

of water rights among co-riparian States. He, therefore, suggested that the Pakistan Delegation may kindly reconsider their views on this subject, in particular.

The Pakistan Delegate took the floor to reply, and stated that the Sub-Committee would be bound by its mandate, given by the resolution, and the rules of the Committee or its Statutes could not change that mandate, namely, to prepare a draft of articles on the Law of International Rivers. Whether these were described as recommendations would not affect the status of those rules, if they were supportable by existing law and the experience of Asian-African States. His Delegation could not agree to starting the work with the Helsinki Rules, unless these were proposed by a Government. As to the question of aggression and the right of self-defence, he thought that these propositions were supported by law and authority. Any act of a State which caused damage to another was an act of aggression.

The Delegate of Iraq supported the Delegate of Pakistan and said that the Committee was master of its rules.

The Indian Delegate replied that the Committee may change its rules of procedure but could not change its mandate established by Governments. A resolution of the Committee could not override the Statutes. Nor was every act of a State causing damage to another an act of aggression. Remedy against damage was compensation and not self-defence. Aggression was a qualitatively different concept.

III. DRAFT ARTICLES ON THE LAW OF INTERNATIONAL RIVERS JOINTLY PROPOSED BY THE DELEGATIONS OF IRAQ AND PAKISTAN AT THE ELEVENTH SESSION

Article 1

An international river is one that traverses the boundary of or separates two or more States, including the tributaries which flow into the said river making a material contribution to its flow.

The river with its tributaries is considered to be the common property of the co-riparian States and is an indivisible unit.

Article 2

(a) A riparian State should respect the acquired rights of the co-riparian States in the international river.

(b) A riparian State may not utilize the waters of an international river or take action in its territory in a manner which would cause grave and permanent damage to the territory of a co-riparian State.

(c) A riparian State may not utilise the waters of an international river in a way which causes widescale environmental, ecological and physical changes in the territory of a co-riparian State.

Article 3

In cases in which the utilization 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.

Article 4

Every riparian State must act in good faith in the exercise of its rights in relation to the waters of an international river. Where 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, in particular :

(a) A lower riparian State may not dam the waters of an international river at a particular site, flooding the territory of an upper riparian State, if an alternative site is available which would avoid such flooding.

(b) An upper riparian State may not divert the waters of an international river without constructing reservoirs for storage of water, where this is possible and which would have the effect of avoiding damage to the lower riparian State.

Article 5

(a) 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.

(b) A riparian State may not change the course of an international river at the point where it enters the territory of other co-riparian State.

(c) A riparian State may not alter or change the course of an international river which would decrease the amount of its water in the downstream of the co-riparian State.

Article 6

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. What is a reasonable and equitable share is to be determined by considering all the relevant factors in each particular case.

Article 7

A use or category of uses is not entitled to any inherent preference over any other use or category of uses. 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, such as agriculture and consumptive uses.

Article 8

If due to human conduct any detrimental change is caused in the natural composition, content, or quality of the water of an international river in one State, which does substantial injury in another State, the former State is responsible for the damage done.

Article 9

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 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.

The States shall refer the dispute within reasonable time to arbitration and shall abide by its decision.

Article 10

The general rules of International Law as set forth in these draft articles are applicable to the international river and the use of its waters except as may be provided otherwise by convention, agreement or binding custom among the co-riparian States.

IV. PROPOSAL OF THE INDIAN DELEGATION ON THE LAW OF INTERNATIONAL RIVERS MADE AT THE ELEVENTH SESSION

The Delegation of India proposes that the Helsinki Rules adopted by the International Law Association in 1966, should be the basis of the Committee's study of the Law of International Rivers. To begin with, the following rules may be taken up for study :

Article I

The general rules of international law as set forth in these articles are applicable to the uses of waters of an international drainage basin except as may be provided otherwise by convention, agreement or binding custom among the basin States.

Article II

An international drainage basin is a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

Article III

A "basin State" is a State the territory of which includes a portion of an international drainage basin.

Article IV

Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin.

