

(iii) Secretariat Brief The Law of International Rivers

The focus of the following study is primarily on the examination of legal regulation and protection of available freshwater resources in the Asian and African region. The Kampala Session (1993) after due deliberations had endorsed the AALCC Secretariat's study on "River System Agreements" and had further directed the Secretariat to examine crucial areas relating to River System Agreements with special emphasis on the utilization of freshwater resources¹. There were different views at this session as regards the continued examination of these areas. India felt that as there were immense diverse factors and different systems of management in river basins of the world, this topic was not amenable for continued examination. The other reasons for its non-continuation was that the topic was before the ILC² Syria, Uganda and Tanzania, however, supported the inclusion of this topic in the future agenda as it complemented the ILC's work and suggested that the Secretariat should continue to study the topic in order to arrive at more acceptable principles on sharing of freshwater resources³.

The following study seeks to examine, albeit briefly, the general impediments existing within the structure of the international legal norms to provide for a complete regulatory mechanism to sustain freshwater resources and its flow. At the factual level, the study under consideration identifies the

1. For the Decision of the Kampala Session on this topic see : *Report of the Thirty-second held in Kampala (Uganda) from 1 to 6 February 1993*.
2. *Verbatim Record of Discussions, Thirty-second Session of the AALCC (Kampala, 1993)* p. 341.
3. *Ibid.*, p. 342.

concrete problems starting from environmental hazards to drinking water deficiencies. In order to get a clear picture of these issues the study draws heavily from the ideas proposed at the United Nations Conference on Environment and Development (UNCED). ILC draft text also forms a strong base for the study. The AALCC Secretariat finds ILC's normative principles relating to freshwater resources (enunciated especially while defining "international watercourse") as acceptable.

Freshwater Resources: Conflicts and Compromises

River and lake basins, especially its freshwater resources form natural frameworks for the planning and management of integrated development programmes. Accordingly, the economic and social development has as its constituent element an effective water resources management, such as, hydropower, water supply, irrigation, navigation, flood control, fisheries development and an environmental protection.⁴ For the purposes of effective utilization of available freshwater resources integrated approach to development and growth is essential. In recent years, there is an increasing concern about the environmental impact of large dams, soaring costs of construction and the inefficiency of irrigated agriculture. These models of development of river basins have called into question the wisdom of embarking upon large integrated schemes. This is not all. In the developing world, primarily in the Asian-African continent, the incomplete development of market economies and the low level of economic growth has meant that much greater amount of governmental intervention is necessary in the developmental process⁵. On the other hand, economic assistance from the developed world has not resolved these problems. The developed countries have frequently sought to apply inappropriate criteria in judging development alternatives and are reluctant to support government subsidies by the poorer developing countries which will adversely affect their balance of payment position.

The Report of the United Nations Conference on Environment and Development in its agenda 21 identifies the crucial need for preservation of freshwater resources. The Chapter 18 of this document, titled "Protection of Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources", outlines the dichotomy existing in the models of development as regards water

4. Economic Commission for Africa, *Integrated River and Lake Basin Management as a Vehicle for Socio-economic Development in Africa*, Natural Resources/Water Series No. 20(1990) (United Nations, Sales No. E.90.IL.10).

5. *Ibid.*, p. 60.

resources. According to the study embodied in this document, "Freshwater resources are an essential component of the Earth's hydrosphere and an indispensable part of all terrestrial ecosystems. The freshwater environment is characterized by the hydrological cycle, including floods and droughts, which in some regions have become more extreme and dramatic. Global climate change and atmospheric pollution could also have an impact on freshwater resources and their availability and, through sea level rise, threaten low-lying coastal areas and small island ecosystems⁶. The consequences of the depletion of freshwater resources on the human populace in particular and living beings in general as defined by this study are cause of great concern. Undoubtedly, innovative techniques including the improvement of indigenous technologies, are needed to fully utilize limited water resources and to safeguard those resources against pollution⁷.

