INTERNATIONAL LAW COMMISSION (ILC), SIXTIETH SESSION, 31st JULY 2008

STATEMENT OF MR. NARINDER SINGH, PRESIDENT OF THE FORTY-SEVENTH SESSION OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO)

Excellency, Mr. Edmundo Vargas Carreno, Chairman of the International Law Commission, Distinguished Members of the Commission, Ladies and Gentlemen,

1. It is my privilege and honour on behalf of the Asian-African Legal Consultative Organization (AALCO) and in my capacity as President of the Forty-Seventh Session of AALCO to address the Sixtieth Session of the International Law Commission (ILC). ILC and AALCO share a longstanding and mutually beneficial relationship.

2. Mr. Chairman, at the outset, I take this opportunity to convey AALCO's congratulations to the International Law Commission on the commemoration of its Sixtieth Anniversary this year. The AALCO recognizes the great contribution that the ILC has made, in furtherance of its mandate, to the progressive development and codification of international law during this period of sixty years.

3. The AALCO continues to attach great importance to its traditional and longstanding relationship with the Commission. Mr. Chairman, it is the statutory obligation for AALCO to examine those subjects that are under the consideration of the International Law Commission and thereafter to forward the views of the Member States to the Commission. Fulfillment of this mandate over the years has helped to forge closer relationship between the two Organizations. It has also become customary to represent each other during our respective annual sessions.

4. Generally, in pursuance of this tradition the Secretary-General of the AALCO presents the highlights of the views expressed by Delegations participating in the Annual Session of AALCO. However, very recently, at the last Annual Session held in New Delhi from the 30th June to 4th July 2008, Professor Dr. Rahmat Mohamad of Malaysia was appointed as its new Secretary-General. As he will only assume his responsibilities as the Secretary-General next month, he has requested me, as the current President of AALCO, to place before the Commission the highlights of AALCO's deliberations on ILC matters at its Forty-Seventh Annual Session

5. Mr. Chairman, please allow me to express my sincere appreciation and gratitude on behalf of the AALCO for the presence of Mr. Rohan Perera, the representative of the ILC at the Forty-Seventh Annual Session of our Organization who reported on the work of the

Commission at its Fifty-Ninth Session and the first part of the Sixtieth Session. In all, four members of the Commission, Mr. Rohan Perera, Amb. Xue Hanqin, Prof. Maurice Kamto and myself, participated at the AALCO Session. Mr. Chairman, the AALCO on its part appreciates the representation of the Commission at its annual sessions.

6. Mr. Chairman, since July 2007, AALCO had undertaken several activities in the field of international law. However, I would briefly dwell about the Forty-Seventh Annual Session of AALCO. The Forty-Seventh Annual Session of AALCO took place in New Delhi, India – the Headquarters of the Organization, from 30 June to 4 July 2008. I was elected as the President while Mr. Wanjuki Muchemi, Solicitor General of the Republic of Kenya, was elected as the Vice President. Along with deliberations on a number of organizational matters and substantive agenda items, a one day special meeting on "Contemporary Issues in International Humanitarian Law" jointly held by AALCO and ICRC also took place.

7. During the deliberations on the agenda item relating to the work of the International Law Commission, many delegations offered detailed comments on the work of the Commission. As mandated by Article 1 of the AALCO's Statutes, I take this opportunity to bring to the attention of the Commission the views expressed by AALCO Member States on the work of the Commission.

8. Thus, Mr. Chairman, I will now begin with the topic **"Shared Natural Resources".** There was general appreciation for the work of the Commission and its Special Rapporteur on the topic Amb. Chusei Yamada. While offering specific comments one Delegate made the following observations.

- The draft articles in many aspects resembled the 1997 Convention on Non-Navigational Uses of International Watercourses, but were much more restrictive in terms of environmental protection and international cooperation. Such articles would provide useful guidance for States in planning utilization and conservation of their groundwater resources.

- As regard to the final form of the draft articles, the Delegate was of the view that they did not consider it appropriate to adopt them in the form of a convention. Instead it recommended a declaration of non-binding nature with a view to facilitating aquifer States to make proper plans for their aquifer resources.