Article V

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

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

- (a) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin State;
- (b) the hydrology of the basin, including in particular the contribution of water by each basin State;
- (c) the climate affecting the basin ;
- (d) the past utilization of the waters of the basin, including in particular existing utilization ;
- (e) the economic and social needs of each basin State ;
- (f) the population dependent on the waters of the basin in each basin State ;
- (g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State ;
- (h) the availability of other resources ;
- (i) the avoidance of unnecessary waste in the utilization of waters of the basin ;
- (j) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses, and
- (k) the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State ;

(3) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article VI

A use or category of uses is not entitled to any inherent preference over any other use or category of uses.

Article VII

A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.

Article VIII

1. An existing reasonable use may continue in operation unless the factors justifying its continuance are outweighed by other factors leading to the conclusion that it be modified or terminated so as to accommodate a competing incompatible use.

2. (a) A use that is in fact operational is deemed to have been an existing use from the time of the initiation of construction directly related to the use or, where such construction is not required, the undertaking or comparable acts of actual implementation.

(b) Such a use continues to be an existing use until such time as it is discontinued with the intention that it is abandoned.

3. A use will not be deemed an existing use if at the time of becoming operational it is incompatible with an already existing reasonable use.

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

The subject *The Law of International Rivers* was considered by the Committee during the Third, Fourth, Seventh and Eighth Meetings of its Eleventh Session held at Accra (Ghana).

The Delegate of IRAQ introduced before the Committee a set of draft articles being joint proposal of the Delegations of Iraq and Pakistan and requested the Committee to give consideration to the draft articles. In his introductory statement, the Delegate of Iraq referred to the various principles which had been advocated from time to time and stated that the draft articles in the joint proposal of Pakistan and Iraq were derived from international custom practised among different nations, opinions of jurists, decisions of courts and treaties concluded between States as also the decisions and resolutions of international associations and bodies. He then dealt with the different articles contained in the joint proposal and explained the background and scope of the principles contained in the draft articles. The three main principles contained in the draft articles, according to him, were : that a State was not to be allowed to alter the natural conditions on its own territory to the disadvantage of the natural conditions in the territory of its neighbouring State ; (ii) the rights of riparian State must be fully respected and the waters of international rivers should be so utilised as to bring maximum benefit to all riparian States ; and (iii) the obligation of States to submit water disputes for arbitration when other peaceful means of settlement were not affective. He invited the Committee to proceed to consider the draft articles as the basis of discussion.

The Associate Member of the Republic of KOREA stated by way of preliminary observation that the agricultural use of

the waters of an international river was of vital importance especially to Asian-African countries and it was necessary to consider this important subject as traditional law and practice did not fully govern and deal with the new problems of Asian-African countries. He stated that it would be useful at the outset to consider the Report of the Inter-Sessional Sub-Committee.

The Delegate of PAKISTAN affirmed that the development and utilisation of water resources on an equitable basis was vital for sustaining the life and economy of the ever-growing populations of Asian-African countries. Recalling the discussions in the Inter-Sessional Sub-Committee he stated that at that meeting the Delegate of Iraq and also the Delegate of Pakistan had put forward certain draft articles for consideration of the Sub-Committee and that after considering these proposals and hearing the views of the other Delegations, the Iraq and Pakistan Delegations had now put forward their joint proposal which he wished the Committee to take as the basis of discussion. He said that if the Helsinki Rules were to form the basis of discussion as suggested by the Delegates of India and Japan, it would be time consuming process. He suggested that the Committee should start with the concrete proposals which were before the House in the shape of draft articles as contained in the joint proposal of Iraq and Pakistan.

The Delegate of INDIA after reviewing the discussions at the Karachi Session and the Inter-Sessional Sub-Committee stated that before the Inter-Sessional Sub-Committee there were three major proposals, namely a set of draft principles proposed by the Delegate of Iraq ; a set of draft articles proposed by the Delegate of Pakistan ; and the proposal of Japan to proceed on the basis of the Helsinki Rules which was supported by India. He mentioned that most of the States represented in this Committee were riparian States and the interests of those States should be reconciled on a rational and fair basis. The first endeavour, in his view, should be to build up a body of

positive law on the subject and to find out the basic principles embodied in the treaties and agreements on the subject and in States practice. If the existing law was not complete or adequate, the second initial step, according to him, would be to develop the law by filling the gaps and by making proposals. He said that there were two methods which were open to the Committee in discussing this subject, namely either to embark on a research into the treaties and States practice all over the world with a view to ascertaining the general rules or principles or alternatively the Committee could proceed on the basis of work already done by international associations and bodies. He said that the second alternative would ensure speedy progress and suggested that the Helsinki Rules which were adopted by the International Law Association in 1966 should be taken as the basis for discussion in the Committee. He gave detailed reasons for his proposals as to why the Helsinki Rules should be taken as a starting point and mentioned that these rules were likely to be taken up as an item for consideration by the U.N. General Assembly at its next session.

