
V. LAW RELATING TO INTER-
NATIONAL RIVERS

INTRODUCTORY NOTE

The subject "Law of International Rivers" had been referred to this Committee for consideration under Article 3(b) of its Statutes by the Governments of Iraq and Pakistan. Although the subject is fairly vast it became clear from the preliminary statements made by the delegations of the referring Governments at the ninth session of the Committee, held in New Delhi in December 1967, that the topics which they wished the Committee to consider related to some particular aspects of the problem. Iraq appeared to be primarily interested in two questions, namely, (a) definition of the term "international rivers" and (b) rules relating to utilisation of waters of international rivers by the States concerned for agricultural, industrial and other purposes apart from navigation. Pakistan's primary concern also appeared to be with regard to the uses of waters of international rivers, and more particularly, the rights of lower riparians.

It has been well-recognised that protection of the legitimate rights of the States concerned in the waters of international rivers is a matter to be regulated by rules which would be acceptable to the international community as a whole. As has been pointed out by several jurists and writers, there are certain rules on the subject which are already in existence derived from international custom, practice among nations, opinions of jurists, decisions of courts and provisions of treaties and conventions. In recent years, a great deal of work in the field has been done by various learned institutions and bodies such as the Institute of International Law, the International Law Association, the Inter-American Bar Association, New York University School of Law and the Economic Commission for Europe. The most notable and comprehensive study

prepared so far in this field may be found in the formulations adopted by the International Law Association at its 1966 Conference which are known as the Helsinki Rules. The General Assembly of the United Nations by a decision taken at its twenty-fourth session had requested the International Law Commission to formulate the draft rules on this subject after taking into account the work done by other bodies, and the same is now pending consideration of the Commission.

This Committee at its ninth session after a preliminary exchange of views on the subject directed the Secretariat to collect the relevant background material on the issues indicated in the statements made by the delegations and to prepare a Brief for consideration of the Committee. One of the main issues that arose in the course of discussions at that session was how far the rules developed and practised by European nations would be applicable to the problems which arise in the Asian-African region having regard to the different geophysical characteristics of the rivers and the needs of the people for varying uses of the waters. Some of the delegates stressed on the urgent need for the development of the law in a manner that would reflect the Asian-African viewpoint. Opinions were also expressed that the draft principles adopted by the International Law Association and the Institute of International Law did not meet the situation faced in certain Asian and African countries.

The Committee at its tenth session held in Karachi in January 1969 took up the subject for further consideration on the basis of the material placed before it by the Secretariat with a view to formulate its recommendations on the subject in the form of draft principles. The Committee took note of the views and opinions expressed from time to time by jurists and experts on various questions, the decisions of the Permanent Court of International Justice, Federal Courts and Arbitral Tribunals as well as the work already done by learned institutions and bodies. The Committee

also had before it the relevant provisions of treaties and conventions with regard to international rivers in Asia, Africa, Europe and the Americas. The Committee at that session by Resolution No. X(6) appointed a Sub-Committee to give detailed consideration to the subject and 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 civilisations and legal systems for consideration at the Committee's next session. The Committee also directed its Secretariat to assist the Sub-Committee and to collect relevant background data in the light of the discussions at the Committee's tenth session. It also requested the Member Governments to indicate points on which they desired further data to be collected by the Secretariat.

The Sub-Committee appointed at the Karachi Session met in New Delhi in December 1969 to consider the matter in the light of the suggestions made by the Member States of the Committee and further material collected by the Secretariat in pursuance of the aforesaid Resolution No. X(6). The matters taken note of by the Sub-Committee included the question of formulation of the definition of an international river; the general principles of municipal water rights existing between owners of adjacent land under different municipal systems; the decisions of courts and arbitral tribunals on disputes relating to water rights between independent States and constituent states of a Federation, general principles governing the responsibility of States and the doctrine of abuse of rights; river pollution; rights of riparians regarding the uses of waters of international river basins; and State practice regarding settlement of river water disputes. At this meeting the representative of Pakistan placed a set of ten draft articles for consideration of the Sub-Committee and the delegate of Iraq also placed before the Sub-Committee a set of draft principles consisting of 21 articles. The delegates of Iraq and Pakistan desired that the

Sub-Committee should proceed to discuss the subject on the basis of the draft formulations presented by them, whilst the delegate of India desired that the Sub-Committee should take the Helsinki Rules as the basis for discussion. As the discussions in the Sub-Committee were not conclusive it was agreed that the matter should be further discussed at the next session of the Committee.

