



IRANIAN EMBASSY
WASHINGTON 8, D. C.

May 22, 1958.


Mr. John G. Laylin,
Covington & Burling,
Union Trust Building,
Washington 5, D. C.

Dear Mr. Laylin,

I wish to thank you for your letter of May 15th and for your kindness in sending so promptly the copies of excerpts from the legal memorandum of the Department of State and the copy of the Statement of Principles of Law and Recommendations with Commentary and Supporting Authorities prepared by a committee of the American Branch of the International Law Association.

I have found them extremely interesting and informative, and plan to forward this information to Teheran.

Sincerely yours,


Dr. Ali Gholi Ardalan
Ambassador of Iran

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II. International Law Affecting the
Use of International Rivers

A. The General Principle Applying to
International Rivers.

The international law on the obligations of States appropriating water from international rivers for irrigation projects is one part of the body of international law enjoining actions in the territory of one State having ramifications in the territory of another State injurious to the interests of that State. This body of rules draws its validity from the practice of civilized nations and from the general principles of law recognized by civilized nations.

An instructive example of this category of duties is provided by the award in the Trail Smelter Arbitration case, in which it was held that Canada was responsible under international law to the United States for injury done to United States territory by noxious fumes emanating from works operated in Canada. The general principle illustrated by the Trail Smelter decision -- that a State may not exploit the natural condition of its territory in such a manner as to damage or interfere substantially with the proper exploitation by another State of its territory -- has been recognized and applied with great particularity in the case of changes in the flow of international rivers. Indeed, in this field

the international law has gone far beyond the injunction of certain activities, such as the operation of a smelter, to lay down affirmative principles by which nations must be regulated in appropriating the water of an international river.

Professor Oppenheim's recognized work on international law gives the following general statement of the principle recognized in international practice:

"A state is not only forbidden to stop or divert the flow of a river which runs from its own to a neighboring state, but likewise to make such a use of the water of the river as either causes danger to the neighbouring state or prevents it from making proper use of the flow of the river on its part.**"

A more comprehensive statement of the principle is given by Professor Brierly:

"... The practice of states, as evidenced in the controversies which have arisen about this matter, seems now to admit that each state concerned has a right to have a river system considered as a whole, and to have its own interests weighed in the balance against those of other states; and that no one state may claim to use the waters in such a way as to cause material injury to the interests of another, or to oppose their use by another state unless this causes material injury to itself. This principle of the 'equitable apportionment' of all the benefits of the river system between all the states concerned is clearly not a single problem which can be solved by the formulation of rules applicable to rivers in general; each river has its own problems and needs a system of rules and administration adapted to meet them ...***"

* Oppenheim's International Law (Lauterpacht's 6th Ed. (1947)), pp. 429-430.

** Brierly, Law of Nations (1942), p. 158.

In other words, international law recognizes that an international river creates a "kind of partnership" (to use the words of the Italian Court of Cassation) among the riparian States, and places them under an obligation to cooperate in preserving each other's interests in the river.* The form this cooperation may take will, of course, depend on which interests are most important along the particular river (navigation, irrigation, power development, etc.)

These statements of the principle are supported by numerous precedents in international practice. For the sake of brevity, simplicity and clarity, the text of the brief will set forth only a few of the salient precedents to document the statement of the law. To show the generality of the acceptance of the principle of equitable apportionment, a few precedents in the practice of nations not concerned

* See Appendix B, No. 1. (An extract from Societe Energie Electrique du Littoral Mediterranee v. Compagnia Imprese Elettriche Liguri.) There are numerous cases in the municipal law of civilized nations, based upon international law, which recognize this partnership relation and the obligation to protect the interests of neighboring States when modifying the flow of international rivers for domestic purposes. One of the most significant of these, a decision of the German Staatsgerichtshof in the case of Wuerttemberg v. Baden (1927), has been set out in Appendix B, No. 2. The equitable apportionment of the waters of the rivers of the Indus Basin among the Provinces and States of India was also based upon international law by the Indus (Rau) Commission of the Government of India, which arbitrated the conflicting claims of the Provinces and States of the Indus Basin in 1942. Extracts from the Report of the Commission are set out in Appendix B, No. 3.

primarily with irrigation will also be included. For further documentation, the Commission is referred to Appendix B, references to which will be made in appropriate parts of the text.

One of the earliest recognitions of the requirements of international law regarding international rivers concerned a dispute between Belgium and the Netherlands with regard to canals taking off from the Meuse, one of the great commercial waterways of Europe. The Belgian Government had constructed a canal to provide navigation between Antwerp and the Meuse and to irrigate and reclaim wastelands adjacent to the Dutch border. The operation of this canal, which drew its water from another canal taking off from the Meuse, affected the navigability of this other canal and the Meuse River, and also resulted in the flooding of areas in the Netherlands adjacent to the area irrigated in Belgium.

The Netherlands Government objected to these developments on the ground that they infringed the Netherlands' rights under international law. It stated:

"The Meuse being a common river both to the Netherlands and to Belgium, it goes without saying that both parties are entitled to make the natural use of the stream, but at the same time, following general principles of law, each is bound to abstain from any action which might cause damage to the other; in other words, they cannot be allowed to make themselves masters

of the river by diverting it to serve their own needs, whether for purposes of navigation or irrigation.**

The Belgian Government, recognizing the force of these objections, entered into negotiations with the Netherlands and concluded a treaty shortly thereafter which allocated to each nation a specified volume of water for the service of its canals and provided for cooperative action to accommodate the interests of the two nations.** Since that date the two nations have resolved fresh disputes by supplementary agreements based upon recognition of the obligation to preserve each other's interests, or by reference to the Permanent Court of International Justice.***

Another recognition of the requirements of international law is contained in a convention concluded by Norway and Sweden upon separation of the two kingdoms by the Treaty of Karlstadt, concluded in 1905. The convention is valuable for the clarity with which it sets forth the respective rights and obligations of the two nations.

* Instructions sent by the Netherlands Government to its Ministers in London and Paris, 30th May, 1862. The original text is in the Algemeen Rijksarchief at The Hague, and is quoted in Herbert Arthur Smith, The Economic Uses of International Rivers (1931).

** See Treaty to Regulate Diversions of Water, concluded by Belgium and the Netherlands on 12th May 1863, set forth in Appendix B, No. 4.

*** See Treaty for the Revision of the Treaty of 1863, concluded by Belgium and the Netherlands on 11th January 1873, set forth in Appendix B, No. 5, and the decision of the Permanent Court of International Justice in The Diversion of Water from the Meuse, Series A/B, No. 70 (1937).

Article IV specifies that the convention is applicable to all the tributaries of any international stream, however remote those tributaries might be from the boundary.

Article II of the convention recognizes that:

"In accordance with the general principles of international law, it is understood that the works mentioned in Article I cannot be carried out in one of the two States without the consent of the other, whenever these works, in influencing the waters situated in the other State, would have the effect of sensibly impeding the use of a water course for navigation or launching, or of otherwise bringing about serious changes in the waters of a region of considerable extent.**"

Here is a clear recognition that customary international law requires the agreement of the interested States before the condition of an international stream may be seriously modified by activities within the territory of any of the riparian nations.**

Another treaty, which is typical of many treaties dealing with international rivers, is the protocol regarding the German-Saar frontier, concluded by France, Germany and the Saar on 13th November 1926.***

* Convention relating to common lakes and water courses, 26th October 1905, set forth in Appendix B, No. 6.

** Compare the text of the resolution of the Institute of International Law adopted in 1911, set forth in Appendix B, No. 7.

*** The text of the treaty is set forth in Appendix B, No. 8.

This treaty provides for the establishment of commissions on both sides of the frontier to deal with the hydraulic system, and provides in detail for cooperation between the Governments whenever action which might affect the other side of the frontier is contemplated. Article II, Section 2 of this protocol provides as follows:

"Along these frontier water-courses and also along all water-courses, streams or artificial water-courses intersecting the frontier line, no building shall be constructed or installation erected, on one side of the frontier which may modify the existing course on the other side of the frontier, unless such buildings or installations have been authorized by both sides of the frontier. Further ... the Government Commission of the Saar Territory and the Prussian, Bavarian or Oldenburg Governments shall apply the relevant legislative provisions regarding water-courses which are in general applicable to their own territory; they shall take account of the interests lying beyond the frontier just as if the latter were situated on the near side of the frontier. ... The rights of user over all the above water-courses shall remain as at present."

Article II, Section 3 provides for transmission of information concerning any projects to the interested Parties on the other side of the international frontier, as well as joint inspection of the water courses. Article IV requires the consent of authorities on both sides of the frontier to "modify a building in any way or to create a new installation within the statutory flood area whereby the escape of flood waters would be interfered with." Other articles make detailed provision for cooperative action in

maintaining the water courses and adjusting the uses permitted on each side of the frontier.

In this treaty we see some of the basic rules of conduct accepted in the practice of nations. The riparian nations undertake to consult each other in the launching of any projects which may affect the inhabitants of the other riparian states, and establish machinery whereby this consultation may take place. They recognize that any proposal to take action within the territory of one of the States must have the consent of the other riparian States if that action may affect substantially the interests of the other riparian States. Furthermore, each of the riparian nations recognizes that the interests of the inhabitants of the other riparian States must be placed on a par with the interests of its own inhabitants.

