

Conference, held at Mar del Plata, March, 1977" and similar other international instruments.

I. Responses to the Decisions of the International Law Commission.

5.90. The Indus Water Treaty of 19th September, 1960 between India and Pakistan; the Agreements between the Governments of India and Nepal, on the "Kosi Project", of 25th April, 1954, on the "Gandak Irrigation and Power Project" of the 4th December, 1959 (including the Exchange of Notes of 4th December, 1959) of 30th April, 1964 (Revising some provisions of the Agreement of 4th December, 1959), on "Kosi Project (revising the Agreement of 25th April 1954) of 19th December 1966 (Revised Agreement); "Summary Record of Discussions of the Meeting", of 19th February, 1976, and on "the Renovation and Extension of Chandra Canal, pumped Canal and Distribution System of the Western Kosi Canal in Nepal, of 7th April 1978; and the Agreements and Arrangements between India and Bangladesh on "Sharing of Ganga Waters at Farakka and on Augmenting its Flows" of 5th November, 1977 (renewed in 1982-83), Ad-hoc Accord of 20th July, 1983 (On Teesta Waters) and the Memorandum of Understanding of November 22, 1985,

all indicate a series of measures which can be considered as reflecting the spirit of the Draft Articles of the International Law Commission approved at Geneva on 17th July, 1980. It may be pointed out here that Article 3 of the Draft Articles of the I.L.C. requires the system states to conclude "system agreements" for facilitating the utilisation of the water of the so designated "international water course systems" (usually termed as international water resources).

5.91. The fact that some of the water treaties were concluded by India with her neighbour States, even before the approval of the Draft Articles of the International Law Commission demonstrates that India was conscious of such co-operative water-resources management measures with her neighbours even before the I.L.C. approved the said Draft Articles - or in other words India's operational thinking at domestic level is the same as desired or demanded by international norms and standards.

VI. Alternative Strategies for better and effective Implementation - approach

6.10. The foregoing analysis will remain incomplete without an evaluation of the existing position and without making efforts to search for and identify some alternative strategies for a better and more effective implementation approach vis-a-vis the letter and spirit of international norms in the field of management of water resources

in India for promoting better rights and extracting higher benefits, in regard to water as a material resource, for improving the quantum as well as quality of means of livelihood for a better quality of life for the greatest number of the citizens in India as honorable members of a welfare state.

6.11. It is submitted that quantitatively India abounds in "legislative measures", legislative safeguards" and "administrative measures". Further, it has also developed and acquired a lot of source material in the form of judicial decisions, awards of Tribunals and agreements in the field of water resources development and management. But there is a substantially valid question as to why the country has not succeeded in the goal of accomplishment of optimum utilisation of its water resources which attainment could certainly improve the quality of life of its humanfolk. The answer perhaps lies in and can better be obtained by, testing the quality of all these legislative, administrative, judicial, quasi-judicial and diplomatic measures.

6.12. The quality of law, its sister measures and their procedural-cum-functional efficacy is tested by their potential to communicate their message to the units for which they are enacted and implemented. Their quality is also tested by their substantive merit in clearly defining rights, powers, privileges and

immunities as well as obligations, liabilities and responsibilities of various agencies and functionaries of the government as also those of the individuals or bodies of individuals for whom the same are meant. A review of the prevailing water resources development and management measures and of their implementation mechanism in India, however, reveals that the same are still inadequate and in certain respects faulty. The entire legislative framework including the implementation mechanism in this field, reflects, unfortunately, a legacy of the colonial trends indicating a sovereign subject relationship between the governing apparatus and the citizens.

6.12. In the light of the aforesaid observations it is submitted that the entire framework, even if it reflects fairly good amount of response towards international law norms and standards, needs an overhauling in the direction of evolving a system in which the citizens, the presumed subjects of law, may be effectively and sincerely involved both at the policy-making as well as implementation stages. This will ensure full utilisation of the water resources, in terms of the perception of "optimum utilization" of the said resources, aimed at improving the quality of life, with an eye upon the greatest happiness of the greatest number of the Indian humanfolk as honorable members of a welfare State enjoying a dignified position in the community of States.