

**VERBATIM RECORD OF THE THIRD
GENERAL MEETING
HELD ON TUESDAY, 3RD JULY 2007,
AT 3:50 PM**

Her Excellency Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session in the Chair.

**A. Report on the work of the
International Law Commission at its
Fifty-Eighth Session**

President: We now commence with our substantive work. The first topic under our consideration is the "Report on the work of the International Law Commission at its Fifty-eighth Session". I invite Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General of AALCO to lead our deliberations on this topic.

Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General of AALCO: Madam President, Hon'ble Ministers, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

At the outset, it is my pleasure to congratulate those who have been elected to the International Law Commission (ILC) from our Member States. It is a matter of proud to all of us that 12 out of 34 Members in the ILC are from AALCO Member States. These Members are: our outgoing President Mr. Narinder Singh from India; President of the Forty-fourth Session of AALCO, Mr. Amos S. Wako from Kenya; Messers Ali Mohsen Fetais Al-Marri from Qatar; Christopher John Robert Dugard from South Africa; Hussein A. Hassouna from Arab Republic of Egypt; Mahmoud D. Hmoud from Jordan; Maurice Kamto from Cameroon; Bayo Ojo from Nigeria; A. Rohan Perera from Sri Lanka; Nugroho Wisnumurti from Indonesia; Ms. Xue Hanqin from People's Republic of China, and Amb. Chusei Yamada from Japan.

I also welcome Mr. Narinder Singh the representative of International Law

Commission. AALCO and the ILC have a long-standing tradition of being represented at each other's annual sessions.

Madam President, I have the honour to introduce the Secretariat's 'Report on Matters Relating to the Work of the International Law Commission at its Fifty-Eighth Session' contained in the Document AALCO/46th/CAPE TOWN SESSION/2007/S 1. The document also contains summary of views expressed by the AALCO Member States on the topic in the Sixth Committee of the UN General Assembly at its sixty-first session (2006).

There were nine topics on the agenda of the fifty-eighth session of the Commission. With a view to providing Member States with adequate time for focused deliberations on the work of the International Law Commission, the AALCO Secretariat presents its report with certain modifications to the previous format. One section provides a brief summary of some of the topics on the agenda of the ILC. These are: Reservations to Treaties, Diplomatic Protection, Unilateral Acts of States, International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law, Responsibility of International Organizations and Fragmentation of International Law. Another section contains a relatively elaborate overview of the work of the Commission on three topics. These are: Shared Natural Resources, Effects of Armed Conflicts on Treaties and the Obligation to Extradite or Adjudicate (*aut dedere aut judicare*).

This division is made keeping in view the progress of the work of the Commission on these items. Therefore, Member States are requested to focus on these three topics during their deliberations at the forty-sixth session of AALCO. Nevertheless the Secretariat will welcome any comment on other topics, which could enrich the work of the ILC in its coming session.

I now briefly present the work of the Commission at its fifty-eighth session.

On the topic of 'Reservations to Treaties', the Commission considered the second part of the Special Rapporteur's tenth report and referred to the Drafting Committee 16 draft guidelines dealing with the definition of the object and purpose of the treaty and the determination of the validity of reservations. The Commission also adopted 5 draft guidelines dealing with the validity of reservations, together with commentaries. In addition, the Commission reconsidered 2 draft guidelines dealing with the scope of definitions and the procedure in case of manifestly invalid reservations which were previously adopted, in light of new terminology.

On the topic of 'Diplomatic Protection', the Commission considered the seventh report of the Special Rapporteur and subsequently completed the second reading of the topic. The Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on Diplomatic Protection.

On the topic of 'Unilateral Acts of States', the Commission considered the ninth report of the Special Rapporteur and adopted a set of 10 guiding principles, together with commentaries, relating to unilateral declarations of States capable of creating legal obligations and recommended the guiding principles to the attention of the General Assembly.

On the topic of 'International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law', the Commission considered the third report of the Special Rapporteur and subsequently completed the second reading of the topic. Further, the Commission decided to recommend that the General Assembly endorse the draft principles by a resolution and urge States to take national and international action to implement them.

On the topic of 'Responsibility of International Organizations', the Commission considered the fourth report of

the Special Rapporteur and adopted 14 draft articles, together with commentaries, dealing with circumstances precluding wrongfulness and with the responsibility of a State in connection with the act of an international organization.

On the topic of 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law', the Commission considered the report of the Study Group and took note of its forty-two conclusions, which it recommended to the attention of the General Assembly.

On the topic of 'Shared Natural Resources', the Commission referred 19 revised draft articles to the Drafting Committee and subsequently adopted on first reading a set of draft articles on the law of transboundary aquifers, together with commentaries. The Commission also requested written submission of comments from governments on draft articles on the topic. Therefore, I request Member States to submit their comments to facilitate the work of the Commission.

On the topic of 'Effects of Armed Conflicts on Treaties', the Commission considered the second report of the Special Rapporteur. On the topic of the 'Obligation to Extradite or Prosecute (*aut dedere aut judicare*)', the Commission considered the preliminary report of the Special Rapporteur.

Madam President, before concluding I wish also to draw the attention of delegates to the information requested by the Commission on other agenda items. The information provided by States would be of significant help to the Commission in formulating its work. The feedback and information on state practice of AALCO Member States could be of immense help in enabling the Commission to take into consideration the views of different legal systems. Therefore, the Secretariat requests that delegates submit specific comments and observations on the agenda items to facilitate the work of the

Commission. Once again, I thank you all for your kind attention to my statement.

President: I now invite the representative of the International Law Commission to make a statement on the work of the International Law Commission at its fifty-eighth Session.

Mr. Narinder Singh, Member of International Law Commission: Dear colleagues, Distinguished Ladies and Gentlemen, it is a great honour and a pleasure for me, much more so as a first time member of the International Law Commission, to address this distinguished gathering on behalf of the Commission. On behalf of the Chairman of the Commission and its entire membership, I wish to convey to you all the best wishes for a successful session. As evidenced by the provisions of its Statute and as often acknowledged in its annual reports, the Commission attaches great importance to its cooperation with other bodies concerned with international law, including its progressive development and codification. Like in previous years, in its Resolution 61/34 of December 2006, the General Assembly has encouraged the Commission to further strengthen this form of cooperation. The relationship between the Commission and AALCO spans many years. Not only do the two bodies attend each other's annual meetings but also, over the years, eminent personalities from AALCO Member States have served the Commission in various capacities with distinction.

In my statement today, I wish to focus on the activities of the Commission since last year. It is needless to recall that this year's session of the Commission is the first of the new quinquennium. This follows the election of its members by the General Assembly of the United Nations last year. 16, of its 34 members, almost half, are new. The first part of this year's session has already been completed; we met from 7 May to 5 June and we will later this July be convening for the second segment until the second week of August. The beginning of work of the new Commission comes in the

wake of a successful completion of five years of fruitful work in the progressive development and codification of international law.

The year 2006 saw the fruitful completion of 4 projects. First, the Commission concluded the second reading of the draft articles on Diplomatic Protection and it recommended to the General Assembly the elaboration of a convention. This matter will be addressed by the General Assembly at its forthcoming Sixty-second session after it, last year, invited Governments for comments and observations on the draft articles and on the final form.