The Saar treaty is only one of a great many treaties of its type. Among other treaties providing machinery for joint action to deal with questions on matters which may affect more than one riparian State, attention is called to the following: Boundary Waters Treaty, concluded by the United Kingdom and the United States on 11th January 1909 (Appendix B, No. 9); Agreement Relating to Water Courses and Dikes, concluded by Denmark and Germany on 10th April 1922 (relating in large part to irrigation)

(Appendix B, No. 10).* This group of treaties, which is so numerous that we have not attempted to call all of them to the attention of the commission, evidences a pervasive international custom amounting to a general practice accepted as law by civilized nations.

To sum up the effect of this international practice, we could hardly do better than to quote from the opinion of the Supreme Court of the United States in applying the principle of equitable apportionment to a dispute between two States of the Union. Translated from

* The following additional treaties, recognizing the necessity for joint authorization of activities affecting more than one nation, but not dealing primarily with irrigation, are also set forth in Appendix B: Treaty for Boundary Delimitation, concluded by the Congo Free State and the United Kingdom on 9th May 1906 (Appendix B, No. 11); Treaty of Peace, concluded by the Allied and Associated Powers and Austria on 10th September 1919 (Appendix B, No. 12); Treaty of Peace, concluded by the Allied and Associated Powers and Hungary on 4th June 1920 (Appendix B, No. 13); General Convention Relating to the Development of Hydraulic Power, signed on 9th December 1923 and ratified by Danzig, Denmark Greece, Hungary, Iraq, Newfoundland, New Zealand, Panama, Siam and the United Kingdom (Appendix B, No. 14); Convention for the Regulation of Hydraulic Systems, concluded by Hungary and Roumania on 14th April 1924 (Appendix B, No. 15); Convention concerning the Regime of the Pasvik and Jakobselv Rivers, concluded by Finland and Norway on 14th February 1925 (Appendix B, No. 16); Treaty of Frontier Delimitation, concluded by France and Germany on 4th October 1925 (Appendix B, No. 17); Agreement Concerning the Frontier, concluded by Belgium and Germany on 7th November 1929 (Appendix B, No. 18); General Convention Concerning the Hydraulic System, concluded by Roumania and Yugoslavia on 14th December 1931 (Appendix B, No. 19); Convention Concerning the Bega Canal and River, concluded by Roumania and Yugoslavia on 14th December 1931 (Appendix B, No. 20);

the American scene to the world scene, the Court's words give us the essence of the international custom based upon the rule of law:

"... A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such a power to the destruction of the interest of lower States could not be tolerated. And on the other hand equally little could New Jersey be permitted to require New York to give up its power altogether in order that the River might come down to it undiminished. Both States have real and substantial interests in the River that must be reconciled as best they may be. The different traditions and practices in different parts of the country may lead to varying results, but the effort always is to secure an equitable apportionment without quibbling over formulas."*

B. Application of the Principle of Equitable Apportionment to Rivers Used for Irrigation.

It is to be expected, of course, that the application of so broad a principle as that of equitable apportionment to specific situations would require the development of certain subsidiary rules. It is a testimony to the vitality of the principle of equitable apportionment in

(Continuation of footnote on page 32)

Treaty to Regulate the Use of the Waters of the Roya River, concluded by France and Italy on 17th December 1914 (Appendix B, No. 21).

* New Jersey v. New York, 283 U.S. 336, 342-43 (1931).

international law that such rules have been developed in the field of irrigation from international rivers.

In general, the principles which have been developed may be stated quite simply: As General Goldsmid held, each riparian nation is entitled to continue to obtain its historical supply of water from an international river for the purpose of irrigation and domestic consumption. This historical irrigation has priority over any later project to appropriate the river's waters. With regard to any surplus waters which may remain after the historical irrigation is provided for, each riparian nation is entitled to share equitably in their use and development. By this it is meant, among other things, that the surplus waters should be shared on the basis of the relative requirements and opportunities for use which the riparian nations may possess. Furthermore, the riparian nations are entitled to share in the improvement of the river supply by means of engineering works, and are under an obligation to cooperate so as to preserve each other's interest in the development of the river.

For the documentation of this statement of the international law, we will set forth in the text five of the significant international precedents. However, it should be observed that there are additional sources to

support this statement of principles.*

One of the earliest of the modern applications of the principle of equitable apportionment to irrigation is contained in the Boundary Treaty of the Pyrenees concluded by France and Spain on 14th July 1866.**

Article XXXVII of the treaty provides that the inhabitants of each side of the boundary have the right to

- * References to specific precedents will be made at appropriate places in the text. In addition, we would like to call the attention of the Commission to the practice in the subcontinent of India and in the United States, the two areas of the world where irrigation has been carried to its highest development.

In the United States the Supreme Court has been charged with the duty of adjudicating ~~the rights of States of the Union in interstate rivers.~~ The rights of the States of the Union vis-a-vis one another in interstate rivers. These decisions provide a storehouse of specific applications of the principle of equitable apportionment. The most important of them are: Nebraska v. Wyoming, 325 U.S. 589 (1945); Colorado v. Kansas, 320 U.S. 382 (1943); Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938); Washington v. Oregon, 297 U.S. 517 (1936); New Jersey v. New York, 282 U.S. 336 (1931); Connecticut v. Massachusetts, 282 U.S. 660 (1931); Wyoming v. Colorado, 259 U.S. 419 (1922); Kansas v. Colorado, 206 U.S. 46 (1907).

In India prior to partition the claims of the several Provinces and States were adjusted by arbitration of the Government of India, as well as by agreements contracted among the several governments. In the latest adjustment, that of the Indus (Rau) Commission in 1942, the Government of India gave consideration to the practice developed in the United States, as well as the practice of nations. This is one indication of the manner in which the principle of equitable apportionment has developed throughout the world wherever irrigation has been undertaken. Extracts from the Report of the Indus (Rau) Commission will be found in Appendix B, No. 3.

- ** Set forth in Appendix B, No. 22.

irrigate with the waters of a certain canal, each side to draw water from the canal on alternate weeks. In Article IX of the additional act annexed to the treaty it is provided:

"... Each Government recognizes, subject to the making, when advisable, of a bilateral enquiry, the legality of the irrigation, of the mills and the enjoyment for domestic uses at present existing in the other State, by virtue of a concession, title or prescription, with the reservation that only water necessary for the satisfaction of real needs will be used"

Here we see an application of the most basic rule of the principle of equitable apportionment: Namely, that the existing uses of water have a vested right to the supplies of an international water course.

Article X provides further:

"If, after having satisfied the real needs of uses recognized respectively by one side or another as legal, disposable water remains at the lowest level on passage across the frontier, such water shall be divided in advance between the two countries, in proportion to the extent of the irrigable lands belonging to the respective immediate riparians, deduction being made of the land already under irrigation."

Here we see the logical extension of the principle of equitable apportionment. The existing uses have first call on the waters of the international water course. Any proposed uses may be undertaken only after having satisfied the real needs of existing uses.

Then we see a secondary rule of equitable apportionment. The waters available for proposed uses are to be

divided between the riparian States "in proportion to the extent of the irrigable lands" belonging to the respective riparians, deduction being made of the land already under irrigation.* This subsidiary rule is not always stated in the same manner in the various precedents in international practice. In some cases the division of the surplus waters is not based upon any particular formula, such as the extent of irrigable lands on either side of the frontier, but upon a more general criterion, the requirements of agricultural extension of the several riparian nations. Indeed, it would be unwise to attempt to apply a rigid formula to the varied interests which may have to be taken into account in allocating the untapped waters of an international river. In every case "the effort always is to secure an equitable apportionment without quibbling over formulas."**

In the other articles of the treaty is contained a third subsidiary principle of the doctrine of equitable

* In the practice in the Indian subcontinent water available after the satisfaction of existing uses has been distributed on the basis of the culturable irrigable area. See Report of the Indus (Anderson) Committee (1936?), Vol. I, p. 30, an extract from which is contained in Appendix B, No. 23.

** See page 33 SUDRA.

apportionment: Namely, the obligation of the riparian nations to cooperate to preserve each other's interests. In Article XI it is provided that either nation proposing to construct works or permit new irrigation from the boundary streams must notify the proper authorities of the other nation in order to permit those authorities to complain if the interests of their territory might be injured. This article provides further that the engineers of each nation shall have the power, on legal notice given in good time, to visit the places where such works are to be undertaken. Article XVIII of the treaty provides for an international commission of engineers to establish the existing use of waters for irrigation, operation of mills, and domestic purposes "in order to bring into accord the amount of water necessary in each case, and to suppress abuses" This commission is also empowered to determine the flow of each water course and the area of the irrigable lands on each side of the boundary, and to undertake other measures designed to effectuate the equitable apportionment called for by the treaty.

Of all the precedents in international law, perhaps the most important is the practice relating to the Nile, that historic river along which civilization was born with the practice of irrigation. This precedent is

of particular relevance in this dispute ~~also~~ because of the similarity of the basic factors affecting life in Egypt and Seistan. In both cases the delta of the river is in an arid area devoid of any appreciable rainfall, and the river, flowing through other nations, brings down its life-giving supplies of water from the snowcapped peaks of distant mountain ranges. In both cases the major historical irrigation has taken place in the delta of the river, rather than along its upper reaches.

In the late nineteenth century, we find the Nile Valley occupied by Egypt along the lower reaches, by Great Britain along the middle reaches and along some of the tributaries, and by Ethiopia and Italy along the other upper reaches of the river system. In 1891 the Italian Government undertook "not to construct, on the Atbara [a tributary of the Nile], in view of irrigation, any work which might sensibly modify its flow into the Nile."^{*} In 1902 the Ethiopian Government undertook

"not to construct, or allow to be constructed, any work across the Blue Nile, Lake Tsana, or the Sobat, which would arrest the flow of their waters into the Nile, except in agreement with His Britannic Majesty's Government and the Government of the Soudan."^{**}

* Protocol concluded by Italy and the United Kingdom on 15th April 1891, the relevant portion of which is set forth in Appendix B, No. 24.