- The Delegate was also of the view that at this stage it was not proper for the Commission to take up oil and natural gas as its second area for legal drafting under the current topic, because that presented quite complicated legal issues and in State practice had been handled differently from groundwater.

9. Another Delegate was of the view that it did not deem it advisable that the Commission commences work on cross boundary oil and gas reservoirs. Oil and natural gas were of great strategic economic and developmental importance for the owner States, and their management and exploitation had been done through bilateral cooperation and

mutually agreed arrangements. The Delegate also emphasized that the Commission had no mandate to consider, under the present topic, the environmental aspects of fossil and hydrocarbon fuels. They hold that principles or a legal regime developed to govern the exploitation and management of a specific natural resource, e.g. the transboundary groundwater aquifers, could not be applied to other types of shared natural resources.

10. Another Delegate noted that the Commission would recommend that the General Assembly first approve the adopted texts as guidelines and then afterwards considers the feasibility of codifying the texts as a treaty sometime in the future. The Delegate welcomed the adoption of the texts and expressed his support for this two-stage approach.

11. A Delegate was of the view that there was a need to re-examine some of the drafts articles on transboundary groundwater to fill existing gaps in the 1997 Convention on Watercourses.

12. Another Delegate supported the recommendation of Special Rapporteur that it was prudent for the present work to be solely concentrated on the law of transboundary groundwaters, and that the Commission could take up the issue on oil and natural gas only after the work on transboundary groundwaters was finished.

- The Delegate concurred with Special Rapporteur that the consideration of the political, economic and environmental aspects of oil and natural gas on the one hand, and groundwaters on the other, revealed differences that required the two to be treated separately. The Delegate acknowledged the complexity of taking up oil and gas, and concurred with the point that such resources could have a transboundary component and parts thereof may fall under the jurisdiction of another State.

- The Delegate referred to Articles 77 and 81 of the United Nations Convention on the Law of the Sea (UNCLOS), and said based upon that the exploration and exploitation of the natural resources in the continental shelf of a coastal State was within the sovereign rights and exclusive jurisdiction of the coastal State concerned. He also highlighted that a coastal State shall have the exclusive right to authorize and regulate drilling on its continental shelf for all purposes as provided for in Article 81 of UNCLOS 1982. The relevant coastal State had also the duty to enter into provisional arrangements of a practical nature, which includes, *inter alia*, an agreement to explore and exploit natural resources in the continental shelf pending its final delimitation. Such provisional arrangements were the sole prerogative of the coastal State concerned and should not be subjected to international regulation. Pursuant to this, it was of the view that the Commission should take up the matter regarding oil and gas only after it had completed the second reading of the law of transboundary groundwaters, including deciding whether or not oil and gas should be considered at all.

- As regards the final form of the draft articles, the Delegate reiterated that this question should be approached with caution in light of the differing views

expressed by States. He suggested that the question of the final form be deferred until the second reading of the draft articles was accomplished. He also noted that the present draft articles did not include provisions of dispute settlement, final clauses and any article, which might prejudice the issue of final form.

13. On the topic of **"Effects of Armed Conflicts on Treaties"** one Delegate stated that their delegation agreed with the general framework of the draft as so far adopted by the Commission. The presumption embodied in draft article 3, namely, treaties do not automatically cease to operate in the event of an armed conflict, should be taken with care. Despite the fact that armed conflicts, international or internal, had changed in many aspects in contemporary international affairs, effects of armed conflicts on treaties may vary greatly from case to case, as relations between States concerned were no longer under normal conditions and their capacity to carry out the relevant international obligation was thus affected. In providing security and predictability of treaty relations, the delegation noted with appreciation the draft articles on suspension, termination and separability. Their delegation noted with pleasure that the issue of legality of use of force was also being dealt with.

