

## REPORT OF THE SUB-COMMITTEE APPOINTED AT THE THIRTEENTH SESSION

### PART I. GENERAL

1. The Committee appointed on January 24, 1972, a Standing Sub-Committee on the Law of International Rivers with a view to giving further consideration to the draft Propositions formulated on this subject by the Rapporteur at the Colombo Session. The Sub-Committee was composed of the following ten member States :

Egypt	represented by	Mr. Fawzi El Ibrashi Dr. Ibrahim F. Shihata
Ghana	„ „	Mr. M.A.F. Ribeiro
India	„ „	Mr. V.N. Nagaraja
Iran	„ „	Mr. F. Parsi
Iraq	„ „	Dr. Bakir Kashif Al-Khatta
Japan	„ „	Mr. E. Furukawa
Kenya	„ „	Mr. W.N. Mbote
Nigeria	„ „	Mr. T.I. Adesalu
Nepal	„ „	Mr. Churamani Raj Singh Malla
Pakistan	„ „	H.E. Dr. S.M. Koreshi Mr. E.H. Farouqui

The Standing Sub-Committee held three meetings, with Mr. E. Furukawa of Japan, as Chairman and Dr. Ibrahim F. Shihata of Egypt as the Rapporteur. The representative of Pakistan submitted a document entitled "Pakistan's

Comments on Draft Propositions on the Law of International Rivers" a copy of which is attached.

2. At the beginning of its work the Sub-Committee was reminded by one member that the draft Propositions referred to it did not cover all aspects of the Law of International Rivers and that they were silent in particular on the rules relating to navigational uses of such rivers. The Sub-Committee considered that the subject was vast and only a start had been made on a limited area of study. The Sub-Committee was of the opinion that since the Committee is interested in the study of the Law of International Rivers as a whole, other aspects of this subject including navigation, pollution, timber floating etc. should be taken up in future sessions. On this occasion, some members suggested, and the Sub-Committee agreed to recommend, that the Committee direct the Secretariat to prepare a study on the subject of the right of access of land-locked countries to the sea through international rivers. Such a study may review the present practice in this respect and include relevant material and background information with a view to helping the formulation of general rules on this matter.

3. In the course of the exchange of views that followed, it was agreed by the members of the Sub-Committee that their task was not to negotiate an agreement on a definite set of rules with a view to drafting a convention reflecting a compromise between the interests of the members present. Rather, they were to discuss, as much as the time may allow, the draft Propositions in order to help the Rapporteur of this Sub-Committee to redraft the Propositions in the light of the discussion, so that they may reflect more accurately and more objectively the principles of international law which members of the Sub-Committee consider to be applicable in this respect. Such principles may not, however, be necessarily confined to restating the existing law, but should also involve a progressive development of this law whenever necessary, as previously suggested in Resolution X(6) adopted



by the Committee at its Tenth Session in Karachi. It was further agreed that the new draft to be prepared by the Rapporteur should include appropriate commentaries on each Proposition and should be distributed through the Secretariat to members of the Standing Sub-Committee well before the date of the next session to enable various Governments to give their views at the next Session.

In the light of these considerations, the Sub-Committee proceeded to discuss the ten draft Propositions referred to it, but was able only to consider the first three Propositions as a result of the little time allotted to it in this Session. The summary of discussions along with proposals made in the Sub-Committee on Propositions I—III appear in Part II of this Report. With regard to the Propositions discussed, the Sub-Committee is happy to report that the exchange of views that took place marked a significant progress in its work. It was felt and hoped that further discussions of this issue in future sessions in the same constructive spirit will enable the Sub-Committee to complete its task.