** Article III of the boundary treaty concluded by Ethiopia and the United Kingdom on 15th May 1902 is set forth in Appendix B, No. 25.

In neither of these two upstream riparians had irrigation been practiced historically, and it was recognized that their utilization of the river for other purposes had to be undertaken in such a manner as not to divert the waters of the tributaries of the Nile from the natural course by which they would reach the lower regions of the river.

Between the Sudan and Egypt there was naturally a conflict of interest. Egypt had a large population and a highly developed system of irrigation. None the less, the pressure of its population required extension of its irrigation system. The Sudan had a sparse population, but the British Government foresaw that its future prosperity would rest upon the development of agriculture in a region known as the Gezira, which lay between the Blue and White Niles. Prior to World War I both Governments had prepared plans for development in their territories. With the resumption of their development programs after the war, both nations recognized the conflict of interest and entered into negotiations to settle their respective rights along the Nile. In February 1920 the British Government assured the Egyptian Government that the area of land to be irrigated by the Gezira project would not be increased without consulting the Egyptian Government. However, it turned out that the cost of the completed project greatly

exceeded the original estimates, and the British Government issued instructions to the Government of the Sudan that it was free to increase to an unlimited extent the area of land to be irrigated from the project, intending in this manner to make the project economically self-sustaining. The Egyptian Government objected to these instructions on the ground that they did not take proper account of the rights of the lower riparian. Diplomatic discussions ensued. Finally, on 26th January 1925 Lord Allenby, the British High Commissioner in the Sudan, wrote to the Egyptian Foreign Minister:

"... I would assure your Excellency at once that the British Government, however solicitous for the prosperity of the Sudan, have no intention of trespassing upon the natural and historic rights of Egypt in the waters of the Nile, which they recognise to-day no less than in the past, and in giving the instructions in question to the Sudan Government His Majesty's Government intended that they should be interpreted in this sense."*

Following this recognition by the United Kingdom of Egypt's rights in the flow of the Nile, the two Governments appointed a joint commission to recommend a scheme whereby the interests of Egypt and the Sudan could be accommodated. This commission issued a detailed report in March, 1926. Thereafter, the British High Commissioner and the President of the Egyptian Council of Ministers entered

* British Treaty Series (1929), No. 17, p. 33.

into conversations looking toward an agreement. While the conversations were going on, Sir Austen Chamberlain sent a draft of note to the British High Commissioner in Egypt, dated 9th November 1927, in which he set forth the basic principle upon which agreement should be based. His draft reads in part as follows:

"I have the honour to remind your Excellency that on the occasion of our recent conversations in regard to the utilisation of the waters of the Nile, we agreed on the following conclusions:-

"The principle is accepted that the waters of the Nile, that is to say, the combined flow of the White and Blue Niles and their tributaries, must be considered as a single unit, designed for the use of the peoples inhabiting their banks according to their needs and their capacity to benefit therefrom; and, in conformity with this principle, it is recognised that Egypt has a prior right to the maintenance of her present supplies of water for the areas now under cultivation, and to an equitable proportion of any additional supplies which engineering works may render available in the future."*

Here we have a concise statement of some of the basic elements of the principle of equitable apportionment: Namely, that each riparian has

"a prior right to the maintenance of her present supplies of water for the areas now under cultivation, and to an equitable proportion of any additional supplies which engineering works may render available in the future."

In this case it should be noted that the emphasis has been placed upon the improvement of the river supply by means

* Paper regarding negotiations for a treaty of alliance with Egypt, Egypt No. 1 (1928) (Cmd. 3050), p. 31.

of engineering works. Not only is the lower riparian entitled to priority treatment for its existing agriculture dependent upon irrigation, and to an equitable proportion of any surplus waters that may exist in the river in its natural state, but it is also entitled to share equitably in the improvements in the river supply which may be effected by means of engineering works constructed anywhere along the reaches of the river and its tributaries.*

The conversations between Egypt and the United Kingdom reached fruition in an exchange of notes on 7th May 1929. The two Governments recognized once again their obligations as riparian States not to impinge upon each other's share of the common waters, and to cooperate in the development of the river basin. The Egyptian Government agreed to such an increase in the irrigation of the Sudan as would not "infringe Egypt's natural and historical rights in the waters of the Nile and its requirements of agriculture extension." The British Government reiterated its acknowledgment of "the natural and historical rights of Egypt in the waters of the Nile."

In paragraph 3 of the Egyptian note, which constitutes the text of the agreement accepted by Great Britain,

* In this connection we would like to state that the lower riparian is, of course, obligated to share the costs of such engineering works to the extent that it benefits from them. The Government of Iran is quite willing to bear its fair share of the cost of any irrigation works which may be constructed along the Hirmand River for the expansion of irrigation in Seistan.

the findings of the 1925 Nile Commission are accepted with minor modifications. The Commission had established a schedule of withdrawals from the river to be permitted in the Sudan.

In paragraph 4 provision was made for cooperation in measuring discharges and maintaining records. Clause 2 of this paragraph contains the basic provision of the agreement, aside from the acceptance of the recommendations of the Nile Commission's report. It provides:

"Save with the previous agreement of the Egyptian Government, no irrigation or power works or measures are to be constructed or taken on the River Nile and its branches, or on the lakes from which it flows, so far as all these are in the Sudan or in countries under British administration, which would, in such a manner as to entail any prejudice to the interests of Egypt, either reduce the quantity of water arriving in Egypt, or modify the date of its arrival, or lower its level."

Here again the nations have subscribed to the basic principle that no riparian nation on an international river may undertake unilaterally any measures having a substantial effect upon the interests of the other riparian nations. It will be noted that this principle applies to a reduction in the quantity of water reaching the lower riparian, modification of the date of its arrival, or lowering of its level.

In 1949 this principle was given further application in an agreement concerning the construction of a dam at Owen Falls in Uganda for the production of hydraulic power

and for the control of the waters of the Nile. A communique concerning this agreement was published on 19th May 1949.

It states that:

"2. Plans and specifications for this work have been prepared in full consultation between and approved by the Egyptian Ministry of Public Works and Uganda authorities. The Royal Egyptian Government and His Britannic Majesty's Government have accordingly agreed to entrust to the Uganda Electricity Board the issue of an invitation for tenders and the placing of contracts in agreement with these plans and specifications.

"3. The contracts will be submitted to the two Governments who will examine them promptly and indicate their joint approval of them by the exchange of formal notes and will at once notify the Government of Uganda.

"4. The two Governments have also agreed that though the construction of the Dam will be the responsibility of the Uganda Electricity Board, the interests of Egypt will, during the period of construction, be represented at the site by an Egyptian resident engineer of suitable rank and his staff stationed there for the purpose by the Royal Egyptian Government, to whom all facilities will be given for the accomplishment of their duties. Furthermore, the two Governments have agreed that although the Dam when constructed will be administered and maintained by the Uganda Electricity Board, the latter will regulate the discharges to be passed through the Dam on the instructions of the Egyptian resident engineer to be stationed with his staff at the Dam by the Royal Egyptian Government for this purpose in accordance with arrangements to be agreed between the Egyptian Ministry of Public Works and the Uganda authorities pursuant to the provisions of agreements to be concluded between the two Governments.

"5. The two Governments also recognize that during and after the construction of the Dam, the Uganda Electricity Board may take any action at Owen Falls which it may consider desirable provided that this action does not entail any prejudice to the interests of Egypt in accordance with the Nile

Waters Agreement of 1929 and does not adversely affect the discharge of water to be passed through the Dam in accordance with the arrangements to be agreed between the two Governments. The Egyptian Ministry of Public Works and the Uganda Electricity Board will consult together on matters of mutual interest. Any difference of opinion which may arise, however, in connection with the control of the water or with the generation of hydroelectric power will be a matter of discussion and settlement in a spirit of friendly cooperation between them. If these authorities find themselves unable to settle it, the matter will be referred to arbitration in accordance with arrangements to be agreed between the two Governments."

This agreement, so apposite to the case of the Hirmand River, is only one aspect of the continuing cooperation and adjustment which the nations along the Nile have undertaken in applying the basic requirements of international law. Satisfactory application of the principle of equitable apportionment to any major river requires that permanent machinery be established for continuing joint supervision and adjustment of the activities of the several nations affecting the river.

A third major precedent in the application of equitable apportionment to irrigation problems concerns the Rio Grande and Colorado Rivers flowing between the United States and Mexico. These rivers drain huge basins and flow into fertile but arid plateaus and plains. In the past century the development of agriculture in these plains has been pushed vigorously by the Governments of the United States and Mexico.

As in other areas of the world, these national programs impinged upon one another and gave rise to disputes. In 1880 the United States protested a diversion from the Rio Grande which left American farmers without water, claiming that this was "in direct opposition to the recognized rights of riparian owners."* On other occasions it was Mexico who complained of diversions detrimental to its agriculture. On one occasion the United States proceeded to obtain an injunction in its own courts against private diversions of which Mexico had complained.**

In 1906 the two Governments concluded an agreement which ameliorated the situation.*** In this treaty the United States was not yet prepared to admit any legal obligation to pay Mexico claims for damage inflicted by diversions in American territory. Nevertheless, the treaty did provide for the delivery of scheduled quantities of water monthly to Mexico, and that the United States would

* Letter from the Secretary of State of the United States to the United States Minister to Mexico, dated _____, set forth in Appendix B, No. 26.

