

Part I, dealing with the general principles concerning nationality in all situation of State Succession could include basic principles to be observed by "States concerned" i.e. the predecessor and successor states, or the successor states as the case may be, and Part II containing rules directed at -specific situations of State succession.

As regards the calendar of action the Working Group took the view that the first reading of such articles could be completed during the 49th (1997) or at the latest the 50th Session (1998) of the Commission.

The Working Group further recommended to the Commission that it undertake the substantive study of the subject under the title "Nationality in Relation to the Succession of States".

Finally the Working Group observed that upon completion of the Work on the nationality of natural persons, the Commission could take a decision, based on comments received from States, on the need to consider the question of the impact of State Succession on the nationality of legal persons.

### **Recommendation of the Commission**

Upon the recommendation of its Working Group the Commission at its 48th Session decided to recommend to the General Assembly that: -

(i) The General Assembly take note of the completion of the preliminary study on the topic and that it request the Commission to undertake the substantive study of the topic entitled "Nationality in Relation to the Succession of States" on the understanding that:

- (a) Consideration of the question of the nationality of natural persons will be separated from that of the nationality of legal persons, and that priority will be given to the former,
- (b) for present purposes and without prejudicing a final decision - the result of the work on the question of nationality of natural persons should take the form of a declaratory instrument consisting of articles with commentaries,
- (c) The decision on how to proceed with respect to the question of the nationality of legal persons will be taken upon completion of the work on the nationality of natural persons and in light of the Comments that the General Assembly may invite States to submit to it on the practical problems raised by a successor State in this field.

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Mr. Husain El-Baharna, Mr. Derek William Bowett, Mr. Edmundo Vargas - Carrero, Mr. James Crawford, Mr. Salifou Fombi, Mr. Kamil Idris, Mr. Awn - Al-Khasawneh, Mr. Igor Lukashuk, Mr. Robert Rosenstock, Mr. Albert Szekesley, Mr. Christian Tomuschat, and Mr. Chusei Yamada

VI. GENERAL ASSEMBLY FIFTY-FIRST SESSION AGENDA  
ITEM 146.

**Report of the International Law Commission on the Work of its  
forty-eighth session**

The General Assembly

Having considered the report of the International Law Commission on the work of its forty-eighth session,

Emphasizing the importance of furthering the progressive development of international law and its codification as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Emphasizing the role of the International Law Commission in the fulfillment of the objectives of the United Nations Decade of International Law,

Recognizing, the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission further to enhance their contribution to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Stressing the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention on each of the main topics dealt with in the report,

Wishing to enhance further the interaction between the Sixth Committee as a body of government representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs,

1. Takes note of the report of the International Law Commission on the work of its forty-eighth session;
2. Expresses its appreciation to the International Law Commission for the work accomplished at the forty-eighth session, in particular for completing the final draft articles on the draft Code of Crimes against the Peace and Security of Mankind and the provisional draft articles on State responsibility, and draws the attention of the States participating in the Preparatory Committee for the Establishment of an International Criminal Court to the relevance of the draft Code to their work;
3. Requests the Secretary-General to invite Governments to present, before the end of the fifty-third session of the General Assembly, their written comments and observations on action which might be taken in relation to the draft Code of Crimes against the Peace and Security of Mankind;
4. Recommended that, taking into account the comments of Governments, whether in writing or expressed orally in debates in the General Assembly, the International Law Commission should continue its work on the topics in its current programme;
5. Draws the attention of Governments to the importance, for the International Law Commission, of having their views on the draft articles on State Responsibility adopted on first reading by the Commission, and urges them to present in writing their comments and observations by 1 January 1998, as requested by the Commission;

6. Encourages Governments that may wish to do so to provide their comments and observations in writing on the report of the Working Group on International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law annexed to the report of the International Law Commission in order that the Commission may, in the light of the report of the Working Group and such comments and observations as may be made by Governments and those that have been made in the Sixth Committee, consider at its forty-ninth session how to proceed with its work on the topic and make early recommendations thereon;

7. Invites States and international organizations, particularly those that are depositaries, to answer promptly the questionnaire prepared by the Special Rapporteur on the topic concerning reservations to treaties;

