

Adviser	Mr. W. Asare-Brown, Counsellor, Ghana High Commission, New Delhi.
INDIA	
Member (Leader of Delegation)	Dr. Nagendra Singh, Secretary to the President of India.
Alternate Member	Dr. S.P. Jagota, Director, Legal and Treaties Division, Ministry of External Affairs.
Adviser	Mr. N.C. Saxena, Joint Secretary, Ministry of Irrigation and Power.
Adviser	Mr. C.V. Ranganathan, First Secretary, Permanent Mission of India to the United Nations, New York.
Adviser	Dr. R.K. Dixit, Assistant Legal Adviser, Legal & Treaties Division, Ministry of External Affairs.
Adviser	Mr. R. G. Rajan, First Secretary, High Commission for India, Colombo.
INDONESIA	
Member (Leader of Delegation)	H. E. Mr. Abdul Hamid, Ambassador of Indonesia in Ceylon.

Alternate Member	Dr. Hasjim Djalal, Chief of the Division of Inter- national Law, Legal Directo- rate, Department of Foreign Affairs, Djakarta.
Adviser	Mr. Noegroho Wisnoemoerti, Chief of the International Conference Section, Legal Department, Department of Foreign Affairs, Djakarta.
IRAN	
Member (Leader of Delegation)	Mr. Ezedine Kazemi, Head of the Legal Department, Ministry of Foreign Affairs.
Alternate Member	Mr. A. Makki, Embassy of Iran in India.
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Member (Leader of Delegation)	H. E. Dr. Hasan Al-Rawi, Ambassador, Director-General, Ministry of Foreign Affairs.
Alternate Member	Dr. Baquir Kashif Al-Ghatta.
Adviser	Mr. Amir S. Aram, Embassy of Iraq, New Delhi.
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Member (Leader of Delegation)	Dr. Kumao Nishimura.
Alternate Member	Dr. Shigeru Oda, Professor, Tohoku University.

- Adviser Mr. Tatsuo Saito,
Deputy Head, First Ocean
Fisheries Division, Production
Department, Fisheries Agency.
- Adviser Mr. Hiroaki Fuji,
Deputy Head, Scientific Affairs
Division, United Nations Bureau,
Ministry of Foreign Affairs.
- Adviser Mr. Todayoshi Tao,
Second Secretary, Embassy of
Japan, Colombo.
- Adviser Mr. Katsuhisa Uchida,
Second Secretary,
Embassy of Japan, New Delhi.
- Adviser Mr. Kenzo Oshima,
Official, Legal Affairs Division,
Treaties Bureau, Ministry of
Foreign Affairs.

JORDAN

- Member
(Leader of Delegation) H. E. Mr. Anwar Nashashibi,
Ambassador of Jordan in India.

KENYA

- Member
(Leader of Delegation) Mr. F. X. Njenga,
Senior Assistant Secretary,
Ministry of Foreign Affairs,
Government of Kenya.

KUWAIT

- Member
(Leader of Delegation) Mr. Taleb Jalal Al-Naqib,
Director of the Legal Department,
Ministry of Foreign Affairs.

Alternate Member

Mr. Khalaf Rashid Al-Ibban,
Legal Department, Ministry of
Foreign Affairs.

MALAYSIA

Member
(Leader of Delegation)

Hon'ble Tan Sri Haji Abdul
Kadir bin Yusof,
Attorney-General and Minister
for Legal Affairs.

Alternate Member

Mr. L. C. Vohrah,
Senior Federal Counsel.

Adviser

Mr. Zainuddin Abdul Rahman,
High Commission for Malaysia
in Ceylon.

NIGERIA

Member
(Leader of Delegation)

Hon'ble Dr. T. O. Elias,
Attorney-General for the Fede-
ration of Nigeria.

Alternate Member

Mr. D. Ogundere,
Acting Deputy Solicitor-General.

Adviser

Mr. O. Omotoso,
Senior State Counsel.

PAKISTAN

Member
(Leader of Delegation)

Hon'ble Sharifuddin Pirzada,
Attorney-General for Pakistan.

Alternate Member

Mr. M. A. Samad,
Legal Adviser,
Ministry of Foreign Affairs.

Adviser

Mr. Haroon Al Rashid,
Deputy Legal Adviser,
Ministry of Foreign Affairs.

PHILIPPINES

Member

(Leader of Delegation)

H. E. Mr. Leon Ma. Guerrero,
Ambassador of the Philippines
in India, New Delhi.

Alternate Member

Mr. Julio Calvo,
Charge d'Affaires a.i.,
Embassy of the Philippines,
Colombo.

SIERRA LEONE

Member

(Leader of Delegation)

Hon'ble Mr. J. E. Mahoney,
Attorney-General for Sierra
Leone.

SYRIA

Not Represented.

