

that the diversion by Israel of the waters of River Jordan did not only interfere with the irrigatory rights of the lower riparians, but it also changed the historical geography of the Holy land because the River Jordan was sacred to Christians all over the world. He asked this matter to be thrashed out by a Sub-Committee which might be appointed by the Committee.

The Delegate of Sierra Leone stated that the question of waters of international rivers was of crucial importance and prompt solution was essential. He supported the suggestion of constituting an inter-Sessional Sub-Committee.

The Delegate of Thailand also supported the suggestion for establishment of an inter-Sessional Sub-Committee. He suggested that a directive should be given to the Secretariat to collect further material in order to assist the work of the Sub-Committee.

The Delegate of U.A.R. stated that this subject was of great importance to the Asian and African States as most of the major international rivers ran through the territories of these two continents. He mentioned that the problems regarding the Nile River were settled by a model agreement concluded in November 1959 between U.A.R. and the Sudan for regulation of their rights, duties and full utilisation of the waters of the River Nile. He referred to the work done by the League of Nations in concluding the Convention of December 1923 regulating the development of water power and the rights of riparians. He also referred to the Seventh International Conference of American States held in 1932 and the work done by the I.L.A. He felt that the studies made in Europe and America were not sufficient as those were based primarily on the needs of navigation and industrial uses. He emphasized that a State should not be allowed to alter the natural conditions of its territory to the disadvantage of the neighbouring State without its consent. He saw no objection to the consti-

tution of an inter-Sessional Sub-Committee as proposed by other Delegates.

The subject was further considered in the plenary meeting held on 25th of January, 1969. The Observer for the Government of Nigeria stated that the problem of international rivers was one of the greatest importance to his country as it was traversed by the River Niger which flows through the territories of Guinea, Mali, Niger and Nigeria. He said that customary international law on the uses of waters of international rivers was guided by the community of interests of the riparian States, which meant reasonable or equitable share of the waters of an international river, as also equitable right of consultation about the development and the use of the river by each riparian State. The corresponding obligation of the riparian States, he said, was to respect the equal right of other riparians. Apart from customary international law, he said, the above principles were recognised in a number of treaties and were reiterated in the Judgment of the Permanent Court of International Justice in 1937 in the case between Holland and Belgium. He stated that the use of international waters was increasing and that the priorities in regard to the use of water differ from basin to basin, between one part of the basin and another part. He reminded the Committee that the problem of International Rivers was not only juridical but it was sociological and economic also. Therefore, the problem should not be seen purely from an academic angle, but in the light of experience of various countries. He welcomed the idea of constituting a Sub-Committee to give the matter adequate consideration so that the work of the Committee and the recommendations made by it might be beneficial to all Governments.

The Delegate of Pakistan, referring to the discussions held in the previous meeting, stated that there was broad agreement in the Committee on the question of urgency of

dealing with the problem of International Rivers in the context of the needs of Asia and Africa and that the matter had to be looked at not only from legal angle but keeping in view such other vital considerations as the engineering and human aspects also. He suggested that the Secretariat be directed to collect further data on the subject on the basis of the observations made by the Delegates at the present Session and then the participating Governments be requested to indicate what additional data should be collected by the Secretariat. He suggested the formation of a broad-based inter-Sessional Sub-Committee consisting of the representatives of Ghana, India, Indonesia, Iraq, Jordan, Pakistan, Thailand and U.A.R. for giving detailed consideration to the subject with a view to formulating draft articles taking into consideration the various aspects which have been mentioned during the deliberations of the Committee at the present Session.

The Delegate of India stated that his understanding of the proposal of an inter-Sessional Sub-Committee was that it would be open to all Member Governments to be represented on that Committee, so that in effect the meeting of the inter-Sessional Sub-Committee would be as if it were a meeting of the Committee itself, though in an informal manner. He felt that the formulation of principles should be done as far as possible by representatives of a large number of Member Governments and that the representatives who would attend the meetings of the Sub-Committee would be persons with special knowledge of the subject and that the discussions would be on a technical level. He felt that the subject being of vital importance and complexity, the formulation of principles should be undertaken by a Committee of the Whole or by the Secretariat. Although his own preference was to entrust the Secretariat with this task, he accepted the suggestion of Pakistan for appointment of an inter-Sessional Sub-Committee on the understanding that it would be composed of the representatives of all Member Governments. He reite-

rated his suggestion made at the earlier meeting that it would be preferable to adopt a procedure by which the Secretariat should be asked to collect data and thereafter make certain formulations which could be sent to all Member Governments for their comments and that the formulation of the Secretariat together with the comments of Member Governments could be considered by the Committee itself at its Eleventh Session. He felt that having regard to the experience of other bodies which had dealt with this subject, this matter could not be proceeded with hurriedly and that the subject should be considered methodically and systematically in such a way that no one could raise any objection.