Secondly, the Commission completed the second reading of the draft principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities. The adoption of the draft Principles completes the liability aspects, thus concluding the work on the topic "International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law". The Commission recommended that the Assembly endorse the draft principles by a resolution and urge States to take national and international action to implement them. It will be recalled that in 2001 the Commission already completed the prevention aspects of the topic by adopting draft articles on Prevention of Transboundary Harm from Hazardous Activities and the elaboration of the Convention was recommended. The Assembly took note of these draft articles without taking further action. Pursuant to its resolution 61/36, the Assembly will address both aspects of the topic at its session this year.

Thirdly, the Commission adopted Guiding Principles applicable to Unilateral Declarations of States capable of creating legal obligations, thus completing its work on "Unilateral Acts of States".

Fourthly, the Commission completed its work on “Fragmentation of International Law: Difficulties Arising from Diversification and Expansion of International Law”, contained by taking note of the report of the Study Group and its 42 conclusions. It may be noted that in adopting the Guiding Principles and taking note of the conclusions the Commission showed its versatility regarding the various forms that its work product takes, while the consideration of Fragmentation of International Law evidences the penumbra of topics that the Commission would probably have to take up as it tries to address the challenges of International Law in the Twenty-First Century.

In addition to completing these four topics, the Commission continued work on the various topics on its agenda and in particular adopted on first reading draft articles on the law of transboundary aquifers consisting of 19 draft articles, together with commentaries thereto, and decided, in accordance with articles 16 and 21 of its statute, to transmit the draft articles, through the Secretary-General, to Governments for comments and observations. Such comments and observations are to be submitted to the Secretary-General by 1 January 2008. It also decided to include five new topics on its long term programme, namely (a) Immunity of State Officials from Foreign Criminal Jurisdiction; (b) Jurisdictional Immunity of International Organizations; (c) Protection of Persons in the Event of Disasters; (d) Protection of Personal Data in the Transborder and Flow of Information; and (e) Extraterritorial Jurisdiction. It is anticipated that the Commission would include some of these topics in its current programme of work. Already, the Commission has decided to include the Protection of Persons in the Event of Disasters and has appointed Mr. Eduardo Valencia-Ospina Special Rapporteur for the topic.

Let me now turn to the substantive part of the current programme of work of the

Commission, which consists of 6 topics. The oldest on the agenda is “Reservations to Treaties”. Thus far the Commission has considered 11 reports by the Special Rapporteur, Mr. Alain Pellet, and has adopted more than 75 guidelines regarding reservations. In the first part of this year’s session, the Commission examined part of the 10th report, as well as the 11th report. The 12th report will be considered in the second part of the session. We also devoted time in the Drafting Committee considering draft guidelines dealing with the definition of the object and purpose of the treaty and addressing various kinds of reservations which would assist in elucidating the notion of incompatibility with the object and purpose of the treaty. Thus far 9 guidelines have been adopted.

The topic “Shared Natural Resources” was included in the agenda of the Commission in 2002. Mr. Chusei Yamada was appointed as Special Rapporteur and he indicated his intention to deal with confined transboundary groundwaters, as well as oil and gas in the context of the topic, following a step-by-step approach beginning with groundwaters. As already noted, the Commission adopted, on first reading, a text on transboundary aquifers last year, which is now before Government for comments and observations. At the present session, the Commission had before it the fourth report of the Special Rapporteur. The report essentially addresses the question of the relationship between the work on transboundary aquifers and any future work on oil and gas, and the Special Rapporteur proposes that the Commission should proceed with the second reading of the draft articles on the law of transboundary aquifers in 2008 and to delink the topic from any future work on oil and gas. This recommendation has been largely well received by the Commission, which is now working, through a Working Group, chaired by Mr. Enrique Candioti, on a possible questionnaire on oil and gas for circulation to Governments.

The topic "Expulsion of Aliens" has been on the agenda of the Commission since 2004. The Special Rapporteur, Mr. Maurice Kamto, has so far submitted three reports. In his preliminary report, he proposed a general approach to the topic and a preliminary work plan, which were positively received by the Commission and by the Sixth Committee. According to the comprehensive approach chosen, the Special Rapporteur intends to examine the rules applicable to the expulsion of aliens in general as well as the rules governing the expulsion of specific categories of aliens such as refugees, stateless persons and migrant workers. The second report, which was considered by the Commission during the first part, proposes draft articles on scope and on use of terms, which have since been referred to the Drafting Committee. The third report, in which the Special Rapporteur begins the examination of the general rules governing the expulsion of aliens, will be considered later in the second segment.

The topic "Effects of Armed Conflicts on Treaties" has been on the Commission's current programme since 2004. The Commission, this year, had before it the third report of the Special Rapporteur, Mr. Ian Brownlie. The report focused on a set of draft articles which the Special Rapporteur has proposed for the Commission's consideration. Following the consideration of the report, the Commission decided to establish a working group under the chairmanship of Mr. Lucius Caflisch to consider certain questions that have arisen during the debate. It is anticipated that the working group will meet during the second part of the session.

Following the completion, on second reading, of a set of draft articles on "Responsibility of States for Internationally Wrongful Acts" in 2001, the Commission in 2002, decided to include the topic "Responsibility of International Organizations" in its programme of work. The Special Rapporteur, Mr. Giorgio Gaja, has since then presented five reports, in

which he follows the general pattern of the articles on State Responsibility. It is thus no surprise that the bulk of the 30 draft articles so far provisionally adopted by the Commission correspond to a large extent to those constituting Part One of the articles on State Responsibility. There was no compelling reason to consider that solutions applying to States would not generally apply to international organizations in matters concerning general principles of responsibility, attribution of conduct, breach of an international obligation or circumstances precluding wrongfulness. At the same time, last year, the Commission adopted specific provisions, which find no equivalence in its articles on State responsibility. These concern, in particular, draft articles 25 to 30, which are devoted to the responsibility of a State in connection with the act of an international organization. In the fifth report, which will be considered in the second segment of the current session, the Special Rapporteur has addressed issues relating to the content of the international responsibility of an international organization. The 14 draft articles introduced in the report closely follow the equivalent provisions in Part Two of the text on State responsibility. They deal with some general principles, reparation for injury and serious breaches of obligations under peremptory norms of general international law.

The last, but by no means least, topic on the current programme is the "Obligation to Extradite or Prosecute" (*aut dedere aut judicare*), which was included in 2005. Last year, the Special Rapporteur Mr. Zdzislaw Galicki submitted a report containing a preliminary set of observations concerning the substance of the topic, marking the most important points for further consideration and including a preliminary plan of action for the Commission's future work. Following the debate, the Commission requested information from Governments on practice, including international treaties containing the obligation to extradite or prosecute and reservations made to those

treaties, on domestic legal regulations and national judicial practice in the field, and on the crimes or offences to which the principle of the obligation *aut dedere aut judicare* is applied in the legislation or practice of States. The Special Rapporteur has since submitted his second report, which will be considered by the Commission in the second part of the session.

