

9. I should also like to invite the attention of the distinguished Members of the Sub-Committee to the fact that the Helsinki Rules might be taken up as an item for consideration by the General Assembly at its next session. In fact, as was mentioned by the Ceylon High Commission in their letter of 18 June 1969 (Brief of Documents, Volume I, page 83), this subject was to be introduced at the twenty-fourth session of the UN General Assembly, which is just coming to a close. Dr. Manner, the Chairman of the ILA Committee on International Water Resources Law, has now informed the Secretary of this Committee in his letter of 24 November 1969, that Finland proposes to raise the item at the next session of the General Assembly in 1970. This is all the more reason why we should not embark on a new formulation of our own but concentrate our attention on the Helsinki Rules to review their suitability for the Asian and African countries.

10. In view of this proposal, I do not wish, Mr. Chairman, to offer our comments on the draft articles proposed by the Delegate of Iraq as well as those proposed by the Delegate of Pakistan. Many of the ideas contained therein are also contained in the Helsinki Rules and we would offer our comments on them while discussing the Helsinki Rules. Some other articles are new articles which have not been included in the Helsinki Rules and which may be controversial. By way of example, I could refer to the doctrine of "Abuse of Rights". A review of literature on the subject would show that the subject is intensely controversial. *Lauterpacht* and *Cheng* support the concept, but recognise the controversy. *Kunz*, *Guggenheim* and *Schwarzenberger* deny the existence of the doctrine under international law and question its utility. According to *Schwarzenberger*, the abuse of rights is neither a part of Roman Law nor of Common Law, nor can it acquire legitimacy or authority by citing a Latin phrase in its support. In fact, Professor *Schwarzenberger* wrote an exhaustive article on the subject entitled "Uses and Abuses of the Abuse of Rights in International Law", published

in *Transactions of the Grotius Society* (1957) at pages 157-179. Others who deny the existence of the concept are *Gutteridge*, *Brownlie*, and the French authority, *J. D. Roulet*. I do not wish to discuss the existence and non-existence of the concept at this stage, or its application to the question of water rights. All I wish to emphasise at this stage is that before we go into the question of "abuse of rights" and "State responsibility", another complicated question which is presently being considered by the International Law Commission, we should concentrate our efforts on defining the rights of a State in the waters of an international drainage basin. I should also like to mention that the Helsinki Rules, while dealing with the equitable utilisation of waters, have not made any provision on "abuse of rights". In view of this, the best course for us to adopt would be to proceed with the Helsinki Rules to reach an understanding about the rights, rather than start an academic discussion on the doctrine of "abuse of rights".

STATEMENT BY THE INDONESIAN REPRESENTATIVE

Mr. Chairman,

I have listened with interest to the speakers who spoke before me and who have outlined their positions *vis-a-vis* the subject before us. Allow me to make some observations, and I would like to do so in the framework of the AALCC Resolution No. X (6) passed at the Karachi Session last January.

Firstly, the Committee is aware of the spadework which has been done by the International Law Association and other organizations and bodies both Governmental and non-Governmental concerning the Law of International Rivers. Secondly, the Committee also realizes that the development and codification of the principles governing the Law of International Rivers are of vital significance to the emerging countries of Asia and Africa, particularly in the context of their food and agricultural development programmes.

In instructing this Sub-Committee to prepare a draft of articles on the Law of International Rivers, particularly in the light of the experience of the countries of Asia and Africa, the Committee in fact has given expression of a consciousness that the work done in this field does not reflect sufficiently the special needs of our regions. I think that this Sub-Committee does agree that the above guidelines given by the Committee provide the framework within which this meeting should fulfil its task.

The Sub-Committee should, therefore, endeavour as much as possible to make fresh contributions to the body of thinking and recommendations already existing in this field,

and at the same time it should avoid duplications. Secondly, while giving due consideration to the existing rules, such as the Helsinki Rules, the Sub-Committee should concentrate on aspects having direct and actual relevance to the problems, needs and conditions of the Afro-Asian region, such as the uses of water for agricultural and industrial purposes.