14. Another Delegate noted that the observance of the sanctity of international treaties was a recognized principle in international law, and any act inconsistent with the purposes and principles of the Charter of the United Nations would not affect the continuity and integrity of them. His delegation reiterated its position that the ILC's mandate in considering the effects of armed conflicts on treaties was supplementing the existing international instruments related to this issue. As regards, the draft articles, their delegation offered the following comments:

First, with regard to draft article 1 on "Scope of application", the Delegate noted that they did not favor the inclusion of international organizations within the scope of the draft articles, since it related to other topics, particularly the topic of "Responsibility of International Organizations" which was currently under consideration in the Commission. Therefore, they supported the recommendation of the Working Group decision on the expansion of the scope of the topic, i.e. the consideration of treaties involving intergovernmental organizations should be postponed until a later stage.

Second, as for draft article 2 subparagraph (b), the Delegate did not agree with the recommendation of the Working Group to include internal armed conflicts in the scope of application of the draft articles. Their delegation was of the view that the topic should be exclusively restricted to international or interstate-armed conflicts. Differences between international armed conflicts and non-international armed conflicts, on the one hand, and non-feasibility of dealing with the two in the same manner, on the other hand, militate against broadening the scope of the term "armed conflict" to cover internal armed conflicts. The Delegate recognized that non-international armed conflicts might adversely affect the ability of the concerned State to fulfill its treaty obligations. However, that issue could be dealt with in accordance with draft articles on "Responsibility of states for internationally wrongful acts", in particular under Chapter V (circumstances precluding wrongfulness).

Third, the Delegate noted that there was general agreement that the outbreak of an armed conflict, as understood from the provisions of common Article 2 of the 1949 Geneva Conventions, could not affect the validity of treaties concluded between the parties to the conflict. The Delegate concurred with the members of the Commission that the doctrine of continuity and survival of treaties was central to the whole topic in question. Given the divergence over the term "*ipso facto"* and "necessarily", and in order to duly reflect this well established principle, the Delegate endorsed the suggestion that draft article 3 should be redrafted more affirmatively.

Fourth, the Delegate was of the view that in the absence of an express reference in the treaty to the consequences of the outbreak of an armed conflict between the parties, the nature, i.e. the object and purpose of, the treaty in question was indicative of the intention of the parties whether it should continue or not to operate in time of war. Given that, the inclusion of "the nature and extent of the armed conflict" as the factors for determining the intention of the parties to a treaty relating to its susceptibility to termination or suspension, in draft article 4, seems to be *a posteriori* self-contradictory; the intention of the parties to a treaty at the time of the conclusion of the treaty was determinable in accordance with provisions of Articles 31-33 of the 1969 Vienna Convention on the Law of Treaties, and, as such, the determination of such intention shall not be overshadowed by, and/or subject or subordinated to, subsequent circumstances, including an armed attack, which might occur at any time after the conclusion of the treaty. In other words, neither the armed conflict nor its extent or nature could logically be invoked as to explore the intention of the parties to the treaty in question. Therefore, they recommended that paragraph (b) of draft article 2 should be deleted.

Fifth, concerning draft article 6 *bis*, their delegation favored the proposal of the Working Group that the draft article should be deleted because the application of human rights law, environmental law or international humanitarian law depended on specific circumstances, which could not be subsumed under a general article.

Sixth, the Delegate agreed that draft article 7 was of key importance to the entire scheme of the draft articles. They could go along with the suggestion to re-examine the enumerated categories of treaties with a view to identifying agreed upon principles/criteria for determining the treaties that should be continued in operation during armed conflict. A combination of the two approaches, i.e., a set of general criteria stated in generic term followed by an un-exhaustive list of categories of treaties which should continue in operation during armed conflict, might prove to be the most viable option at the end of the day. The Delegate wished that the draft article 7 should include treaties or agreements delineating land and maritime boundaries, whatever format the draft article may ultimately take. Their delegation was of the opinion that the treaty that established a boundary belonged, by its nature, to the category of treaties creating permanent regime or status. Such treaties create objective *erga omnes* obligations to which the international community as a whole, indeed all States, and not only the States parties to the treaty, were bound. As such, even a fundamental change of circumstances, armed conflict being one of them, may not be invoked as a ground for terminating or withdrawing from these treaties, as