Let me conclude by focusing a few remarks on the reliance of the Commission on the cooperation that it receives from member States at various stages of the consideration of topics on its programme of work. Such cooperation takes different forms. It may be at the beginning of the consideration of the particular topics. This may take the form of responding to requests for information on State practice or legislation or indeed responding to a questionnaire. Or, it may be by way of commenting on the progress made by the Commission on given topics in the debates of the Sixth Committee or fora such as these. Indeed it may crucially be in the form of written comments submitted upon the completion of the first or second reading texts. At all these stages the Commission values the responses and comments of all States. Unfortunately, quite often the responses and comments received are few and unevenly spread in terms of comments received, in particular from the developing world. AALCO can play an important role in considering ways in which it would encourage its members to participate more actively in this important endeavour. The progressive development of international law, and its codification, is a long and arduous process that requires a continuous and concerted engagement. AALCO can play an important role in harnessing the contribution of its membership in that regard. Once again, on behalf of the Commission I wish this current session of AALCO a successful and fruitful conclusion. Thank you.

President: Thank you. Iran you have the floor.

The Delegate of the Islamic Republic of Iran: Madam President, at the outset, I wish to appreciate the distinguished Representative of the International Law Commission for his diligent report. I would also like to commend all the distinguished Rapporteurs and members of the Commission for their hard work and their outstanding contributions to the work of the Commission.

Madam President, although my delegation is interested to all the topics studied by the ILC, in my statement I will make a few comments on the work of ILC during its 58th session held in 2006, regarding the Diplomatic Protection, Responsibility of International Organizations and Effects of Armed Conflicts on Treaties.

Madam President, in view of the Draft Articles on Diplomatic Protection, I would confine my intervention to some of the key issues:

The draft Articles on Diplomatic Protection are concerned only with the rules governing the circumstances in which diplomatic protection may be exercised and the conditions that must be met before it could be exercised. They do not seek to determine the ways a person may acquire the nationality of a State. It has not been the International Law Commission's mandate to enumerate the factors establishing nationality, after all.

In the draft Article 4, the Commission has eloquently stated the right of States to determine who their nationals are. We believe that States, in exercising this right, should avoid adopting laws, which increases the risk of dual nationality, multiple nationality or statelessness.

Regarding the draft Article 7, we believe that determination of which nationality is predominant is a subjective question. There are no objective criteria or as confirmed by the Commission in Paragraph 5 of the commentary to the Article, there are no

decisive factors, to be taken into account in deciding which nationality is predominant.

This Article is not based on the customary international law. It is, rather, a premature step for progressive development of International law. In our opinion, the customary international law recognizes the rule of non-opposability of the diplomatic protection against a State in respect of its own nationals.

The report of International Law Commission has invoked the awards of the Iran-United States Claims Tribunal as recent sources for demonstration of the evolution of the rules of international law in the field of diplomatic protection. As we have reiterated before, we do not share this opinion. The awards of the majority of that arbitration body in dual nationality matter concerned principally the law of treaties and the interpretation of the Algerian Declaration signed by two Governments in 1981 rather than diplomatic protection. Moreover, most disputes before this tribunal including all of those brought by claimants having dual national involve a private party on one side and a Government or a Government-controlled entity on the other, and many involved primarily issues of municipal law and general principles of law.

Consequently, the inclusion of such a controversial Article in the final text yields in depriving more interested States from approving the outcome instrument on this topic.

Madam President, extending diplomatic protection to corporations mentioned in chapter III in most cases is unnecessary as the circumstances in which the corporations perform their activities and the procedures for settlement of disputes is largely regulated by the bilateral and multilateral treaties signed between States.

About the undue delay referred to in Article 15 Subparagraph (b), we believe that sluggish proceeding may not *ipso facto* be

considered as a reason for the exception of the exhaustion of local remedies. In some countries, due to various unavoidable grounds, judicial proceedings are more time-consuming in comparison to other countries. The Judicial authorities of a State cannot and should not treat their own citizens and foreign nationals differently while rendering justice, as equity before the law and non-discrimination principles are generally accepted.

Madam President, with appreciation to Mr. Giorgio Gaja, the Special Rapporteur on Responsibility of international organizations for his fourth report (A/CN.4/564 and add.1 and 2) which was considered by the International Law Commission in its 58th Session. My delegation would like to offer some comments on draft articles of chapter V (Articles 17-24) on circumstances precluding wrongfulness, and address one of the key questions raised by the Commission under this topic.

Although Special Rapporteur has pointed out in paragraph 5 of the report that the present analysis followed the general pattern adopted in the articles on responsibility of states under the heading "circumstances precluding wrongfulness", my Delegation believes that, in spite of some similarities, the position and functions of the international organizations and the states should be differentiated in general. Accordingly, circumstances precluding wrongfulness of the acts of the State and that of the international organizations should be distinguished from each other.

On draft article 17, I would like to raise a question on the elements constituting "valid consent"; validity of the consent of a State or an international organization should be based on their will and without any pressure and/or violation of its sovereignty and independence. It goes without saying that every consent should be principally taken as valid. Also it is significant to determine the limits of consent in objective manner.

Considerable inconsistencies exist in section on self-defense which should be corrected; for example, draft Article 18 does not completely reflect the content of paragraphs 15-17 of the report. My delegation is of the view that a clear distinction must be made between 'self-defense' and "lawful use of force" in reasonable implementation of the purposes of a given mission. Furthermore, draft article 18 appears to be limited to self-defense as used in Article 51 of the United Nations Charter. In fact the latter Article is exclusively related to the States and it doesn't concern international organizations in any way. To put it another way, the draft article on self-defense seems to contain elements of progressive development of International law, since no one has ever mentioned or suggested that customary law refers in any way to the activities of international organizations. Given that, the reference, even indirectly, to Article 51 would not be necessary.

As regards the necessity, draft article 22 articulates an overall approach that necessity may not be invoked by international organizations for precluding the wrongfulness. However, in our view, there are ambiguities in some terms such as "essential interest" or "international community". In other words, the Special Rapporteur's elaboration in paragraphs 35-42 cannot give any objective definition to or decisive factor for determination of above said concepts.

We agree with the Commission in draft article 23 on compliance with preemptory norms of international law. Having considered preemptory norms as obligatory norms, international organizations should comply with them.

Madam President, about the first question on paragraph 28 of the ILC report, we are of the view that, when an organization is not in a position to provide compensation to the injured party for its internationally wrongful act, the States parties to the concerned organization, to the extent affecting the

decision resulting the wrongful act, should try to offer the due compensation, taking into account the respective rules and regulations of the organization. Of course, our response has a preliminary nature.

Madam President, as regards the topic "Effects of Armed Conflicts on Treaties", I would like to commend Special Rapporteur, Mr. Ian Brownlie, for second report (contained in document A/CN.4/570). In view of the report and seven draft Articles presented by the special Rapporteur, my delegation wishes to make a few comments:

First of all, it should be noted that there are several conventions and legal instruments which are related to the present topic such as, the 1969 Vienna Convention on the Law of Treaties, the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, and draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission at its fifty-third session (2001). Given that, the International Law Commission's mandate in this regard, is to supplement the existing international instruments.