I am aware that the task before us is not an easy one, because the national interests of sovereign States are involved and because this meeting is actually trying to establish rules which restrict the national rights of nations. It is for these reasons that we have to tread carefully, though I hope, not without despatch.

My Government would like to see that the principle of solidarity be applied in the preparation of draft articles on the Law of International Rivers. This principle may provide the necessary scope in which riparian States can cooperate for the peaceful and fruitful development of the region concerned, and to avoid disputes which only unnecessarily consume our time and energy that should be applied to the speedy development of our economy.

The statement made by my distinguished colleague from Ceylon is of special interest to me, because being also an island-country our positions have much in common. I would like to make further comments on the Ceylonese statement if the occasion arises.

Mr. Chairman, the meeting has heard the proposals forwarded by the respective Delegations. The positions are now known to a certain extent. I hope that this will be a starting point for us to go deeper into the subject and that this Sub-Committee will succeed in producing results as expected by the Committee. Thank you, Mr. Chairman.

ORAL STATEMENT OF THE JAPANESE REPRESENTATIVE

The position of the Japanese Government on the uses of the waters of international rivers was stated clearly by Dr. Nishimura, Member of the Asian-African Legal Consultative Committee from Japan, at the Tenth Session held in Karachi last January.

This is namely :

Japan recognises quite well the keen necessity of formulating some general rules on the problem of the uses of the waters of international rivers.

Japan also considers that these general rules should be used as guiding principles for solution of a particular problem which, by nature, should be solved on the bilateral or regional basis.

Japan further considers that as the basis of our work of formulating these general rules, we should take up the Helsinki Rules on the Uses of the Waters of International Rivers prepared by the International Law Association in 1966. The best starting point of our work may be to supplement and make more comprehensive these Rules, particularly on the subject of consumptive uses of waters of international rivers.

STATEMENT BY THE JORDAN REPRESENTATIVE

Mr. Chairman,

It is for me a great pleasure to start my brief statement on the Law of International Rivers, with a welcoming salutation to your most respected person, for presiding over this meeting, as I am quite confident that the presence of such a highly legal authority will facilitate our task and render our discussions fruitful and objective.

As far as the Law of International Rivers is concerned, I would take this opportunity to reiterate what has already been stated on the subject by the Jordan Delegate to the Karachi Meeting of the Committee.

The Law of International Rivers takes up the question of relations among States; but regulations related to such rivers, and disputes arising out of the question of International Rivers may, however, occur between a State and an illegal occupying force, such as the situation between the Arab States and the so-called "State" of Israel.

I would request that what has been said by the Jordan Delegate at the Karachi Session, regarding the Holy Jordan River, should be taken into consideration in the course of our deliberations.

I have to comment with satisfaction that the Draft Principles introduced by the distinguished Iraqi Delegate in the Sub-Committee, answer in spirit the problem mentioned above, particularly Articles 7, 12, 15, 17, 18 and 19 of the Iraqi principles.

I have equally the pleasure to confirm that the draft articles proposed by the distinguished Delegate of Pakistan offer a great contribution to the work of our Sub-Committee and tackle the problem of the Jordan River. I have to mention in particular Article 2 (with some suggested amendment and addition in order to suit the terms "occupying force" and "occupied territory of a riparian State"), Article 3 Article 4 (b) and Article 5.

While repeating my welcome to you, Hon'ble Mr. Chairman and you dear colleague Delegates, I have to mention with recognition and appreciation the studious work of the Secretariat of the Committee who rendered our work easy to manage and control.

I wish with all my heart all the success to our distinguished Asian-African Legal Consultative Committee hoping that it will enlarge soon its membership and the scope of its work.