paragraph 2 (a) of Article 62 of the Vienna Convention on the Law of Treaties expressly prescribed. It was imperative to note the critical function of treaties establishing boundaries in maintenance of peace and security and prevention of armed conflicts in international relations. The recognition of the principle of *uti posseditis (juris)* in international law indicated the extreme importance States confer upon the continuity and stability of borders, even when they had been arbitrarily drawn by former colonial powers, in order not to endanger the fundamental mainstay of nation-state. Given that, it would not be convenient to keep treaties establishing boundary out of categories of the treaties unaffected by armed conflicts. The exclusion of treaties establishing boundary from the list of treaties, which should continue in operation during an armed conflict, may have consequential implications and send wrong messages.

Seventh, their Delegation supported the inclusion of treaties codifying rules of *jus cogens,* as well as those encompassing *erga omnes* obligations, in draft article 7 and felt that they should continue in operation during and after an armed conflict.

Eighth, their Delegation favored the inclusion of draft article 10. Clear distinction should be made between the situations of unlawful use of force by a State and that of self-defense and emphasized that the State resorting to unlawful use of force must not be allowed to benefit from consequences of its unlawful act.

15. Another Delegate in relation to draft article 1, said that in principle, it supported the recommendation of the Working Group that the consideration of treaties involving international intergovernmental organizations should be left in abeyance until a later stage. It noted that the international organizations themselves do not appear to see the need for the extension of these draft articles to them. This supported the contention that the draft Articles should be confined to treaties between States. It emphasized that the draft article should give due regard to the application of the draft articles to treaties that were being provisionally applied that could also be affected by an armed conflict.

16. On the topic of "**Reservations to Treaties"**, one Delegate observed that they recognized the importance of reservation to treaties in international law and inter-States contractual relations. He deemed it imperative that the Commission should proceed with its work without altering the flexible regime established in the 1969 and 1986 Vienna Conventions. He then offered following comments on draft guideline:

- The Delegate concurred with the ILC in draft guideline 2.6.3 that a State or an international organization member of a treaty has the freedom to formulate an objection to a reservation made by another Member State or international organization. He reiterated the position that an objection to a reservation should be formulated in conformity with the principles of international law, including the principle of sovereignty of States. An objection to a reservation was, like the reservation itself, a unilateral act, in nature, and as such, could not override the latter's legal effect.

- His Delegation, however, noted that only States or international organizations that were parties to the treaty were entitled to object to a reservation. Given that, his delegation held that draft guideline 2.6.5, paragraph (ii) should be revisited; non-

parties would be able to oppose a reservation, if and when they expressed their consent to be bound to the treaty in question. He said that reservation and objection thereto create bilateral legal relations between the reserving State and the objecting State in respect to their treaty obligations arising from the treaty. Accordingly, only parties to a treaty were entitled to formulate an objection to a reservation made to that treaty. He based his argument on the principle that there should be a balance between the rights and obligations of States. Non-parties were not entitled to make an objection to a reservation because they do not have full obligation to that treaty either.

- The Delegate further observed that reservations and objections thereto might vary from substantive issues to purely procedural aspects of the treaty. Therefore, it does not seem legally reasonable to give a signatory State, let alone a non-party, the right to make objection to reservations while its overall obligation vis-à-vis the parties to the treaty is limited to refraining from acts which would defeat the object and purpose of the treaty.

- Regarding the time period for formulating an objection, the Delegate agreed with the 12 months time limit recommended in draft guideline 2.6.13, which was in line with the relevant provision of the Vienna Conventions.

- Regarding draft guideline 2.6.14, the Delegate opposed the inclusion of "pre-emptive objection". He noted that it was not only a vague and imprecise notion but also contravenes the principle of free consent of States to decide to accede or not to the treaties and dissuaded potential or future parties from acceding to international treaties. Eventually, it would compromise the universality of treaties and hinder the development of international law. Moreover, the notion "pre-emptive objection" alters the Vienna Conventions regime substantially, and causes legal uncertainty. Giving prior notice to the potential or future reserving State(s) may well serve to send political signals, but it would have no legal effect whatsoever either on the treaty or on the obligations arising from it. An objection, by its nature, may be made subsequent to a prior reservation. The Delegate thus suggested that the draft guideline 2.6.14 should be deleted.