We approve the point made by special Rapporteur in Paragraph 4 of his second report, generally supported by the states, that the topic is not part of law relating to the use of force. We believe, rather, that the topic is in the realm of several domains of international law, including law of treaties, international humanitarian law, state responsibility and self-defense.

Non-international armed conflicts may adversely affect the ability of the concerned States to fulfill their treaty obligations. However, due to the purposes of the present topic, the inclusion of internal conflicts in draft Article 2 Subparagraph (b) would broaden the scope of the term "armed conflict". It is noteworthy that draft Articles on Responsibility of States for Internationally Wrongful Acts has provided

provisions in this regard in Chapter V relating to circumstances precluding wrongfulness.

The issue of military occupation and its effects of the treaties is a subject that we appreciate the Special Rapporteur to pay attention to in his drafting. However, it is not something to be covered in the definition of term "armed conflict".

We confirm the inclusion of intention referred to in draft Article 4. The intention of the State parties to a specific treaty at the time of its conclusion is a fundamentally important factor in determining the validity of a treaty in case of an armed conflict. The intention of parties at the time the treaty was concluded might be understood through the text of the treaty including its preamble and annexes, and also from *travaux préparatoires* of the treaty and circumstances of its conclusion.

The indicia of susceptibility to termination or suspension of treaties in case of armed conflict in draft Article 4, does not make any distinction between the State resorting to unlawful use of force contrary to the Charter of United Nations and the State which exercises the inherent right of self-defense. To put the State using force unlawfully and the State defending itself on an equal footing would be tantamount to recognizing an unlawful act. As the Institute of International Law has rightly put in Article 7 of the resolution adopted on 28 August 1985 about "The Effects of Armed Conflicts on Treaties", the States should be entitled to suspend, in whole or in part, the operation of a treaty that is incompatible with their inherent right of self-defense. Such a distinction shall be taken into account in the whole draft articles.

It is our firm belief that the integrity and continuity of international treaties are the two basic principles of law of treaties that should be taken into account in dealing with the present topic. That's why we insist that the draft Article 6 should be sustained. We

took note of the Special Rapporteur's proposal to delete the draft Article 6 from the proposed set of draft Articles. However, we believe that the Article can either be saved intact or incorporated into draft Article 4 in redrafting.

With regard to draft Article 7, the enumerated categories of treaties might be reexamined with a view to extracting common criteria for determining the treaties that should be continued in operation during an armed conflict. One such criteria is *erga omnes* obligations; treaties that encompass *erga omnes* obligations of States shall be sustained during and after armed conflict and cannot be suspended or terminated in such a case. Therefore, we propose this to be inserted in the draft Article 7. Thank you Madam President.

President: I now give the floor the Republic of Korea.

The Delegate of the Republic of Korea: Madam President, I would like to make a few observations on the responsibilities of international organizations.

First of all, I would like to express my delegation's strong support for the activities of the International Law Commission (ILC) on the Responsibilities of International Organizations. Successful completion of this work will be comparable to the ILC's accomplishments in the Vienna Conventions on the Law of Treaties, which established a single system of inter-State treaties, as well as treaties allowing for the participation of international organizations. In particular, the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 created a uniform regulation of treaties and became exemplars of the progressive development and codification of international law. I am of the opinion that the final draft articles on state responsibility in 2001 should be viewed in this greater context. Rules on the

responsibility of international organization are essential to establishing a comprehensive framework for the law of international responsibility. Their adoption would mark a continuation of the ILC's successes in establishing a system of law for treaties.

Second, the responsibilities of international organizations and State responsibility are the two pillars of international responsibility for internationally wrongful acts. I believe that the responsibilities of States and international organizations vis-à-vis internationally wrongful acts should be determined within a basically uniform system, analogous to the relationship between inter-State treaties and treaties between States and international organizations or between international organizations. Hence, we must adhere to the basic framework of common headings and provisions, paralleled by revisions to and additions of provisions reflecting the distinctive qualities of each international organization. The four reports on the responsibilities of international organizations preserve this primary structure, but we cannot rule out the possibility that this uniformity may eventually be undermined. I would urge the ILC to be aware of this possibility and do its best to avoid it.

Last but not least, given the uniqueness of international organizations, which possess independent legal personalities, the elaboration of international responsibilities is by no means a simple task. The difficulty is all the greater if a State happens to be associated with a particular act by an international organization. This topic is dealt with in Articles 25 to 30, under the heading "State Responsibility of a State in Connection with the Act of International Organizations". If an act is attributed to an international organization and a State is associated with that act, their needs to be a fundamental review of whether to approach the act as part of the

responsibilities of international organizations or of States. Thank you.

President: Thank you very much. I now give the floor to the representative of Japan.

The Delegate of Japan: Madam President, I would like to speak on three topics of the current agenda of the UN International Law Commission, i.e., Shared Natural Resources, Effects of Armed Conflicts on Treaties and the Obligation to Extradite or Prosecute.

As regards the topic of "Shared Natural Resources" my government welcomes the timely completion of the first reading of the set of 19 draft articles on the law on transboundary aquifers by the International Law Commission last year and can generally supports the principles embodied in these draft articles. While awaiting the written submission of comments and observation on the draft articles and their final form from governments by January 1, 2008, the Commission considered during the first part of its session this year the 4th report of the Special Rapporteur in document A/CN.4/580 which was devoted only to the aspect of relationship between the work on transboundary aquifers and the possible future work on oil and natural gas that are generally perceived to be included in the topic of shared natural resources. The report deals with similarity and dissimilarity between aquifer on one hand and oil and natural gas on the other not only from the point of scientific and technical features but also those of political, economic and environmental aspects. It summarizes that though there exists close similarity between the physical feature of non-recharging aquifer and that of reservoir rock of oil and natural gas, the similarity between groundwater on one hand and oil and natural gas on the other ends there and they are different in all other aspects.

Further, my government is pleased to learn that the Commission has endorsed the recommendations of the Special Rapporteur and will proceed with the second-reading of

the draft articles on the law of transboundary aquifers next year and would endeavor to complete the second-reading as expeditiously as possible independently from the possible future work on oil and natural gas.

I would like to highlight a particularly important characteristic of groundwater. Fresh water is the life-supporting resource vital for the human-being for which no alternative resource exists. Water is also a vital resource for hygienic living of the human being. In addition, water is the essential ingredient of natural eco systems and of organic life of the planet earth. We may be headed for the possible global water crisis. Hundreds of million people, in particular in the developing world might suffer from the shortage of clean and sanitary fresh water. It is our urgent task to formulate an international legal framework for international cooperation of reasonable and equitable management of water resources and avoid international disputes on water. From these points of view, the Commission's work on the law of transboundary aquifers is indeed important.

All the members here have big stakes in the projects. In order to have their views reflected in the Commission's second reading, the member governments of the AALCO are required to submit their comments by January 1, 2008 to the Secretary-General of the UN. I have a message from the Special Rapporteur, Mr. Chusei Yamada. He hopes that, in formulating your comments, you would kindly refer to the draft articles and the commentaries thereto in pp. 192 to 245 in Chapter VI of the Report of the International Law Commission of 2006 in document A/61/10. He will be always available to you to answer any question or clarification. I shall be happy to act as intermediary between you and the Special Rapporteur.

