REPORT OF THE SUB-COMMITTEE APPOINTED AT THE TWELFTH SESSION

(Part I—General)

A Sub-Committee on the Law of Internatinal Rivers was appointed by the Committee on January 20, 1971. The Sub-Committee consisted of the representatives of the Governments of Ceylon, India, Indonesia, Iran, Iraq, Japan, Nigeria, Pakistan and the U.A.R. The names of the representatives are listed below :

Dr. A. R. B. Amerasinghe	(Ceylon)
Dr. S. P. Jagota	(India)
Mr. N. C. Saxena	(India)
Dr. R. K. Dixit	(India)
Mr. N. Wisnoemoerti	(Indonesia)
Mr. A. Makki	(Iran)
Dr. B. K. Al-Ghatta	(Iraq)
Mr. K. Uchida	(Japan)
Mr. G. Ogundere	(Nigeria)
Mr. M. A. Samad	(Pakistan)
Mr. Haroon Al Rashid	(Pakistan)
Justice Mohammed Sadek Almady	(U. A. R.)

The Sub-Committee held seven meetings between January 22 and January 27, 1971.

2. The representative of the Government of Ceylon, Dr A.R.B. Amerasinghe, and the representative of the Government of Japan, Mr. K. Uchida, were unanimously elected as Chairman and Rapporteur of the Sub-Committee, respectively.

3. Pursuant to Resolution No. X(6) of the Tenth Session, the Sub-Committee was expected to give detailed consideration to the Law of International Rivers with a view to prepare a set of Draft Articles on the Law of International Rivers.

4. The Sub-Committee had before it two sets of Draft Articles, one submitted jointly by Iraq and Pakistan and the other by India, both at the Eleventh Session. It had then been decided to discuss these two sets of Draft Articles article by article at the Twelfth Session. The Sub-Committee unanimously accepted the proposal of the representative of U. A. R. that the Rapporteur should submit a working paper consisting of Draft Articles, in which he was expected to amalgamate as far as possible the propositions contained in the above mentioned two sets of Draft Articles. The purpose of this was to facilitate the discussions of the relevant principles governing the subject. A set of Draft Propositions was, accordingly, submitted by the Rapporteur, a copy of which is annexed hereto. The Sub-Committee unanimously agreed to accept the Draft Propositions as the basis of discussion.

5. Of the ten Draft Propositions, submitted for discussion by the Rapporteur, the Sub-Committee considered Propositions I to V. Dut to want of time, the Sub-Committee was unable to consider the rest of the Propositions.

6. With regard to the Propositions discussed, the Sub-Committee is happy to report that significant progress was made in its work. The summary of discussions along with proposals made in the Sub-Committee on Propositions I to V appear in Part II of the Report.

7. Since it was not possible to consider Propositions VI to X at all and since it was felt that further consideration of some of the matters relating to Propositions I to V was also necessary, the Sub-Committee recommends that an Inter-Sessional Meeting of the Sub-Committee be held

during 1971 for the purpose of completing its assignment. The Sub-Committee further recommends that the same persons who represented their countries at the Sub-Committee be designated again to participate at the said Inter-Sessional Meeting for the purpose of ensuring the continued and expeditious treatment of the subject under consideration.

Part II (Summary of Discussions)

Re : Proposition I

With regard to Proposition I, there was general agreement, although some delegates proposed that the phrase "international drainage basin" be replaced by the phrase "the international drainage basin of an international river", and that this replacement should be made wherever the former phrase occurs.

Re : Proposition II

With regard to sub-paragraph (1), there was general agreement except with regard to the phrase "flowing into a common terminus", which according to some delegates ought to read as "flowing into an international river".

The Sub-Committee was in agreement with Proposition II(2).

Following the proposal with regard to Proposition I, a proposal to include as Proposition II(3) a definition of an international river in the following form was made :

"**Proposition II(3)**. An international river is one that traverses the boundary of or separates two or more states, including its tributaries, and which flows through an international drainage basin."

Re : Proposition III

There was general agreement with regard to sub-paragraphs (1) and (2) of Proposition III. However, one delegate proposed the amendment of sub-paragraph (1) by adding after "an international drainage basin" the words "of an international river, so as to provide the maximum benefit to that state from the uses of waters with the minimum detriment to the other co-basin state". With regard to this proposal, another delegate expressed the view that this proposed amendment would necessitate the inclusion of such other factors as are enumerated in Article V(2) of the Helsinki Rules of 1966 and also the inclusion of the principle embodied in Article V(3) of the said Rules.