** See United States v. Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1899).

*** Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, concluded by the United States and Mexico on 21st May 1906, set forth in Appendix B, No. 27.

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pay the whole cost of storing and delivering the water to Mexico, including the cost of construction of a storage dam. It was estimated at the time that the cost of the storage facilities would exceed the estimate of the injury which had been inflicted upon Mexico.* / In the years following this treaty the United States and Mexico authorized extensive inquiries by a joint commission regarding an equitable distribution of the waters of the Rio Grande and Colorado.** These studies culminated in the conclusion of a treaty between Mexico and the United States which provided for an equitable apportionment of the waters of these rivers.*** This treaty was based on a recognition that international law imposed obligations upon each country with respect to irrigation in the other. In requesting ratification of the treaty, the Secretary of State of the United States stated to the Senate:

"It must be realized that each country owes to the other some obligation with respect to the waters of these international streams, and until this obligation is recognized and defined,

* See Charles A. Timm, The International Boundary Commission, the United States and Mexico, University of Texas publication, No. 4134 (1941), p. 175 et seq.

** See Hackworth, Digest of International Law (1940), Vol. 1, pp. 585-90.

*** Treaty Between the United States and Mexico Respecting Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, concluded on 3rd February 1944, set forth in Appendix B, No. 28.

there must inevitably be unrest and uncertainty in the communities served by them -- a condition which becomes more serious with the increasing burden of an expanding population dependent upon the waters of these streams.**

In addition the Assistant Secretary of State declared:

"... The logical conclusion of the legal argument of the opponents of the treaty appears to be that an upstream nation by unilateral act in its own territory can impinge upon the rights of a downstream nation; this is hardly the kind of legal doctrine that can be seriously urged in these times.***

This treaty contains a great many provisions regulating in detail the future regime of the international rivers. The basic framework provides for the supervision of the activities of the two Governments along the two rivers by an international commission made up of sections from each Government. A detailed apportionment of the annual flow of the rivers is agreed upon. The storage of the waters of the rivers in reservoirs is provided for in detail, and rules are laid down defining the ownership by the two nations of the waters impounded in these reservoirs, as well as the manner in which the two nations may withdraw their shares of the storage water for use.

* Hearings before the Committee on Foreign Relations, United States Senate, First Session, on Treaty with Mexico Relating to the Utilization of the Waters of Certain Rivers, Part 1, p. 19 (1945).

** Hearings, Part 5, p. 1762.

Among the principles embodied in this treaty, we may note that existing uses of water are given preferred treatment. Article V provides for the joint construction of works in the main channel of the Rio Grande, which shall include:

"Dams required for the conservation, storage and regulation of the greatest quantity of the annual flow of the river in a way to ensure the continuance of existing uses and the development of the greatest number of feasible projects, within the limits imposed by the water allotments specified."*

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- * In his testimony before the Senate, the United States Secretary of State described the treaty as follows:

"The treaty now under consideration protects, in large measure, existing uses in Mexico on the Colorado River. In the United States, not only are existing uses protected, but opportunity is given for great expansion On the lower Rio Grande ... a division of the water was agreed upon which, when coupled with the building of international dams, will protect existing uses and make possible considerable expansion in both countries" Hearings before the Committee on Foreign Relations, United States Senate, 79th Congress, 1st Session, on Treaty with Mexico relating to the Utilization of the Waters of Certain Rivers (1945), part 1, p. 20.

The attention of the Commission is drawn to other treaties which protect existing uses: Boundary Waters Treaty, concluded by the United Kingdom and the United States on 11th January 1909 (Appendix B, No. 9) ("The foregoing provisions [prohibiting diversions] shall not apply to or disturb any existing uses of boundary waters on either side of the boundary."); Agreement Relating to Water Courses and Dikes, concluded by Denmark and Germany on 10th April 1922 (Appendix B, No. 10) ("Machinery authorized at the time of coming into force of this Agreement may not, in consequence of the use of the water by other persons, be deprived of the water necessary for its working, to the extent which has heretofore been customary.").

A perusal of the provisions of the treaty also show that they are based upon a sharing of the surplus waters of the international rivers and of the benefits to be derived from storage dams and other engineering works.* As a corollary of this principle, it is recognized in the treaty that each nation must bear a share of the costs of

(Continued from page 50)

The American section of the International Water Commission (United States and Mexico) concluded, on the basis of an examination of eleven international treaties, that:

"In all of the eleven international agreements cited above involving many nations and rivers, existing uses of water were recognized and protected as prior appropriations." House Doc. No. 359, 71st Cong., 2nd Sess., (1930) p. 16.

For the application of this principle to the States of the American Union, the Commission has referred to Kansas v. Colorado, 206 U.S. 46, (1907) (Appendix B, No. 29); Wyoming v. Colorado, 259 U.S. 419 (1922) (Appendix B, No. 30); Nebraska v. Wyoming, 325 U.S. 589 (1945) (Appendix B, No. 31).

For the application of this principle on the Indian sub-continent the Commission is referred to a Report of the Indus (Rau) Commission, Vol. I, pp. 10-11 (1942) (Appendix B, No. 3).

* See, s.g., Articles V, VII, VIII, IX, XI, XIII, XIV, XV and XVI of the treaty.

these engineering works proportionate to the benefits derived.*

Another modern application of the principle of equitable apportionment is contained in an agreement regarding the Kunene River flowing from Portuguese Angola into the mandate of Southwest Africa, administered by the Union of South Africa.** The preamble of this agreement recites that Ovamboland, a part of the mandated territory, had in the past benefited greatly by the overflow of the Kunene River at points within Portuguese territory. Subsequently, silting of the channels seriously diminished the extent of these inundations, with resultant injury to the agriculture of Ovamboland. Since the use of the water of the river had been common to both parties, and since it was not practicable for the Government of South Africa to erect all the works necessary to use its share of the water for power development in the mandated territory, the two Governments entered into an agreement to facilitate the erection

* See, e.g., Articles V and XIV of the treaty. This principle has been recognized in many other treaties, e.g., Agreement Relating to Water Courses and Dikes, concluded by Denmark and Germany on 10th April 1922 (Appendix B, No. 10); and the treaties discussed later on in the text.

** Agreement Regarding the Use of the Rua Cana Falls in Angola, concluded by Portugal and the Union of South Africa on 1st July 1926 (Appendix B, No. 32).

of such works in Portuguese territory and to maintain the diversion of water for irrigation in the mandated territory.

The principles contained in the Agreement are the familiar principles which we have seen in the treaties already discussed. Under Article I a dam for the diversion of water to be utilized for the generation of hydraulic power in the mandated territory may be constructed across the Kunene River on Portuguese territory. Under Article II it is provided that either Government may construct the dam. Whichever Government desires to do so must give notice to the other, which shall have an opportunity to share in the construction, including the approval of plans and the supervision of finances. If the dam is jointly constructed, the cost of construction shall be equally divided between the two Governments. If one Government builds the dam, the other may, by giving ten years' notice, and upon payment of one-half the cost of construction, acquire a right to share in the scheme to the extent of one-half of the water in the river.

Article III provides that if the dam is jointly constructed, the cost of maintenance shall be equally divided between the two Government, and so forth. Article IV provides that the Government of South Africa shall be entitled to construct intake works on the river immediately above

the dam, "and thus to impound and to divert into a canal to be constructed by it on the left bank of the river in Portuguese territory so much of the water of the river as it may at that point be entitled to."

In Article VI the Government of Portugal "concedes to the Government of the Union of South Africa the right to use up to one-half of the flood water of the Kunene River for the purposes of inundation and irrigation in the mandated territory provided" that the scheme is feasible.

Article VII provides that neither Government shall divert water along a certain stretch of the river "unless a quantity sufficient for any power works constructed at any point below the Rapids is allowed to pass down."

In simple and concise language, this treaty applies the principles of international law to a relatively undeveloped area where power development and irrigation are of equal importance. It is particularly relevant in this case because of the fact that a portion of the historical irrigation of Seistan has been dependent upon canals which took off from Bandar-i-Kamal Khan and followed the old bed of the river. With the alteration of the river's course and the drawing of the boundary line in 1872, the areas of Seistan irrigated in this manner were cut off from the river itself. By 1872 those areas had ceased to receive irrigation from the Hirmand and their population

had migrated elsewhere. However, the Government of Iran intends to bring these areas under cultivation once again. This can only be done by means of canals which will draw a portion of Iran's share of the waters of the Hirmand from a weir constructed in the vicinity of Bandar-i-Kamal Khan. By virtue of its position as a riparian owner of the river, and by virtue of the historical irrigation of the area from the river, Iran, like South Africa, is entitled to the cooperation of Afghanistan in making these works possible.

One more precedent should suffice for purposes of documentation. In 1946 the Governments of Turkey and Iraq concluded a protocol concerning the regulation of the waters of the Tigris and Euphrates Rivers and their tributaries.* These rivers irrigate historic lands of Iraq, drawing their supplies in large part from the mountain ranges of Turkey. The preamble of the protocol states:

"Turkey and Iraq,

"Recognizing the importance for Iraq of the construction of conservation works on the Tigris and Euphrates and their tributaries, in order to assure the maintenance of a regular supply of water and the regularization of the flow of the two rivers, to avoid the danger of flood during the annual flood periods,

* Protocol concerning the Regulation of the Waters of the Tigris and Euphrates and Their Tributaries, concluded by Iraq and Turkey on 29th March 1946 (Appendix B, No. 33).

