

(ii) **THE SECOND GENERAL MEETING HELD ON THURSDAY, 21 JUNE 2001 AT 9.30 A.M.**

**(Hon'ble Chief Bola Ige (SAN) Vice President in the Chair)**

The Meeting continued its consideration of the **General Statements**.

1. **The Delegate of Saudi Arabia** congratulated the President and Vice President on their election to the 40<sup>th</sup> Session of the organization and expressed appreciation to the Secretariat for making preparations for convening the session in New Delhi. Speaking on the issue of human rights protection, the Delegate felt that States could have their own approach to the subject based on their religious and cultural beliefs. This perception, he added should be based on an understanding that there exist different civilizations and cultural system, on which law is often based. He drew attention of the Meeting to the issue of Human Rights based on Islamic faith.

The Delegate stated that the human rights model in his country is based on the divine source, wherein rules of obedience are derived from religious doctrines and not from any legislative charter or covenant. Further elaborating, he added that the Islamic Sharia is supreme in his country from which no omission or abrogation is possible. In this regard, the Delegate desired that other States, UN organizations, Committees on Human Rights and international organizations understand this concept of Islamic rules.

He submitted that the session of AALCO should make efforts to understand, better, his country's viewpoints on the existing interlinkages between adherence to rules and teachings of the Islamic religion.

Further explaining the effectiveness of the Islamic Sharia in his country, he narrated the example of amputating limbs as a deterrent punishment for thefts. The punishment he added is divinely ordained as the Holy Quran says "those who steal, females and males cut their hands as punishment for the wrong deeds". Besides, the Delegate added no Muslim has ever questioned the fairness and soundness of such a ruling.

Continuing on the issue of theft, he wanted the audience to look at the state of security in his country where divine laws are applied and those where positive laws are applied. Stating that in his country people, very few people were punished for committing theft, he added that commercial storeowners and other property owners leave their door open without fear of losing their goods. He felt that others should take note that the understanding of human rights is essentially an integral part of one's religion and belief.

He concluded his intervention by making a plea that the issue of Human Rights in Asia and Africa be placed on the agenda of the organisation's next session in 2002.

2. **The Delegate of Kuwait** while congratulating the President and the Vice President on their election, thanked the Government of India and its people for their warm hospitality.

Speaking about the growing influence of scientific and technological developments on the lives of people, he added that the world had become a global village. While discussing the need to fashion international law on the basis of this change, he felt that the dignity of man should be preserved.

Speaking on substantive issues, the Delegate said that his Government had two points to make. In the first, making a reference to the good efforts of Government of India sponsoring the draft on Combating International Terrorism, the Delegate stated that terrorism was a disease that had gripped the international community. The only way to combat this problem, he added was by effective cooperation amongst States of AALCC, in particular and the international community in general. In this regard, he outlined the efforts of the League of Arab States to adopt a Convention on Terrorism in 1998. The Convention, he said had gone ahead with defining terrorism in a complete way keeping in tune with the developments on the international plane. He however stressed that international efforts to combat terrorism should not in anyway hamper the right to self determination of people, which was recognized as a *jus cogens* by the international legal decisions and State practice. In this regard he specifically pointed to Article 1 paragraph 2 which provided that national liberation movements are not acts of terrorism.

As regards the Palestinian issue, he said that the aggression against the people of Palestine was a crime against humanity as people were being killed by Israeli forces which tantamounts to a flagrant violation of international law and the Fourth Geneva Convention of 1949.

On the item of UNCED: Follow up, the Delegate said that it was a very important matter and the international community should voice a common concern for having a right to a clean environment. He added that damage of international environment was an unethical practice. As regards the issue of ICC, the Delegate commended the work of the PREPCOM and called for effectively contributing towards strengthening the Rome Statute.

Further, the Delegate stated that his government supported placing the item 'The Establishment of Co-operation against Trafficking in Women and Children', on the agenda of the Committee, as it was very important to implement international efforts, especially monitoring of human rights situation. On this issue he said that his Government was ready for fact-finding missions to visit his country and assess the human rights situation there.