THAILAND

Member

(Leader of Delegation)

Mr. Nissai Vejajiva,
Charge d' Affaires,
Thai Embassy in Colombo.

UNITED ARAB REPUBLIC

Member

(Leader of Delegation)

H.E. Mr. Hassan Fahmy
Al Badawy,
Minister for Justice.

Alternate Member

Mr. Justice Al Sadek Almahdi,
Chief Justice of the High Court.

Adviser

Mr. Omar Hafez Cherif,
Counsellor in High Court.

Adviser

Dr. Asmat Hammam,
Counsellor in Foreign Office.

Adviser

Mr. Saad Zaghloul Maher,
Chief, Prosecuting Office.

B. Representatives of Associate Member States :

REPUBLIC OF KOREA

Associate Member

H. E. Dr. Woonsang Choi,
Ambassador, Consul-General of
the Republic of Korea in India.

Alternate

Mr. Tae Zhee Kim,
Chief of Treaty Section,
Bureau of International Relations,
Ministry of Foreign Affairs.

Adviser

Mr. Sun Sup Chang,
South-East Asian Section I,
Bureau of Asian Affairs,
Ministry of Foreign Affairs.

Adviser

Mr. Suk Woo Kim,
Vice-Consul, Consulate-General
of the Republic of Korea,
New Delhi.

C. Representatives of non-Member Asian-African States
attending as Observers :LIBYAN ARAB
REPUBLIC

Mr. Ali Al-Ghandanis,
Charge d'Affairs,
Embassy of Libya in Pakistan.

TURKEY

Mr. Akin Emregul,
First Secretary, Turkish
Embassy, New Delhi.

MAURITIUS

Mr. L. Venchard,
Solicitor-General, Ministry of
Justice.

SAUDI ARABIA

Mr. Zain A. Dabbagh,
Minister Charge d'Affaires,
Embassy of Saudi Arabia,
Taipei.

SINGAPORE

Mr. Michael Khoo Kah Lip,
State Counsel and Deputy Public
Prosecutor, Attorney-General's
Chambers.

TANZANIA

Mr. Justice Seaton,
Judge of the High Court of
Tanzania.

**D. Representatives of United Nations Agencies attending
as Observers :**

INTERNATIONAL LAW COMMISSION H. E. Dr. T. O. Elias,
Chairman, International Law
Commission.

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
(UNCITRAL) Prof. John Honnold,
Chief, International Trade Law
Branch, Office of Legal Affairs.

**E. Representatives of Inter-Governmental Organisations
attending as Observers :**

INTERNATIONAL INSTITUTE FOR THE
UNIFICATION OF PRIVATE LAW Mr. Mario Matteucci,
Secretary-General.

PERMANENT SOUTH PACIFIC COMMISSION Dr. Jaime-Cocho Sousa,
Under Secretary (Legal).

**F. Representatives of Non-Governmental Organisations
attending as Observers :**

AMERICAN SOCIETY OF INTERNATIONAL
LAW Mr. John Lawrence Hargrove,
Director.

**INTERNATIONAL LAW
ASSOCIATION
(GERMAN SECTION)**

Professor Gunther Jaenicke,
President,
German Society of International
Law.

**G. Representatives of States outside the Asian-African
Region attending the Session to Explain their
View-Point on the Law of the Sea.**

ARGENTINA

H. E. Mr. Ernesto De La
Guardia,
Deputy Representative of
Argentina to the United
Nations.

BRAZIL

H. E. Mr. Wladimir Murtinho,
Ambassador of Brazil to India
and Ceylon.

ECUADOR

Mr. Ledo Jose Ayala-Lasso,
Counsellor of the Embassy of
Ecuador to Italy.

PERU

H. E. Mr. Alfonso Arias
Schreiber,
Director of Sovereignty and
Frontiers, Ministry of External
Affairs.

UNITED STATES OF
AMERICA

Mr. Berhanard H. Oxman,
Assistant Legal Adviser for
Ocean Affairs,
Department of State, and
Chairman, Inter-Agency Draft-
ing Committee on Seabeds.
Dr. Vincent McKelvey,
Senior Research Geologist,
U. S. Geological Survey,
Department of Interior.

III. AGENDA OF THE TWELFTH SESSION

I. Administrative and Organisational Matters :—

1. Adoption of the Agenda.
2. Election of the President and Vice-President.
3. Admission of new Members and Observers to the Session.
4. Consideration of the Secretary's Report on Policy and Administrative Matters and the Committee's Programme of Work.
5. Dates and place for the Thirteenth Session of the Committee.

II. Matters referred to the Committee by the Governments of the Participating Countries under Article 3 (b) of the Statutes :—

1. *Law of the Sea including Questions relating to Sea-Bed and Ocean Floor* (Referred by the Government of Indonesia).
2. *Law of International Rivers* (Referred by the Governments of Iraq and Pakistan).