The Committee, after some further discussion, unanimously decided to appoint a Sub-Committee consisting of the representatives of Member Governments for the purpose of preparation of draft articles on the Law of International Rivers, particularly in the light of the experience of the countries of Asia and Africa, for consideration at the Committee's Eleventh Session. It was decided that the Sub-Committee shall meet at New Delhi prior to the holding of the Eleventh Session of the Committee. It was also decided that the President and Secretary of the Committee might attend the meetings of the Sub-Committee and the Sub-Committee may also co-opt any person having expert knowledge of the subject to assist it in its deliberations. It was agreed that the quorum at the meetings of the Sub-Committee will be representatives of five Member Governments.

The Committee decided to direct the Secretariat to assist the Sub-Committee and collect the relevant background data in the light of discussions in the Committee. It was also decided to request the Governments of the participating States to indicate points on which they desire the data to be collected. The Member Governments were also requested to assist the Secretariat in the collection of the material.

RESOLUTION ADOPTED AT THE
TENTH SESSION

Resolution No. X (6)

Considering that the Governments of Iraq and Pakistan by references made under Article 3(b) of the Statutes have requested the Committee to consider the Law relating to International Rivers ;

Recalling Resolution IX(16) in which the Committee decided to consider the subject of international rivers and directed the Secretariat to collect relevant material on the issues indicated in the course of statements made by the Delegations and to prepare a brief for consideration of the Committee;

Taking Note of the statements made by the Delegations present at the Tenth Session and the views expressed by the Observer for Nigeria;

Also Noting the work done by the International Law Association and other organizations and bodies both Governmental and non-governmental concerning the Law of International Rivers;

Considering 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;

The Committee decides that a Sub-Committee be formed to give detailed consideration to the aforesaid subject;

The Committee further decides that the Sub-Committee do consist of the representatives of Member Governments and do meet at New Delhi, with a quorum of representatives of five Member Governments, prior to the holding of the Eleventh Session of the Committee. The President and the Secretary may attend the meetings of the Sub-Committee. The Sub-

Committee may also co-opt any person having expert knowledge of the subject to assist it in its deliberations.

The Committee directs the 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 and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems, for consideration at the Committee's Eleventh Session.

The Committee further directs the Secretariat to assist the Sub-Committee and collect relevant background data in the light of the discussions in the Committee at its Tenth Session and requests the Governments of participating States to indicate points on which they desire the data to be collected.

The Committee further requests the Governments concerned to assist the Secretariat in the collection of the material whenever required.

Sd/-

Syed Sharifuddin Pirzada
President

V. THE RIGHTS OF REFUGEES

THE RIGHTS OF REFUGEES

The subject of 'the Rights of Refugees' had been referred to this Committee by the Government of U.A.R. under article 3(b) of the Statutes of the Committee. The Final Report on the subject was approved by the Committee at its Eighth Session held in Bangkok during 1966, and submitted to the Government of U.A.R. and other Member Governments of the Committee. The Government of Pakistan in their comments on this Report, stated as follows ;

"The Government of Pakistan have no objection to the adoption of the articles subject to the following comments :

- (1) The term 'refugee' in Article I should be enlarged by adding a new clause viz. "(c) leaves or being outside is unable or unwilling to return to his homeland, the sovereignty over which or the international status of which is disputed by two or more States and hostilities have taken place" in Article I after clause (b).
- (2) Article II should have consequential amendment in the light of the amendment of the definition of refugee in Article I.
- (3) In Article IV a provision for the constitution of a tribunal for determining any controversy on the right of return of refugees, should be made.
- (4) In Article V, a provision for payment of compensation to refugees who are desirous of returning to their country should be made, and the refugees should be accorded the standard of treatment of the nationals of the country of asylum. However, certain reservations should be made, namely until

the refugees are given full citizenship they (i) cannot enter into Government service; (ii) cannot become Members of the Parliament or hold political office in the country; (iii) cannot vote as a citizen in the elections of the country; (iv) their movements can be restricted in the interests of public order and security of the State."

The Government of Pakistan also requested the Secretariat of the Committee to place the item of 'The Rights of Refugees' on the agenda of the Tenth Session for reconsideration of the Final Report in the light of their comments cited above. A number of Member Governments supported the Pakistan Government's request and accordingly the matter was placed on the agenda of the Tenth Session.

At the Tenth Session held in Karachi in January 1969, the Committee proceeded to reconsider its Final Report on the Rights of Refugees on the basis of (1) the comments received from the Government of Pakistan and (ii) a note prepared by the Office of the United Nations High Commissioner for Refugees at the request of the Secretariat of the Committee, which set out the developments in the field of international refugee law since the Bangkok Session. These developments were the entry into force of the 1967 Protocol relating to the Status of Refugees which made the 1951 Refugee Convention universally applicable, the Declaration on Territorial Asylum adopted by the U. N. General Assembly on 14 December 1967, the recommendations made by the Addis Ababa Refugees Conference held in October 1967, and the draft O.A.U. Instrument concerning Refugees.