## PART II—SUMMARY OF DISCUSSIONS

### Title

The title "Draft Propositions on the Law of International Rivers" was the subject of a lengthy discussion. First it was said that the title was broader than the actual content of the Propositions which did not deal with navigational uses. It was agreed, however, that the work of the Sub-Committee should eventually cover all aspects of the Law of International Rivers and that the Propositions under discussion form only one part of this work. Some delegates suggested that the term "international rivers" should be replaced in the title by the term "international drainage basins" as the latter term which has a wider scope is the one actually used in the text of the Propositions. Other delegates preferred the use of the term "international watercourses". Although no agreement was reached on introducing such a

change, it was generally understood that the use of the term "international rivers" in the title does not and should not have any restrictive effect on the scope of the rules expressed in the Propositions.

### Proposition I

It was agreed that the words "of international law as" which appear in the first line, be crossed out, as they might give the erroneous impression that the Propositions merely restate existing law on the subject. It was also agreed, as a point of drafting, to replace the word "articles" in the second line by the word "Propositions".

### Proposition II

One member raised the question that the definition embodied in paragraph I might not cover the situation where the underground waters of a certain drainage basin flows into a terminus different from that of the surface waters. This, it was agreed, was not intended. The commentary should explain that this exceptional situation is covered by the definition given in the text. Another member suggested that the phrase "flowing into a common terminus" be replaced by the phrase "flowing into the principal river, stream or lake or other common terminus". Some members, however, found this addition to be redundant.

### Proposition III

There was a suggestion by a member that the following words should be added at the end of paragraph I: "so as to provide maximum benefit to that State from the use of waters with the minimum detriment to the other co-basin States". It was felt, however, that the content of this addition is related to the rule embodied in Proposition IV, paragraph 2, and should be discussed in that context.

It was agreed, on the other hand, that paragraph 2 should be subject to two changes: First it should include reference, by way of example and without implying any given



order of priorities, to the relevant factors in determining what is "a reasonable and equitable share". The following factors were considered to be worthy of mention in this respect :

- (a) the geography of the basin ;
- (b) the hydrology of the basin ;
- (c) the climate affecting the basin ;
- (d) the past and existing utilization of the waters ;
- (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 water resources ;
- (i) the avoidance of unnecessary waste in the utilization of waters of the basin ; and
- (j) the practicability of compensation to one or more of the co-basin States as a means of adjusting conflicts among uses.

The Sub-Committee finally agreed that the text of paragraph 2 should indicate who will determine the equitable and reasonable share in each case. The consensus was that such determination is to be made initially by the interested basin States.

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## VI. LAW OF THE SEA

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## INTRODUCTORY

The subject "the Law of the Sea including questions relating to Sea-Bed and Ocean Floor" was referred to this Committee for consideration by the Government of Indonesia under Article 3(b) of the Committee's Statutes. Having regard to the recent developments in the field and the proposal for convening of a UN Conference of Plenipotentiaries to consider various aspects of the Law of the Sea, the Committee at its eleventh session decided to include the subject as a priority item on the agenda of its twelfth session.

In order to appreciate the background of the Committee's study, it may be recalled that the International Law Commission of the United Nations, soon after its establishment, took up the Law of the Sea as a priority topic for codification. The Commission after considering the subject at a number of its sessions drew up its conclusions in a set of draft articles which formed the basis for discussion at the Conference of Plenipotentiaries convoked by the United Nations in 1958. That conference succeeded in adopting four conventions on the subject, namely, (i) the Convention on the Territorial Sea and the Contiguous Zone, (ii) the Convention on the High Seas, (iii) the Convention on Fishing and Conservation of Living Resources of the High Seas, and (iv) the Convention on the Continental Shelf. The question of the breadth of the territorial sea, however, remained unresolved due to wide divergence of views and another Conference of Plenipotentiaries convened in 1960 to consider the problem also failed to resolve the question as no proposal received the requisite two-thirds majority. Some of the other questions which appear to have been left unresolved by these two



conferences were those relating to the regime of international straits and the special rights of coastal States, if any, on fishing resources of the sea.