Re : Proposition IV

With regard to sub-paragraph (1) there was general agreement.

With regard to sub-paragraph (2) contrary views were expressed whether its subject-matter was recognised in international law. One delegate proposed that it be replaced by the following :

"**Proposition IV(2)**. Consistent with the principle of sovereign equality of all states, each basin state shall have due regard to the rights of co-basin states in the exercise of its right to use the waters of an international drainage basin".

In this connection one delegate proposed another formulation in the following terms : "*Proposition IV(2)*. Where a particular right can be exercised by more than one method, a basin state shall adopt such a method as to provide the maximum benefit to that state and to cause the minimum detriment to co-basin states". However, this proposal was subsequently withdrawn.

Re : Proposition V

With regard to the first sentence there was general agreement. With regard to the second sentence some delegates expressed the view that it should be omitted.

ANNEXURE 1

DRAFT PROPOSITIONS ON THE LAW OF INTERNATIONAL RIVERS

(Prepared by the Rapporteur)

Proposition I

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

Proposition II

(1) 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.

(2) A "basin state" is a state the territory of which includes a portion of an international drainage basin.

Proposition III

(1) 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.

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

Proposition IV

(1) Every basin state shall act in good faith in the exercise of its rights in relation to the waters of an international drainage basin.

(2) Where a particular right can be exercised by more than one method, a basin state shall adopt the method which would not cause injury to a co-basin state.

Proposition V

A use or category of uses is not entitled to any inherent preference over any other use or category of uses. However, in determining preference among competing uses special weight should be given to uses which are the basis of life, such as agricultural and consumptive uses.

Proposition VI

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.

Proposition VII

(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 of compatible 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.

Proposition VIII

(1) A basin state may not utilize the waters of an international drainage basin or take action in its territory in a

manner which would cause grave and permanent damage to the territory of a co-basin state.

(2) In cases in which the utilization of an international drainage basin by a basin state may result in damage or injury to a co-basin state the prior consent of that state should be required.

Proposition IX

Any act or omission in violation of the foregoing Articles III and VIII may give rise to state liability in accordance with general principles of international law.

Proposition X

Any disputes concerning the interpretations and applications of the foregoing articles shall be settled peacefully in accordance with Article 33 of the Charter of the United Nations.

STATEMENT BY THE INDONESIAN DELEGATION, AT THE LAW OF INTERNATIONAL RIVERS SUB-COMMITTEE MEETING OF THE TWELFTH SESSION OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE, ON JANUARY 23, 1971.

Mr. Chairman,

The significance of the subject now under discussion, namely the Law of International Rivers, is beyond doubt. International rivers could become a source of welfare, but it could also become a source of conflict. My Government, therefore, is of the opinion that there could be general guiding rules which would regulate the uses of such rivers, especially in cases where the riparian States do not have agreement or treaties for this purpose.

It is my firm belief, Mr. Chairman, that it would be a considerable contribution to the international community, especially to the Afro-Asian countries, if the Committee could agree to a set of basic or general guiding rules as I mentioned above, which guarantee a universal application without regard of time and place. It seems to me that this is the only possible way for the Committee to give contribution in dealing with the matter, particularly in view of the limited time available to us during this session.

The drafting of such basic guiding rules should, of course, take into account the basic tenets contained in the draft articles presented by members of the Committee.

In this respect, Mr. Chairman, I wish to submit the opinion of my Government that the basic guiding rules should be formulated on the basis of the following principles :

(a) The rules should be just and equitable.

(b) The rules should not only take into account the geographical factors, but also non-geographical ones, such as the vital interest of a particular riparian State.

(c) The rules should be based on the principle of solidarity.

(d) In cases where the international rivers pass through developed and developing States, the rules should be able to safeguard the interest of the developing riparian State *vis-a-vis* that of the developed riparian State, the latter having advance technology and large amount of capital at its disposal.

As concluding remark, Mr. Chairman, may I stress again that the Committee should deal with the matter with the prime objective to formulate basic guiding rules of universal application. And to achieve this objective, we should approach the matter only from its legal side. Thank you, Mr. Chairman.