3. **The Delegate of Palestine** at the outset congratulated the President and the Vice President on their election and hoped that the 40<sup>th</sup> session of the AALCC would come to a successful end. He also thanked the Secretary General and his Secretariat for the excellent arrangements for holding the session in New Delhi and preparation of background papers.

Speaking on the item of "Deportation of Palestinians," affecting his country he said the recent spate of aggression had put the peace process in jeopardy. Stating that this violence had

affected the life of nearly 25,000 people, the Delegate called upon the international community to help restore peace in the region. Calling Israeli aggression a new form of apartheid regime, he said it had violated all norms of international law and justice. While stating that his delegation was concentrating its statement only on the item of “Deportation of Palestinians.....”, he attached equal importance to the other items on the agenda of the 40<sup>th</sup> Session. Referring to the constructive role AALCC has played and could play in the future, he stated that it could participate in the international efforts to condemn violation of the UN Charter and the state sponsored terrorism unleashed by Israel against his country.

4. **The Delegate of the Republic of Iraq** spoke on the plight of his country due to imposition of UN sanctions. Calling for lifting of sanctions at the earliest, he expressed the view that children and the weaker sections of the Iraqi society were worst hit.

Speaking on the issue of missing prisoners of war (POW's) as alleged by another AALCO Member State, he said that his country had made sustained efforts to locate them, but without success. Moreover, the Delegate said that this issue of missing Prisoners of War was used as one of the means to prolong the sanctions imposed on his country. He drew attention to the plight and whereabouts of the missing Iraqi Prisoners of War.

The Committee then took up for consideration the item **Report on the Matters relating to the Work of the International Law Commission at its 52<sup>nd</sup> Session.**

5. **Mr.Mohammad Reza DABIRI, the Deputy Secretary-General of the AALCC** introduced the Secretariat's report on this topic contained in document No. AALCC/XL/HQ(New Delhi)/2001/S.1. Mr.DABIRI stated that in accordance with the views expressed at the AALCC Legal Advisers' Meeting, to give in-depth consideration to one topic on the ILC's agenda at every session of the AALCC, it was proposed to focus the deliberations at its current session on the agenda item “State Responsibility”. He also informed that the Secretariat's report contained a new feature, namely a compilation of the position of AALCC Member States on the ILC agenda item, as articulated within the Sixth (Legal) Committee of the UN General Assembly.

As regards the topic of “State Responsibility” the Deputy Secretary-General gave an overview the evolution of the work within the ILC. He said ‘State Responsibility’ is one of the traditional and classical areas of international law with profound implications for the determination of rights and obligations of States. Both in terms of the importance of the subject matter, and as an exercise in codification, the ILC's work on this topic was comparable to that of its contribution to the regime on the law of treaties.

The Deputy Secretary-General suggested that the deliberations on “State Responsibility” could be structured under the following heads:

- (a) Concept of “serious breaches of obligations owed to the international community as a whole”;
- (b) Concept of “injured States”;
- (c) Counter measures;
- (d) Incorporating provisions on dispute settlement; and

(e) Final form of the draft articles.

On the ILC agenda item relating to draft article on the "Prevention of Transboundary Damage from Hazardous Activities", Mr.DABIRI said the Commission was close to finalizing its work. He underscored the views of several AALCC Member States in the Sixth Committee, who had emphasized the interdependence between the issues of 'prevention' and 'liability' and called upon the ILC to take up the question of liability as soon as possible.

Brief references were made to the evolution of the Commission's work on the topics of Reservations to Treaties, Diplomatic Protection and Unilateral Acts of States.

6. **H.E. Mr. Peter Kabatsi, the Chairman and Representative of the ILC** in his statement outlined the different levels of co-operation that exists between the AALCC and the ILC. Mr.Kabatsi said that the ILC valued its relationship with the AALCC in the process of discharging its mandate in progressively developing and codifying international law. Expressing appreciation for the succinct report of the Secretariat on the work of the ILC at its 52<sup>nd</sup> Session, Mr.Kabatsi briefed the Delegates about the developments during the first part of the ILC's 53<sup>rd</sup> Session held in April – June this year. Recalling the engagement of the ILC with the topic of 'State Responsibility' over the past 50 years, Mr.Kabatsi informed that the Commission had at its current session finally completed and unanimously adopted on second reading all articles related to the topic. The final product, which now comprises of 59 articles is titled as "Responsibility of States for Internationally Wrongful Acts". The articles are placed under four parts:

Part I - International Wrongful Acts of a State

Part II – Content of the International Responsibility of a State

Part III – The implementation of the international responsibility of States

Part IV – General Provisions.