8. Takes note of the completion of the preliminary study of the topic "State succession and its impact on the nationality of natural and legal persons", and requests the International Law Commission to undertake the substantive study of the topic entitled "Nationality in relation to the succession of States" in accordance with the modalities provided for in paragraph 88 of its report, and invites Governments to submit comments on the practical problems raised by succession of States affecting nationality of legal persons;

9. Takes note with appreciation of paragraphs 143 to 244 of the report of the International Law Commission concerning its procedures and working methods;

10. Takes note of the comments of the International Law Commission on the question of a split session, as presented in paragraphs 228 to 233 of its report;

11. Encourages the International Law Commission, in relation to its internal matters, to take decisions which could contribute to its efficiency and productivity;

12. Takes note of the decision the International Law Commission contained in paragraph 256 of its report on the duration of its next session;

13. Invites the International Law Commission further to examine the topics "Diplomatic protection" and "Unilateral acts of States", and to indicate the scope and the content of the topics in the light of the comments and observations made during the debate in the Sixth Committee on the report and any written comments that Governments may wish to submit;

14. Requests the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, those specific issues, if any, on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

15. Reaffirms its previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

16. Once again expresses the wish that seminars will continue to be held in conjunction with the sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars, appeals to States that can do so to make the voluntary contributions that are urgently needed for the holding of the seminars, and requests the Secretary-General to provide the seminars with adequate services, including interpretation, as required;

17. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the fifty-first session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

18. Also requests the Secretary-General to make appropriate arrangements to commemorate the fiftieth anniversary of the establishment of the International Law Commission through a colloquium on the progressive development and codification of international law, to be held during the consideration in the Sixth Committee of the report of the Commission on the work of its forty-ninth session;

19. Recommends that the debate on the report of the International Law Commission at the fiftysecond session of the General Assembly commence on 27 October 1997

## VI. The Law of International Rivers

### (i) Introduction

The item "Law of International Rivers" was first taken up for consideration, by the Committee following upon a reference made by the Governments of Iraq and Pakistan during the Eighth Session (Bangkok, 1966) of the AALCC. The following year, at the Ninth Session held in New Delhi (1967), the delegate of Iraq in his statement indicated the areas which necessitated a closer scrutiny, viz. (a) the definition of the term "international rivers"; and (b) the rules relating to utilization of waters of international rivers by the States concerned for agricultural, industrial and other purposes not connected with navigation. At the Tenth Session (Karachi, 1969) after extensive deliberations the AALCC decided to set up a Sub-Committee of all Member Governments to prepare a set of draft articles on the Law of International Rivers, particularly in the light of experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems.

The sub-committee comprising the representatives from the Governments of Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone and Sri Lanka met in New Delhi in December 1969. At that meeting the delegations of Pakistan and Iraq placed before the sub-committee a set of draft principles consisting of 21 articles. In the subsequent Sessions of the AALCC, the subcommittee could not finalize these draft articles due to a few unclear provisions. However, the draft articles were referred to the Member Governments for their consideration. The matter was thereafter discussed at the Eleventh, Twelfth, Thirteenth and Fourteenth Sessions of the Committee. At the Fourteenth Session of the AALCC held in New Delhi in 1973, it was decided that since the International Law Commission (ILC) was actively engaged in considering this topic, its examination could be deferred.

This item was brought back on the agenda of the Twenty-third session of the Committee (Tokyo, 1983) at the request of the Government of Bangladesh. The Government of Bangladesh, in its reference, had proposed that the AALCC could resume the consideration of the item excluding the areas which were under consideration by the ILC. A view was expressed, on the other hand, that the AALCC could initiate studies relating to regional system agreements concerning the international rivers. However, some Member Governments were of the view that the AALCC should await the finalization of the ILC's work, in order to avoid duplication of work and they were also keen to follow the progress of work in the ILC. In order to accommodate all these views, the AALCC decided to continue the study in the following areas: (a) to identify the areas which were not likely to be covered by the work of the ILC and where it was deemed desirable for the AALCC to undertake a study; (b) to examine the Articles provisionally adopted by the ILC; and (c) to submit a tentative programme of work for the consideration of the Committee.