V. LAW RELATING TO INTERNATIONAL SALE OF GOODS

INTRODUCTORY NOTE

The Law relating to International Sale of Goods was originally included in the programme of work of this Committee under Article 3(c) of its Statutes at the suggestion of the Government of India. A Study concerning the Rules of Conflict of Laws relating to International Sales and Purchases was prepared by the Secretariat and was placed before the Committee at its fourth session held in Tokyo in 1961. The matter was considered by a Sub-Committee at the Tokyo Session which recommended collection of further material. It was not possible to make much progress on this subject for some time in view of the fact that there were a number of references by Member Governments under Article 3(b) of the Committee's Statutes which needed urgent consideration. During the discussions at the second session of the UNCITRAL, the representatives of India and Ghana suggested that the Asian-African Legal Consultative Committee should be requested to revive its consideration of the subject of International Sale of Goods and that it should be taken up for discussion at the eleventh session of the Committee. The subject was accordingly placed on the agenda of the eleventh session of this Committee and a Brief was prepared by the Committee's Secretariat dealing with all the topics which were generally discussed at the second session of the UNCITRAL. The Committee considered the subject in the plenary and after noting the views and comments made by various delegations as well as the Secretary-General of the Hague Conference, the Secretary of the UNCITRAL and the representative of the UN Economic Commission for Africa, the Committee decided to constitute a Sub-Committee for giving further consideration to the subject. The Sub-Committee held three meetings

during the Accra Session in which, apart from the members of the Committee, Observers from other governments and international organisations also participated. The Sub-Committee decided to concentrate its attention on two points : namely, (i) increase familiarity of the members of the Committee with the work done by UNCITRAL and other organisations, and (ii) make recommendations regarding the manner in which the subject may be discussed in the Committee on a regular basis. The Sub-Committee submitted an Interim Report on the 29th of January 1970, which was followed by a fuller Report.

The subject was taken up for further consideration at the twelfth session of the Committee held in Colombo during January 1971. After discussions in the plenary, the Committee requested its Standing Sub-Committee* to give detailed consideration to the subject. The Sub-Committee dealt with six questions : (i) the desirability of adoption of standard or model contracts in respect of commodities of special interest to the buyers and sellers of Asian-African region ; (ii) the suitability of Articles 1 to 17 of the ULIS for the countries of Asian-African region ; (iii) consideration of the preliminary draft of Unifo m Law on Prescription (Limitations) in the field of International Sale of Goods prepared by the Working Group of UNCITRAL ; (iv) International Legislation on Shipping ; (v) Negotiable Instruments ; and (vi) International Commercial Arbitration, and presented its Report at the plenary meeting held on the 27th of January 1971. The Secretary-General of the UNIDROIT (Mr. Mario Matteucci) and the Secretary of the UNCITRAL (Prof. John Honnold) participated in the discussions both in the plenary and the Sub-Committee.

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*Composed of Ceylon, Ghana, India, Iraq, Japan, Nigeria, Pakistan, and the U.A.R.

RECORD OF DISCUSSIONS HELD AT THE TWELFTH SESSION

SEVENTH MEETING HELD ON MONDAY THE 25TH JANUARY 1971 AT 11.00 A. M.

Hon. T.S. Fernando, Q.C. (President) IN THE CHAIR

PRESIDENT :

This morning we are scheduled to take up the question of the International Sale of Goods. I call upon the Leader of the Pakistani Delegation to introduce the subject. The distinguished Attorney-General of Pakistan is Chairman of the Standing Committee on this subject.

PAKISTAN :

Mr. President, distinguished Members and Observers : I do not propose to make any statement but I will only confine myself to giving a summary of the suggestions made by this Committee.

It will be recalled that the subject of International Sale of Goods was taken up by this Committee at its Accra Session in January 1970 and a Standing Sub-Committee was appointed. After taking into consideration the statements made by a number of Members and Observers as well as by the Secretary of UNCITRAL and the Secretary-General of the Hague Conference on Private International law, the Sub-Committee made its report and recommendations, which appear in the Brief prepared by the Secretariat at pages 5 to 14.

The Sub-Committee concentrated, among others, on the following subjects :

1. Relations between unification of conflict rules and unification of substantive rules on International Sale of Goods.

2. Other subjects considered by UNCITRAL Working Group.
3. Relations between the Convention proposed by the Working Group on Prescription and the Uniform Law on International Sale of Goods.
4. The manner in which the uniform law whether of substantive rules or of conflict rules or combination thereof should be embodied in the final text namely, whether in the form of a convention or a code, or in the same or some other form.
5. Encouragement of conclusion and adoption of standard contracts or general conditions of sale specially in the regions of Asia and Africa.
6. (Lastly,) promotion of uniform interpretation of convention or code.