Within a few years of the two UN Conferences on the Law of the Sea it became apparent that the international community would have to seriously tackle the problem of the breadth of the territorial sea as a number of States began taking unilateral action in this matter following upon the failure of the 1958 and 1960 UN Conferences to resolve this question. The technological advances made in the field of exploitation of the sea-bed also made it necessary to define with sufficient precision the extent of the national jurisdiction of coastal States in the sea-bed and to think in terms of exploration and exploitation of the natural resources of the sea and the sea-bed beyond the limits of national jurisdiction for the common good of mankind. Moreover, the emergence of new nations in Africa during the 1960s brought home the necessity for re-examination of some of the issues and it became obvious that any new order of the Law of the Sea must adequately reflect their views.

Recognising the need for orderly development of the sea-bed and the ocean floor, the General Assembly by its Resolution 2467A (XXIII), adopted on the 21st December, 1968, established a Special Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. During 1968-69 the Soviet Union and the United States of America consulted with a number of States regarding the possibility of holding of another international conference on the Law of the Sea to settle the outstanding issues on the subject, and the General Assembly of the United Nations by its Resolution 2574A(XXIV), adopted at its 1833rd plenary meeting, requested the UN Secretary-General to ascertain the views of member States regarding the desirability of convening a conference on the Law of the Sea at an early date to review the regimes of the

high sea, the continental shelf, the territorial sea and the contiguous zones, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the sea-bed and the ocean floor which lay beyond the limits of national jurisdiction. The overwhelming support that this Resolution received made it evident that the holding of a conference to settle the outstanding issues on the Law of the Sea was almost a matter of certainty and that the Asian and African States would have an important role to play in the formation of the law on the subject and in the establishment of a new order of the sea.

It was at this stage that the Government of Indonesia proposed to the Committee that it should take up this subject at a very early date in order to assist the member States of the Committee to prepare for the proposed UN Conference and also to enable them to have an exchange of views on important issues prior to the holding of the conference. Indonesia's proposal was placed before the Committee at its Accra session held in January 1970 and the Committee resolved that, having regard to the paramount importance of the subject to the Asian-African States, the Committee should take up the matter at its next regular session and that preparatory work should be proceeded forthwith. The Committee also decided that its activities with regard to the assistance to be given in preparation for the proposed UN Conference on the Law of the Sea as also affording of facilities for exchange of views should not be confined to member States of the Committee alone but should be offered to all Asian and African States following upon the previous practice which it had adopted in connection with the preparation for the Law of Treaties Conference with such signal success.

The Secretariat of the Committee, in pursuance of the aforesaid decision, sent a communication to practically all the



Asian and African Governments inviting them to participate in the discussions on the Law of the Sea which were to be held at the Colombo session of the Committee in January 1971. Along with the invitation a list of topics for discussion and a questionnaire was sent out to these Governments inviting their views with regard to the topics which the proposed UN Conference should consider as also their comments on substantive issues raised in the questionnaire. In response to this invitation, 25 States including 18 of the Members of the Committee participated in the Colombo session. Twelve other Governments requested to furnish them with the preparatory material and the proceedings of the Colombo session on the Law of the Sea. In addition, delegations from the United States of America and five of the Latin American Governments attended the session in order to explain their viewpoints on various issues before the Colombo meeting of this Committee.

At the Colombo session the subject was discussed in detail in the plenary meetings held on the 19th, 20th, 21st, 22nd and 27th January, 1971 and the principal topics which were taken up for consideration were as follows : (1) breadth of the territorial sea ; (2) rights of coastal States in respect of fisheries in areas beyond the territorial sea, (3) exploration and exploitation of the sea-bed including the question of national jurisdiction over the sea-bed, the concept of "trusteeship" over the continental margin ; (4) the type of regime to govern the sea-bed and ocean floor beyond the limits of national jurisdiction and the archipelago concept ; (5) international straits and (6) preservation of marine environment. Following the discussions in the plenary the Committee appointed a Sub-Committee consisting of all the participating member States of the Committee and a Working Group was established composed of the representatives of Ceylon, India, Indonesia, Japan, Kenya and Malaysia for detailed study and preparation on the subject. It also appointed as its Rapporteur Mr. Christopher W. Pinto of Ceylon.