During the Kathmandu Session (Nepal, 1985) a preliminary report prepared by the Secretariat was considered which *inter alia*, indicated five areas for consideration, namely (i) an examination of the draft articles after they were adopted by the ILC and to furnish comments thereon for consideration of the Sixth Committee and possibly before a diplomatic conference, (ii) development of norms and guidelines for the legal appraisal of the validity or otherwise of any objection that may be raised by one Watercourse State in relation/regard to projects sought to be undertaken by another Watercourse State, (iii) study the matter relating to navigational uses and timber floating in international watercourses, (iv) study of other uses of international rivers such as agricultural and navigational purposes, and (v) study of State practice in the region of user agreements and examining the modalities employed in the sharing of waters such watercourses as the Gambia, Indus, Mekong, Niger and Senegal

The Committee continued to monitor the ILC deliberations and presented a report the ILC's progress of work for the consideration of the Committee at its Twenty-fifth Session (Arusha, 1986). At the Arusha Session of the Committee, it was decided that the consideration of this item would be confined to the monitoring of the work done by the ILC.

At the subsequent Sessions held in Bangkok (1987), Singapore (1988), Nairobi (1989) Beijing (1990) and Cairo (1991) the AALCC Secretariat presented studies which were confined only to the examination of draft articles adopted by the ILC. During the thirty-first session (Islamabad, 1992) the Committee discussed a study prepared by the Secretariat analysing the ILC draft articles adopted after the first reading. The Thirty-second Session (Kampala, 1993) considered a study entitled, "The Law of International Rivers: A Preliminary Study Relating to River System Agreements". The Committee after considering this study directed the Secretariat to examine crucial areas relating to the utilization of freshwater resources

It may be recalled that whilst completing its second reading, the International Law Commission adopted a resolution concerning unrelated confined ground waters whereby it recognized the need for continuing efforts to elaborate rules pertaining to confined transboundary groundwater and expressed the view that the principles contained in its draft articles on the law of non-navigational uses of watercourses may be applied to transboundary confined groundwater. The resolution recognized that confined groundwater, that is groundwater not related to an international watercourse, was also a natural resource of vital importance for sustaining life, health and the integrity of ecosystems.

Accordingly, the AALCC Secretariat presented to the Tokyo Session a study, entitled, "The Law of International Rivers: Normative Approaches to the Sustainability of Freshwater Resources". This study dealt with the legislative measures both at the national and international level, to preserve fresh water resources.

The Committee at its Tokyo Session (1994) while taking note of the brief prepared by the Secretariat, expressed its concern at the growing misuse of freshwater resources which constituted only 2 per cent of the global water resources. It also noted with satisfaction the progress of work on the item "non-navigational Uses of International Watercourses" during its second reading in the ILC. With a view to facilitate further substantive discussion, the Committee also decided to place this item on the agenda of the Thirty-fourth Session.

This item was brought back on the agenda of the Twenty-third session of the Committee (Tokyo, 1983) at the request of the Government of Bangladesh. The Government of Bangladesh, in its reference, had proposed that the AALCC could resume the consideration of the item excluding the areas which were under consideration by the ILC. A view was expressed, on the other hand, that the AALCC could initiate studies relating to regional system agreements concerning the international rivers. However, some Member Governments were of the view that the AALCC should await the finalization of the ILC's work, in order to avoid duplication of work and they were also keen to follow the progress of work in the ILC. In order to accommodate all these views, the AALCC decided to continue the study in the following areas: (a) to identify the areas which were not likely to be covered by the work of the ILC and where it was deemed desirable for the AALCC to undertake a study; (b) to examine the Articles provisionally adopted by the ILC; and (c) to submit a tentative programme of work for the consideration of the Committee.

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The Secretariat study prepared for the 34th Session (Doha) furnished a summary and comments on the draft articles adopted by the ILC after completing the second reading. The major part of the ILC's discussion and disagreement stem from the extent and definition of "unrelated confined groundwater"

The Secretariat brief also drew attention to the resolution on "Draft Articles on the Law of the non-navigational Uses of International Watercourses" adopted by the General Assembly at its 49th Session whereby it, *inter alia* took note of the existence of a number of bilateral treaties and regional agreements and also invited States to submit, not later than 1 July 1996, written comments and observations on the draft articles adopted by the ILC. Resolution 49/52 of 8 December 1994 of the General Assembly also decided that, at the beginning of the fifty-first session, the Sixth Committee should convene as a Working Group of the Whole, open to State Members of the United Nations or members of specialized agencies, for three weeks to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the ILC and in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session of the General Assembly.