These were the six subjects.

In the course of deliberations in the Sub-Committee the Secretary of UNCITRAL had posed the question whether the Asian-African Legal Consultative Committee would consider the desirability of holding frequent conferences to encourage the conclusion and adoption of standard or model contracts particularly in relation to specific commodities of interest to the buyers and sellers in the region. He had pointed out that the United Nations Economic Commission for Europe which had brought together sellers and buyers for specific commodities, namely, plant and machinery, had adopted a standard or model contract relating thereto. After some discussion in the Sub-Committee it was felt that each government would have to consider the desirability of promoting contracts in conjunction with the trading organizations and interests concerned and that the matter should be reviewed by the Committee itself which was to meet in Colombo in January 1971.

As a result of these deliberations and recommendations

of the Sub-Committee, on the 24th October 1970, the Secretary-General of our Committee addressed letters to member governments and to the various Afro-Asian Chambers to inquire whether they would favour the idea of adopting a standard or model contract in respect of commodities which may be of special interest to the buyers and sellers of the Asian-African region. The governments and most of the chambers have notified to the Secretary-General that the matter is receiving their attention.

In the meantime, reactions have been received from the Chambers of some of the countries and from the Government of Jordan which I would like to place before you. The Chamber of Commerce in Colombo in their letter to the Secretary-General have expressed the following views :—

"The position with regard to imports is that the government is the principal importer as much of the imports now handled by the private sector will soon be taken over by a State Trading Corporation which is being formed. It was not known what will be left in the way of imports to the private sector.

With regard to exports the position is as follows :

(1) Tea : Although this commodity accounts for the bulk of our export earnings, trading is carried out without a contract form and the opinion amongst tea exporters is that the position is very satisfactory. In a few cases parties use a simple contract form.

(2) Rubber : Over half the rubber production is sold under bilateral pacts to socialist countries. The rest of the rubber is sold by the private trade under contract of the Rubber Traders Association of London, New York and Japan respectively. A new International Standard Contract Form is now under discussion by rubber interests.

(3) Coconut Products : They have expressed the opinion that a contract form of London Oil and Tallow Traders' Association is used.

Then there was a communication from Singapore International Chamber of Commerce and I quote from there :

"The notion of model contracts which can be 'revised or modified to suit the needs of parties' is at first sight attractive. It is, however, essential that they should be as simple and as flexible as possible and also that they should not be made essential whether by law or by administrative practice in all transactions. If form is a vital ingredient for contracts it might well create problems rather than avoid them and may cause unnecessary delay.

Some of our members take the line that standard contracts are not really necessary with old customers in established markets but might be useful when dealing with new men in new places. Others have suggested that in the case of general merchandise, it is necessary to spell out terms and conditions of sale in quite different ways for different articles.

Thus any standard contract should be limited to basic requirements, including provisions for the contingency of changes of the value of the currency in which the transaction is being conducted. It might be more useful to produce a list of contingencies and conditions any of which might be included in particular contracts according to circumstances rather than to try and produce the proforma of a standard document.

As to the second question—to what commodities should standard contracts be applied—it may be mentioned that for primary products exported from Singapore, such as rubber, standard contracts and procedures have long been established by the trade and there appears to be no demand for any change. In

major commodity markets with established trade associations, the latter are in the best position to standardise and regulate contracts."

So far as the Ministry of Foreign Affairs, Singapore, is concerned, they replied as follows :

"With regard to your enquiries in the penultimate paragraph of your letter, we generally are not very concerned with the adoption of model or standard contracts for commodities except that of timber and rubber.

Furthermore, standard contracts have been compiled for international trade in natural rubber and a contract is also being finalised for trade in technically specified rubber."

Lastly, I should like to refer to the letter received from the Federation of Jordan Chamber of Commerce. I quote :

"It is felt here that the adoption of the general conditions of sale or model contracts would be most appropriate in respect of commodities which may be of special interest to the buyers and sellers of my country as well as the Afro-Asian region. Being successfully experimented in Europe these general conditions of sale and model contracts are favoured for their applicability, flexibility and potential conformity to local laws and regulations of every country within the Asian-African region.

With regard to the commodities, it is felt that all raw materials, intermediary equipment and machinery used in industrialization and development programmes in the Afro-Asian region are of special interest to the buyers and sellers of the region.

I hope that your Committee will succeed in concluding and defending the most proper methods and commodities to the buyers and sellers of the region through