The Draft Articles on the Law of the Non-Navigational Uses of International Watercourses under consideration by the ILC since 1971 seek to deal with the preservation of freshwater resources with a "holistic approach"⁸. The members of the Commission during the recent session, while expressing their views on the Report submitted by the Special Rapporteur, consistently referred to the concept of sustainable development and the so-called holistic approach to protection of the environment integrating economic and social considerations with environmental issues, as reflected in principle 4 of the Rio Declaration 1992 and in Chapter 18 of Agenda 21 relating to the protection of the quality and supply of freshwater resources, and the application of integrated approaches to development, management and use of water resources⁹.

The AALCC members in the successive sessions have noted with concern the necessity for preservation of freshwater resources. It may be noted that in the Asian-African region many major rivers, vital sources of fresh water for their riparian countries, cross international borders; similarly, lakes may fall within the borders of two or more countries¹⁰. Sierra Leone, at the AALCC's

6. *Report of the United Nations Conference on Environment and Development*, 13 August 1992, U.N. Document No. A/CONF. 151/26 (Vol. II) p. 167.

7. *Ibid.*

8. *Draft Articles on the Law of the Non-navigational Uses of International Watercourses and Commentaries Thereon Provisionally Adopted on First Reading by the International Law Commission at its Forty-third Session*, September 1991 (United Nations), p. 10.

9. *Draft Report on the International Law Commission on the work of its Forty-fifth Session*, 16 July 1993, U.N.G.A. Document No. A/CN.4/L. 485, p.9.

10. Lake Victoria, e.g. has a surface area of some 69,000 sq. Km. including the islands the catchment area of the Upper Nile Basin up to Nemule at the border of Uganda and the Sudan is some 411,000 sq. km. of which 87 per cent lies in Kenya, Uganda and the United Republic of Tanzania and the remaining 13 per cent in Burundi, Rwanda and Zaire. See: A.B. Abul Hoda, "The Hydrometoro Logical Survey Project", in *Experiences in the Development and Management of International River and Lake Basins*, Natural Resources/Water Series No. 10., 1983 (United Nations, Sales No. E. 82. II. A. 47) p. 298.

Thirty-first Session (Islamabad, 1992) outlined the importance of freshwater resources, especially for Africa.¹¹ The delegate of Sierra Leone pointed out that it was only two per cent of freshwater that was available for humanity and only one per cent was fit for human consumption.¹² He also pointed out that more than 40 per cent of the members of the United Nations were bereft of pure water for drinking. India has expressed the view that the question of the management and utilisation on international watercourses as a subject, was not amenable to universal, regional or even continent-wise principles. It viewed the preservation and protection of water resources from the perspective of "micro-level management" through mutual agreement between and among the States concerned only with due reference to attendant factors.¹³ Uganda underlined the importance of freshwater resources for the African continent as there was probably no country which had freshwater in the form of lakes and rivers in Africa.¹⁴ At the Islamabad Session, Turkey had referred to the identification and equitable utilization of fresh groundwater resources.¹⁵ Jordan had also made reference to groundwater resources in the Middle-East and the necessity for its equitable utilization.¹⁶

Legislative Measures to Preserve Freshwater Resources

It is stated that Governments apply the general principles of international law applicable to the water resources which include, *inter alia*, the right of each basin State to an equitable utilization and the duty not to cause appreciable harm to a co-basin State (including the environment) and recognize the duty to exchange available relevant information and data. This is also the duty to notify and consult reciprocally with co-basin States that may be adversely affected by a project or programme planned by one or more basin States and the duty to consult, concerning the institutionalization of cooperation or collaboration for basin development, upon the request of any other basin States.¹⁷

For an effective utilization of available freshwater resources legislative measures with adequate regulatory mechanism would be necessary within the realm of municipal systems also. For example, governments planning to

11. Verbatim Record of Discussions, Thirty-first Session (AALCC) Islamabad, 1992, p.124.
12. Ibid. It has been pointed out that main cause of infant mortality in developing countries, particularly in Africa, is lack of pure drinking water.
13. Verbatim Record of Discussions, Thirty-second Session (AALCC), Kampala, 1993, p.341.
14. Ibid., p.342.
15. Verbatim Record, Thirty-second Session (AALCC), n.14, p.121.
16. Ibid., p.123. For detailed statements on these issues by Syrian Arab Republic and Bangladesh See: Verbatim Record of Discussions, Thirtieth Session of the AALCC (Cairo, 1991), p.71.
17. River Basin Development, n. 7, p.18.