FURTHER STATEMENT OF THE PAKISTAN REPRESENTATIVE

Mr. Chairman,

The subject for consideration of this inter—sessional Sub-Committee, in accordance with the terms of reference, is to prepare draft articles on the Law of International Rivers, particularly in the light of the experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems. The Government of Pakistan had addressed an *Aide-Memoire* to the member Governments of the Committee on this important subject. At that time we had communicated our intention of submitting detailed draft articles for consideration of the Committee based on the general principles already enunciated in the *Aide-Memoire*. At the beginning of the Session of the Sub-Committee we explained the general principles contained in the *Aide-Memoire* and also submitted the draft articles for consideration of the Sub-Committee. We were amply rewarded by the views expressed by the distinguished members here. At the outset the distinguished Delegate of Iraq introduced the draft principles on behalf of the Government of Iraq. We find much common ground between these general principles and the draft articles that we have proposed. We are happy to note that the distinguished Delegate of Ghana had stated that his Government found nothing objectionable with the principles embodied in our *Aide-Memoire*. The distinguished Delegates of Ceylon and Indonesia had expressed the view that the Sub-Committee may consider the proposals made by the Governments of Iraq and Pakistan and attempt to suggest concrete guidelines in accordance with the terms of reference of the Committee. We welcome this point of view and hope that the various proposals currently sub-

mitted are considered by the Committee in formulating draft articles on the Law of International Rivers. The distinguished representative of Jordan has proposed an amendment to Articles II, III and V of our draft articles to take into consideration the obligation of an "occupying force" in this respect. We concur with the suggestion of the distinguished Delegate of Iraq that this amendment is both realistic and reasonable. The distinguished representative of Japan emphasised that an area of agreement already existed in the Helsinki Rules on the uses of the Waters of International Rivers, and that the said Rules may be taken as a basis for discussion but that efforts should be made to improve these rules taking into consideration the interests of Afro-Asian States. The distinguished Delegate of India also emphasised the area of agreement existing under the Helsinki Rules but expressed reluctance to add to these rules as in his opinion new proposals might be controversial in nature. He has also made some other observations but for want of time we reserve our position in respect thereof.

2. It is the view of my Delegation that the Sub-Committee must endeavour to perform the work assigned to it by the Committee under Resolution No. X(6) and to prepare draft articles on the Law of International Rivers. It is clear from this resolution that not only the work of the International Law Association but that the work of other organisations and bodies, both governmental and non-governmental must be taken into consideration. The fourth preambular paragraph of the resolution reads: "also noting the work done by the International Law Association and other organisations and bodies, both governmental and non-governmental, concerning the Law of International Rivers". It is thus clear that the Committee envisages a more comprehensive basis for the work of the Sub-Committee. And it was in the spirit of this resolution that we have submitted these draft articles for the consideration of the Committee. Accordingly, our draft articles took into consideration the Helsinki Rules along with the work of other

international organisations. It may also be mentioned that the Helsinki Rules must be considered in the context of their comments. We have also taken into consideration international custom, the general principles of law existing in the legal systems of the world, international river treaties, the opinion of jurists and other precedents. I would also like to emphasise that we have tried to keep our specific proposals as objective as possible and not directed against upper or lower riparian States in particular.

3. I now give a brief explanation of the draft articles circulated by us earlier. Article 6 of these draft articles provides: "Each riparian State is entitled within its territory to a reasonable and equitable share in the beneficial use of waters of an international river. What is a reasonable and equitable share is to be determined by considering all relevant factors in each particular case". The examination of the Helsinki Rules will show that this formulation combines Article IV and Article V (i) of those Rules. The principle of equitable apportionment is universally recognised. We have not, however, attempted to define which factors would be relevant in order to determine the equitable apportionment of the waters of an international river. We thought it would suffice to state that this can be done in the light of all the relevant factors in each particular case.