The Delegate of CEYLON whilst reserving his comments on the joint proposal presented by Iraq and Pakistan recalled that owing to differing opinions in regard to the starting point of discussion the Inter-Sessional Sub-Committee was unable to perform the task which the Committee had entrusted to it at the Karachi Session. He said that the question to be decided by the Committee was one of procedure, namely the basis on which the Committee was going to proceed in regard to formulation of rules on the subject of International Rivers. Referring to the draft articles which were presented before the Inter-Sessional Sub-Committee by the Delegate of Pakistan, he pointed out that those draft articles were either identical with or based on the Helsinki Rules. In view of this, he said agreement should be reached on a starting point so that some progress could be made on the subject.

The Delegate of JAPAN fully recognised the vital importance of the problem of the use of waters of international

rivers and the need to formulate general principles for solution of particular problems on the basis of bilateral or regional agreements among the interested States. He suggested for consideration of the Committee that the Helsinki Rules should be taken as the basis of the Committee's work for formulating the general rules and this could be supplemented or modified or adapted to suit the particular conditions of Asian and African regions. He suggested that the joint draft proposed by Iraq and Pakistan might be entitled as "Supplementary Rules to the Helsinki Rules" and that since the subject on the settlement of disputes was dealt with in Chapter VIII of the Helsinki Rules in a detailed and concrete manner, the draft articles proposed by Iraq and Pakistan had better leave the matter entirely to the Helsinki Rules. As regards the substantive rules, he drew the particular attention of the Committee to Article VI of the Helsinki Rules which provided that a use or category of uses was not entitled to any inherent preference over any other use or category of uses.

The Delegate of IRAQ stated that the Committee should proceed on the basis of the joint proposal of Pakistan and Iraq and not on the basis of the Helsinki Rules as those did not reflect the particular views of Asia and Africa on the question.

The Delegate of INDONESIA stated that although his country was not directly concerned with the topic, he would like to see all its aspects considered with the aim of achieving an equitable solution of the problem of uses of waters of international rivers and any probable outcome of deliberations in the matter should have the common aim of attaining long-term cooperation between the countries concerned.

The Delegate of JORDAN said that the divergence of opinion between the Delegations regarding the matter of approach was merely technical and not of substance. While admiring the work done by the International Law Association, he felt that this Committee was charged with the function of dealing with the problems peculiar to the region and this was

reflected in the resolution of the Karachi Session constituting the Inter-Sessional Sub-Committee. He felt that since concrete proposals had been made in the joint Iraq-Pakistan draft, it might be appropriate to go through those proposals and see how for these were suitable.

The Associate Member for the Republic of KOREA stated that the Committee should first have the report on the work done by the Inter-Sessional Sub-Committee and also hear general statements and explanations from the proposers of the draft articles and thereafter the same should be scrutinised by a Sub-Committee.

The Delegation of U.A.R. suggested that the joint proposal of Iraq and Pakistan should be taken as the basis on which discussions should start in the Committee.

The Delegate of GHANA said that the subject of international rivers was very important and this was reflected in the number of conventions and the treaties and also in the evolution of customary rules to govern the uses of international rivers. He suggested that an *Ad hoc* Sub-Committee might be constituted to find out what was common between the Helsinki Rules and the draft articles put forward by Iraq and Pakistan. He said that those Delegates who wanted to rely on the Helsinki Rules could put forward those Rules whilst considering the draft articles submitted by Iraq and Pakistan.

The Delegate of INDIA once again reiterated his stand that the Committee should proceed on the basis of the Helsinki Rules as being a formulation of independent and impartial body of jurists. He said that if the procedural question could not be resolved, the proper course for the Committee would be to refer the proposals of Iraq and Pakistan to the Governments of the participating countries which could be looked into by each Government and the Governments could decide whether they would like to start from the approach of international river as a unit or on the basis of a river basin approach. The appro-