"Considering that it is probable that, after investigation, the most suitable locations for the construction of barrages and other similar works, the total expense of which shall be charged to Iraq, will be found to be in Turkish territory,

"In accordance, likewise, with the necessity for installing permanent observation stations, in Turkish territory, with a view to registering the flow of the above mentioned rivers and of regularly communicating to Iraq the results of such observations,

"Accepting the principle of adapting, as much as possible and in the interest of the two countries, the construction of the conservation works on these waters to irrigation purposes and the production of hydroelectric power,

"Agree to the following terms:"

In Articles I and II it is agreed that Iraq may undertake surveys on Turkish territory in cooperation with Turkish authorities to obtain data necessary for the choice of sites for engineering works and for the planning of such works. These surveys are to be made at Iraq's expense.

Article III provides that Turkey shall set up permanent observation stations on its territory, and makes detailed provision for the regular communication of information concerning the rivers and their tributaries. The costs of these activities are to be shared equally by the two Governments. / Articles IV and V state that:

"Article IV

"The Turkish government accepts, in principle, the construction, in accordance with the agreement referred to in the following paragraph, of works which may be indicated as necessary as a result of the studies provided for in Article I.

"With the exception of the permanent observation stations, each work shall be the subject of a separate agreement, insofar as concerns its location, its cost, its operation and maintenance, as well as its use by Turkey, for irrigation and production of power.

"Article V

"Turkey shall keep Iraq up to date on its construction projects for conservation works, on the use of the two rivers and their tributaries, in order that such works may be undertaken by common agreement, as far as is possible in the interests of Iraq, as well as in the interests of Turkey."

Article VI provides for the appointment of permanent representatives to coordinate the activities of the two Governments and to effectuate the protocol.

C. Conclusion.

On the basis of the customary practice of nations under international law, it can be seen that there is no conflict between the award of Major-General Goldsmid and the general requirements of the principle of equitable apportionment. The historical irrigation of Seistan and Chakhansur has the first claim upon the waters of the Hirmand River. After provision has been made for the continued supply of the water necessary for this irrigation, the remaining waters of the river are to be shared equitably by Afghanistan and Iran. Both Governments are obligated to cooperate in securing the improvement of the river supply by means of engineering works and both nations are entitled to share in the benefits of such improvement.

ANNEXURE F—NEUTRAL EXPERT

(ARTICLE IX (2))

Part 1—Questions to be referred to a Neutral Expert

1. Subject to the provisions of Paragraph 2, either Commissioner may, under the provisions of Article IX (2)(a), refer to a Neutral Expert any of the following questions:

(1) Determination of the component of water available for the use of Pakistan

(a) in the Ravi Main, on account of the deliveries by Pakistan under the provisions of Article II (4), and

(b) at various points on The Ravi or The Sutlej, on account of the deliveries by Pakistan under the provisions of Article III (3).

(2) Determination of the boundary of the drainage basin of The Indus or The Jhelum or The Chenab for the purposes of Article III (2).

(3) Whether or not any use of water or storage in addition to that provided under Article III is involved in any of the schemes referred to in Article IV (2) or in Article IV (3)(b) and carried out by India on the Western Rivers.

(4) Questions relating to

(a) obligations with respect to construction or remodelling of, or pouring of waters into, any drainage or drain as provided in Article IV (3)(c) and Article IV (3)(d); and

(b) maintenance of drainages specified in Article IV (4).

(5) Questions arising under Article IV (7) as to whether any action taken by either Party is likely to have the effect of diverting the Ravi Main between Madhopur and Lahore, or the Sutlej Main between Harike and Suleimanke, from its natural channel between high banks.

(6) Determination of facts relating to questions arising under Article IV (11) or Article IV (12).

(7) Whether any of the data requested by either Party falls outside the scope of Article VI (2).

(8) Determination of withdrawals to be made by India under proviso (iii) to Paragraph 3 of Annexure C.

(9) Determination of schedule of releases from Conservation Storage under the provisions of Paragraph 8 of Annexure C.

(10) Whether or not any new Agricultural Use by India, on those Tributaries of The Jhelum on which there is any Agricultural Use or hydro-electric use by Pakistan, conforms to the provisions of Paragraph 9 of Annexure C.

(11) Questions arising under the provisions of Paragraph 7, Paragraph 11 or Paragraph 21 of Annexure D.

(12) Whether or not the operation by India of any plant constructed in accordance with the provisions of Part 3 of Annexure D conforms to the criteria set out in Paragraphs 15, 16 and 17 of that Annexure.

(13) Whether or not any new hydro-electric plant on an irrigation channel taking off the Western Rivers conforms to the provisos to Paragraph 24 of Annexure D.

(14) Whether or not the operation of a Storage Work which was in operation as on the Effective Date substantially conforms to the provisions of Paragraph 3 of Annexure E.

(15) Whether or not any part of the storage in a Connecting Lake is the result of man-made works constructed after the Effective Date (Paragraph 8(b) of Annexure E).

(16) Whether or not any flood control work constructed on the Jhelum Main conforms to the provisions of Paragraph 9 of Annexure E.

(17) Whether or not any Storage Work to be constructed on a Tributary of The Jhelum on which Pakistan has any Agricultural Use or hydro-electric use conforms to the provisions of Paragraph 10 of Annexure E.

(18) Questions arising under the provisions of Paragraph 6 or 14 of Annexure E.

(19) Whether or not the operation of any Storage Work constructed by India, after the Effective Date, conforms to the provisions of Paragraphs 17, 18, 19, 21 and 22 of Annexure E and, to the extent necessary, to the provisions of Paragraph 8 of Annexure C.

(20) Whether or not the storage capacity proposed to be made up by India under Paragraph 23 of Annexure E exceeds the storage capacity lost by sedimentation.

(21) Determination of modifications to be made in the provisions of Parts 2, 4 or 5 of Annexure H in accordance with Paragraphs 11, 31 or 38 thereof when the additional supplies referred to in Paragraph 66 of that Annexure become available.

(22) Modification of Forms under the provisions of Paragraph 41 of Annexure H.

(23) Revision of the figure for the conveyance loss from the head of the Madhopur Beas Link to the junction of the Chakki Torrent with the Beas Main under the provisions of Paragraph 45 (c) (ii) of Annexure H.

2. If a claim for financial compensation has been raised with respect to any question specified in Paragraph 1, that question shall not be referred to a Neutral Expert unless the two Commissioners are agreed that it should be so referred.

3. Either Commissioner may refer to a Neutral Expert under the provisions of Article IX (2)(a) any question arising with regard to the determination of costs under Article IV (5), Article IV (11), Article VII (1)(a) or Article VII (1)(b).

Part 2—Appointment and Procedure

4. A Neutral Expert shall be a highly qualified engineer, and, on the receipt of a request made in accordance with Paragraph 5, he shall be appointed, and the terms of his retainer shall be fixed, as follows:—

- (a) During the Transition Period, by the Bank.
- (b) After the expiration of the Transition Period,
 - (i) jointly by the Government of India and the Government of Pakistan, or
 - (ii) if no appointment is made in accordance with (i) above within one month after the date of the request, then by such person or body as may have been agreed upon between the two Governments in advance, on an annual basis, or, in the absence of such agreement, by the Bank.

Provided that every appointment made in accordance with (a) or (b)

- (ii) above shall be made after consultation with each of the Parties.

The Bank shall be notified of every appointment, except when the Bank is itself the appointing authority.

5. If a difference arises and has to be dealt with in accordance with the provisions of Article IX(2)(a), the following procedure will be followed:—

- (a) The Commissioner who is of the opinion that the difference falls within the provisions of Part 1 of this Annexure (hereinafter in this paragraph referred to as "the first Commissioner") shall notify the other Commissioner of his intention to ask for the appointment of a Neutral Expert. Such notification shall clearly state the paragraph or paragraphs of Part 1 of this Annexure under which the difference falls and shall also contain a statement of the point or points of difference.
- (b) Within two weeks of the receipt by the other Commissioner of the notification specified in (a) above, the two Commissioners will endeavour to prepare a joint statement of the point or points of difference.
- (c) After expiry of the period of two weeks specified in (b) above, the first Commissioner may request the appropriate authority specified in Paragraph 4 to appoint a Neutral Expert; a copy of the request shall be sent at the same time to the other Commissioner.
- (d) The request under (c) above shall be accompanied by the joint statement specified in (b) above; failing this, either Commissioner may send a separate statement to the appointing authority and, if he does so, he shall at the same time send a copy of the separate statement to the other Commissioner.

6. The procedure with respect to each reference to a Neutral Expert shall be determined by him, provided that:

- (a) he shall afford to each Party an adequate hearing;
- (b) in making his decision, he shall be governed by the provisions of this Treaty and by the *compromis*, if any, presented to him by the Commission; and
- (c) without prejudice to the provisions of Paragraph 3, unless both Parties request, he shall not deal with any i) of financial compensation.

7. Should the Commission be unable to agree that any particular difference falls within Part 1 of this Annexure, the Neutral Expert shall, after hearing both Parties, decide whether or not it so falls. Should he decide that the difference so falls, he shall proceed to render a decision on the merits; should he decide otherwise, he shall inform the Commission that, in his opinion, the difference should be treated as a dispute. Should the Neutral Expert decide that only a part of the difference so falls, he shall, at his discretion, either:

- (a) proceed to render a decision on the part which so falls, and inform the Commission that, in his opinion, the part which does not so fall should be treated as a dispute, or
- (b) inform the Commission that, in his opinion, the entire difference should be treated as a dispute.