implement irrigation schemes in a basin, should enact legislation-making provision for appropriate water laws and, *inter alia*, for administering an equitable programme of land distribution to the intended beneficiaries, under the appropriate tenure systems, and guaranteeing that local populations receive a share of project benefits.¹⁸ Within the existing structure of global economic system, it may be unrealistic to remove legal restrictions, if any, hindering the mobilization and investment of private resources for the achievement of the objectives of river basin programmes. The AALCC Secretariat is of the view that since in majority of the Asian and African developing countries agriculture constitutes a subsistence activity fresh water sustains a huge marginally placed population. The effective utilization of river basin programmes should not radically alter the living pattern of this population. It is vital that the legislative measures, keeping in mind local conditions, should establish a suitable regulatory mechanism for optimum realization of objectives set forth for the river basin programmes funded from the private resources.

A. Approaches to a Legal Definition

The identification of a premise for the "freshwater resources" in the form of a viable legal definition so as to define its effective utilization is crucial. This attempt however poses certain difficulties particularly in connection with groundwater. To begin with, it may be noted that the definition of "international watercourse" as embodied in the Draft Articles on the Law of the Non-Navigational Uses of International Water courses as adopted by ILC on first reading encompasses all predictable situations, including all sources of "freshwater resources". International watercourse is defined as "a system of surface and underground waters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus".¹⁹ The phrase "system of surface and underground waters" refers to the hydrologic system composed of a number of different components through which water flows, both on and under the surface of the land.²⁰ These components include rivers, lakes, aquifers, glaciers, reservoirs and canals. It is further clarified that so long as these components were interrelated, they formed part of the watercourse.

18. Ibid., p.19.
19. ILC Draft Articles, n.17, p.6.
20. Ibid.

The definition formulated by the ILC satisfies all the requisites of a "watercourse system". However, there is some uncertainty as regards its applicability to "confined" groundwater which it may be noted constitute a major portion of the available freshwater resources. In view of this, some members of the Commission had sought the inclusion of groundwater within the term "watercourse". However, it was decided that in order to constitute a "watercourse" for the purposes of the draft articles, the system of surface and underground waters must flow into a "common terminus".²¹ A reference may also be made to the Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System and the annexed Action Plan.²² A noteworthy feature of this agreement is its emphasis on the "holistic approach to international watercourse management". The objective of this Action Plan concerns primarily to "certain enumerated problems" and thus to promote the development and implementation of environmentally sound water resources management in the whole river system"²³.

During the Thirty-first Session of AALCC, the Turkish delegation had pointed out that incorporating glaciers, canals and particularly underground water, amounted to sharing of those natural resources which were in contradiction with the generally accepted principle of international law concerning the permanent sovereignty of States over their natural resources.²⁴ The Turkish delegation, therefore, supported the distinction between free groundwater and confined groundwaters on the basis that only the "free groundwater" constituted the part of the definition of "watercourse". Further, it was submitted that no concrete examples of international practice could be found in relation to groundwater easily; and there were difficulties in collecting scientific data concerning free and confined watercourses for the Asian-African States²⁵. Similar views were expressed by Jordan while pointing out that the importance of groundwaters to the Middle-East. The delegation stressed the fact that "the underground water should not be linked with resources that could be far deep in the territories of countries, because the countries have full sovereignty over the dry surfaces and reservoirs can be built on this".²⁶ The Syrian delegate endorsing this view had pointed out that as per the ILC report, 77 per cent of joint rivers had underground sources.²⁷

21. *Ibid.*, p.7.

22. *International Legal Materials*, Vol. XXVII (1988), p.1109.

23. *Ibid.*

24. *Verbatim Record of Discussions: Thirty-first Session (AALCC)*

25. *Ibid.*

26. *Ibid.*, p.124.

