

AALCO/43/BALI/2004/SD/S 7

*For Official use only*

**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



---

**JURISDICTIONAL IMMUNITIES OF STATES  
AND THEIR PROPERTY**

---

**Prepared by:**

**The AALCO Secretariat  
E-66, Vasant Marg, Vasant Vihar  
New Delhi– 110057  
(INDIA)**

## **CONTENTS**

	<b>Page No.</b>
<b>I. Introduction</b>	<b>1</b>
<b>II. Deliberations at the Sixth Committee (Legal) of the UN General Assembly (2003)</b>	<b>3</b>
<b>III. Meeting of the Ad Hoc Committee (1-5 March 2004)</b>	<b>5</b>
<b>IV. Overview of the Draft Articles Adopted by the Ad Hoc Committee</b>	<b>6</b>
<b>V. Comments</b>	<b>9</b>
 <b>Annex I</b> <b>Draft United Nations Convention on</b> <b>Jurisdictional Immunities of States and Their Property</b>	   <b>11</b>
 <b>Annex II</b> <b>Summary of Deliberations During the 42<sup>nd</sup> Session</b>	  <b>25</b>

# JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

## I. INTRODUCTION

1. In accordance with the General Assembly resolution 32/151 of December 1977, the topic "Jurisdictional Immunities of States and Their Property" was included in the programme of work of the International Law Commission (ILC) in 1978.<sup>1</sup> At the forty-third Session (1991), the Commission adopted the final text of a set of 22 draft articles on the subject, and recommended that the General Assembly convene an international conference of plenipotentiaries to examine the draft articles and conclude a convention on the subject.<sup>2</sup>

2. Subsequently, the ILC's draft articles were the subject of examination of a Working Group established within the framework of the Sixth Committee of the General Assembly during the years 1992<sup>3</sup> and 1993.<sup>4</sup> The Working Group was mandated to "examine the issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a Convention through the production of general agreement". In furtherance of this process, informal consultations were held in September-October 1994 within the Sixth Committee to identify and alienate differences on substantive issues.<sup>5</sup> In the same year, by resolution 49/61, the General Assembly invited Member States to submit to the UN Secretary General their comments on results of the working group and the informal consultations. The deliberations were then suspended to give more time for States to reflect on the issues involved. In 1997, the General Assembly decided to resume consideration of this item at its fifty-second session.

3. The General Assembly resumed consideration of this topic in 1997 (52<sup>nd</sup> session) and at its 53<sup>rd</sup> session in 1998 adopted resolution 53/98 whereby it:-

- (a) decided to establish at its 54<sup>th</sup> session an open-ended working group of the Sixth Committee to consider the outstanding substantive issues related to the draft articles; and
- (b) invited the International Law Commission to present any preliminary comments it may have regarding the outstanding substantive issues related to the draft articles.

---

<sup>1</sup>. An item entitled "Jurisdictional Immunities of States and Their Property" was included in the provisional list of 14 topics selected for codification by the International Law Commission at its first session in 1949. For details see *Yearbook of ILC* (1979), vol. II, Part. 2, pp. 185.

<sup>2</sup>. For full text of the draft articles and commentaries thereto, see Report of the International Law Commission on the work of its forty-third session, 29 April - 19 July 1991, Doc. A/46/10 at pp. 8-151.

<sup>3</sup>. Doc. A/C.6/47/L.10.

<sup>4</sup>. Doc. A/C.6/48/L.4.

<sup>5</sup>. For the Report of the Chairman of Informal Consultations, see Doc. A/C.6/49/L.2.

4. Accordingly, at its fifty-first session (1999), the ILC established a Working Group on Jurisdictional Immunities of States and their property and entrusted it with the task of preparing preliminary comments as requested by the General Assembly. The ILC took note of the suggestions made by the Working Group<sup>6</sup> and transmitted the same to the Sixth Committee of the UN General Assembly.

5. In line with the decision contained in UN General Assembly resolution 53/98, the fifty-fourth session of the General Assembly established a Working Group within the Sixth Committee and elected Mr. Gerhard Hafner as its Chairman. The discussion of the Working Group focused on five outstanding substantive issues identified in the report of the Working Group of the ILC, namely:

- (i) Concept of a State for purposes of immunity;
- (ii) Criteria for determining the commercial character of a contract or transaction;
- (iii) Concept of a State enterprise or other entity in relation to commercial transactions;
- (iv) Contracts of employment; and
- (v) Measures of constraint against State property.