The Committee gave consideration to this matter in its plenary meetings held on the 23rd, 25th, 28th and 29th of January, 1969 and adopted two resolutions, Nos. X(7) and X(8).

Initiating the discussion on the matter in the plenary meeting held on 23rd January, 1969, the Delegate of Pakistan stated that the primary reason for suggesting reconsideration of the Bangkok Principles was that events, which had taken place since August 1966 when the Final Report of the Committee was adopted, had proved the need for providing explicitly in the 'Principles' a provision which would cover refugees from a territory the sovereignty over which or the international status of which was in dispute. The amendment proposed by the Government of Pakistan was with regard to the definition of the term 'refugee' so as to include within the ambit of that expression those hundreds of thousands of persons who were in fact refugees but whose particular circumstances excluded them from the purview of the definition as set out in the 'Principles' adopted by the Committee.

Supporting the suggestion of the Delegate of Pakistan, the Jordanian Delegate stated that the definition of 'refugees' in the Bangkok Principles did not take care of all the cases which were encountered in actual practice. Therefore, the amendment suggested by the Delegate of Pakistan in his view would fill in the lacuna which existed in the Bangkok Principles.

The Delegate of Ghana referred to the developments in the field of refugee law since the Bangkok Session, and said that the Bangkok Principles had to be reviewed in view of those developments. Referring specifically to the draft O.A.U. Refugee Convention, prepared by the Refugee Commission at the request of the O.A.U., he mentioned that it had made some improvement in the situation by expanding the definition of 'refugee' and by stressing the principle of international solidarity in connection with the granting of asylum to refugees. He urged the Committee to examine these new developments and improve the principles adopted at Bangkok.

The Delegate of India expressed the view that although the Bangkok Principles were not elaborately drafted and their number was not large, yet they were precise and comprehensive. He pointed out that the thought running through those principles was liberal and progressive, and it was a matter of satisfaction that the concept of provisional asylum was adopted by the Committee before the General Assembly adopted the Declaration on Territorial Asylum. Referring to the plight of Palestinian refugees since 1948 and more particularly after June 1967, he said that this Committee had given recognition and support to the principles of the right to return and the right to compensation, and therefore the legal basis of a solution already existed. He suggested that the Committee should devise machinery for implementation of those rights not with reference to any particular situation, but on the basis of general principles. He therefore felt that the amendment sought by Pakistan was unnecessary.

The Delegation of Indonesia supported in principle any proposal that might lead towards finding a solution of the refugee problem. She, however, required time to examine carefully the amendment suggested by the Delegate of Pakistan.

The Delegate of Japan expressed his willingness to review the Bangkok Principles in the light of the proposals made by the Delegates of Pakistan and Jordan and the developments in the field of refugee law which had taken place since the Bangkok Session. He said that three questions arose for consideration of the Committee, namely (i) modification of the definition of 'refugee' as suggested by the Delegate of Pakistan; (ii) the question of setting up of competent tribunals for awarding compensation; and (iii) the standard of treatment of refugees. According to him, the Pakistan Government's proposal was a very important one and required serious consideration by the Committee. As for establishment of tribunals, he felt that the time was now

ripe and the matter should be considered from a sense of realism. As for the standard of treatment for refugees, he said that unlike in Africa, in Asia the standard of treatment provided was aliens standard of treatment and it was because the national standard of treatment in the field of labour, employment, social security etc. entailed heavy burden on the receiving State. For this reason, he pointed out it would be difficult to accept the suggestion of U.N.H.C.R. regarding adoption of national standard of treatment.

The Delegate of Sierra Leone supported in principle the amendment proposed by the Delegate of Pakistan. He, however, was of the view that in considering the amendment moved by the Delegate of Pakistan, the Committee would have to consider two matters, namely (i) whether or not the Committee wished to modify a fundamental legal concept regarding refugees; and (ii) a number of amendments consequential upon the proposed amendment. He desired the Committee to consider two other questions also, as suggested by U.N.H.C.R., namely matters relating to travel documents and visas and repatriation.

The Delegate of Thailand saw no objection to the amendment proposed by Pakistan. He wanted the Committee to lay more stress on the basic rights of refugees.

The Observer for U.N.H.C.R. expressed the view that refugee situations were diverse and it was difficult to establish common principles covering all of them. Firstly, there were exchanges of population where persons had fled or were expelled to a country with which they had had close ties. In such situations, he pointed out, there existed problems of economic integration and legal problems were of lesser importance. Secondly, there was problem of refugees fleeing for fear of persecution and seeking asylum in another, generally the neighbouring country. In such cases the question of economic integration as well as that of legal status arose until

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