27. *International Legal Materials*, n.25, p.1109.

B. Utilization and Preservation: A Balanced View

The definitional aspects of "watercourse" in general, and "freshwater" sources in particular, present, as seen from the above discussion, few practical difficulties. It may be stated that these factors were primarily location or region-specific. The utilization and preservation, on the other hand, of available freshwater resources will have to balance two opposing interests. One view, as mentioned already, could be to approach the issue through a holistic management of available water resources in an environmentally sound manner.²⁸ According to the commentaries provided by the ILC, "the attainment of 'optimal utilization does not mean achieving the maximum use, the most technologically efficient use, or the most monetarily valuable use. Nor does it imply that the State capable of making the most efficient use of a watercourse whether economically, in terms of avoiding waste, or in any other sense should have a superior claim to the use thereof. Rather, it implies attaining maximum possible benefits for all Watercourse States and achieving the greatest possible satisfaction of all their needs, while minimizing the detriment to, or unmet needs of, each'.²⁹

The concept of efficient basin management is a crucial one. It requires utilizing all the water resources of a basin, both surface and substance, to support a range of economic activity and seeking to optimize such utilization so that the most economically efficient, environmentally sound and socially equitable plan can be evolved.³⁰ The evolution of the concept of basin development departed from the idea of absolute territorial sovereignty, via the counter-notion of a State using its part of the shared basin so as not to injure co-basin States, towards the concept of using the waters of the basin in an equitable or reasonable manner to meet the needs of each State.³¹ In this regard, a more flexible approach as enunciated in the Helsinki Rules (ILA, 1967) and the African Convention on the Conservation of Nature and Natural Resources could be considered as reasonable and practicable.³²

One of the major source of freshwater resource is rainfall, and it has large seasonal and annual variations in most of the river basins in the Asian-African region. Accordingly, the first necessity of basin management is to store sufficient water in the upper catchments to allow a balancing of flows throughout the dry season and from year to year. further, as it is pointed out

28. Draft Articles, n.11, p.29.

29. Economic Commission for Africa, n.7, p.61; The First attempt to employ the concept of basin management was the Tennessee Valley Authority. It began in 1933 "with a view of encouraging and guiding in the orderly and balanced development of the diverse and rich resources."

30. *Ibid.*

31. For the texts, see: International Law Association, *Report of the Fifty-second Conference, Helsinki, 1966* (London 1967); *African Convention on the Conservation of Nature and Natural Resources*, National Resource/Water Series No. 13 U.N. Sales No. E/F. 94.II. A.7).

"when one takes into account the sum total of economic and social activity within a large basin which is water-related, e.g. Agriculture, fisheries, livestock, industry, urban development, transportation, forestry soil conservation, wildlife, nature conservation, mining and perhaps, recreation, the complexity of balancing resources against requirement, and of taking into account future development is readily apparent."³²

The United Nations Conference on Environment and Development in its Agenda 21 called for cooperation among States ".....in conformity with existing agreements and/or other relevant arrangements, taking into account the interests of all riparian States concerned."³³ It also proposed the following programme for the freshwater sector; (a) Integrated water resources development and management; (b) Water resources assessment; (c) Protection of water resources, water quality and aquatic ecosystems; (d) Drinking water supply and sanitation; (e) Water for sustainable food production and rural development; and (f) Impact of climate change on water resources.³⁴

Conclusion

The long-term development of global freshwater requires holistic management of resources and a recognition of the inter-connectedness of the elements related to freshwater and freshwater quality.³⁵ As mentioned in our study, there are few regions of the world that are free from problems of loss of potential sources of freshwater supply. The Report of the UNCED correctly identifies the causes for the depletion of freshwater resources as: (a) inadequately treated domestic sewage; (b) inadequate control on the discharges of industrial waste waters; (c) loss and destruction of catchment areas; (d) ill-considered siting of industrial plants; (e) deforestation; and (f) uncontrolled shifting cultivation and poor agricultural practices.