Following its deliberations, the Chairman of the Working Group Mr. Hafner presented a Report to the Sixth Committee.<sup>7</sup>

6. The Working Group continued its work during the 56th session of the General Assembly. At that session, the General Assembly decided to establish an Ad hoc Committee on Jurisdictional Immunities of States and their Property, open also to participation by States Members of the specialized agencies to further the work done, consolidate areas of agreement and resolve outstanding issues. In line with this mandate, the Ad Hoc Committee met at the UN Headquarters from 4 to 13 February 2002. The work of the Ad hoc Committee saw significant progress in the attenuation of the outstanding substantive issues. More specifically, out of the five issues, two issues – one relating to the concept of a State for purposes of immunity and the other, on measures of constraint against State property seemed to be satisfactorily resolved.

7. In accordance with the General Assembly resolution 57/16, the Ad Hoc Committee was reconvened from 24 to 28 February 2003 in order to make a final attempt at consolidating areas of agreement and resolving outstanding issues. At the 6<sup>th</sup> plenary meeting, on 28 February 2003, the Ad Hoc Committee adopted its report containing the text of the draft articles together with understandings with regard to some of the provisions of the draft articles.<sup>8</sup> At the same meeting, the Ad Hoc Committee decided to recommend that the General Assembly take a decision on the form of the draft articles. If

---

<sup>6</sup>. These suggestions are contained in paragraphs 24-30; 56-60; 78-83; 103-107 and 125-129 of the Working Group's report which is annexed to the *Report of the ILC on its work of its fifty-first session*, A/54/10 at pp. 360-419.

<sup>7</sup>. A/C.6/54/L.12.

<sup>8</sup>. General Assembly Official Records, Fifty-eighth Session, Supplement No. 22 (A/58/22).

and when the General Assembly decided to adopt the draft articles as a Convention, the draft articles would need a preamble and final clauses, including a general savings clause concerning the relationship between the articles and other international agreements relating to the same subject.

8. The topic "Jurisdictional Immunities of States and Their Property" was included to the agenda of the AALCO's work programme following a proposal from the Government of Japan at the Thirty-ninth Session held in Cairo in February 2000.<sup>9</sup> Since then the Secretariat has at successive sessions of AALCO presented reports on the developments on this topic. At the 42<sup>nd</sup> session of the AALCO held at Seoul (2003), the Organization took note of the adoption of the text of the draft articles and directed the Secretariat to continue following up the developments in this regard and report to the next session.

9. It is in compliance with this mandate that the Secretariat presents this report.

## **II. DELIBERATIONS AT THE SIXTH COMMITTEE (LEGAL) OF THE UN GENERAL ASSEMBLY (2003)**

10. The Sixth Committee considered the item at its 12th, 13th, 20th and 21st meetings, held on 21 and 23 October and 3 and 4 November 2003. The Chairman of the 2003 Session of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property presented its report.<sup>10</sup> The Chairman said that the Ad Hoc Committee made a significant progress and resolved all outstanding issues on the draft articles, which had not been settled within the United Nations for about 25 years. Delegations expressed their satisfaction with the successful adoption by Ad Hoc Committee of its report containing draft articles on jurisdictional immunities of States and their property and understandings relating to some of the provisions. Delegations expressed the view that the resolution of all outstanding issues on the draft articles constituted an important achievement. It was emphasized that the text, together with the set of understandings on some provisions of the draft articles, represented a carefully balanced compromise solution to the complex problems raised by the topic of state immunity. Following views were expressed by some of the AALCO Member States.

11. The delegate of **Jordan** expressed a different view. He said that it would be better for the draft articles to be adopted in the form of a declaration. The issue of a convention should be deferred until State practice and international jurists could provide the necessary clarification to some provisions with which his delegation had problems, such as the "understandings" contained in Annex II of the Committee's report. He said that his delegation did not object to compromise on the text of article 11 concerning the dismissal or termination of employment. That should not be interpreted as acquiescence by Jordan to the provisions of that article [para 2 (d)]. The understanding reached on that provision

---

<sup>9</sup>. Res. No. 39/10.