As regards the item "Prevention of Transboundary Damage from Hazardous Activities", Mr.Kabatsi stated that the ILC at its 53<sup>rd</sup> session finally completed and adopted a set of 19 articles and a preamble. The articles, *inter alia*, deal with the scope of the topic, use of terms, prevention, co-operation, implementation, authorization, assessment of risk, notification of information, consultations on preventive measures, factors involved in an equitable balance of interests, exchange of information, information to the public, non-discrimination, emergency preparedness and relationship to other rules of international law and settlement of disputes.

The other three topics on the current agenda of the ILC, namely, Reservation to Treaties, Diplomatic Protection and Unilateral Acts would be dealt with during the second part of the ILC session starting in early July this year. Mr.Kabatsi said the Commission looked forward to receiving and hearing the AALCC Secretary General Amb.Dr.Wafik Z.Kamil on his visit to the ILC sometime next month.

The floor was then opened for comments and observations by Member States.

7. The **Delegate of the Arab Republic of Egypt** noted the improvements effected by the Special Rapporteur Mr. James Crawford, to the draft articles on State Responsibility and offered the following comments:-

- a) Welcomed the approach of distinguishing categories of harmed States and the attendant right to request appropriate remedy;
- b) Noted the improvement in the formulation of new draft article 40 that defines an “injured State”. The distinction between a "primarily affected (victim) State" and that of "States though not directly affected, but nevertheless were interested in the performance of the breached obligations" was deemed to be significant.
- c) On Article 49 entitled “Invocation of responsibility by States other than the injured States”, the Delegate noted that the notion of collective interests were ambiguously formulated and hence required improvisation.
- d) On provisions relating to ‘countermeasures’, it was emphasized that countermeasures should be dealt as extraordinary measures that should be resorted to only at the last instance. The need to define acts of permitted countermeasures in a specific manner was stressed. Provisions to limit excessive Counter Measures, should be included in the text, and by all means Counter Measures should not be allowed to assume a punitive character. They are not a form of punishment. Collective countermeasures would give room for abuse by powerful States, and an appropriate legal framework regulating this aspect would be helpful.
- e) On the final form of the draft articles, the Delegate expressed the willingness of Egypt to consider any other form, excluding that of a Convention or agreement.

On the topic “Reservations to Treaties”, the Delegate expressed support for the ongoing work and said that the work should not deviate from the framework laid down by the Vienna regime on law of treaties. The Delegate commended Dr.P.S.Rao, the Special Rapporteur for his contribution towards the formulation of draft articles relating to Prevention of Transboundary Damage from Hazardous Activities. Expressing support for the draft articles, the Delegate cautioned against making any substantial changes to the provisions. Stating that the ‘prevention’ dimension should be preserved, he said that the Commission must decide whether the phrase “acts not prohibited by international law” should be deleted or retained in the draft articles.

8. The **Delegate of the Islamic Republic of Iran** in his statement focussed on the work of the ILC on State responsibility. At a general level, his delegation was satisfied with the structure of the draft articles as proposed by the Special Rapporteur and adopted by the Drafting Committee. On specific issues, he offered the following observations:-

- a) Welcoming the replacement of references to “international crime” of States under draft article 19 with the phrase “serious breaches of obligations owed to the international community as a whole, he said that this approach constitutes a middle ground which hopefully could secure consensus among States.
- b) As regards countermeasures, he cautioned that countermeasures should not be employed by powerful States as a means of coercing or punishing small States. This conviction finds legal expression in draft article 50 paragraph 1.
- c) On the final form of the draft articles, the Delegate stated that it would be ideal,

if these articles could be adopted in the form of a convention. Such a convention would require a chapter on the peaceful settlement of disputes. The delegation regretted the lack of provisions on dispute settlement in the final text on State Responsibility. Another option as to form of draft articles which would also be less time consuming, would be to adopt it as a declaration of the UN General Assembly.