III. Matters taken up by the Committee under Article 3 (c) of the Statutes :—

1. *International Sale of Goods* (Taken up by the Committee at the suggestion of the Governments of India and Ghana).

1. Priority item.

IV. LAW OF INTERNATIONAL RIVERS

INTRODUCTORY NOTE

The subject the "Law relating to International Rivers" was included in the programme of work of this Committee on a reference made by the Governments of Iraq and Pakistan under Article 3 (b) of the Statutes of the Committee.

At the ninth session of the Committee held in New Delhi in December 1967, the Delegates of Iraq and Pakistan made introductory statements setting forth the issues which they wished to be considered. After a preliminary exchange of views, the Committee directed its Secretariat to prepare the relevant documentation for consideration of the subject at the tenth session of the Committee.

At the tenth session held in Karachi in January 1969, the subject could not be given full consideration on account of the Committee's pre-occupation with the subject of the Law of Treaties. The Committee took note of the statements made by the Delegates and the Observers present at that session and appointed an inter-sessional Sub-Committee to meet in New Delhi prior to the holding of the eleventh session for the purpose of preparing draft articles on the subject 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.

The inter-sessional Sub-Committee met in New Delhi from the 15th to 20th of December, 1969. The discussions in the Sub-Committee were not, however, conclusive and it was decided to refer the matter to the Committee at its eleventh session.

At the eleventh session held in Accra in January 1970, discussions in the Committee mainly 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 first eight articles of the Helsinki Rules as proposed by the Delegation of India should form the basis of discussion. It was finally agreed that both the proposals should be referred to the participating Governments for their comments and that thereafter both be considered at the twelfth session.

At the twelfth session held in Colombo during January 1971, following the discussions in the plenary meeting held on 20th of January, it was decided to appoint a Sub-Committee comprising of the representatives of Ceylon, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Nigeria, Pakistan, and the U.A.R. to give detailed consideration to the subject. The representative of Ceylon (Dr. A.R.B. Amerasinghe) and the representative of Japan (Mr. K. Uchida) were unanimously elected as the Chairman and Rapporteur of the Sub-Committee. The Sub-Committee requested its Rapporteur to prepare a working paper consisting of a set of draft articles amalgamating as far as possible the propositions contained in the joint proposal of Pakistan and Iraq and in the Helsinki Rules. The Rapporteur submitted the aforesaid working paper containing ten (I to X) draft propositions, which were accepted by the Sub-Committee as the basis of discussion. However, due to lack of time, the Sub-Committee was able to consider only the draft propositions I to V and it recommended consideration of the rest of the propositions at an inter-sessional meeting to be convoked prior to the thirteenth session of the Committee. The Sub-Committee further recommended that the same representatives who had composed the Sub-Committee at Colombo should participate in the aforesaid inter-sessional meeting with a view to ensuring expeditious treatment of the subject. The Report drawn up by the Sub-Committee was adopted by the Committee at its plenary meeting held on the 27th of January, 1971.

RECORD OF DISCUSSIONS HELD AT THE TWELFTH SESSION

MEETING HELD ON 20TH OF JANUARY, 1971
AT 3.30 P.M.

Hon. T.S. Fernando (President)

IN THE CHAIR

PRESIDENT :

We will now take up the question of the Law of International Rivers. On this matter I believe the distinguished leader of the Delegation of Iraq wishes to make a statement.

✓ IRAQ :

Mr. President, distinguished Delegates.

On behalf of the head of our delegation, Ambassador Dr. Hasan Al-Rawi, I would like to make the following statement.

The exploitation of international rivers for the welfare of the human communities that share the waters of such rivers has always been a matter of prime importance.

The ultimate development of any locality cannot go beyond the maximum utilization of its water resources. Such uses are for municipal, agriculture, industry, hydro-electric power, navigation, fish preservation, recreation, salinity control and other uses.

Iraq has always depended on the waters of Tigris and Euphrates and their tributaries for sustaining its agriculture since the dawn of civilization up to the present time. The largest portion of its population is still living on agriculture as their only source of income. The Tigris and

Euphrates and their tributaries are the principal sources of surface run-off in Iraq. They are both international rivers in the sense that they originate in Turkey and pass down through Syria and Iraq having the longest course of their channels in the latter country.

There are also twenty-four common rivers that originate in Iran and flow down to the Iraqi territory which range in their yearly run-off from about half a billion cubic metres per annum to 24 billion cubic metres per annum. The international document that refers to the joint utilization of the waters of the Tigris and Euphrates between Syria and Iraq is the treaty concluded between England and France as mandatory powers over Syria and Iraq signed on the 23rd December, 1923, which states the following :

"The British and French Governments shall come to an agreement regarding the nomination of a commission whose duty it will be to make a preliminary examination of any plan of irrigation formed by the government of the French mandatory territory, the execution of which would be of a nature as to diminish in any considerable degree the waters of the Tigris and Euphrates at the point where they enter the area of the British mandate in Mesopotamia".