The AALCC secretariat is of the view that to protect and preserve freshwater resources in an effective manner, a two-fold regulatory mechanism is *sine quo non*. One, it is essential that municipal law systems should take necessary steps to incorporate legislative measures to restrict the degradation and pollution of limited freshwater sources and flows. Second, at the international level, there should be a unanimous resolve to cooperate at all levels to integrate basin development mechanisms at both legal and institutional levels. The draft text provided by the ILC takes into account clearly the approaches outlined in our study. The emphasis, in our view, should shift to more regional and sub-regional co-operation so as to achieve the long-term objective of sustaining the quantity and quality of freshwater resources.

32. Economic Commission for Africa, n. 7, p.63.

33. Report of the United Nations Conference on Environment and Development, n.9, p.168.

34. Ibid.

35. Ibid., p.169.

VII. Report of the International Law Commission on the Work of its Forty-Fifth Session

(i) Introduction

The International Law Commission (hereinafter called the Commission or the ILC) established by the General Assembly Resolution 174 (III) in 1947, is the principal organ to promote the progressive development of international law and its codification. The Commission held its forty-fifth Session in Geneva from May 3 to July 23, 1993. There were as many as four substantive topics on the agenda of the said session of the Commission.

These included:

- (i) State Responsibility;
- (ii) Draft code of Crimes Against the Peace and Security of Mankind;
- (iii) The Law of Non-Navigational Uses of International Watercourses; and
- (iv) International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law.

It may be recalled that the General Assembly had by its resolution 47/33 *inter alia* requested the Commission to continue its work on the elaboration of a draft statute for an international criminal court as a matter of priority. The resolution also called upon the Commission to examine, in this regard, the issues identified in the report of its Working Groups and in the debate in the Sixth Committee, with a view to drafting a Statute, as well as the written comments received from the States and to submit a report at the Assembly's next Session.

The Commission held substantive discussions on the issue of an International Criminal Court, the topics of State Responsibility, and International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law

and the Non-Navigational Uses of International Watercourses. All these items are at different stages of work and some notes and comments on these items which were subjected to detailed discussions during the Commission's forty-fifth session are contained herein.

It may be mentioned that the Asian-African Legal Consultative Committee attaches particular importance to the question of Non-Navigational Uses of International Watercourses as this topic is also under consideration by the Committee. The topic of the Draft Code of Crimes Against the Peace and Security of mankind is also one to which the Committee attaches great importance in view of the current international situation.

It may be recalled that the General Assembly by its resolution 47/33 had *inter alia* requested the Commission to consider the planning of its activities and programme for the term of office of its members bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles. The Assembly also requested the Commission to examine its method of work in all their aspects bearing in mind that the staggering of the consideration of some topics might contribute to a more effective consideration of its report in the Sixth Committee.

The Commission acting in pursuance of that request proposes the incorporation into the Commission's agenda, under conditions to be decided, the topics "the Law and Practice Relating to Reservations of Treaties" and "State Succession and its impact on the nationality of natural and legal persons". It is understood that the order of listing of the topics does not suggest any priority.

Apropos the 'Law and Practice Relating to Reservation of Treaties' the Commission is of the view that the topic meets the criteria for selection established by the Commission and endorsed in the Sixth Committee. The reasons advanced by the Commission in this respect are threefold viz. that the topic appears to respond to a need of the international community on account of several obscurities and lacunae in such instruments as the Vienna Convention on the Law of Treaties, 1969; the Vienna Convention on Succession of States in Respect of Treaties, 1978 and the Vienna Convention on the Law of Treaties Between States and International Organizations or between International Organizations, 1986. Secondly, the contemporary international climate is propitious with the removal of the obstacles and problems imposed by the cold war and further, the topic falls within the competence of the Commission where both the doctrinal aspects and State practice can be discussed. But lastly, because the topic stands a good chance of producing concrete results within a reasonable period, that is to say the adoption on first reading, by the end of the present quinquennium of a draft intended for the General Assembly. The Commission,

therefore, while aware of the need not to challenge the regime established in articles 19 to 23 of the Vienna Convention on the Law of Treaties, 1969 considers that these provisions could be clarified and developed either in the form of draft protocols to the existing conventions or a guide on practice of states to which States, international organizations and others could refer.