The AALCC at its Thirty-fourth Session *inter alia* commended the ILC on the adoption of the draft articles on the non-navigational uses of International Watercourses and urged Member States to consider utilizing the Secretariat Studies and commentaries in furnishing before July 1996 their comments and observations on the draft articles to the United Nations. The Committee requested the United Nations General Assembly to consider adopting a Convention on the Law of the Non-Navigational uses of International Watercourses on the basis of the draft articles adopted by the International Law Commission and the comments made thereon by the Member States. It also directed the AALCC Secretariat to report to the Thirty-sixth Session of the Committee of the outcome of the consultations at the Fifty-first Session of the General Assembly. At the Thirty sixth Session held at Tehran, elaborate discussion took place, on this subject.

### Thirty sixth Session: Discussions

Introducing the item the Assistant Secretary General Mr. Asghar Dastmalchi *inter alia* stated that the item "Law of the International Rivers" had been on the agenda of the Committee since 1966 following references made to the Committee at the Eighth Session (Bangkok, 1966), by the Governments of Iraq and Pakistan. Subsequently, a reference was made to outline the areas which needed closer scrutiny, namely (a) definition of the term "International Rivers", and (b) rules relating to utilization of waters of International Rivers by the States concerned for agricultural, industrial and other purposes not connected with navigation. A Sub-Committee had been constituted at the Tenth Session to prepare draft articles on this item in the light of experience of the countries of Asia and Africa, and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems. However, these draft articles could not be finalized due to lack of consensus on some of the provisions. Meanwhile, the International Law Commission was actively engaged in considering this topic and it was therefore decided that Committee defer the examination of the topic.

Thereafter in 1983 at the Tokyo session this item was again placed on the agenda of the Committee at the request of the Government of Bangladesh. In its request the Government of Bangladesh had suggested that the Committee could resume the consideration of the item excluding the areas which were under consideration by the ILC. The brief of documents prepared by the Secretariat for the 24th Session had identified five areas for consideration, namely, (a) an examination of the draft articles after they were adopted by the ILC and to furnish comments there on for consideration of the Sixth Committee and possibly before a diplomatic conference (b) development of norms and guidelines for the legal appraisal of the validity or otherwise of any objection that may be raised by one watercourse State; (c) study the matter relating to navigational uses and timber floating in international watercourses; (d) study of other areas of international rivers such as agricultural uses; and (e) study of State practice in the region of user agreements and examining the modalities employed in the sharing of waters in such watercourses, as the Gambia, Indus, Mekong, Niger and Senegal.

Following a decision taken by the Committee at its Arusha Session the Secretariat had confined itself to monitoring the progress of the work of the ILC and prepared briefs analysing the ILC draft articles on the subject until the Committee at its 32nd Session directed the Secretariat to examine the areas relating to the utilization of freshwater resources. The item was last considered at the 34th Session of the AALCC held in Doha in 1995. The brief for the 34th Session of the AALCC had furnished a summary and comments on the draft articles adopted by the ILC. It had pointed out that a major part of the Commission's discussion and disagreement stemmed from the definition of "unrelated confined groundwater". That Secretariat brief had also drawn attention to the resolution on "Draft Articles on the Law of the non-navigational Uses of International Watercourses" adopted by the General Assembly at its 49th Session whereby it had taken note of the existence of number of bilateral treaties and regional agreements and invited States to submit comments and observations on the draft articles adopted by the ILC. Resolution 49/52 of 8 December 1994 of the General Assembly had also decided that at the beginning of the Fifty-first Session the Sixth Committee should convene as a Working Group of the Whole, open to State Members of the United Nations or members of specialized agencies to elaborate a 'framework convention' on the law of the Non-Navigational uses of international watercourses on the basis of the draft articles adopted by the ILC.