Given the long procedure and delay that would be involved with convening a plenipotentiary conference to adopt the draft articles in the form of a convention, the Delegate stated that if Iran's concern are addressed and a balanced text emerges, it could go along with its adoption in a special meeting of the General Assembly. Adoption of a declaration on State Responsibility, he said, would not preclude the possibility of the elaboration of a convention on the same topic in the future.

9. **The Delegate of the Republic of Korea** offered his felicitations to the President and Vice-President on their election to the respective offices. Recalling that the work on "State Responsibility" has lasted for almost five decades, the Delegate said it was time to bring our efforts to a conclusion on this subject. In spite of whatever shortcomings the draft articles may possess, the merit of adopting the draft articles now would outweigh any disadvantage than not adopting it. Expressing preference for the draft articles to be adopted in the form of a binding convention, he noted that the commentary to the draft articles would bring along the wealth of well-researched resources.

On the item Diplomatic Protection, the Delegate felt that the ILC seemed to lean too much on the issue of determination of nationality, which is largely procedural in nature, instead of substantive law involving the protection of nationals by States, such as the denial of justice, national treatment of aliens, etc.

He also stressed the importance of examining the role and function of the consular officer beyond the function entrusted to him under the "Exequater" of the receiving State.

On the topic of "Unilateral Acts of States", the Delegate urged the ILC to identify all conceivable subjects like recognition, acquiescence, estoppel, declarations, protest, etc. i.e. subjects which could be regarded as unilateral actions under international law. Once this is done, the Commission could then work on the definition of such unilateral actions and their application to practices. On the ongoing work relating to reservation to treaties, he expressed the wish that it could be adopted in the form of a Guide to Practice or Model Law, and suitably supplement the 1969 Vienna Convention on Law of Treaties.

10. **The Delegation of People's Republic of China** stated that China highly valued the achievements of the ILC and was confident that it would make even greater achievements in the new century.

On the topic "State Responsibility", the Delegate expressed general appreciation over most of the draft articles, though he was concerned over articles on "collective countermeasures". Stressing that countermeasures can be taken exclusively by the country injured by an international wrongful act, he feared that the introduction of the elements akin to "collective

sanction" or "collective intervention" to the regime of State Responsibility could become one more pretext for the pursuit of power politics in international relations. For the same reason, his delegation was opposed to use or threat of force in the exercise of diplomatic protection.

While recognizing the necessity of codifying the rules relating to "Unilateral Acts of States", the Delegate stated that the validity of the unilateral act depends on its consistency with the fundamental principles of international law and the principle of "good faith". He urged the ILC to undertake further in-depth studies, while proceeding with its work on this subject.

Evinced great interest on the work of the ILC on reservations to treaties, the Delegate hoped that the outcome of this exercise would fill the gaps of the reservation system in the Vienna Convention on Law of Treaties.

Informing the Delegates about the nomination by his Government of the candidature of Ms. Xue Hanqin (Director General of the Department of Treaty and Law of the Chinese Foreign Ministry) for election to the membership of the International Law Commission, he hoped that her election would enable her to make important contributions to the work of ILC.

11. The **Delegate of Thailand** offered his felicitations to the President and the Vice - President on their election.

On the topic of "State Responsibility" his delegation welcomed the formulation of the phrase "serious breaches of essential obligations to the international community as a whole" to replace the notion of "international crimes" under article 19 of the draft articles. Citing the legal position within the framework of the Statute of the International Criminal Court on the crime of aggression, the Delegate stated that there must be state responsibility for an act of aggression before deciding on the criminal responsibility of an individual perpetrator.

Expressing concern over the possibility of abuse of the right of countermeasure by powerful States, he suggested that a compulsory dispute settlement procedure either of the ICJ or other bodies be resorted to in events involving use of countermeasures. The authorization of provisional measure by the International Court of Justice would to a large extent be useful in regulating and ensuring that countermeasures are proportional.