At the Accra Session of the Committee held in January 1970, the Delegates of Iraq and Pakistan submitted a joint draft consisting of 10 articles which they wished the Committee to take up as the basis for discussion. The delegate of India also submitted a proposal that the Helsinki Rules adopted by the International Law Association in 1966 should be the basis of the Committee's study and, to begin with, the first 8 articles of the Helsinki Rules should be taken up. No progress could be made at the Accra Session on this subject as the discussions centred around procedural matters and there was not sufficient time to discuss the substantive issues.

At the Colombo Session of the Committee held in January 1971, following the discussions in the plenary, it was decided to appoint a Sub-Committee comprising of the representatives of Ceylon (now Sri Lanka), Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Nigeria, Pakistan and the U.A.R. (now Arab Republic of Egypt) to give detailed consideration to the subject. The representative of Ceylon (Sri Lanka) and the representative of Japan were elected as the Chairman and the 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 his 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-session meeting to be convoked prior to the Thirteenth Session of the Committee. The Sub-Committee accordingly met again in Colombo from 6 to 10 September 1971 when it considered the draft propositions I to X.

At the Thirteenth Session of the Committee held in Lagos, the subject was taken up for consideration by the Standing Sub-Committee as reconstituted at that session. During the meetings of the Sub-Committee it was observed that the draft proposals prepared by the Rapporteur 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 accordingly agreed to take up other aspects of this subject including navigation, pollution, timber floating etc. in its future sessions. The Sub-Committee also agreed that the Committee should direct the Secretariat to prepare a study on the subject of the right of land-locked countries to access to the sea through international rivers. It was further agreed that the new draft proposals with appropriate commentaries thereon should be prepared by the Rapporteur of the Sub-Committee and should be distributed through the Secretariat to members of the Sub-Committee before the next Session.

REPORT OF THE INTER-SESSIONAL SUB-COMMITTEE MEETING HELD IN COLOMBO FROM 6TH TO 10TH SEPTEMBER, 1971

In pursuance of paragraph 7 of the Report of the Sub-Committee on the Law of International Rivers which was accepted by the meeting of the Asian-African Legal Consultative Committee held in Colombo from 18th to 28th January, 1971, the said Sub-Committee met in Colombo from 6th to 10th September, 1971 and reports as follows :—

The following participated :

1. Dr. A.R.B. Amersinghe (Ceylon)—Chairman.
2. Mr. R. Rangachari (India).
3. Mr. S.C. Jain (India).
4. Mr. Husein Walangadi (Indonesia).
5. Mr. A. Makki (Iran).
6. Mr. E. Furukawa (Japan)—Rapporteur.
7. Mr. M.A. Samad (Pakistan).
8. Mr. Harunur Rashid (Pakistan).

Mr. K. Ichihashi, Deputy Secretary-General of the Committee was also present.

Proposition I :

Although there was general agreement with Proposition I as proposed by the Rapporteur, some delegates maintained that the phrase "international drainage basin" be replaced by the phrase "international drainage basin of an international river" and this replacement should be made not only in Proposition I but also wherever else it occurred.

The proposer of the amendment maintained that the fact that the amendment was proposed was not to be taken to imply that he did not subscribe to the basin approach. The other members of the Sub-Committee were also of the view that the drainage basin approach was the appropriate one.

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 one delegate ought to be read as "flowing into an international river". Some other delegates, however, did not consider the amendment necessary.