4. Article 7 of the draft articles proposed by us states as follows: "A use or category of uses is not entitled to any inherent preference over any other use or category of uses". This corresponds to Article VI of the Helsinki Rules. We have also added the words "an international river must be examined on an individual basis and a determination made as to which uses are more important giving special weight to uses which are the basis of life". The regions of Africa and Asia being relatively arid with large populations to support are badly in need of agricultural development and these uses must be given more importance in determining priorities amongst uses.

5. Article 8 of the draft articles proposed by us provides that "an existing reasonable use is to be respected unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it would be equitable to modify or terminate it so as to accommodate a competing incompatible use". This corresponds to Article VIII para (i) of the Helsinki Rules. In our view, however, an existing use is not worthy of protection if (a) it is established over the lawful objections of a co-riparian State that the use is contrary to the Law of International Rivers and (b) at the time of becoming operational it is incompatible with a pre-existing reasonable use.

Article 9 of our draft articles combines the substance of Articles IX and X(a) of the Helsinki Rules.

Articles 10 of the draft articles proposed by us provides : "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..." This part of the formulation is the same as Article XXVII, paragraph (i) of the Helsinki Rules which states, "Consistently with the Charter of the United Nations, 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." In our formulation we have added the words "in the case of disagreement between two or more States it is not permissible for one of these States to act as judge in its own cause and take unilateral and arbitrary action". We feel that the requirement of good faith implies that no one party will prejudice the interest of the other by taking unilateral and arbitrary action. This is a rule which also follows from the principle of good neighbourly relations between States. We have tried to state the existing obligations regarding the pacific settlement of disputes without proposing any recommendations as in Article VI of the Helsinki Rules.

6. I would now like to refer to Article 1, which defines an international river. The definition has been suggested keeping in view the current thinking that an international river ought to be treated as an integrated whole. Thus, *J. L. Brierly* states as follows : "This practice of States as evidenced in the controversies which have arisen about this matter, seems now to admit that each State concerned has a right to *have a river system considered as a whole*, and to have its own interests weighed in the balance against those of other States and that no State may claim to use the waters in such a way as to cause material injury to the interest of another, or to oppose their use by another State unless this causes material injury to itself". We have taken into consideration all waters that flow into an international river. This view is amply supported in the practice of States as is clear from pages 17-20 of Vol. II of the Brief of Documents.

7. Article 2 of the draft articles proposed by us recognises that certain actions by one riparian State in its own territory may result in such grave damage to the territory of the other that the action would constitute a violation of the sovereignty and territorial integrity of the latter. In such cases because of the extreme gravity of the injury the act may be regarded as an act of aggression rather than merely a tortious act. In these circumstances compensation would not appear to be an adequate remedy and the right of self-defence may well exist. These acts have to be prohibited in no uncertain terms in the interests of peace and security of riparian States.

8. In support of this principle, we may mention that there is an obligation under the Charter of the United Nations to refrain from acts against the territorial integrity or political independence of any State. Thus Article 2(4) provides as follows :—

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State."

The term 'force' is to be interpreted to mean "all forms of pressure". In interpreting Article 2(4) of the Charter in the General Assembly's Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, Algeria, Cameroons, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia put forward a joint proposal defining 'force' as follows :

"All forms of pressure, including those of political or economic character against the territorial integrity or political independence of any State."

(See report of the Special Committee on Principles of International Law concerning Friendly Relations *Official Records of the 23rd Session*—Document A/7326, paras 26, and 49-54).

In respect of this draft article we welcome the suggestion of the distinguished Delegate of Jordan, as supported by the distinguished Delegate of Iraq, that the operation of this principle may be extended and applied to an "occupying force".

9. Article 3 of the draft articles proposed by us states a fundamental principle of law which is absent from the Helsinki Rules. In accordance with this article "in cases in which the 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. Where any damage or injury results, the aggrieved State is entitled to indemnification". This formulation is based on the Latin maxim : *Sic utere tuo et alienum non laedas* (i.e. so use your own so as not to injure another's property). *Lauterpacht* states that this maxim is applicable to the relations of States no less than to those of individuals, it underlies a substantial part of the law of torts in English law and the corresponding branches of other systems of law. (*Brief of Documents*, Vol. II, page 23).