The second topic on which I would like to offer my comments is "Effects of Armed Conflicts on Treaties". This topic has been

on the agenda of the Commission since 2004. Three reports were submitted by the Special Rapporteur. The contents and the draft articles proposed in the reports remain almost unchanged. My government regrets that the Commission was not able so far to conduct in-depth study of the topic. The question of the effects of armed conflicts on treaties is an unsettled and unclear area of international law. The Vienna Convention on the Law of Treaties made it clear by its Article 73 that it shall not prejudge the question. Accordingly, expeditious formulation of draft articles that will provide practical guidelines to make a decision whether a particular treaty continues to operate as a whole or in part in time of an armed conflict is called for.

My government recognizes that the question of effects of armed conflicts on treaties is an extremely difficult one. The doctrines and State practices before the 2nd World War are no longer much relevant. States have abandoned the traditional warfare and shifted towards armed conflicts under the cover of police action, self-defence or humanitarian intervention. On the other hand, there are emerging and expanding legal regimes, such as human rights and environment that are required to be operative also in armed conflicts. We expect the Commission to engage in practical analysis of the treaties of various categories in the newly established Working Group.

The third topic on which I would like to comment pertains to "The Obligation to Extradite or Prosecute (*aut dedere aut judicare*)". The Commission had so far only a preliminary report of the Special Rapporteur last year and it would be premature to offer substantive comments before the Commission embarks on formulating draft articles. However, my government feels that we must take a cautious approach, recognizing the treaty basis in force of the obligation to extradite or prosecute. While it is important to establish international network not to allow safe haven to offenders of serious

international crime, we must bear in mind the cardinal principles well established in criminal justice. These principles are relevant, for instance, to constraints on extradition based on sovereign criminal jurisdiction of the requested State and the human right of the accused, to avoidance of miscarriage of trial and to the independence of prosecution which would require more guarded formulation, namely to “submit the case to the competent authorities for the purpose of prosecution” as opposed to an outright “obligation to prosecute”. Thank you for your attention.

President: Thank you. I now give the floor to Kenya.

The Delegate of the Republic of Kenya: Madam President, Ministers of Justice, Attornies –General, Heads of Delegations, Distinguished Delegates, Madam President, on behalf of the Kenyan Delegation, I have a brief statement which I want to make on this topic. Let me once again extend Kenya’s appreciation to all AALCO Member States for supporting the candidates from Member States during the recent election of Members to the International Law Commission (ILC). As you are aware, Kenya requested support from AALCO Member Countries during the Forty-Fifth Session in New Delhi during the election to membership of ILC. It was because of support from AALCO Member States that our Honourable Attorney-General Amos Wako was elected as one of the Member of the International Law Commission. We are very grateful for this support.

We applaud this support and unity of purpose from AALCO Member States also made it possible for the election of other candidates from amongst its members.

Madam President, the continuing importance of the codification and progressive development of international law is recognized under Article 13 of the Charter of the United Nations. Under Article 20 of its Statute, the ILC is required to

prepare drafts in the form of articles and to submit them to the UN General Assembly together with a commentary containing an adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine; together with the conclusions defining the extent of agreement on each point in the practice of States and in doctrine, and divergences and disagreements which exist, as well as arguments invoked in favour of one or another solution.

Madam President, the substantive agenda of the 59th Session of ILC are relevant to all AALCO Member States. This includes topics on: Shared Natural Resources; Responsibility of International Organizations; Reservations to Treaties; Effects of Armed Conflicts on Treaties; The Obligation to Extradite or Prosecute; and Expulsion of Aliens

Madam President, it is important therefore that AALCO Member States participate fully and actively in the deliberation of these topical issues in order to ensure that our views and concerns are taken on board during the codification of international law. We want to encourage all AALCO Member States to submit commentaries whenever draft ILC documents are circulated to ensure that their views are incorporated in these international legal instruments.

Madam President, AALCO offers a forum in which Member States can examine these topics in depth through incisive debates. These in turn leads to better understanding of the issues common to us all with a view of articulating the same at the global forum.

We therefore encourage all Member States not to sit on the sidelines as important international instruments are crafted that will eventually effect all our countries.

Finally, we urge the AALCO Secretariat to intensify collaboration with relevant international bodies to organize regional seminars and discussions on the topical

issues under consideration of the ILC. I thank you, Madam President.

President: Thank you. I now give the floor to Malaysia.

The Delegate of Malaysia: Madam President, His Excellency the Secretary-General, Excellencies and Distinguished Delegates, Ladies and Gentlemen, on behalf of my delegation, allow me to express Malaysia's appreciation to the AALCO Secretariat for the comprehensive report prepared on the matters relating to the work of the International Law Commission (ILC) at its 58th session as well as the Statement presented by the representative of the ILC.

During the last Sixth Committee session of the United Nations General Assembly, Malaysia had participated in the discussion of the agenda item pertaining to the Report of the ILC on the work of its 58th Session. Amongst the nine topics that were deliberated under this agenda item, Malaysia delivered its comments on three topics, namely "Shared Natural Resources", "Effects of Armed Conflicts on Treaties" and "The Obligation to Extradite or Prosecute".

In today's deliberation, my delegation would also like to make some general comments on the topics and its related issues. In relation to the topic of "Shared Natural Resources" Malaysia reiterates its comments as expressed during the Sixth Committee Session which is reflected in the AALCO Secretariat's comprehensive report on the work of the ILC at its 58th Session and as expressed at AALCO's Forty-Fifth Session in New Delhi.

Madam President, Malaysia takes note that the AALCO's Secretariat has outlined three issues in respect of the topic of "Effects of Armed Conflicts on Treaties" for focused considerations of the Member States. In this regard, Malaysia reiterates its comments made at the last Sixth Committee Session on the issue of the Inclusion of Situations of

Non-International Armed Conflicts and Military Occupation as reflected in paragraph 89 of the AALCO Secretariat's Report.

In addition, on the issue of Ipso Facto Termination or Suspension, Malaysia had commented during the last Sixth Committee Session that it opposed the Rapporteur's proposal to replace "ipso facto" with "necessarily", on the ground that "necessarily" is less incisive. Malaysia also agreed that the Draft Articles should not rule out the possibility of automatic suspension or termination in appropriate cases. Although Malaysia acknowledges the difference between the concept of termination and suspension, Malaysia viewed that the exigencies of particular situations may render difficulties in any attempt to identify or apply the two concepts.

With regard to the issue of the Relationship with other Branches of International Law, Malaysia's position is in line with the principle enunciated by the International Court of Justice, in its advisory opinion on the Legality of the Threats of Use of Nuclear Weapons, to the effect that while certain human rights and environmental principles do not cease to apply in time of armed conflict, their application was determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which was designed to regulate the conduct of hostilities. Malaysia is also of the position that to allow *lex specialis* to expressly override or apply during situations of armed conflict is accepted provided that such *lex specialis* includes not just international humanitarian law treaties but also any bilateral treaties concluded between the parties to the conflict.