<sup>10</sup>. A/58/22

should not have the effect of allowing authorities of one State to make judicial determinations on the political decisions of another, including matters of national security.

12. The delegate of **Japan**, while in principle favoring the adoption of draft articles as a convention, said that the General Assembly should endorse the draft substantive articles. He hoped that the Ad Hoc Committee would be reconvened with a mandate to formulate a preamble, final clauses and possibly a simple dispute-settlement provision.

13. The delegate of **India** said that his delegation supported the adoption of the draft articles in the form of a convention, which alone would provide clarity, uniformity and certainty of applicable rules. It would also help clarify the scope and nature of the immunities of States and their property in legal proceedings concerning their commercial activities. He said India supported the continuation of work by the Ad Hoc Committee in transforming the understandings reached into a convention.

14. The delegate of **Nepal** said that a legally binding instrument on the complex issue of jurisdictional immunities of States was long overdue. He noted that adoption of the 22 draft articles as a whole was a great achievement and suggested that a special committee should be given a new mandate to finalize the preamble and final clauses at a meeting to be convened in the spring.

15. The delegate of **China** said that the text was not satisfactory and perfect, as expected. He, however, said that China was fully aware that the text, as it now stood, represented the best possible result that could be achieved. He said that the subject was an important one of international law and they favored an international convention, based on the draft articles.

16. The delegate of the **Republic of Korea** said that an Ad Hoc Committee should convene next spring, not for the sake of opening up areas already resolved, but to prepare a draft preamble and final clauses.

17. Thus, on the whole, support was also expressed for the convening of the Ad Hoc Committee in spring of 2004 to finalize work on the subject.<sup>11</sup> It was suggested that the Ad Hoc Committee be given the specific mandate of drafting preambular and final clauses for inclusion in a convention, which could be adopted at the 59th Session of the General Assembly. Some speakers stressed that the focus should be on drafting the preamble and the final clauses without reopening discussions on matters of substance,

---

<sup>11</sup>. Many of the developed countries like Australia, Italy, Norway, and Russian Federation supported for establishment of the Ad Hoc Committee. However, the delegate of the **United States** had a different view. He said that the draft articles were not without drawbacks. There were some questions as to whether they were specific enough in certain difficult areas of international law. He observed that uncertainty was strongest with regard to remedies, immunity to liability and definition and scope. He suggested that adequate time should be taken to make sure the preambular work covered concerns and that the Assembly should continue imposing principles in a nonbinding way.

thus preserving the delicate compromises reached. At the 20th meeting, on 3 November 2003, the representative of the Japan introduced a draft resolution, which was adopted without a vote.<sup>12</sup> The Sixth Committee further recommended the draft resolution to the General Assembly for its adoption.

18. Accordingly the General Assembly adopted the resolution 58/74 wherein, *inter alia*, it decided “that the Ad Hoc Committee shall be reconvened from 1 to 5 March 2004, with the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property, which will contain the results already adopted by the Ad Hoc Committee.”<sup>13</sup>

### **III. MEETING OF THE AD HOC COMMITTEE (1-5 March 2004)**

#### **A. Organization of Work**

19. The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property (hereinafter referred to as the ‘Ad Hoc Committee’) met at the UN Headquarters from 1 to 5 March 2004.

20. The Ad Hoc Committee was open to all States Members of the United Nations and to States Members of the specialized agencies. The elected members of its Bureau were:

Chairman:	Mr. Gerhard Hafner (Austria)
Vice-Chairpersons:	Mr. Karim Medrek (Morocco)
	Mr. Piotr Ogonowski (Poland)
	Mr. M. Gandhi (India)
Rapporteur:	Ana Carlina Plazas (Colombia)

21. The Ad Hoc Committee had before it its report on the 2003 session<sup>14</sup> and, for reference purposes, its report on the 2002 session;<sup>15</sup> comments submitted by States in accordance with General Assembly resolutions 46/55 of 9 December 1991 and 49/61 of 9 December 1994 and on the reports of the open-ended working group of the Sixth Committee established under Assembly resolutions 53/88 of 8 December 1998 and 54/101 of 9 December 1999, as contained in the reports of the Secretary-General.<sup>16</sup> The Committee also had, for reference purposes, the 1999 and 2000 reports of the Chairman of the Working Group of the Sixth Committee.<sup>17</sup>

---

<sup>12</sup>. A/C.6/58/L.20

<sup>13</sup>. A/RES/58/74

<sup>14</sup>. Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 22 (A/58/22).