As regards the topic State Succession and its impact on the nationality of natural and legal persons, the Commission has pointed out that it is part of one of the three sub-topics identified by the Commission in 1963 under the topic "Succession of States". It is not among the issues which have so far been dealt with by the Commission which takes the view that it meets the established criteria for selection.

It appears that the formulation, on the basis of a comprehensive examination of State practice, of minimum standard criteria for "ex lege acquisition of nationality could provide useful guidelines to legislators of new States that are in the process of drafting laws in this area. It should furthermore be recalled that by virtue of customary rules of international law, a large number of treaty rights and obligations are automatically binding on the successor State and that the application of many such treaties directly concerns individuals, or more precisely nationals of the treaty parties sometimes there is a need for the application of these treaties even before the nationality law is adopted by the successor State. Thus a "preliminary" determination of the nationality of individuals or more persons residing in the territory where the change of sovereignty occurred becomes a precondition for the continued application of the mentioned treaties.

The outcome of the work of the Commission on this topic could for instance be a study or a draft declaration to be adopted by the General Assembly. The final form of the work will be decided by the Commission at a later stage.

Thirtythird Session: Discussions:

When the Committee took up consideration of the agenda item *Report of the Work of the International Law Commission; the Vice-Chairman of the International Law Commission* (Prof. V.S. Vereshchetin) stated that the International Law Commission (ILC) attached great importance to the maintaining of close links with the AALCC as well as with other regional legal committees. The ILC, he added, welcomed every opportunity to acquaint itself with the work of the AALCC. In the spirit of longstanding cooperation between the two bodies the Committee was represented at the forty-fifth session of the Commission by the Secretary-General, Mr. Frank X. Njenga and Mr. Bhagwat Singh. He further stated that the International Law Commission was able to make substantial progress on all the items on the agenda of its forty-fifth session. The Commission

had, *inter alia*, worked out a comprehensive and systematic set of draft articles with commentaries thereon, on the draft statute of an international criminal court. The text of this draft statute was the basis for examination by the General Assembly and the member Governments.

On the question of International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law he stated that the Commission had referred to the Drafting Committee the draft articles on prevention of transboundary harm of activities involving a risk of such harm together with the formulation on non-discrimination. The Commission also made substantial progress on the question of State Responsibility and provisionally adopted a number of draft articles. With regard to the Non-navigational Uses of International Watercourses he stated that the Commission had begun the second reading of the draft articles as adopted on first reading in 1991. As regards the future programme of work of the Commission he stated that the ILC had decided to include, subject to the approval of the General Assembly, two topics in its agenda. These are "The law and practice relating to the reservation of treaties" and "State Succession and its impact on the Nationality of Natural and Legal Persons".

The Delegate of Japan expressed his delegation's admiration for the significant progress made by the ILC on each topic and, in particular, on the work of the Working Group on a draft statute for an international criminal court. The progress was the result of the intensive discussions among the Commission's members, and the efforts of its Special Rapporteurs.

As circumstances in the international arena continue to change, the international community feels a need for a new mechanism or new instrument which would ensure the rule of law in the community. Recently the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the territory of the former Yugoslavia was established, as an enforcement measure of the Security Council under Chapter VII of the Charter of the United Nations.

It is important that the International Law Commission should be sensitive to the needs of the international community, and study ways by which the Commission, as a forum of international law experts, may best fulfil those needs within a reasonable period of time. He proposed a more frequent and flexible use of such methods as working groups or a drafting committee in the future work of the Commission for this would increase the productivity of the Commission in a timely manner.

His delegation appreciated the decision of the Commission supported by the

General Assembly to complete the elaboration of draft statute for an international criminal court at its forty-sixth session this year. Referring to the draft statute of the international criminal court he said that the approach of optional acceptance by States of the Court's jurisdiction would facilitate the acceptance of the statute by a larger number of States, which is the main and the most important condition to be satisfied.

Turning to "State Responsibility" he said that it was the most important topic and that the Commission has to find ways to ensure more rapid progress in the drafting of articles on the topic.