Madam President, on the topic of "The Obligation to Extradite or Prosecute", Malaysia notes the current study undertaken by the ILC to determine the practices of States pertaining to this obligation. Malaysia observes that the obligation currently arises

out of a treaty or domestic legislation and as such, this obligation exists upon States if the State chooses to bind itself either under treaty or domestic law regime. In Malaysia's case, such obligation is governed by its domestic law in the form of the Extradition Act 1992. As the deliberation of this topic is ongoing, Malaysia supports the efforts of the ILC to continue its study on States practices.

Malaysia also supports the proposal for a thorough and detailed analysis of the link between *Aut Dedere Aut Judicare* and the principle of Universal Jurisdiction. Malaysia notes and supports the study of ILC on types of offences, which these obligations arise, namely international crimes.

With regard to the study of the ILC to include this obligation of "triple alternative" wherein the surrender of offenders to international tribunals or ICC, at this juncture, Malaysia has reservation on the proposal to introduce the "triple alternative" doctrine as there is no provision in our domestic law providing for such practices.

Madam President, in view of the preliminary stage of the study and without prejudice to a final decision on its legal form, Malaysia stated that it supports the proposal to formulate draft rules concerning the concept, structure and operation of the obligation. Thank you Madam President.

President: Thank you. China you have the floor.

The Delegate of the People's Republic of China: Thank you. Madam President, Mr. Secretary-General, Distinguished Delegates, first of all, I would like to express my appreciation to the AALCO Secretariat for their hard work in preparing the report on the work of the 58th Session of the International Law Commission (ILC). This report summarizes the remarks made by Member States of AALCO at the Sixth Committee of the 61st Session of the UN General Assembly and contains comments made by the AALCO Secretariat on the

work of the ILC. Their good efforts will help Asian and African countries to know more about the ILC's work and the current development of international law.

I would like to share with you our views on the work of ILC.

Madam President, with regard to "State Responsibility for International Wrongful Acts, the UN General Assembly will review this issue at its 62nd Session. It is a complex issue, which concerns immediate interests of every state. We should act with caution on the timing for negotiating a convention. Resolution 59/35 has requested the Secretary-General to collect information on relevant state practice, so we can study the information carefully before deciding what to do next.

On "Diplomatic Protection", China welcomes the adoption of 19 draft articles on diplomatic protection on second reading by the ILC at its 58th session. In our view, the draft articles have summarized and further developed international law, and we are generally satisfied with the draft articles. We have also taken note that some elements of the draft articles are not yet corroborated by state practice. My delegation is of the view that time is not ripe now to adopt a binding legal instrument based on the draft articles.

Madam President, on "Allocation of Loss in Case of Transboundary Harm Arising Out of Hazardous Activities, China welcomes the adoption of the draft principles on second reading by the ILC at its 58th Session. We agree in principle that the draft principles should not be legally binding. The outcome of the work can take soft law form as declaration, guiding principle or model law.

On "Responsibility of International Organizations", we welcome the adoption of draft articles on "circumstances precluding wrongfulness" or the "waiver article" by the ILC at its 58th Session. We in general endorse the draft articles. At the same time,

we believe that the Member States who have exercised the key influence on the international organization to commit wrongful acts should be held accountable for such acts, and the responsibility due to Member States should not be shifted simply to international organizations. International organizations should not abuse the term “necessity” as an excuse for waiver of its responsibility. An international organization and its Member State should be held responsible jointly for the wrongful acts the former authorizes the latter to commit.

Madam President, on “Reservations to Treaties”, China has noticed that the ILC has adopted over 70 draft Articles and the commentary on this topic since it put this topic onto its agenda in the 46th Session of ILC in 1994. It is a significant contribution to the codification and progressive development of international law. We appreciate the outstanding work of the Commission and the Special Rapporteur. At first half of the 59th Session, the Drafting Committee discussed key issues, such as the validity of treaty reservations incompatible with the object and purpose of the treaty, vague reservations, reservation contrary to customary international law rules, and to rules of *jus cogens*, reservation made according to domestic law, and reservation to treaties on human rights or treaties on disputes settlement. China holds that sovereign states have the right to make reservations, which is stipulated by the Vienna Convention on Treaty Law. Forbidding reservations is only an exception to the general rule of allowing reservations. The practice of restricting reservations in certain regions cannot be universally applied. There should be balance between the legal security of treaty relations and the freedom to conclude treaties.

Concerning the topic of “Expulsion of Aliens”, China has noticed with appreciation that at the recently concluded first half of the 59th Session of the ILC, the Special Rapporteur submitted the second report including two draft articles on the scope of

application of the draft and definition of expulsion of aliens. China believes that there should be a balance between rights of states to expel and protection of the rights of aliens. Particularly, the illegal immigrants should be covered by this draft articles.

Madam President, with regard to the topic of “Effects of Armed Conflicts on Treaties”, we believe that the “armed conflicts” in the draft should be limited to “international armed conflicts”. “Treaties” specified in the draft articles should cover the treaties concluded by states and international organizations. While judging whether a treaty is suspended or terminated because of armed conflicts, one should take into consideration the intention of state signatories at the time of concluding the treaty, the implementation of the treaty, the situation after the outbreak of armed conflicts and the nature, purpose and object of the treaty. We think the legitimacy of the use of force affects treaty relations, and this issue should be further studied.

On the topic of “The Obligation to Extradite or Prosecute”, we agree that this study should focus on the codification of international law, with the aim to strengthen the obligation to international cooperation and fight transnational crimes.

Madam President, with regard to “Shared Natural Resources”, we welcome the adoption by the ILC of the draft articles of “The Law of Transboundary Aquifers” on the first reading at its 58th Session. Study of the topic of the utilization and preservation of transboundary resources is of great importance to States. In our view, it is better not to prejudge the final form of the draft articles at present stage, and the ILC should be cautious regarding the study of oil and natural gas.

Madam President, the ILC has been playing an important role in the codification and progressive development of international law. The Chinese Government will continue to pay close attention to, and support, the

ILC's efforts on this field. Thank you for your attention, Madam President.

President: Thank you China. We now give the floor to Indonesia.

The Delegate of the Republic of Indonesia: Thank you Madam President, Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, let me at the outset, take this opportunity to extend my appreciation to Amb. Reza Tabatabaei, Deputy Secretary-General of AALCO, Mr. Narinder Singh in his capacity as the Representative of ILC, for their introductory remarks on the work of the ILC. My delegation would also like to congratulate Members of ILC coming from Asian African countries who were elected recently as Commissioners by the UN General Assembly, last year. My delegation also compliments the Secretariat of the AALCO for their excellent work in preparing a brief document on the topic "Report on Matters Relating to the Work of the International Law Commission at Its Fifty-Eighth Session" as stipulated in Document S1. My delegation also realize that the International Law Commission has been playing a important role in progressively developing and codifying international law.

Furthermore, in this opportunity my delegations would like to make a few remarks on some issues relating to diplomatic protection, effects of armed conflicts on treaties and expulsion of aliens.

Madam President, Ladies and Gentlemen, I would begin my comment on the topic of "Diplomatic Protection". My delegation attaches great significance to diplomatic protection, since it might be employed as a means to advancing the protection of human rights. As we all notice, the Commission had before it the Special Rapporteur's sixth report dealing with clean hands doctrine. In the context of diplomatic protection the doctrine is invoked to preclude a State from exercising diplomatic protection if the

national it seeks to protect has suffered an injury as a consequence of his or her own wrongful conduct.