The Assistant Secretary General further stated that the AALCC at its 34th Session had *inter alia* directed the Secretariat to report to the 36th Session of the Committee on the outcome of the consultations at the fifty-first Session of the General Assembly. Inviting attention to the brief he said that the brief had been prepared in partial fulfilment of that mandate and furnished an overview of the first session of the Working Group of the Whole held from 7th to 25th October 1996 during which the Working Group elected Ambassador Chusei Yamada (Japan) as Chairman and Ambassador Lammers (Netherlands) as the Chairman of the Drafting Committee. Mr. Robert Rosenstock who had been the Special Rapporteur when the ILC had adopted the draft articles on the topic had been invited by the Secretary General to take a place at the Committee's table as an expert consultant. He further stated that in spite of its best efforts, the Working Group could not complete its consideration of the entire set of draft articles and submitted its report to the Sixth Committee. Following consideration of the Report of

the Working Group the General Assembly at its 51st session had *inter alia* decided to convene a Second Session of the Working Group of the Whole of the Sixth Committee for a period of 2 weeks from 24 March to 4 April 1997 to elaborate a framework Convention on the Law of non-navigational Uses on International Watercourses. It also decided that on the completion of its mandate the Working Group of the Whole shall report directly to the General Assembly. Pursuant to the aforementioned resolution of the 51st Session of the General Assembly the Second session of the Working Group of the Whole of the Sixth Committee was convened in New York from 24 March to 4 April 1997. The AALCC Secretariat was not represented at either of the sessions of the Working Group. At its recent meeting the Working Group was known to have adopted by a vote the Draft Convention on the non-navigational Uses of International Watercourses.

The Delegate of Japan, recalling his Chairmanship of the Working Group constituted by the Sixth Committee to draft a Convention on the non-navigational Uses of International Watercourses, said that it is a very important area where legal study needs to be undertaken. Giving a broad outline of the 'Framework Convention', to be adopted and opened for signature in mid-May 1997, he stated that the draft convention had 37 articles comprising core principles, procedural rules for negotiating distribution of waters and a dispute settlement mechanism. He said the Framework Convention was a remarkable piece of legislation as it was characteristically more a guide than a treaty.

States would feel free to incorporate the provisions of the proposed Convention in their municipal laws. He was of the view that all AALCC Member States must actively participate in the adoption and ratification of this Convention.

The Delegate of India expressed his appreciation for the able guidance of the delegate of Japan under whose chairmanship the Working Group had met. He also expressed his appreciation for the Report prepared and presented by the Assistant Secretary General. Recounting the work done by a number of international organizations and bodies like the ILA Helsinki Rules on International Watercourses, he stated all States must make maximum use of the Framework Convention on the Non-navigational Use of International Watercourses. He further pointed

out that rivers being a source of livelihood are essential components of our environment. In his view the work of the ILC on this topic was largely influenced by the Helsinki Rules. He further stated that the Convention to be adopted and opened for signature on 15 May 1997 ensured: (i) equitable sharing of watercourses in ones own territory without adversely affecting the interests of the other user States; (ii) environment pollution an important issue, (iii) pacific settlement of water disputes. Essentially speaking, he felt the Convention had 4 components comprising general principles, procedural provisions, environmental safeguards and dispute settlement mechanism. Emphasizing that the most important feature of the Convention is its flexibility whereby States may, in their bilateral and or regional agreements, incorporate only those principles agreeable to them, he called upon the member States of the AALCC to support, adopt and ratify the Convention.

The Secretariat brief while referring to the background and development of this item that has been more or less reflected in the ASG's statement, looks at the working group of the whole and finally presents the resolution adopted by the General Assembly.

## (ii) Decision on "The Law of International Rivers"

(Adopted on 7.5.1997)

*The Asian-African Legal Consultative Committee At Its Thirty-Sixth Session*

*Taking note* of the Report of the Secretary General on the item "Law of International rivers" set out in Doc.No. ALCC/XXXVI/Tehran/97/S.9,

*Having heard* the comprehensive statement of the Assistant Secretary General,

*Appreciative* of the informal report of the Chairman of the Working Group of the Whole of the Sixth Committee;

1. *Commends* the Working Group of the Whole of the Sixth Committee for having adopted the draft of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses;
2. *Urges* Member States to participate in the discussion on the report of the Working Group of the Whole to be presented at the Fifty Second Session of the General Assembly;
3. *Encourages* the Member States to consider the Framework Convention on the non-navigational Uses of International Watercourses and to consider concluding bilateral or regional user agreements in concordance with the Framework Convention.
4. *Expresses* appreciation for the work of the Secretariat on the item, and
5. *Decides* to include the item "The Law of International Rivers" on the agenda of the thirty seventh Session.