<sup>15</sup>. Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 22 (A/57/22).

<sup>16</sup>. A/47/326 and Add. 1-5, A/52/294, A/53/274 and Add. 1, A/54/266, A/55/298 and A/56/292 and Add. 1 and 2.

<sup>17</sup>. A/C.6/54/L.12 and A/C.6/55/L.12.

22. The Ad Hoc Committee decided to proceed with its work in a Working Group of the Whole. The Working Group Proceeded with the formulation of a preamble and final clauses, on the basis of written and oral proposals submitted by delegations, as well as suggestions of the Chairman. The issues considered included the relationship between the draft articles and the understandings, as well as the provisions of the preamble and final clauses (relationship between the draft Convention and other international agreements; settlement of disputes; signature, ratification, acceptance, approval or accession; entry into force; denunciation; depositary and notifications, authentic texts and reservations).

## **B. Outcome of the Meeting of the Ad hoc Committee**

23. At its 8<sup>th</sup> plenary meeting, on 5 March 2004, the Ad Hoc Committee adopted its report containing the text of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property, together with understandings with Respect to Certain Provisions of the Convention.<sup>18</sup>

24. The Working Group agreed on a preamble and final clauses for a draft Convention on Jurisdictional Immunities of States and Their Property, as well as the chapeau for the understandings with respect to certain provisions of the draft Convention. It was also agreed that the draft Convention should be entitled “United Nations Convention on Jurisdictional Immunities of States and Their Property”.

25. Further, at the same meeting the Ad Hoc Committee decided to recommend to the General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property. It was also decided that the General Assembly includes in its resolution adopting the draft United Nations Convention on Jurisdictional Immunities of States and Their Property the general understanding that the Convention does not cover criminal proceedings.

## **IV. OVERVIEW OF THE DRAFT ARTICLES ADOPTED BY THE AD HOC COMMITTEE**

26. In accordance with its mandate the Ad Hoc Committee adopted the preamble and final clauses dealing with the status of the annex, relationship of the present convention with other international agreements, settlement of disputes, signature, ratifications, entry into force, denunciation, depositary and notifications and authentic texts. Following is the overview of the preamble and some of the important provisions of the Final Clauses.

### **Preamble**

*The States Parties to the present Convention,*

*Considering that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,*

---

<sup>18</sup>. A/AC.262/L.6.

*Having in mind* the principles of international law embodied in the Charter of the United Nations,

*Believing* that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

*Taking into account* developments in State practice with regard to the jurisdictional immunities of States and their property,

*Affirming* that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

*Have agreed as follows:*

27. The draft preamble adopted by the Ad Hoc Committee emphasizes that the concept of jurisdictional immunities of States and their property is an accepted principle of customary international law. It further underlines that a convention on this topic would enhance the rule of law and legal certainty and bring in harmonization of practice of States. Therefore, the exercise of drafting of the convention would constitute both codification and progressive development of international law as it codifies general principles with certain elements of progressive development so far as restrictive immunity is concerned.

28. Keeping in view the compromises reached in the process of resolving differences on various issues, it further clarifies that those matters that are not governed by the proposed Convention are regulated by the rules of customary international law. Though it is the reiteration of existing principle it reflects the differences of views on certain issues for which compromise solutions were adopted.

## **Final Clauses**

29. Final clauses<sup>19</sup> constitute articles 25 to 33 of the draft Convention.

## **Article 25**

### **Annex**

The annex to the present Convention forms an integral part of the Convention.

30. Article 25 makes it clear that Understandings with Respect to Certain Provisions of the Convention contained in annex to the draft Convention constitute an integral part of the Convention. Therefore any interpretation of the concerned provisions should be in the light of the understandings provided therein. This is a significant provision, as the understandings annexed constitute clarifications relating to some of the important provisions of the draft convention. Therefore they remain a guide to the interpretation of concerned provisions. However, it may be noted in this regard that some countries have expressed concern in the Sixth Committee about the status of these understandings in the convention framework.