8. Each Government agrees to extend to the Neutral Expert such facilities as he may require for the discharge of his functions.

9. The Neutral Expert shall, as soon as possible, render a decision on the question or questions referred to him, giving his reasons. A copy of such decision, duly signed by the Neutral Expert, shall be forwarded by him to each of the Commissioners and to the Bank.

10. Each Party shall bear its own costs. The remuneration and the expenses of the Neutral Expert and of any assistance that he may need shall be borne initially as provided in Part 3 of this Annexure and eventually by the Party against which his decision is rendered, except as, in special circumstances, and for reasons to be stated by him, he may otherwise direct. He shall include in his decision a direction concerning the extent to which the costs of such remuneration and expenses are to be borne by either Party.

11. The decision of the Neutral Expert on all matters within his competence shall be final and binding, in respect of the particular matter on which the decision is made, upon the Parties and upon any Court of Arbitration established under the provisions of Article IX (5).

12. The Neutral Expert may, at the request of the Commission, suggest for the consideration of the Parties such measures as are, in his opinion, appropriate to compose a difference or to implement his decision.

13. Without prejudice to the finality of the Neutral Expert's decision, if any question (including a claim to financial compensation) which is not within the competence of a Neutral Expert should arise out of his decision, that question shall, if it cannot be resolved by agreement, be settled in accordance with the provisions of Article IX (3), (4) and (5).

Part 3—Expenses

14. India and Pakistan shall, within 30 days after the Treaty enters into force, each pay to the Bank the sum of U.S. \$5,000 to be held in trust by the Bank, together with any income therefrom and any other amounts payable to the Bank hereunder, on the terms and conditions hereinafter set forth in this Annexure.

15. The remuneration and expenses of the Neutral Expert, and of any assistance that he may need, shall be paid or reimbursed by the Bank from the amounts held by it hereunder. The Bank shall be entitled to rely upon the statement of the Neutral Expert as to the amount of the remuneration and expenses of himself (determined in accordance with the terms of his retainer) and of any such assistance utilized by him.

16. Within 30 days of the rendering of a decision by the Neutral Expert, the Party or Parties concerned shall, in accordance with that decision, refund to the Bank the amounts paid by the Bank pursuant to Paragraph 15.

17. The Bank will keep amounts held by it hereunder separate from its other assets, in such form, in such banks or other depositories and in such accounts as it shall determine. The Bank may, but it shall not be required to, invest these amounts. The Bank will not be liable to the Parties for failure of any depository or other person to perform its obligations. The Bank shall be under no obligation to make payments hereunder of amounts in excess of those held by it hereunder.

18. If at any time or times the amounts held by the Bank hereunder shall in its judgment be insufficient to meet the payments provided for in Paragraph 15, it will so notify the Parties, which shall, within 30 days thereafter, pay to the Bank, in equal shares, the amount specified in such notice as being the amount required to cover the deficiency. Any amounts so paid to the Bank may, by agreement between the Bank and the Parties, be refunded to the Parties.

ANNEXURE G—COURT OF ARBITRATION

(ARTICLE IX(5))

1. If the necessity arises to establish a Court of Arbitration under the provisions of Article IX, the provisions of this Annexure shall apply.

2. The arbitration proceeding may be instituted

(a) by the two Parties entering into a special agreement (*compromis*) specifying the issues in dispute, the composition of the Court and instructions to the Court concerning its procedures and any other matters agreed upon between the Parties; or

(b) at the request of either Party to the other in accordance with the provisions of Article IX(5)(b) or (c). Such request shall contain a statement setting forth the nature of the dispute or claim to be submitted to arbitration, the nature of the relief sought and the names of the arbitrators appointed under Paragraph 6 by the Party instituting the proceeding.

3. The date of the special agreement referred to in Paragraph 2(a), or the date on which the request referred to in Paragraph 2(b) is received by the other Party, shall be deemed to be the date on which the proceeding is instituted.

4. Unless otherwise agreed between the Parties, a Court of Arbitration shall consist of several arbitrators appointed as follows:—

- (a) Two arbitrators to be appointed by each Party in accordance with Paragraph 6; and
- (b) Three arbitrators (hereinafter sometimes called the umpires) to be appointed in accordance with Paragraph 7, one from each of the following categories:—
 - (i) Persons qualified by status and reputation to be Chairman of the Court of Arbitration who may, but need not, be engineers or lawyers.
 - (ii) Highly qualified engineers.
 - (iii) Persons well versed in international law.

The Chairman of the Court shall be a person from category (b) (i) above.

5. The Parties shall endeavour to nominate and maintain a Standing Panel of umpires (hereinafter called the Panel) in the following manner:—

- (a) The Panel shall consist of four persons in each of the three categories specified in Paragraph 4(b).
- (b) The Panel will be selected, as soon as possible after the Effective Date, by agreement between the Parties and with the consent of the persons whose names are included in the Panel.
- (c) A person may at any time be retired from the Panel at the request of either Party: Provided however that he may not be so retired
 - (i) during the period after arbitration proceedings have been instituted under Paragraph 2(b) and before the process described in Paragraph 7(a) has been completed; or
 - (ii) during the period after he has been appointed to a Court and before the proceedings are completed.
- (d) If a member of the Panel should die, resign or be retired, his successor shall be selected by agreement between the Parties.

6. The arbitrators referred to in Paragraph 4(a) shall be appointed as follows:—

The Party instituting the proceeding shall appoint two arbitrators at the time it makes a request to the other Party under Paragraph 2(b). Within 30 days of the receipt of this request, the other Party shall notify the names of the arbitrators appointed by it.

7. The umpires shall be appointed as follows:—

- (a) If a Panel has been nominated in accordance with the provisions of Paragraph 5, each umpire shall be selected as follows from the Panel, from his appropriate category, provided that the category has, at that time, at least three names on the Panel:—

The Parties shall endeavour to agree to place the names of the persons in each category in the order in which they shall be invited to serve on the Court. If such agreement cannot be reached within 30 days of the date on which the proceeding is instituted, the Parties shall promptly establish such an order by drawing lots. If,

in any category, the person whose name is placed first in the order so established, on receipt of an invitation to serve on the Court, declines to do so, the person whose name is next on the list shall be invited. The process shall be repeated until the invitation is accepted or all names in the category are exhausted.

(b) If a Panel has not been nominated in accordance with Paragraph 5, or if there should be less than three names on the Panel in any category or if no person in a category accepts the invitation referred to in Paragraph 7(a), the umpires, or the remaining umpires or umpire, as the case may be, shall be appointed as follows:—

- (i) By agreement between the Parties.
- (ii) Should the Parties be unable to agree on the selection of any or all of the three umpires, they shall agree on one or more persons to help them in making the necessary selection by agreement; but if one or more umpires remain to be appointed 60 days after the date on which the proceeding is instituted, or 30 days after the completion of the process described in sub-paragraph (a) above, as the case may be, then the Parties shall determine by lot for each umpire remaining to be appointed, a person from the appropriate list set out in the Appendix to this Annexure, who shall then be requested to make the necessary selection.
- (iii) A national of India or Pakistan, or a person who is, or has been, employed or retained by either of the Parties shall be disqualified from selection under sub-paragraph (ii) above:

Provided that

- (1) the person making the selection shall be entitled to rely on a declaration from the appointee, before his selection, that he is not disqualified on any of the above grounds; and
 - (2) the Parties may by agreement waive any or all of the above disqualifications in the case of any individual appointee.
- (iv) The lists in the Appendix to this Annexure may, from time to time, be modified or enlarged by agreement between the Parties.

8. In selecting umpires pursuant to Paragraph 7, the Chairman shall be selected first, unless the Parties otherwise agree.

9. Should either Party fail to participate in the drawing of lots as provided in Paragraphs 7 and 10, the other Party may request the President of the Bank to nominate a person to draw the lots, and the person so nominated shall do so after giving due notice to the Parties and inviting them to be represented at the drawing of the lots.

10. In the case of death, retirement or disability from any cause of one of the arbitrators or umpires his place shall be filled as follows:

- (a) In the case of one of the arbitrators appointed under Paragraph 6, his place shall be filled by the Party which appointed him. The Court shall, on request, suspend the proceedings but for not longer than 15 days pending such replacement.
- (b) In the case of an umpire, a new appointment shall be made by agreement between the Parties or, failing such agreement, by a person determined by lot from the appropriate list set out in the Appendix to this Annexure, who shall then be requested to make the necessary selection subject to the provisions of Paragraph 7 (b)(iii). Unless the Parties otherwise agree, the Court shall suspend the proceedings pending such replacement.

11. As soon as the three umpires have accepted appointment, they together with such arbitrators as have been appointed by the two Parties under Paragraph 6 shall form the Court of Arbitration. Unless the Parties otherwise agree, the Court shall be competent to transact business only when all the three umpires and at least two arbitrators are present.

12. Each Party shall be represented before the Court by an Agent and may have the assistance of Counsel.

13. Within 15 days of the date of institution of a proceeding, each Party shall place sufficient funds at the disposal of its Commissioner to meet in equal shares the initial expenses of the umpires to enable them to attend the first meeting of the Court. If either Party should fail to do so, the other Party may initially meet the whole of such expenses.

14. The Court of Arbitration shall convene, for its first meeting, on such date and at such place as shall be fixed by the Chairman.