Indonesia welcomes the Special Rapporteur's conclusion that the clean hands doctrine should not be included in the draft articles of Diplomatic Protection. My Delegation believes if the doctrine not included, it would give the Commission more focus on matters of a practical nature that needed further elaboration.

Madam President, Ladies and Gentlemen, now, let me turn to the topic of "Effects of Armed Conflicts on Treaties". My delegation is delighted to note that the Commission decided to include this topic in its Fifty-Eighth session. We would like to comments on three particular aspects of the draft articles presented by the Special Rapporteur's, namely, draft articles 2 (b), 3, and 4.

Referring to draft article 2 (b) which defined the term "armed conflict", it might be better to have one and broader comprehensive to leave to the applicator of the draft article the task to determine in a case-by-case basis. We also noted that a possible way around this special issue might be to adopt a simpler formulation, stating the articles applied to armed conflicts whether or not there was a declaration of war.

On draft article 3, on the termination or suspension of a treaty during an armed conflict, it appears that armed conflict usually led to the suspension of treaties between States. The parties to an armed conflict are not obviously in a position to comply with the rules of a treaty concluded with the actual or former enemy. In this regard, we believe that a general principle of continuity in such cases sounds rather unrealistic.

In draft article 4, the Special Rapporteur's has elevated the "intention" of the parties as the main criteria for the determination of suspension or termination of treaties.

Indonesia considers that there is a need to examine the question of intention further, as well as other possible criteria. Particularly, the Commission should consider other criteria, which should be determined in accordance with articles 31 and 32 of the Vienna Convention on the Law of Treaties as well as the nature of the armed conflict.

Madam President, Ladies and Gentlemen, allow me now to share some observation on the issue of "Expulsion of Aliens". Based on our observation, my delegation believes that the topic was particularly relevant in the contemporary world where globalization had made transboundary movement of people more intensive. The topic raises also important questions of international law, particularly of human rights law, and treaty based judicial and other monitoring bodies have elaborated a series of human rights principles and standards that can apply in relation to it. Indonesia shares the opinion of the Special Rapporteur that a state's right to expel aliens is a right which is inherent in the sovereignty of that state, but that this right cannot be considered absolute.

Furthermore, in regards to this special issue, we believe that the Commission should be further encouraged to undertake a detailed consideration of existing customary international law and treaty law, including a comparative study of international case law both at the global and regional levels as well as of national laws and practice.

Finally, my delegation would like once again to extend our deep appreciation to Secretariat of the AALCO and International Law Commission for this important and valuable topic in the area of International Law. Thank you.

President: Thank you very much. Thailand, you have the floor.

The Delegate of Thailand: Madam President, at the outset, my delegation wishes to express our sincere appreciation for the clear and concise report on the Work

of the International Law Commission (ILC) at its 58th Session prepared by the AALCO Secretariat. Given that the ILC plays an instrumental role in the codification and the progressive development of international law, it is essential that the Asian-African perspectives on important legal issues are brought to the attention of the Commission. Thailand is therefore pleased that AALCO continues to attach great importance to its traditional and longstanding relationship with the Commission. Moreover, Thailand wholeheartedly supports AALCO's participation in the ILC sessions and the holding of joint meetings between AALCO and the Commission.

Madam President, we note with appreciation that Thailand's views expressed at the Sixth Committee of the UNGA at its Sixty-first session in 2006 has been concisely recorded in the Secretariat's report. Given that the obligation to extradite or prosecute is an important matter which was recently brought back to the international community's attention, after it has been largely forgotten for more than half a century since its first appearance on the provisional agenda of the ILC's first session in 1949, I would like to take this opportunity to share further our views on this matter.

In this context, it is important that States incorporate offences of international character and transnational crimes to be extraditable offences under their domestic laws. Furthermore, a more harmonized approach should be adopted when considering requests for international legal cooperation, whether for extradition or mutual legal assistance. Double criminality and the political offence exceptions should be applied resiliently in a way that does not impede international cooperation and the application of emerging norms of customary international law.

Madame President, it was recognized that mutual legal assistance and extradition legislation are necessary tools for an effective international legal cooperation. In

this regard, Thailand would like to draw your attention to the remarkable achievement of the Association of South East Asian Nations (ASEAN) in concluding the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters which has established a strong foundation for the ASEAN member countries to efficiently cooperate with one another in the collection of evidence, prosecution and resulting proceedings. This thus reaffirms ASEAN's strong intention to achieve complementarity between different legal systems in order to help serve the objective of the obligation to extradite or prosecute.

Madam President, Thailand is also of the view that a major obstacle to achieving the objective of the obligation to extradite or prosecute is the lengthy extradition proceedings in some countries. This may result in the expiry of the statute of limitation for the prosecution of the alleged offender, which consequently bars the requesting State to institute its own legal proceedings or to submit the case to the requested State for prosecution. Accordingly, international community shall endeavour to set standards for the conduct of extradition proceedings with a view to expediting the process.

In addition, the alleged offenders' rights to due process of extradition should be ensured given that the extradition hearing does not have the purpose to consider the conviction but rather to surrender the alleged offender to be prosecuted in the Requesting country. In conclusion, allow me to reiterate the importance of the international cooperation in the enhancement of the extradition process. In this connection, Thailand wishes to assure its best effort towards this end. Thank you, Madame President

President: Thank you. South Africa you have the floor.

The Delegate of the Republic of South Africa: Madam President, Excellencies, Distinguished delegates, Ladies and

Gentlemen, on behalf of the Government of the Republic of South Africa, I make the following brief statement on the report of the work of the International Law Commission (ILC).

South Africa supports the work of the International Law Commission with regard to the topic of "Diplomatic Protection". However, the scope of draft Article 19 (the rule on the exhaustion of local remedies, actions or procedures other than diplomatic protection and recommended practice) is of concern. South Africa expresses the hope that draft Article 19 will be excluded from the set of draft articles, whilst bearing in mind that it is the consistent practice of our country to respond to legitimate requests for diplomatic protection from our nationals abroad.

In relation to the Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, South Africa welcomes the adoption of the Draft Principles by the ILC. In our view, the Draft Principles and the strict but limited liability imposed on the operator of hazardous activities, advance the development of international law, not only in environmental law, but also relating to sustainable development.

Madam President, with regard to the ILC's consideration of the topic of "Shared Natural Resources" and preparation of draft articles in relation thereto, South Africa is of the view that the social and economic importance of groundwater in South Africa is of great importance and will play a pivotal role in the future. Our Government will comment on the draft articles by the deadline set, namely 1 January 2008.

The topic of "Unilateral Acts of States" forms part of the ILC report and South Africa supports the work of the ILC in this regard. South Africa supports the codification of the topic as a means of providing the international community with

guidelines concerning the extent to which States may be considered bound by their own voluntary commitments. The elaboration of a legal regime applicable to such acts would contribute to the clarification of the legal effect of certain unilateral acts and thereby enhance certainty and stability in international relations. In order to be proactive on the issue, the Commission may have to consider limiting its scope by concentrating on certain categories of acts, rather than to proceed on the codification of "Unilateral Acts of States" in general.