17. Another Delegate asserted that it was the right of any sovereign State to make a reservation to a treaty; however, the reservation made should be conducted in accordance with the objective of securing the integrity of the treaty. Therefore, the principle of reservation embodied in the 1969 Vienna Convention on the Law of Treaties shall always be the guidance in the deliberation of this topic.

18. Another Delegate appreciated the work done by the Special Rapporteur and endorsed his approach to be in conformity with the terms of the Vienna Convention on the Law of Treaties. The Delegate observed that the draft guidelines, detailed as they were, were useful for State practice, but their precision should be kept within a reasonable range. The Delegate looked forward to see more progress with the work.

19. Another Delegate noted that the discussion of the ILC had focused on objections to reservations and had examined whether an "objection" raised by a State before it becomes a State Party to the treaty in question should be separated from an "objection" and instead be called a "declaration". The Delegate appreciated the hard work of Special Rapporteur and hoped that it would be crystallized into a useful guideline soon.

20. Another Delegate noted that they were currently compiling reservation to treaties, which has been made by his State for the purposes of addressing the questions posed by the Special Rapporteur. He said that they would be providing its comments in due course after in-depth study and consideration had been made to the questions in relation to its practice.

21. On the topic of "**Responsibility of International Organizations",** one Delegate noted that the ILC had considered the sixth report, including draft articles 46-53, which mainly concerned the implementation of responsibility by international organizations. The Delegate noted that although in content they are not far from the terms under State responsibility, they pose a series of questions in practice. Lack of empirical basis constituted part of the challenges to the draft articles, and more importantly were the policy considerations regarding the conduct of international organizations and the relations between member States and non-member States and the internal rules of the relevant organizations. While waiting for the commentaries to these articles, the Delegate maintained strong reservation to the clauses on counter measures.

22. Another Delegate observed that although the Special Rapporteur had pointed out in his report, that the present analysis follows the general pattern adopted in the draft articles on "Responsibility of States" and had made much effort to premise certain commonalities in order to prove his main assumption regarding the obligation (or authorization) of States to cooperate for bringing to an end any breach of obligations *jus cogens,* it was necessary to distinguish, in general, between States' responsibility and that of the international organization.

- The Delegate noted that in situations where an international organization fails to honor its obligation to preclude breach of a preemptory norm of general international law (*jus cogens)*, it would be more convenient to obligate member States to take appropriate supportive measures for empowering the organization to discharge its responsibilities, rather than authorizing the member States to take initiative in an arbitrary manner, which contradicts the principles and purposes of international organizations as well as its raison d'etre.

- On the question of compensation by the responsible international organization for its wrongful act, the Delegate believed that financial scarcity cannot be invoked to absolve the organization of its responsibility under international law. In such situations the States parties should provide the organization with appropriate assistance to fulfill its obligations, in accordance with the internal rules of the organization. While in these cases the responsible organization, as a legal person, bears the responsibility to compensate for the injurious consequences of its act or

omission, those member States, which, due to their role in policy-making mechanism of the organization or their position in overall structure of the organization, have contributed to injurious act, should bear the brunt of responsibility. Likewise, Member States should not bear the financial consequences of an illegal or *ultra vires* measure of the organization or its constituent organs adopted under the influence of limited number of member States, which enjoy special discretionary power under the rules of the organization.

- The Delegate also believed that cases in which an international organization authorizes its Member States to take a certain measure should be differentiated from those where the organization requests them to take the very similar conduct; by authorizing a member State to take an action, the organization confer a *right* upon it to get engaged in a situation, e.g. to enforce a decision of that organization. In such cases, the member State had the *right*, not the *obligation*, to take action. The authorized State was exercising its *right* and, consequently, its conduct should be considered as of its own rather than that of the organization.

23. Another Delegate noted that lack of State practices on the two issues - the concept of the "exhaustion of local remedies," and countermeasures, had made the discussion difficult, but hoped that the ILC would make progress during the second half of the Sixtieth session.