---

<sup>19</sup>. For the text, see Annex attached to the present report.

## **Article 26**

### **Other international agreements**

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

31. This provision is a savings clause whereby it recognizes the applicability of other existing international agreements on matters that are covered by the proposed convention. Thus, this provision underlines that rights and obligations of States under other international agreements do not get affected by virtue of their becoming parties to this convention.

## **Article 27**

### **Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

32. Another important provision under Final Clauses is article 27, which deals with dispute settlement mechanism. Paragraph 2 of this provision provides for three-fold mechanism for the settlement of disputes. First method is to settle the dispute through the process of negotiations within six months. In the event of failure in this regard, parties may agree to constitute arbitration to settle the dispute. If there is a disagreement on the issue of constituting arbitration also, dispute may be taken to the International Court of Justice by one of the parties to the dispute. Therefore, it provides for three options for dispute settlement with a view to encouraging resolution of disputes through peaceful means. Settlement of disputes is an important aspect of the issue of jurisdictional immunities as most of the times stakes are high with disputes involving important financial matters and implications for domestic law.

33. However, this provision, dealing with an important issue of dispute settlement mechanism, is made optional through paragraph 3. Therefore, paragraph 3 is significant in this regard as it allows States to make a declaration to remain out of the purview of this provision. Like many other international instruments the draft convention also left the issue of dispute settlement to the discretion of States. Thus, mechanisms provided under paragraph two of this article remain optional.

## **V. COMMENTS**

34. In the view of the AALCO Secretariat, the outcome of the recent meeting of the Ad hoc Committee signals the culmination of the work that began within the Sixth Committee of the UN General Assembly in 1992. The draft Convention adopted by the Ad Hoc Committee, along with the understandings thereto is a consolidated text incorporating the comments and observations of States as expressed over the past 10 years on the original version of the ILC draft articles on this topic. In the assessment of the AALCO Secretariat, the adopted text offers promising compromises on outstanding substantive issues and simplifies the language of some provisions, thus enhancing its acceptability among States.

35. Adoption of text of the preamble and final clauses by the Ad Hoc Committee provisionally brought the work on the topic of jurisdictional immunities of States and their property to an end so far as its drafting process is concerned. However the task ahead is for States to expedite the process of adopting the Convention and its entry into force.

36. The peculiar feature of the issue of State immunity is that it is at the point of intersection of international law and national procedural law. Till now it has been validated on the principles of customary international law as it is recognized in the draft preamble. As it is the domestic courts that determine the claims for State immunity there has not been much unanimity despite some consensus among States on certain issues. Thus, if adopted, the Convention would mark an important event, which would lead to harmonization of State practice.

37. The Convention, if adopted, would also mark as a culmination to the process of various national and international developments in the field of State immunity that started in 1970s in the form of various national legislations and others like the European Convention on State Immunity, 1972. As the draft convention reflects various views it is expected that many States would become parties with a view to bringing in uniformity of practice.

38. Though the finalization of drafting exercise took long time it is certainly a timely achievement, particularly in the context of globalization of economies. When there has been a large-scale movement of investments, disputes arising out of such ventures need a

legal mechanism. Therefore, early adoption of the Convention would facilitate the smooth flow of investments, as it would bring in legal clarity in such transactions.

## **ANNEX I**

### **Draft United Nations Convention on Jurisdictional Immunities of States and Their Property**

*The States Parties to the present Convention,*

*Considering* that the jurisdictional immunities of States and their property are generally accepted as a principle of customary international law,

*Having in mind* the principles of international law embodied in the Charter of the United Nations,

*Believing* that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area,

*Taking into account* developments in State practice with regard to the jurisdictional immunities of States and their property,

*Affirming* that the rules of customary international law continue to govern matters not regulated by the provisions of the present Convention,

*Have agreed as follows:*

#### **Part I** **Introduction**

##### **Article 1** **Scope of the present Convention**

The present Convention applies to the immunity of a State and its property from the jurisdiction of the courts of another State.