Madam President, the Republic of South Africa supports the work of the Commission with regard to the topic of "Reservations to Treaties", but admittedly does not always actively participate in the debate. In view of the complexity of the issues involved we would prefer that the position in the Vienna Convention be maintained, namely that it is the prerogative of the Signatory States to accept or reject the reservation and this is a sovereign decision for each State to determine. If signatory States do have queries regarding the validity of the reservation these can be raised through the diplomatic channel.

In respect of the Commission's work on the "The Obligation to Prosecute or Extradite", the ILC's general preference to adopt a cautious approach to this topic is supported and the scope of the topic should be limited to the objective of the obligation to extradite or prosecute – namely to reduce the cases of impunity for persons suspected of having committed international crimes by depriving them of "safe havens".

Finally, Madam President, South Africa welcomes the ILC's work on the topic of "The Fragmentation of International Law". We are in agreement that the increase in the scope of international law and its somewhat fragmented expansion has both positive and negative aspects. The ILC should be commended on its insightful conclusions in dealing with the fragmentation of

international law. Whilst the study does not attempt to address possible solutions in the prevention of the fragmentation of international law, the study does explore rules of interpretation and the Vienna Convention on the Law of Treaties to better solve the consequences of the fragmentation of international law. I thank you for your attention.

President: Thank you. Egypt you have the floor.

The Delegate of the Arab Republic of Egypt:¹ Thank you Madam Chair. At the outset I would like to express my thanks to Mr. Tabatabaei, Deputy Secretary-General AALCO for presenting the "Report concerning the work of the International Law Commission at its fifty-eighth Session". I would also like to express the thanks of the delegation of Egypt to Mr. Narinder Singh for representing the ILC and for his comprehensive report concerning the work of the Commission during its last Session.

At the outset I would like to conform the importance of the work of the International Law Commission, in the elaboration of international treaties, which are one of the most important source of international law. Through the codification of international treaties, the Commission seeks to develop international law. Considering this as one of the most important objectives of United Nations, as referred to in the Charter of the United Nations, the work of Commission is very important. Its importance is further highlighted by the successful completion of the Commission of international legal instruments, since it has been established in the midst of forties, such as the Draft Code of Offences against Peace and Security of Mankind, Vienna Convention on the Law of Treaties, Vienna Convention on the Law of Treaties between States and International Organizations or between International

¹ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

Organizations and the Draft Statute of the International Criminal Court.

In addition, the importance of the work stemming from the International Law Commission is that it is not confined only to organizing different fields of international law, like armed conflicts and to determine the authorities occupying the forces, and the rights of civilians under occupation in addition to environmental issues, like groundwater, non-navigational use of international watercourses. All this demonstrates the value of agreements adopted by the ILC for the peaceful settlement of disputes in amicable manner. However, the concern to which I would like to draw the attention is that some of the draft instruments that have been adopted by the ILC have never been enforced, like the Draft Code of Crimes against Peace and Security of Mankind that has been adopted by the ILC a few years ago and referred to the General Assembly of the United Nations. Also some of the draft agreements that have been adopted by the Commission and were referred to the General Assembly were not adopted in the form of International Conventions, but it were adopted guidelines. I would like to refer to the importance of the topics incorporated on the agenda of the ILC at present, either in its long-term work programme or the agreements that are submitted and tackled by the Commission. Now I want to give you the example of the Draft articles on "Responsibility of States" that was adopted by the ILC and was referred to the General Assembly but no decisions were taken to adopt it till present in the form of International Convention or even Guidelines.

I would like to propose in this concern, that the AALCO should intensify cooperation between Members of the Organization and Members of the United Nations so that it has the ability to include within its fold 50% of the membership of United Nations representing the continents of Asia and Africa that form about 100 States. The Organization has a very important role in

coordinating stances of its Members when discussing the items referred from the ILC to the General Assembly. I propose that a Workshop be convened to discuss the draft project agreements under consideration of the General Assembly that have been referred by the ILC or the Draft Agreements that are being considered by the ILC. Because this would lead to one stance amongst Member States of AALCO, when they are discussing it in the UN General Assembly. In this regard, I would like to give you example of Article 4 from the Agreement on the Responsibility of States on prohibited Acts. Article 4 would leave the States responsible for whatever act by the Executive, Judicial, or Legislative authorities. Some of the States do not agree that a State should bear the losses resulting from the erroneous decisions by these authorities. Hence I see the need for convening a workshop for Member States in the AALCO and Member States would participate in coordinating these internal positions. Thank you Madam President.

President: Thank you very much Egypt. Is there anyone who would like to make a statement. Republic of Korea.

The Delegate of the Republic of Korea: Thank you Madam president. I would like to make a short statement as regards the procedural aspect of this Conference. May I continue?

President: Indeed.

The Delegate of the Republic of Korea: Actually today's Session, my delegation intended to make some comments short comments right after the general statements and it seems to be that my delegation has got geographical disadvantage. So may be the podium could not see the intention of my delegation to make statement. Now we are discussing law which guarantee equal protection before the law so please pay due regard to the intention of any Member State of AALCO to make a statement to express their views. Having said that I would just

like to one small point to make that one of the functions and purposes of AALCO is to exchange views experiences and information on matters of common concern having legal implications as provided by Article 1 (b) of the Statute. I do not interpret this provision as static. It should be dynamic. So in that sense under no circumstances the intention of the AALCO Member States to make statement should be limited unless such conduct of business is in complete absolute contravention of AALCO's Statutory Rules or other relevant regulations. Thank you very much.

President: Thank you very much. We would like to apologize to the Member Delegate. We did't see you. But your comments are noted. Any other comments? I think I don't see any hands. I give the floor to the Secretary-General.

Secretary-General: Thank you very much Madam President. Despite this late hour at this point and after a hectic day, nevertheless the Secretariat is proud and very honoured to request Your Excellency to release two very important publications, which AALCO has finalized before we come to this Session. We would like to apprise all the Member States about them and off course being our President we would like to submit to you two of these books that we brought from New Delhi, especially for you to release and it for you to have it in your Library. The rest of the Member States will receive this accordingly through their respective Embassies in New Delhi. I am also pleased to inform that this publication "Essays in International Law" that your Excellency will release now would be on the website of AALCO from tomorrow afternoon which is www.aalco.int.

"Essays in International Law" is released

Secretary-General: Since I still have the floor with me, Madam President, I would like to reiterate the invitation for tonight's dinner. Everybody without exception is invited for tonight's dinner at Cape Sun

Hotel and of course transportation will be provided by the Host Government in all respective hotels. The dinner will be at hotel called Cape Sun at 7.30 PM. You are all invited without exception including all the dignatories, all the members of the Secretariat, host committee and whoever who did not receive a written invitation card, may be they are missing, so orally I am inviting everybody to the dinner tonight. You are most welcome since it is AALCO's dinner, your dinner, we are all co-hosts. Thank you.

Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General of AALCO: May I have your attention please. I have an important announcement to make. I was informed by the Chairman of the Drafting Committee that the next session of the Drafting Committee will be held tonight at 10 PM same place which is the first floor down the hall. Thank you.

The meeting was thereafter adjourned.