24. As regards, the topic **"Expulsion of Aliens",** a delegate recognized that expulsion of aliens was a complicated issue, to a large extent involving both domestic laws and international practice. It took note of seven articles adopted by ILC so far and emphasized that in implementing its national laws on the control of its territory and nationals, a State should pay due respect to the rights and interests of aliens that were found in its territory, whatever legal status they may possess.

25. Another Delegate reiterated its position that while making decision to expel aliens was a sovereign right of a State, it should exercise that right in accordance with the established rules and principles of international law, in particular the fundamental principles of human rights. In other words, distinction was needed to be made between the right and the way that right might be exercised, and in this regard, it suggested that:

One, expulsion should be based on legitimate grounds, as defined in internal law, such as public order and national security, of the expelling State. The Delegate held that collective expulsion, being contrary to international human rights law and the principle of non-discrimination, should be avoided. Regarding the draft article 5 on non-expulsions of refugees, his delegation shared the view that the provisions contained in that draft article should be in conformity with the 1951 Convention on the Status of Refugees. The reference to undefined term "terrorism" in paragraph 1 of draft article 5 was redundant and should be deleted.

Two, his Delegation believed that expulsion by the State of its own nationals was absolutely prohibited. This should be duly reflected in draft article 4. With regard to the

definition of "aliens", his delegation favored the term "national", which was more precise than "ressortissant".

26. Another Delegation noted that as they were currently not a party to the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons, and therefore they were under no legal obligation to provide such protection and rights available under the two treaties. Their country however had been treating the undocumented migrants with full respect to their dignity and based its actions on humanitarian grounds.

27. On the topic of "**Obligation to extradite or prosecute",** one Delegate noted that the obligation to extradite or prosecute constituted an important part of the international criminal law machinery to put an end to impunity and to fight serious international crimes, such as crime against humanity, genocide and war crime as well as transnational organized crime, drug trafficking, corruption and terrorist crimes.

- The Delegate observed, on the one hand, that making decision whether to extradite an alleged offender or to prosecute him/her in national courts was a matter of sovereign right of the territorial State. On the other hand, his Delegation shared the view that the obligation to extradite or prosecute was a treaty obligation and the territorial State had the ultimate jurisdiction and authority to decide on the appropriate course of action to discharge this obligation. The State in whose territory an alleged offender was found had the obligation, in accordance with the relevant treaty, either to surrender the alleged offender to its own competent authorities for investigation and prosecution or to extradite him/her to a requesting State party which had jurisdiction, under the terms of the treaty, to prosecute that person.

- The Delegate felt that the Commission's report, including the study on States' practices in this regard, do not maintain the existence of an international customary rule obligating States to extradite or prosecute outside treaties. The question rises as to the existence of such obligation with regard to very limited categories of international crime. The Delegate hoped that the Commission could find the answer by analyzing the States' practices.

- The Delegate noted that as far as their legal system was concerned, the Extradition Act of 1960 provided that cooperation for extradition of alleged offenders and/or convicts should be conducted on the basis of bilateral extradition treaties or, when there was no such treaty, on the basis of reciprocity. A similar provision was inserted in almost all bilateral agreements on mutual legal assistance and extradition. The Delegate said that his country was a party to a number of anti-drug and crime instruments and counter-terrorism Conventions and Protocols which contained the obligation *aut detere aut judicare*.

28. Another Delegate pointed out that they were of the opinion that extradition was a treaty-based obligation for providing judicial cooperation. The obligation to extradite or

prosecute should not be construed in preferential terms. The implementation of this obligation rested with the discretion or good judgment of a concerned State. The Delegate observed that there was need for caution in the approach to the study of the topic and should not be mixed with universal jurisdiction.

29. Another Delegate commented on their law and practice concerning obligation to extradite or prosecute.

- The Delegate noted that at the domestic level, his State had incorporated the obligation to extradite or prosecute in its Extradition Act of 1992. The determination of whether to grant the extradition request or to refer it to the relevant authority for prosecution lied with the relevant Minister and in doing so, the Minister was to take into consideration the nationality of the fugitive offender and whether his State had jurisdiction to try the offence committed.