##### **Article 2** **Use of terms**

1. For the purposes of the present Convention:
  - (a) “court” means any organ of a State, however named, entitled to exercise judicial functions;
  - (b) “State” means:
    - (i) The State and its various organs of government;
    - (ii) Constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of the sovereign authority, and are acting in that capacity;
    - (iii) Agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;
    - (iv) Representatives of the State acting in that capacity;

- (c) “commercial transaction” means:
- (i) Any commercial contract or transaction for the sale of goods or supply of services;
  - (ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
  - (iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.
2. In determining whether a contract or transaction is a “commercial transaction” under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if the parties to the contract or transaction have so agreed, or if, in the practice of the State of the forum, that purpose is relevant to determining the non-commercial character of the contract or transaction.
3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

### **Article 3**

#### **Privileges and immunities not affected by the present Convention**

1. The present Convention is without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:
- (a) Its diplomatic missions, consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; and
  - (b) Persons connected with them.
2. The present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*.
3. The present Convention is without prejudice to the immunities enjoyed by a State under international law with respect to aircraft or space objects owned or operated by a State.

### **Article 4**

#### **Non-retroactivity of the present Convention**

Without prejudice to the application of any rules set forth in the present Convention to which jurisdictional immunities of States and their property are subject under international law independently of the present Convention, the present Convention shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present Convention for the States concerned.

## **Part II**

### **General principles**

### **Article 5**

#### **State immunity**

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

## **Article 6**

### **Modalities for giving effect to State immunity**

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.
2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:
  - (a) Is named as a party to that proceeding; or
  - (b) Is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

## **Article 7**

### **Express consent to exercise of jurisdiction**

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:
  - (a) By international agreement;
  - (b) In a written contract; or
  - (c) By a declaration before the court or by a written communication in a specific proceeding.
2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

## **Article 8**

### **Effect of participation in a proceeding before a court**

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:
  - (a) Itself instituted the proceeding; or
  - (b) Intervened in the proceeding or taken any other step relating to the merits.However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.
2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:
  - (a) Invoking immunity; or
  - (b) Asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

## **Article 9**

### **Counterclaims**

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counterclaim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counterclaim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

## **Part III**

### **Proceedings in which State immunity cannot be invoked**

## **Article 10**

### **Commercial transactions**

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

(a) In the case of a commercial transaction between States; or

(b) If the parties to the commercial transaction have expressly agreed otherwise.

3. Where a State enterprise or other entity established by a State which has an independent legal personality and is capable of:

(a) Suing or being sued; and

(b) Acquiring, owning or possessing and disposing of property, including property which that State has authorized it to operate or manage, is involved in a proceeding which relates to a commercial transaction in which that entity is engaged, the immunity from jurisdiction enjoyed by that State shall not be affected.

## **Article 11**

### **Contracts of employment**

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(a) The employee has been recruited to perform particular functions in the exercise of governmental authority;

(b) The employee is:

(i) A diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;

(ii) A consular officer, as defined in the Vienna Convention on Consular Relations of 1963;

(iii) A member of the diplomatic staff of permanent missions to international organizations, of special missions, or is recruited to represent a State at international conferences; or

(iv) Any other person enjoying diplomatic immunity;

(c) The subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(d) The subject of the proceeding is the dismissal or termination of employment of an individual and, as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer State, such a proceeding would interfere with the security interests of that State;

(e) The employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the State of the forum; or

(f) The employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject matter of the proceeding.

## **Article 12**

### **Personal injuries and damage to property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

## **Article 13**

### **Ownership, possession and use of property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) Any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) Any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or

(c) Any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.

#### **Article 14**

##### **Intellectual and industrial property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) The determination of any right of the State in a patent, industrial design, trade name or business name, trademark, copyright or any other form of intellectual or industrial property which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) An alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

#### **Article 15**

##### **Participation in companies or other collective bodies**

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) Has participants other than States or international organizations; and

(b) Is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

#### **Article 16**

##### **Ships owned or operated by a State**

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.
2. Paragraph 1 does not apply to warships, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.
3. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.
4. Paragraph 3 does not apply to any cargo carried on board the ships referred to in paragraph 2, nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.
5. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.
6. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

## **Article 17**

### **Effect of an arbitration agreement**

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) The validity, interpretation or application of the arbitration agreement;
  - (b) The arbitration procedure; or
  - (c) The confirmation or the setting aside of the award,
- unless the arbitration agreement otherwise provides.