15. At its first meeting the Court shall

- (a) establish its secretariat and appoint a Treasurer;
- (b) make an estimate of the likely expenses of the Court and call upon each Party to pay to the Treasurer half of the expenses so estimated: Provided that, if either Party should fail to make such payment, the other Party may initially pay the whole of the estimated expenses;
- (c) specify the issues in dispute;
- (d) lay down a programme for submission by each side of legal pleadings and rejoinders; and
- (e) determine the time and place of reconvening the Court.

Unless special circumstances arise, the Court shall not reconvene until the pleadings and rejoinders have been closed. During the intervening period, at the request of either Party, the Chairman of the Court may, for sufficient reason, make changes in the arrangements made under (d) and (e) above.

16. Subject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all questions relating to its competence and shall determine its procedure, including the time within which each Party must present and conclude its arguments. All such decisions of the Court shall be by a majority of those present and voting.

Each arbitrator, including the Chairman, shall have one vote. In the event of an equality of votes, the Chairman shall have a casting vote.

17. The proceedings of the Court shall be in English.

18. Two or more certified copies of every document produced before the Court by one Party shall be communicated by the Court to the other Party; the Court shall not take cognizance of any document or paper or fact presented by a Party unless so communicated.

19. The Chairman of the Court shall control the discussions. The discussions shall not be open to the public unless it is so decided by the Court with the consent of the Parties. The discussions shall be recorded in minutes drawn up by the Secretaries appointed by the Chairman. These minutes shall be signed by the Chairman and shall alone have an authentic character.

20. The Court shall have the right to require from the Agents of the Parties the production of all papers and other evidence it considers necessary and to demand all necessary explanations. In case of refusal, the Court shall take formal note of it.

21. The members of the Court shall be entitled to put questions to the Agents and Counsel of the Parties and to demand explanations from them on doubtful points. Neither the questions put nor the remarks made by the members of the Court during the discussions shall be regarded as an expression of an opinion of the Court or any of its members.

22. When the Agents and Counsel of the Parties have, within the time allotted by the Court, submitted all explanations and evidence in support of their case, the Court shall pronounce the discussions closed. The Court may, however, at its discretion re-open the discussions at any time before making its Award. The deliberations of the Court shall be in private and shall remain secret.

23. The Court shall render its Award, in writing, on the issues in dispute and on such relief, including financial compensation, as may have been claimed. The Award shall be accompanied by a statement of reasons. An Award signed by four or more members of the Court shall constitute the Award of the Court. A signed counterpart of the Award shall be delivered by the Court to each Party. Any such Award rendered in accordance with the provisions of this Annexure in regard to a particular dispute shall be final and binding upon the Parties with respect to that dispute.

24. The salaries and allowances of the arbitrators appointed pursuant to Paragraph 6 shall be determined and, in the first instance, borne by their Governments; those of the umpires shall be agreed upon with them by the Parties or by the persons appointing them, and (subject to Paragraph 13) shall be paid, in the first instance, by the Treasurer. The salaries and allowances of the secretariat of the Court shall be determined by the Court and paid, in the first instance, by the Treasurer.

25. Each Government agrees to accord to the members and officials of the Court of Arbitration and to the Agents and Counsel appearing before

the Court the same privileges and immunities as are accorded to representatives of member states to the principal and subsidiary organs of the United Nations under Sections 11, 12 and 13 of Article IV of the Convention on the Privileges and Immunities of the United Nations (dated 13th February 1946) during the periods specified in these Sections. The Chairman of the Court, with the approval of the Court, has the right and the duty to waive the immunity of any official of the Court in any case where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Court. The Government appointing any of the aforementioned Agents and Counsel has the right and the duty to waive the immunity of any of its said appointees in any case where in its opinion the immunity would impede the course of justice and can be waived without prejudice to the effective performance of the functions of the said appointees. The immunities and privileges provided for in this paragraph shall not be applicable as between an Agent or Counsel appearing before the Court and the Government which has appointed him.

26. In its Award, the Court shall also award the costs of the proceedings, including those initially borne by the Parties and those paid by the Treasurer.

27. At the request of either Party, made within three months of the date of the Award, the Court shall reassemble to clarify or interpret its Award. Pending such clarification or interpretation the Court may, at the request of either Party and if in the opinion of the Court circumstances so require, grant a stay of execution of its Award. After furnishing this clarification or interpretation, or if no request for such clarification or interpretation is made within three months of the date of the Award, the Court shall be deemed to have been dissolved.

28. Either Party may request the Court at its first meeting to lay down, pending its Award, such interim measures as, in the opinion of that Party, are necessary to safeguard its interests under the Treaty with respect to the matter in dispute, or to avoid prejudice to the final solution or aggravation or extension of the dispute. The Court shall, thereupon, after having afforded an adequate hearing to each Party, decide, by a majority consisting of at least four members of the Court, whether any interim measures are necessary for the reasons hereinbefore stated and, if so, shall specify such measures: Provided that

- (a) the Court shall lay down such interim measures only for such specified period as, in its opinion, will be necessary to render the Award: this period may, if necessary, be extended unless the delay in rendering the Award is due to any delay on the part of the Party which requested the interim measures in supplying such information as may be required by the other Party or by the Court in connection with the dispute; and
- (b) the specification of such interim measures shall not be construed as an indication of any view of the Court on the merits of the dispute.

29. Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed:—

- (a) International conventions establishing rules which are expressly recognized by the Parties.
- (b) Customary international law.

APPENDIX TO ANNEXURE G

(PARAGRAPH 7(B))

<i>List I</i> for selection of Chairman	<i>List II</i> for selection of Engineer Member	<i>List III</i> for selection of Legal Member
(i) The Secretary-General of the United Nations	(i) The President of Massachusetts Institute of Technology, Cambridge, Mass., U.S.A.	(i) The Chief Justice of the United States
(ii) The President of the International Bank for Reconstruction and Development	(ii) The Rector of the Imperial College of Science and Technology, London, England	(ii) The Lord Chief Justice of England

~~CUBA~~~~NATIONALIZATION LAW~~~~July 6, 1960¹~~~~[Translation]~~

~~WHEREAS: The attitude assumed by the Government and legislative power of the United States of America of constant aggression for political purposes against the fundamental interests of the Cuban economy, emphatically evidenced by the amendment recently passed by the Congress of said country to the Sugar Act at the request of the executive power, by which the President of that nation is granted exceptional powers to reduce the participation of Cuban sugar in the sugar market of that country, as an arm of political action against Cuba, obliges the Revolutionary Government to adopt without hesitation, also the measures that it may deem~~

¹ Cuba, Gaceta Oficial, July 7, 1960; Folletos de Divulgación Legislativa, XXII Leyes del Gobierno de la Revolución (julio 1960), p. 29.

ANNEXURE F

Court of Arbitration

[Article IX (5)]

1. If the necessity arises to establish a Court of Arbitration under the provisions of Article IX, the provisions of this Annexure shall apply.

2. The arbitration proceeding may be instituted

- (a) by the two Parties entering into a special agreement (*compromise*) specifying the issues in dispute, the composition of the Court and instructions to the Court concerning its procedures and any other matters agreed upon between the Parties; or
- (b) at the request of either Party to the other in accordance with the provisions of Article IX (5) (b) or (c). Such request shall contain a statement setting forth the nature of the dispute or claim to be submitted to arbitration, the nature of the relief sought and the names of the arbitrators appointed under Paragraph 6 by the Party instituting the proceeding.

3. The date of the special agreement referred to in Paragraph 2 (a), or the date on which the request referred to in Paragraph 2 (b) is received by the other Party, shall be deemed to be the date on which the proceeding is instituted.

4. Unless otherwise agreed between the Parties, a Court of Arbitration shall consist of seven arbitrators appointed as follows:—

- (a) Two arbitrators to be appointed by each Party in accordance with Paragraph 6; and
- (b) Three arbitrators (hereinafter sometimes called the umpires) to be appointed in accordance with Paragraph 7, one from each of the following categories:—
 - (i) Persons qualified by status and reputation to be Chairman of the Court of Arbitration, who may, but need not, be engineers or lawyers.

- (ii) Highly qualified engineers.
- (iii) Persons well versed in International Law.

The Chairman of the Court shall be a person from category (b) (i) above.

5. The Parties shall endeavour to nominate and maintain a Standing Panel of umpires (hereinafter called the Panel) in the following manner:—

- (a) The Panel shall consist of four persons in each of the three categories specified in Paragraph 4(b).
- (b) The Panel will be selected, as soon as possible after the Effective Date, by agreement between the Parties and with the consent of the persons whose names are included in the Panel.
- (c) A person may at any time be retired from the Panel at the request of either Party: Provided however that he may not be so retired
 - (i) during the period after arbitration proceedings have been instituted under Paragraph 2(b) and before the process described in Paragraph 7(a) has been completed; or
 - (ii) during the period after he has been appointed to a Court and before the proceedings are completed.
- (d) If a member of the Panel should die, resign or be retired, his successor shall be selected by agreement between the Parties.

6. The arbitrators referred to in Paragraph 4(a) shall be appointed as follows:—

The Party instituting the proceeding shall appoint two arbitrators at the time it makes a request to the other Party under Paragraph 2(b). Within 30 days of the receipt of this request, the other Party shall notify the names of the arbitrators appointed by it.