- The Delegate was also of the view that a fugitive criminal who was detained under its preventive detention laws were deemed to be prosecuted and his State had taken this stand before when it made its declaration on several counter terrorism conventions it acceded to.

- The Delegate observed that with regard to the practice in carrying out this obligation, his State had consistently maintained its commitment to provide the widest possible assistance in combating crimes and to suppress impunity. Apart from the requirements of the law (*vis-à-vis*, the nationality of the fugitive offender and the issue of whether its courts have the jurisdiction to try the offence), various considerations were taken into account, including international cooperation, the comity of nations, the seriousness of the crimes, the likelihood of obtaining the conviction and the interest of the States and the victims concerned.

- With regard to the crimes to which this obligation was applied under its law, Act 479 provides that it was only applicable to "extraditable offences" which was punishable with imprisonment for not less than one year or with death. As long as the crimes fulfill this threshold, it would regard as an extraditable offence.

- Regarding feedback on States legislations and practices, which relate to the principle of universal jurisdiction, the Delegate stressed that it did not apply the principle of universal jurisdiction in its domestic laws or in its practices. On the issue of whether this obligation existed for international crimes, which had universal jurisdiction, the Delegate said that the findings of the ILC were not conclusive and that further study on State practices was required.

- The Delegate was also of the view that at present, the obligation to extradite or prosecute arose from treaties and not a general obligation under customary international law and that such obligation does not exist for crimes, which has universal jurisdiction.

30. On the topic of "**Most-Favoured Nation Clause**", one Delegate commended the ILC for the establishment of an open-ended Working Group on the Most-Favoured Nation (MFN) clause to examine the possibility of including the topic MFN clause in its long term programme of work. The Delegate expressed their support for the establishment of such Working Group as it could play a useful role in providing clarification on the meaning and effect of the MFN clause in the field of investment agreements. The Delegate believed that the existence of a comprehensive model guideline and commentaries on MFN clause would serve as a ready reference and be a useful guide. The task of accommodating the needs of all countries in regards to MFN clause, taking into account the different systems of law being applied by countries and the diversity of practice was indeed a challenge. However, the Delegate was hopeful that the issues, which would be addressed by the Working Group, would serve as a way forward in this matter.

31. Mr. Chairman, briefly these were the views expressed by the Member States of our Organization at its Forty-Seventh Session.

32. The Forty-Seventh Session of AALCO in a resolution adopted on this subject, appreciated the fruitful exchange of views on the items deliberated during the joint AALCO-ILC meeting in conjunction with AALCO Legal Advisers' Meeting, held in New York, on 5 November 2007. The Member States of AALCO have requested to continue convening such meetings in future. In continuation of this practice I look forward to your views and suggestions regarding the topics that may be taken up for discussion in the forthcoming AALCO-ILC joint meeting for which I will have the privilege to chair.

33. Mr. Chairman, while expressing their congratulations on the Commission's sixtieth anniversary, proposals were made for AALCO to organize a seminar on the work of the ILC, which we propose to do later this year, and hope that some members of the ILC will be able to participate.

34. Mr. Chairman, the Secretariat of the AALCO will continue to prepare notes and comments on the substantive items considered by the Commission so as to assist the representatives of the Member States of the AALCO to the Sixth Committee in their deliberations on the report of the Commission at its Sixtieth Session. Further the item entitled "Report on Matters Relating to the Work of International Law Commission at its Sixtieth Session" would thereafter be considered at the Forty-Eighth Session of the AALCO.

35. Mr. Chairman, allow me to take this opportunity to extend to you and to your distinguished colleagues, on behalf of the AALCO an invitation to participate at the Forty-Eighth Session of the AALCO. The Secretary-General of AALCO shall in due course communicate to you the date and exact venue of the Session. Finally, Mr. Chairman, let me express my sincere gratitude to you and to the Commission for allowing me to address on behalf of AALCO this august body.

Thank you, Mr. Chairman.