This principle has been incorporated in Articles II and III of the Declaration of Montevideo adopted at the Seventh Inter-American Conference held in 1933 (*Brief of Documents*, Vol. II, page 253).

The principle also finds its place in the Statement of Principles adopted in 1956 at Dubrovnik by the International Law Association. Principle No. 4 states as follows :

"A State is responsible, under international law, for public or private acts producing change in the existing regime of a river to the injury of another State, which it can have prevented by reasonable diligence."

Similarly, the Inter-American Juridical Committee on the Industrial and Agricultural uses of International Rivers and Lakes have suggested as recently as 1965 the formulation of this principle as follows :

"In cases in which the utilisation of an international river or lake results or may result in damage or injury to another interested State, the consent of that interested State shall be required, as well as the payment of indemnification of any damage or harm done when such is claimed."

There are numerous other precedents supporting this important principle. However, it is of such a fundamental nature as not to require any further justification.

10. In Article IV we have stated the well-known principle of abuse of rights in this form "every riparian State must act in good faith in the exercise of its rights in relation to the waters of an international river". As a corollary to this principle, we have added the rule that "where a particular right could be exercised by more than one method, it is an abuse of rights for a riparian State to adopt the method which would cause injury to a co-riparian State". The principle as stated by us enjoys wide recognition in international law. Thus, *Oppenheim* is of the view that "the responsibility of a State may

become involved as the result of an abuse of right enjoyed by virtue of international law. This responsibility of a State occurs when a State avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage".

Ricci-Busatti, the Italian jurist, states that "the principle which forbids the abuse of rights is one of the general principles of law recognised by civilized nations, to be applied by the world court" (*Brief of Documents*, Vol. II page 93).

Politis, the French jurist, has taken the view that the doctrine of abuse of rights is of great importance for the development of international law relating to State responsibility and he advocated its progressive application as one of the general principles of law referred to in Article 38 of the Statute of the International Court. (*Brief of Documents*, Vol. II, page 93).

Cheng takes the view that "the principle of good faith which governs international relations controls also the exercise of rights by States. The theory of abuse of rights recognised in principle both by the Permanent Court of International Justice and the International Court of Justice, is merely an application of this principle to the exercise of rights". (*Brief of Documents*, Vol. II, page 95).

Harle states that "every improper exercise of a right with the intention to harm the person inconvenienced by the legal claim in a manner contrary to good faith can enjoy no legal protection under the legal order". (*Brief of Documents*, Vol. II, page 93).

The Permanent Court of International Justice has recognised the existence of this principle in two cases i.e., *Certain German Interests in Polish Upper Silesia* (1926) between Germany and Poland, and in the case of the *Free Zones of Upper Savoy and the District of Gex* (*Brief of Documents*, Vol.

II, page, 97). The *Trail Smelter Arbitration* is also often quoted as an application of this principle (*Brief of Documents*, Vol. II, page 101). But most important of all, I would like to refer to the observations of the Secretariat of AALCC at page 97 of Vol. II of *Brief of Documents* which are as follows :

"To sum up, it may be pointed out that the theory of abuse of rights is one of the general principles of law recognised by several legal systems of the world. This doctrine was applied by the Asian-African Legal Consultative Committee in its Final Report on the Legality of Nuclear Tests where it was stated that even if such tests are carried out within the territory of the testing State, they are liable to be regarded as an abuse of rights."

It is important, therefore, to note that the principle of abuse of rights is a principle accepted as a rule of international law and has already been applied by this Committee.