As regards the topic of "Diplomatic Protection", the Delegate asserted that it was the discretionary right of a State. He opposed the proposal for authorizing use of force as an exceptional means for securing diplomatic protection. Even if such exceptional measures are undertaken, it must have the authorization of the UN Security Council or any other competent body. In cases involving multiple nationality, the Delegate drew attention to the relevance and importance of the test of "genuine link".

12. The **Delegate of the Republic of India** focussed her observations on the topics of "State Responsibility" and "Prevention of Transboundary Hazardous Activities". On, "State Responsibility", the Delegate recounted the contributions of all Special Rapporteurs and outlined the evolution of the topic within the ILC. Specific comments offered on this topic are as follows:

- (a) As regards Part I of the draft articles the Delegate stated that it posed very less problem as it basically reflected customary international law and also that they have been the subject of reference, invocation and application by the ICJ.
- (b) Any legal regime on countermeasures, if it has to be accepted by States, has to regulate, control and limit the potential for abuse inherent in any unilateral measure. No punitive action should be legalized under the garb of countermeasures.
- (c) The widening of the concept of "injured State" should also be avoided. In the view of the Delegate, no right existed for States not directly affected to take countermeasures, in the name of or in the interest of safeguarding interests relating to obligations owed to international community as a whole.
- (d) Noting that a consensus to delete or not add in the draft articles any provision on dispute settlement procedures was discernible, the Delegate felt that a requirement existed for offering a dispute settlement procedure, before a State feels obliged to undertake any countermeasures.
- (e) In case where no clear definition for "international crimes" or "serious breaches of obligations of a peremptory character", is arrived at, the Delegate said India would reserve the draft articles on these provisions for further consideration.
- (f) The delegation was open-minded and would support any consensual effort on the final form of the draft articles.

On the topic of "Prevention of Transboundary harm from Hazardous Activities", the Delegate commended the ILC for its pragmatic approach and endorsed the draft articles, many of whose principles are already accepted under international law. These principles are intended to safeguard the interests of both the "State of Origin" and other "concerned States". The Indian delegation looked forward to the adoption of the draft articles and expressed the hope that they would contribute to the progressive development of international law.

**13. Dr. P.S.Rao, Member of the ILC and the President of AALCO**, who was also the ILC's Special Rapporteur for the topic Prevention of Transboundary Harm from Hazardous Activities made a presentation on the subject.

At the outset, Dr. Rao sought to distinguish between the scope of the concepts of "States Responsibility" and "liability". While State Responsibility deals with acts which are wrongful, "liability" corresponds to act which are by itself not wrongful, may give arise to certain legal consequences.

Speaking on his work as the Special Rapporteur on the aspect of prevention, (which is a sub-topic of the larger aspect of liability), Dr. Rao said that it dealt with the "management of risk" of certain activities. The prevention principle under the draft articles could be effectuated through the requirement of "mandatory prior authorization procedures". This includes a series of steps viz., consultation, exchange of information, notification, environmental impact assessments etc. The draft articles incorporate modern principles of due diligence, precautionary principle and the polluter pays principle. The draft also lays down a set of equitable balancing interests while seeking solutions under the consultative process. This set of balancing interests, *inter alia*, refer to factors such as: - degree of risk of significant transboundary harm; the importance of the



activity to the State of origin; economic viability; and standards of prevention which the State likely to be affected apply to the same or comparable activities.

Dr. Rao informed that at the current session, while finally adopting the draft articles, the ILC had decided to retain in the articles the phrase "acts not prohibited by international law".

14. The **Delegate of Indonesia** focussed his presentation on the ILC's work relating to Prevention of Transboundary Harm from Hazardous Activities. Citing the geographical location of Indonesia, which has over 17000 islands with an area of about 2 million square kms, and also a strategic gateway for sea trade, the Delegate said the country had been the victim of oil pollution. On the reverse, he said that Indonesia was also a source of pollution, which arises from the smoke emanating from burning of tropical forests, which in the year 1997 affected Japan and some other ASEAN neighbours. Against this backdrop his delegation offered the following comments:-

- (a) The draft articles be formulated in the form of "Model Law" so as to offer guidance to States in their bilateral and regional arrangements on this topic.
- (b) There is a need to balance the interests of the "States of origin" and "affected States".
- (c) The obligation of prevention could be defined to mean, "procedures or State obligation's to take any prior measures to cope with further serious loss/unexpected consequences".
- (d) The draft articles must explicitly spell out the duty to cooperate with other countries.
- (e) Environmental impact assessment procedures to be made compulsory and as a basic reference for consultation, notification and settlement of disputes.