The Sub-Committee presented its Report on the work done during the Colombo session which was approved by the Committee at its plenary meeting held on the 27th January, 1971. The decisions taken by the Committee at its twelfth session on the recommendations of the Law of the Sea Sub-Committee in respect of further work to be done were as follows :

- (i) The Rapporteur of the Sub-Committee should prepare a paper containing a list of various issues on the Law of the Sea, summary of the views expressed in the Committee on those issues and a questionnaire inviting the views of the Governments.
- (ii) The Secretariat shall send the Report of the Sub-Committee and the documents mentioned in (i) above to the Governments of participating States and also to the Governments of other Asian-African States by the 15th February, 1971 requesting them to give their comments within two months. The Secretariat shall send directly to each member of the Working Group the replies of Governments as soon as received.
- (iii) The Sub-Committee should request the members of the Working Group to prepare one or more working papers on special issues. These working papers should be sent to the Committee's Secretariat by 1st June, 1971.
- (iv) The Secretariat shall circulate the working papers referred to in (iii) above among the members of the Sub-Committee on the Law of the Sea as soon as they are received, and invite their comments.
- (v) The members of the Sub-Committee who are also members of the United Nations Sea-Bed Committee will maintain close liaison during meetings of that Committee.



- (vi) The Sub-Committee on the Law of the Sea shall convene in Geneva on the 15th July, 1971 just before the summer session of the UN Sea-Bed Committee, and consider the working papers referred to in (iii) above, and discuss matters relating to the agenda of the UN Sea-Bed Committee.
- (vii) The Secretary-General shall in consultation with the members of the Sub-Committee prepare a further programme of work to be done on this subject prior to the Lagos Session of the Committee in 1972.
- (viii) The delegation of Ceylon in consultation with the Committee's Secretariat shall act as the Convenor for all inter-sessional meetings.

The proceedings of the Colombo session on the Law of the Sea and the working paper prepared by the rapporteur containing a list of various issues, a summary of the views expressed in the Committee on those issues and a questionnaire were made available to practically all the Governments in the Asian-African region.

In the meantime replies were received by the United Nations from its member States to the U.N. Secretary-General's communication pursuant to Resolution 2574 A(XXIV) giving their views regarding the proposed Conference on the Law of the Sea and the subjects to be taken up at that conference and a decision was taken to convoke the conference in 1973. The UN Sea-Bed Committee, established in December 1968, completed its formulation of the principles on the sea-bed and its resources which was adopted by the General Assembly in December 1970. The terms of reference of that Committee as well as its membership were enlarged to make it virtually a preparatory body for the Third Conference on the Law of the Sea. The enlarged Sea-Bed Committee met during March 1971 and divided itself into three sub-committees. At that session it succeeded in

resolving various procedural issues and a beginning was made for consideration of substantive questions.

In accordance with the decision taken at the Colombo session of the Committee, the Working Group met in New Delhi towards the end of June 1971 to consider the working paper prepared by the Rapporteur and the special working papers prepared by the other members of the Working Group on questions of fisheries, archipelagos, international straits and international machinery for the proposed sea-bed area. The report of the Working Group was then considered by the Sub-Committee on the Law of the Sea which met in Geneva from the 15th to 17th July, 1971 just before the commencement of the summer session of the UN Sea-Bed Committee.

Apart from considering the report of the Working Group and the working papers considered by the Group, the Sub-Committee also discussed the following matters :—

- A. Matters relating to the summer 1971 session of the UN Sea-Bed Committee :—
  - (i) List of subjects to be dealt with by the Conference on the Law of the Sea ;
  - (ii) Question of priority in dealing with the proposed international machinery as against the question of limits of national jurisdiction ;
  - (iii) Any other matter related to the work of the Sea-Bed Committee.
- B. Preparation for the Committee's Thirteenth Session to be held in Lagos, Nigeria ; and
- C. Assistance to be given to non-member Asian and African States in preparation for the Conference on the Law of the Sea and informing them of the work of this Committee.

The Sub-Committee recommended collection of further material by the Secretariat in preparation for the Lagos