11. Lastly, in Article 5 of the draft articles proposed by us, we have stated the principle that "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 is a general principle of law recognised by States in relation to municipal water rules and is, therefore, a principle which can be usefully applied to the relations of States by virtue of the accepted theory of sources of law as embodied in Article 38 of the Statute of the International Court of Justice. In France and Germany, in accordance with the Civil Law, the riparian has the right to the free use of water for agricultural and industrial proposes, but he must return it without any excessive diminution to the water course when it leaves his land. The upper riparian cannot lead all or almost all water for the purpose of irrigation contrary to the interests of the lower riparian. (See *Brief of Documents* Vol. II, page 32). The laws of Belgium and Spain relating to the regulation of water

rights are more or less similar to the law of France (See *Brief of Documents*, Volume II, page 33).

The common law also appears to have the same principle. Thus *Kent* says "a riparian proprietor has no property in the water itself, but has simple usufruct while it passes along..... though he may use the water while it runs over his land as an incident to the land; he cannot unreasonably detain it or give it another direction and he must return it to its ordinary channel when it leaves his estate. In *Mason V Hill* the court referred to *Blackstone* and interpreted this and other statements to mean that first riparian could not deprive the latter one of the right the natural flow of the water (See *Brief of Documents*, Vol. II, page 41).

Mr. Chairman, with these remarks I commend that the draft articles proposed by us be taken into consideration by the Committee in pursuance of Resolution X (6) adopted at the Karachi Session.

FURTHER STATEMENT OF THE IRAQI REPRESENTATIVE

We are most grateful to the contribution made by our distinguished colleagues from Pakistan, Ceylon, Ghana, India, Jordan, Indonesia and Japan. Their reference to the draft principles presented by my Delegation is highly appreciated. The draft articles presented by the distinguished Delegate of Pakistan and the formulation in the Pakistan *Aide-Memoire* are of great value to the work of our Sub-Committee and my Delegation is happy to note that they correspond and add to our draft principles.

In regard to the views expressed by the distinguished representative of Ceylon, I wish to say that his reference to include the term 'drainage basin' in our discussion is certainly of importance. In fact, our definition of the term 'International River' includes that meaning since we referred to International River as an indivisible geographic physical unit.

As to the terms 'reasonable' and 'equitable', I agree with my Ceylonese colleague that they are philosophical more than technical ones. But I believe my Pakistani colleague has answered this point. The distinguished colleagues from Japan and India have suggested confining our efforts to the Helsinki Rules. You will agree, Sir, I am sure, that the draft principles which we have presented are largely derived from those rules, or are in harmony with them. In fact, our distinguished colleague from India was so kind as to confirm that point in the statement which he so eloquently presented.

But, Sir, I must submit that to rely entirely on those rules is not an advisable course to take. The distinguished Delegate of India speaking of those rules said, and I quote: "We, therefore, support the proposition that the Sub-Committee may

take up the Helsinki Rules as the basis of its study. These rules may be circulated among the Member Governments of this Committee and they may be requested to offer their comments relating thereto. To begin with, we may restrict our study to Articles I to VIII of the Helsinki Rules which contain general provisions and relate to the equitable distribution of water of an international drainage basin. The Member Governments may be invited, while commenting on these Rules to supply the Committee with such material as they would like the Committee to consider in its study of the subject". To us the topic would not be complete by merely discussing the rights without the factors which abuse those rights and the measures to restrict them.

FURTHER STATEMENT OF THE INDIAN REPRESENTATIVE

In answer to the statement made by the distinguished Delegate of Pakistan in the Sub-Committee's meeting held on the 20th December, 1969 at 10.30 a.m., the Indian Delegate made the following points.

Dealing with the question as to the scope of the Committee's work on the Law of International Rivers, he recalled that the name of the Committee was Asian-African Legal Consultative Committee. In other words, it was an inter-governmental body established for mutual consultation. Its consultative status was also clear with reference to Article 3 of its Statute which indicated the subjects which it could take up for consideration and on which it could make recommendations to Member Governments. These subjects were those which were being considered by the International Law Commission, those which may be referred by any of the participating countries and those upon which exchange of views and information will be of common concern.