As for the topic "International Liability for Injurious Consequence arising out of Acts not Prohibited by International Law", his delegation expected that the next session of the Commission will produce further tangible results in the elaboration of draft articles on prevention and that the commission will be able to decide on the next stage of its work on this important topic, which has particular relevance to the development of international environmental law.

Finally on the topic of, "the Law of the Non-navigational Uses of International Watercourses," he said with regard to the final form of the draft articles, the Commission had better not prejudge its position at this stage.

The Delegate of China expressed the view that since the establishment of an international criminal court involves a number of highly complex and politically sensitive issues, this topic should be dealt with very cautiously. Nevertheless, in a spirit of cooperation and in order to seek possible satisfactory solutions to the issues involved, the Chinese delegation is always ready to participate actively in all the relevant debates on this matter. No matter what the final contents of this statute would be, there still exists a fundamental question as to why a state should surrender its criminal jurisdiction over a certain case if it has the will and sufficient judicial capability to exercise its jurisdiction over such a case. He emphasized that, in view of the important and complex political and legal issues involved in the establishment of an international criminal court, should there be a need to establish such a court, these important issues must be treated with great care and suitable solutions must be found in order to ensure the feasibility of the future court as well as its acceptance by all states. As far as the draft statute of an international criminal court proposed by the ILC is concerned, it is, in his view, relatively realistic and balanced although some of the articles may need further consideration and elaboration in the light of the debate at the Sixth Committee last year.

As regards the topic of "State Responsibility", he pointed out that this topic is rather difficult and the Commission has adopted several important articles

concerning the content, forms and degree of State Responsibility. These articles dealt with some of the most important issues of the whole topic. His delegation shall make an indepth study on the contents of these articles and submit its detailed comments after the first reading of the whole topic is completed, he added.

With respect to the topic of International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law, he agreed with the Commission's decision on the selection of prevention for priority consideration since this approach reflects the current tendency in the international environmental legislation. In this context he stressed that any efforts to formulate preventive measures should take fully into account the special needs of developing countries in view of their backward stage of development.

Regarding the topic "The Law of the Non-Navigational Uses of International Watercourses", it is indeed somewhat difficult to develop a set of legal norms regulating non-navigational uses of international watercourses since it touches upon a series of important issues, such as the national economy and people's livelihood of the watercourse states, ecological balance and environmental protection, while each international watercourse vary greatly in terms of hydrographic, geological, climatic and geographic factors. These involve fundamental interests of, and even contradictions between, the States concerned.

In relation to the future programme of work of the ILC, he was convinced that the Commission's efforts in this area will help to make the Commission's work better reflect the needs of the international community. In this context, he agreed with the Commission's decision on the selection of the new topics for its long-term programme of work, such as "the Law and Practice Relating to the Reservations to Treaties" and "State Succession and its Impact on the Nationality of Natural and Legal Persons".

The Delegate of India was of the view that a lot of issues still required to be considered on the question of the establishment of an international criminal court. He said that both the question of jurisdiction of the proposed court and the type of offences should be considered at the next session of the ILC. He stated that his delegation would not be happy to endorse an *ad hoc* international criminal court and would prefer an institution of a permanent nature. His delegation did not see any urgency in establishing any more *ad hoc* courts since a trial mechanism to deal with the offences in Yugoslavia had already been established.

Referring to the question of State Responsibility he said that his delegation was opposed to the recourse to reprisals as they are iniquitous and only lead to abuse of power. In his view counter measures involve unilateral determination and their subjection to peaceful settlement does not resolve the issues.

The Delegate of Syria stated that his delegation attached great importance to the work of the ILC who is in the process of adoption of draft articles on Non-navigational Uses of International Watercourses. His country had presented its comments on the draft articles on the Law of Non-navigational Uses of International Watercourses to the Committee at its Islamabad Session in 1992. In his view watercourses should under no circumstances, cut off or reduce the water below and the sanitary discharge needed in the river-bed. General obligations to cooperate means that watercourse states should agree and decide on the reasonable and equitable share of the uses of the waters in accordance with the water resources of the International Watercourse concerned. As regards the regular exchange of data and information dealt with in draft article he expressed the view that watercourse states should exchange data and information through joint committees and that the exchanged information should include the reservoir operations in the watercourse states, prior to and after the conclusion of the agreement on the uses of the waters of the international watercourse concerned.