With regard to sub-paragraph (2) the Sub-Committee was in agreement.

With regard to sub-paragraph (3) some delegates maintained that it was not necessary. Others felt that if it was retained, the definition should be improved. One delegate maintained that he did not want to comment at all on this sub-paragraph until he had further clarifications from the delegation which had proposed it.

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 water with the minimum detriment to the co-basin states." With regard to this proposal 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 principles embodied in Article V(3) of the same Rules. There was some further discussion which, however, remained inconclusive.

Proposition IV

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

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

“Consistent with the principles 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.”

One delegate, however, supported the Rapporteur's draft Proposition IV in its present formulation.

One delegate pointed out a contradiction in two paragraphs, viz., III (1) and IV (2) : while Proposition III (1) indicated more than one method of beneficial uses, Proposition IV (2) suggested only one such method. There was some further discussion in regard to this proposition but the matter remained inconclusive.

Proposition V

With regard to the first sentence there was agreement.

With regard to the second sentence some delegates expressed the view that it should be omitted.

Proposition VI

One delegate was in favour of the original draft proposition. It was suggested by one delegate that Proposition VI should commence with the words “Subject to Proposition III”. Another delegate proposed that the words “and equitable” should be inserted after the words “reasonable” as an alternate to the above amendment. Both amendments were discussed but no final decision was arrived at.

Proposition VII

It was proposed by one delegate that sub-paragraph

(1) should commence with the words, “Subject to Proposition III.” The proposer said that if this amendment was accepted, then there was no objection to sub-paragraphs (2) and (3) but not otherwise. Whilst one delegate suggested that Proposition VII as formulated by the Rapporteur should be retained in its present form, the other delegates reserved their views on the subject.

It was agreed that the phrase “or compatible” in sub-paragraph (2) (a) should read “of comparable”.

Proposition VIII

One delegate was in favour of retaining the Rapporteur's formulation of Proposition VIII as a whole, whereas another delegate expressed the view that the Proposition as a whole was unacceptable. Other delegates proposed that the entire Proposition be replaced as follows :

“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 water of an international drainage basin.”

Proposition IX

There was general agreement that this Proposition did not seem to have been properly phrased or typed. Was it possible that the phrase “Article II and VIII” should read “III to VIII” ? Or, ought it to read “Articles III and VIII” ? The Sub-Committee expressed the view that this matter should be clarified with reference to the papers in the Secretariat which has the original.

It was proposed by one delegate that the Rapporteur's Proposition IX should be amended to read as follows :

“For any act or injury to a co-basin State the aggrieved basin State shall be entitled to indemnification.”

Another delegate thought that this was too wide and that the word "unlawful" should be inserted between "any" and "act".

Yet another delegate proposed that the Rapporteur's Proposition IX should be replaced by the following :

"When new method of the uses or change of the existing uses of one co-basin State is predicted to substantially affect the rights and interests of the other co-basin States and when the latter so requested, the former co-basin State would enter into consultations with the other co-basin States regarding the matter as set forth in Propositions III to VIII including the matter stated in Article V (2) (j) of Helsinki Rules."

Another delegate said that Proposition IX as in the Rapporteur's draft was unacceptable.

Proposition X

One delegate supported the Rapporteur's draft proposition in its present formulation.

Another delegate while affirming support for the procedure prescribed in Article 33 of the United Nations Charter for the peaceful settlement of dispute wondered how a dispute concerning the "interpretations and applications of the foregoing propositions" could arise at all in the absence of a treaty.

ANNEX

Colombo
11th September, 1971

The Deputy Secretary-General,
Asian-African Legal Consultative Committee,
Hotel Taprobane,
Colombo.

Subject : Report of the Sub-Committee on the Law of
International Rivers.

Dear Sir,

The Delegation of Pakistan suggest that the word "also" occurring in 12th line under Proposition 1 of the Report of the Sub-Committee be deleted.

Yours faithfully,
Sgd. M.A. Samad
Pakistan Representative