7. The umpires shall be appointed as follows:—

- (a) If a Panel has been nominated in accordance with the provisions of Paragraph 5, each umpire shall be

selected as follows from the Panel, from his appropriate category, provided that the category has, at that time, at least three names on the Panel:—

The Parties shall endeavour to agree to place the names of the persons in each category in the order in which they shall be invited to serve on the Court. If such agreement cannot be reached within 30 days of the date on which the proceeding is instituted, the Parties shall promptly establish such an order by drawing lots. If, in any category, the person whose name is placed first in the order so established, on receipt of an invitation to serve on the Court, declines to do so, the person whose name is next on the list shall be invited. The process shall be repeated until the invitation is accepted or all names in the category are exhausted.

(b) If a Panel has not been nominated in accordance with Paragraph 5, or if there should be less than three names on the Panel in any category or if no person in a category accepts the invitation referred to in Paragraph 7(a), the umpires, or the remaining umpires or umpire, as the case may be, shall be appointed as follows:—

- (i) By agreement between the Parties.
- (ii) Should the Parties be unable to agree on the selection of any or all of the three umpires, they shall agree on one or more persons to help them in making the necessary selection by agreement; but if one or more umpires remain to be appointed 60 days after the date on which the proceeding is instituted, or 30 days after the completion of the process described in sub-paragraph (a) above, as the case may be, then the Parties shall determine by lot for each umpire remaining to be appointed, a person from the appropriate list set out in the Appendix to this Annexure, who shall then be requested to make the necessary selection.
- (iii) A national of India or Pakistan, or a person who is, or has been, employed or retained by either of

the Parties shall be disqualified from selection under sub-paragraph (ii) above:

Provided that

- (1) the person making the selection shall be entitled to rely on a declaration from the appointee, before his selection, that he is not disqualified on any of the above grounds; and
 - (2) the Parties may by agreement waive any or all of the above disqualifications in the case of any individual appointee
- (iv) The lists in the Appendix to this Annexure may, from time to time, be modified or enlarged by agreement between the Parties.

8. In selecting umpires pursuant to Paragraph 7, the Chairman shall be selected first, unless the Parties otherwise agree.

9. Should either Party fail to participate in the drawing of lots as provided in Paragraphs 7 and 10, the other Party may request the President of the Bank to nominate a person to draw the lots, and the person so nominated shall do so after giving due notice to the Parties and inviting them to be represented at the drawing of the lots.

10. In the case of death, retirement or disability from any cause of one of the arbitrators or umpires his place shall be filled as follows:—

- (a) In the case of one of the arbitrators appointed under Paragraph 6, his place shall be filled by the Party which appointed him. The Court shall, on request, suspend the proceedings but for not longer than 15 days pending such replacement.
- (b) In the case of an umpire, a new appointment shall be made by agreement between the Parties or, failing such agreement, by a person determined by lot from the appropriate list set out in the Appendix to this Annexure, who shall then be requested to make the necessary selection subject to the provisions of Paragraph 7(b)(iii). Unless the Parties otherwise agree, the Court shall suspend the proceedings pending such replacement.

11. As soon as the three umpires have accepted appointment, they together with such arbitrators as have been appointed by

the two Parties under Paragraph 6 shall form the Court of Arbitration. Unless the Parties otherwise agree, the Court shall be competent to transact business only when all the three umpires and at least two arbitrators are present.

12. Each Party shall be represented before the Court by an Agent and may have the assistance of Counsel.

13. Within 15 days of the date of institution of a proceeding, each Party shall place sufficient funds at the disposal of its Commissioner to meet in equal shares the initial expenses of the umpires to enable them to attend the first meeting of the Court. If either Party should fail to do so, the other Party may initially meet the whole of such expenses.

14. The Court of Arbitration shall convene, for its first meeting, on such date and at such place as shall be fixed by the Chairman.

15. At its first meeting the Court shall

- (a) establish its secretariat and appoint a Treasurer;
- (b) make an estimate of the likely expenses of the Court and call upon each Party to pay to the Treasurer half of the expenses so estimated; Provided that, if either Party should fail to make such payment, the other Party may initially pay the whole of the estimated expenses;
- (c) specify the issues in dispute;
- (d) lay down a programme for submission by each side of legal pleadings and rejoinders; and
- (e) determine the time and place of reconvening the Court.

Unless special circumstances arise, the Court shall not reconvene until the pleadings and rejoinders have been closed. During the intervening period, at the request of either Party, the Chairman of the Court may, for sufficient reason, make changes in the arrangements made under (d) and (e) above.

16. Subject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all question relating to its competence and shall determine its

procedure, including the time within which each Party must present and conclude its arguments. All such decisions of the Court shall be by a majority of those present and voting. Each arbitrator, including the Chairman, shall have one vote. In the event of an equality of votes, the Chairman shall have a casting vote.

17. The proceedings of the Court shall be in English.

18. Two or more certified copies of every document produced before the Court by one Party shall be communicated by the Court to the other Party; the Court shall not take cognizance of any document or paper or fact presented by a Party unless so communicated.

19. The Chairman of the Court shall control the discussions. The discussions shall not be open to the public unless it is so decided by the Court with the consent of the Parties. The discussions shall be recorded in minutes drawn up by the Secretaries appointed by the Chairman. These minutes shall be signed by the Chairman and shall alone have an authentic character.

20. The Court shall have the right to require from the Agents of the Parties the production of all papers and other evidence it considers necessary and to demand all necessary explanations. In case of refusal, the Court shall take formal note of it.

21. The members of the Court shall be entitled to put questions to the Agents and Counsel of the Parties and to demand explanations from them on doubtful points. Neither the questions put nor the remarks made by the members of the Court during the discussions shall be regarded as an expression of an opinion of the Court or any of its members.

22. When the Agents and Counsel of the Parties have, within the time allotted by the Court, submitted all explanations and evidence in support of their case, the Court shall pronounce the discussions closed. The Court may, however, at its discretion, re-open the discussions at any time before making its Award. The deliberations of the Court shall be in private and shall remain secret.

23. The Court shall render its Award, in writing, on the issues in dispute and on such relief, including financial compensation, as may have been claimed. The Award shall be

accompanied by a statement of reasons. An Award signed by four or more members of the Court shall constitute the Award of the Court. A signed counterpart of the Award shall be delivered by the Court to each Party. Any such Award rendered in accordance with the provisions of this Annexure in regard to a particular dispute shall be final and binding upon the Parties with respect to that dispute.

24. The salaries and allowances of the arbitrators appointed pursuant to Paragraph 6 shall be determined and, in the first instance, borne by their Governments; those of the umpires shall be agreed upon with them by the Parties or by the persons appointing them, and (subject to Paragraph 13) shall be paid, in the first instance, by the Treasurer. The salaries and allowances of the secretariat of the Court shall be determined by the Court and paid, in the first instance, by the Treasurer.

25. Each Government agrees to accord to the members and officials of the Court of Arbitration and to the Agents and Counsel appearing before the Court the same privileges and immunities as are accorded to representatives of member states to the principal and subsidiary organs of the United Nations under Sections 11, 12 and 13 of Article IV of the Convention on the Privileges and Immunities of the United Nations (dated 13th February 1946) during the periods specified in these Sections. The Chairman of the Court, with the approval of the Court, has the right and the duty to waive the immunity of any official of the Court in any case where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Court. The Government appointing any of the aforementioned Agents and Counsel has the right and the duty to waive the immunity of any of its said appointees in any case where in its opinion the immunity would impede the course of justice and can be waived without prejudice to the effective performance of the functions of the said appointees. The immunities and privileges provided for in this paragraph shall not be applicable as between an Agent or Counsel appearing before the Court and the Government which has appointed him.

26. In its Award, the Court shall also award the costs of the proceedings, including those initially borne by the Parties and those paid by the Treasurer.

27. At the request of either Party, made within three months of the date of the Award, the Court shall reassemble to clarify or interpret its Award. Pending such clarification or interpretation the Court may, at the request of either Party and if in the opinion of the Court circumstances so require grant a stay of execution of its Award. After furnishing this clarification or interpretation, or if no request for such clarification or interpretation is made within three months of the date of the Award, the Court shall be deemed to have been dissolved.

28. Either Party may request the Court at its first meeting to lay down, pending its Award, such interim measures as, in the opinion of that Party, are necessary to safeguard its interests under the Treaty with respect to the matter in dispute or to avoid prejudice to the final solution or aggravation or extension of the dispute. The Court shall, thereupon, after having afforded an adequate hearing to each Party, decide, by a majority consisting of at least four members of the Court, whether any interim measures are necessary for the reasons hereinbefore stated and, if so shall specify such measures: Provided that

- (a) the Court shall lay down such interim measures only for such specified period as, in its opinion, will be necessary to render the Award; this period may, if necessary, be extended unless the delay in rendering the Award is due to any delay on the part of the Party which requested the interim measures in supplying such information as may be required by the other Party or by the Court in connection with the dispute; and
- (b) the specification of such interim measures shall not be construed as an indication of any view of the Court on the merits of the dispute.

29. Except as the Parties may otherwise agree, the law to be applied by the Court shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed:—

- (a) International conventions establishing rules which are expressly recognized by the Parties.
 - (b) Customary international law.
-

Appendix to Annexure F

[Paragraph 7(b)]

List I
for selection of
Chairman

- (i) The Secretary-General of the United Nations
- (ii) The President of the International Bank for Reconstruction and Development

List II
for selection of
Engineer Member

- (i) The President of Massachusetts Institute of Technology, Cambridge, Mass., U.S.A.
- (ii) The Rector of the Imperial College of Science and Technology, London, England

List III
for selection of
Legal Member

- (i) The Chief Justice of the United States
- (ii) The Lord Chief Justice of England