Another international document concerning the joint utilization of the waters of Tigris and Euphrates among Turkey, Syria and Iraq is Article 109 of the Lauzan Agreement concluded between Turkey and the Governments of the Allied Forces on 24th of July, 1923 which states the following :

"In default of any provisions to the contrary when as a result of the fixing of a new frontier the hydraulic system, canalization, inundation, irrigation, drainage and similar matters in a State are depending on works executed within the territory of another State or when usage is made on the

territory of a State in virtue of pre-War usage of water or hydraulic power the source of which is on the territory of the other State, an agreement shall be made between the States concerned to safeguard the interests and rights acquired by each of them".

Regarding the joint utilization of the common rivers between Iran and Iraq, the international document that regulates the utilization of those waters is contained in the book entitled "*Collection of the Minutes of the Meetings of the Ottoman-Persian Commission entrusted with the delimitation of the frontiers between Iraq and Iran in 1913-1914*" in addition to the local agreement between the inhabitants on the two sides of the frontier based on old local water use practice.

In 1945 an agreement of friendship and good neighbourhood was concluded between Turkey and Iraq. A protocol attached to this treaty implied the exchange of hydrological data and to give a prior notice before undertaking any project and other related matters.

Mr. President, it is the opinion of the Iraqi delegation—based on the principles of international law—that each river is a material indivisible entity from its source to its estuary and that such river must be utilized for the welfare of all the human communities living in its basin.

The Iraqi delegation disagrees entirely with the old theory of complete sovereignty of a State over that part of the international river that passes through its territory. That theory which had few supporters in the medieval ages is presently totally rejected by the authorities on international law, both in theory and practice, as evidenced by all the concluded agreements on the joint utilization of international rivers and decisions of tribunals. Oppenheim states the following :

"The flow of international rivers cannot be submitted to the arbitrary control of any State

through which it passes, because there is a definite international rule that prohibits the State to make the changes in the natural conditions of its territory that will cause harmful effects in the natural conditions of a neighbouring State".

The State is, therefore, according to Oppenheim, prohibited from stopping or changing the course of an international river but is also prohibited to use the water in a manner that causes danger to the interest of the neighbouring State or prevents the neighbouring State from making an appropriate usage of the water of that portion of the river that passes through its territory.

The International Law Association in its report on the Fifty-Second Conference in Helsinki in 1966 follows more or less the same line of thinking.

Mr. President, the aim of the Iraqi delegation in requesting to put the subject of international rivers on the agenda of the esteemed Committee is to make use of the abilities of the distinguished Members of the Committee in setting the general principles and rules in accordance with international law and the internationally accepted practice for the joint utilization of international rivers for the just benefit of all parties concerned. That is why a draft for a joint Pakistani-Iraqi proposal concerning the joint use of international rivers was put forward before the Committee in Accra. The internationally accepted principles and rules in theory and practice were incorporated in the said draft proposal. The draft proposal was framed with the spirit of absolute and complete neutrality.

Since the subject is certainly of vital concern to many Members in the Asian-African Group which are bound together by the ties of neighbourhood and the desire to advance as a group the development of their economic resources and the raising of the living standards of their people, I trust the Pakistani-Iraqi proposal will be looked upon favourably

by the esteemed Members who are most qualified in the opinion of our delegation to set the general rules and principles for the joint exploitation of international rivers for the benefit of all countries of the group. The humanitarian and ethical considerations dictate upon us as a group to crystallize definite general rules and principles for guiding our countries in solving their disputes concerning the joint use of international rivers.

Finally, may I thank you for giving me this opportunity to speak.

PAKISTAN :

Mr. President, distinguished Delegates and Observers : May I congratulate you upon your election as President of the current session.

It will be recalled that it was in the year 1967 at the Ninth Session of this Committee, that the Governments of Iraq and Pakistan suggested, under Article 3(b) of the Statutes of this Committee, that the Committee should take up for consideration the Law of International Rivers. The Committee accepted the requests of the two Governments and in its resolution No. IX(16) decided to consider the question of international rivers, and directed the Secretariat to collect the relevant materials on the issues indicated in the statements made by the delegations.

At the Tenth Session in 1969 the subject came up for discussion. Detailed statements were made : very informative and instructive exchange of views took place and after considering all the views expressed by delegations, a resolution X(6) was adopted which decided that a Sub-Committee be formed to give a detailed consideration to the aforesaid subject. The Sub-Committee met in New Delhi from the 15th December to 20th December, 1969. A start was made in the task of preparation of draft articles on the Law of International Rivers in the light of experience of the