The Delegate of Turkey paid a tribute to the ILC for its contributions to the codification and progressive development of international law and for the degree to which the Commission successfully fulfilled its task.

On the desirability and feasibility of establishing an international criminal court he said that the question of the possible establishment of an international criminal jurisdiction had a long history in international relations and that the need to establish such a court had already been felt at the time of the League of Nations. In 1989, the Assembly revived the question of setting up an international criminal jurisdiction in response to a proposal that an international mechanism be developed with jurisdiction over international drug traffickers. The Commission provisionally adopted the draft code in 1991 and sent the text to Governments for comments. The core of the draft statute dealt with jurisdiction and applicable law. The draft statute elaborated by the Working Group established by the International Law Commission is divided into the following seven parts: establishment and composition of the tribunal; jurisdiction; trial; appeal and review; international co-operation and judicial assistance and enforcement of sentences.

In the draft statute the structure of the International criminal jurisdiction, to be created would be made up of three parts: the judicial organ, or "Court"; the administrative organ, or "Registry", and the prosecutorial organ, or "Procuracy". The question remained unsettled as to whether the tribunal would be a judicial organ of the United Nations or if it would be linked to the UN through a relationship laid out in the statute. The draft lists of some of the crimes the court would have jurisdiction over including acts as earlier addressed by various international legal instruments related to genocide, grave breaches of the 1949 Geneva convention and its Protocol, unlawful seizure of aircraft, apartheid and

hostage taking. In addition, the draft would allow States to confer jurisdiction on the court in respect of other international crimes which are not listed.

On International liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law the ILC work has confirmed the importance of the establishment of a global legal regime which would effectively protect man and the environment from the rapidly accelerating negative consequences on the development.

On State responsibility for wrongful acts the international society lacking a universal legislature and judiciary, in which by virtue of its sovereignty a state took its decision in freedom and came into conflict with another state, the regulating mechanism of state responsibility played a major role in the mutual relations of states and appeared as the necessary corollary of their equality. The complexity of the ILC task with regard to this topic arose from the fact that the law of the international responsibility remained basically customary law and was both controversial and confused.

On the Law of the non-navigational uses of international watercourses the ILC is engaged upon delicate task. The diversity in the circumstances and characteristics relating to different rivers, and the vast divergence of interest of states must be taken into account. They emphasise the need to integrate the law and policy concerning international watercourses with similar concerns in the wider context of contemporary global concern for preservation of the environment and sustainable development.

The Delegate of Sri Lanka commended the ILC on the formulation of the draft statute of an International Criminal Court and for the pragmatic and flexible approach the Commission had adopted in formulating the draft articles. He observed in this regard that the provision for recourse to the court by way of two straits jurisdiction providing for acceptance by States of the Court's jurisdiction. In his view there remained several aspects which required to be clarified further. The delegation was of the view that the jurisdiction of the court must be confined initially to the well defined crimes under accepted international convention listed in the draft articles 22-45 at least until the elaboration of a Code of Crimes against the Peace and Security of Mankind was adopted since the concept of "Crimes under general international Law" lacks specificity to confer jurisdiction on the Courts. His delegation was of the view that the UN Convention on International Traffic in Drugs 1983 should be treated on par with other international conventions as constituting international crimes under draft article 22 rather than as undesirable conduct in terms of draft article 26. He further stated that the provisions of the statute relating to surrender of persons and their effect on existing obligations under bilateral/multilateral treaty regimes requires further clarification.

On the question of State Responsibility his delegation shared the concern, expressed by others, concerning the desirability of formulating a legal regime of unilateral counter-measures given the inherent dangers of its abuse. He wondered whether dispute settlement procedures provide an effective remedy in situations of resort to unlawful or disproportionate counter measures.