15. The **Delegate of Sudan** felt that the AALCO could play a greater role by participating wholeheartedly in the work of the Sixth Committee. In this regard, he was of the view that AALCO could help Member States answer the questions sent by ILC to States soliciting their views on various items on its agenda.

Speaking on the "Reservation to Treaties" the Delegate felt that the outcome of work on the ILC on this topic could be corollary to the Vienna Convention on the Law of Treaties 1969. With respect to reservations to multilateral human rights treaties, he expressed the view that such reservations should be compatible with and not in conflict with the regime of the 1969 Convention on the Law of Treaties.

16. The **Delegate of Japan** commended the ILC for the adoption of the draft articles on State Responsibility. As an overwhelming number of disputes in recent years related to the subject of State Responsibility, the Delegate felt that the completion of the ILC's work would facilitate the amicable settlement of disputes related to this subject. However, his delegation expressed reservations over the following aspects:

- (a) Underscoring the inter linkages between the scope of the meaning of "injured States" and the "relevance of countermeasures", the Delegate was of the view that ambiguity in phrases like 'injury' and 'damage' could lead to a situation where States other than the injured State could invoke responsibility.

- (b) While recognizing the notion of "serious breaches" under the draft articles, the Delegate expressed difficulty over the uncertainty regarding the legal consequences of such serious breaches.

The delegation viewed the provisions on countermeasures as one that had distinctly improved over the earlier drafts.

Expressing appreciation to the work of Dr. P.S. Rao, the Special Rapporteur for the topic Prevention of Transboundary Harm from Hazardous Activities, he expressed the hope that the draft articles would be adopted in the form of a framework convention by the UN General Assembly. He was of the view that this would help addressing environment-related issues.

17. **Amb. Chusei Yamada, Member of the ILC** sharing his views on the subject observed that the ILC was divided as to the final form that the draft articles on State Responsibility should take. Therefore, the ILC would make a two-stage recommendation to the General Assembly whereby:

- (i) The General Assembly would take note of the report of ILC on this topic (as reflective of the current rules on the subject); and
- (ii) The General Assembly may consider whether the draft articles would at a later stage be embodied in the form of a convention.

Drawing attention to the disappointment expressed by the Delegate of the Islamic Republic of Iran over the lack of provisions for dispute settlement, Amb. Yamada stated that if the General Assembly decides to adopt the draft articles in the form of a convention, then it would have to provide for suitable dispute settlement procedures.

Noting the reservation expressed by the Delegate of China to provisions on "collective countermeasures" he informed that the related provisions have been deleted in the text as adopted finally.

As the report of the ILC on the work of its 53<sup>rd</sup> session would be available to Member States as late as in mid-September, he urged the AALCO Secretariat to obtain from the ILC the draft articles along with the commentaries (which would be adopted by 10 August 2001) and circulate it to Member States. This would provide adequate time for Member States to reflect on it and express their views at the Sixth Committee scheduled to discuss this item from October 29 to November 9.

As regards the draft articles on Prevention of Transboundary Harm from Hazardous Activities, he stated that the future work on liability is yet to be decided and hence urged AALCC Member States to communicate their views on this matter, so as to enable the ILC proceed further.

18. The **Delegate of Kuwait**, in an intervention, stated that Kuwait respected all its obligation's towards prisoners of war under international law. As evidence of this adherence to international law principles, the Delegate pointed out that it was working closely with the ICRC

in connection with prisoners of war. Defending certain allegations over its treatment of prisoners of war, the Delegate urged the AALCO to constitute a fact-finding Committee that could visit Kuwait and verify the truth of the allegations.

The President stated that the Secretary General would take note of this request and consider the matter.

19. The Meeting then adjourned.