The subject of International Rivers had been referred to the Committee by the Governments of Iraq and Pakistan for the Committee's consideration under Article 3 (b) of its Statutes. The Committee might make such recommendations to Governments as might be thought fit, as was specified in Article 3 (b). The Committee had throughout been a forum for mutual consultation and expression of views on matters of common interest in the field of International Law. The Committee had worked on numerous subjects since 1956 when it was established, such as, Diplomatic Immunities and Privileges, State Immunity, Extradition, Treatment of Aliens, Rights of Refugees, and the Law of Treaties. Normally the

work on each subject had taken from three to four years to complete. In some cases, the end-product was described as guiding principles, such as those relating to Sovereign Immunity and Extradition, or as articles, such as, those relating to the Rights of Refugees. In either case, these were not binding upon the Governments. For instance, the principles of extradition were drafted in the form of a draft agreement which could be taken into account by States in entering into bilateral or multilateral arrangements or for modifying their local laws. These principles were adopted in 1961. No multilateral convention on extradition applying to Asian-African countries appears to have been arrived at yet. Even the bilateral agreements or arrangements have not yet been concluded. Nor has extradition legislation of the Member States necessarily been modified after 1961. It may also be pointed out that on the question of refugees, although articles were finalized in 1966 at Bangkok, the Government of Pakistan considered it appropriate in 1968 to open them for reconsideration. The request was circulated among the Governments and accordingly the matter was discussed in Karachi in January 1969 and may also be discussed in Ghana in January 1970. Thus, throughout its work the Committee had adopted a flexible approach and its rule had been consultative and advisory, and not legislative one. It could not lay down the law or "declare the existing law" in a definitive manner. What form the conclusion of the work of international rivers should take would also depend upon the views of the Governments participating in this work.

2. On the question of how to proceed further in the subject, the Indian Delegate suggested that the proper course for the Committee to take will be to take a standard formulation as its starting point. If the Committee is to proceed to consider the existing law in the subject and may be *lex ferenda* also, the best course under the circumstances may be the one suggested by the Delegate of Japan namely, to take the Helsinki Rules of 1966 as a starting point and to examine the

proposals of various Governments made or which may be made in this connection. Otherwise it may be difficult to decide as to how two or three or more proposals made by the various Governments should be considered at the same time.

3. The Indian Delegate then addressed himself to the various points made by the Delegate of Pakistan with reference to the draft articles proposed by them. He said that since he was dealing only with the procedural question at that stage, he would not be making detailed comments on the various articles. These would be offered at the appropriate time. He, however, emphasised that if, in the place of starting with the existing rules, as the Pakistan Delegate intended to do, the Committee started on controversial propositions developed by the Pakistan Delegate under Article 2 of his draft articles, wherein he had asserted that any action taken by a riparian State in its territory which resulted in damage to the territory of another State was an act of aggression, the proper remedy for which would not be compensation but the right of self-defence, it might lead to unnecessary argumentation. He thought that the proposition advanced by Pakistan was far too exaggerated and was not at all supportable or maintainable by any authority or by State practice. Nor was Article 2, clause 4, of the U.N. Charter relating to the prohibition of the threat or use of force relevant in the context of water rights. As regards the meaning of the word "force" as "*any form of pressure*", he recalled the proposal which India had co-sponsored with other non-aligned countries in the U.N. Committee on Friendly Relations, of which Pakistan was not a member. He further referred to the fact that both Pakistan and India had co-sponsored a similar proposal with reference to an article (Article 49) of the Law of Treaties at the Vienna Conference in 1968 and in 1969. The proposal had no application to the question of water rights and wrong analogies would not lead to crystallising legally sustainable propositions. It would be too wide and dangerous a doctrine to apply the concept of aggression and the right of self-defence to the adjustment