## **Part IV**

### **State immunity from measures of constraint in connection with proceedings before a court**

## **Article 18**

### **State immunity from pre-judgement measures of constraint**

No pre-judgement measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) The State has expressly consented to the taking of such measures as indicated:
  - (i) By international agreement;
  - (ii) By an arbitration agreement or in a written contract; or
  - (iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or
- (b) The State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

## **Article 19**

### **State immunity from post-judgement measures of constraint**

No post-judgement measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) The State has expressly consented to the taking of such measures as indicated:
  - (i) By international agreement;
  - (ii) By an arbitration agreement or in a written contract; or
  - (iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or
- (b) The State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or
- (c) It has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgement measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.

## **Article 20**

### **Effect of consent to jurisdiction to measures of constraint**

Where consent to the measures of constraint is required under articles 18 and 19, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

## **Article 21**

### **Specific categories of property**

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under article 19, subparagraph (c):

- (a) Property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

- (b) Property of a military character or used or intended for use in the performance of military functions;
  - (c) Property of the central bank or other monetary authority of the State;
  - (d) Property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;
  - (e) Property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.
2. Paragraph 1 is without prejudice to article 18 and article 19, subparagraphs (a) and (b).

## **Part V**

### **Miscellaneous provisions**

#### **Article 22**

##### **Service of process**

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:
- (a) In accordance with any applicable international convention binding on the State of the forum and the State concerned; or
  - (b) In accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or
  - (c) In the absence of such a convention or special arrangement:
    - (i) By transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or
    - (ii) By any other means accepted by the State concerned, if not precluded by the law of the State of the forum.
2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.
3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.
4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

#### **Article 23**

##### **Default judgement**

1. A default judgement shall not be rendered against a State unless the court has found that:
- (a) The requirements laid down in article 22, paragraphs 1 and 3, have been complied with;
  - (b) A period of not less than four months has expired from the date on which the service of the writ or other documents instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and
  - (c) The present Convention does not preclude it from exercising jurisdiction.

2. A copy of any default judgement rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph.

3. The time limit for applying to have a default judgement set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgement is received or is deemed to have been received by the State concerned.

## **Article 24**

### **Privileges and immunities during court proceedings**

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a respondent party before a court of another State.

## **Part VI**

### **Final clauses**

## **Article 25**

### **Annex**

The annex to the present Convention forms an integral part of the Convention.

## **Article 26**

### **Other international agreements**

Nothing in the present Convention shall affect the rights and obligations of States Parties under existing international agreements which relate to matters dealt with in the present Convention as between the parties to those agreements.

## **Article 27**

### **Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of any of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any of those States Parties may refer the

dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

## **Article 28**

### **Signature**

The present Convention shall be open for signature by all States until [       ], at the United Nations Headquarters, New York.

## **Article 29**

### **Ratification, acceptance, approval or accession**

1. The present Convention shall be subject to ratification, acceptance or approval.
2. The present Convention shall remain open for accession by any State.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

## **Article 30**

### **Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the present Convention after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

## **Article 31**

### **Denunciation**

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the date on which the denunciation takes effect for any of the States concerned.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Convention to which it would be subject under international law independently of the present Convention.

## **Article 32**

### **Depositary and notifications**

1. The Secretary-General of the United Nations is designated the depositary of the present Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of the following:

(a) Signatures of the present Convention and the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles 29 and 31;

(b) The date on which the present Convention will enter into force, in accordance with article 30;

(c) Any acts, notifications or communications relating to the present Convention.

## **Article 33**

### **Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

## **Annex to the Convention**

### **Understandings with respect to certain provisions of the Convention**

The present annex is for the purpose of setting out understandings relating to the provisions concerned.

#### **With respect to article 10**

The term “immunity” in article 10 is to be understood in the context of the present Convention as a whole.

Article 10, paragraph 3, does not prejudice the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

#### **With respect to article 11**

The reference in article 11, paragraph 2 (d), to the “security interests” of the employer State is intended primarily to address matters of national security and the security of diplomatic missions and consular posts.

Under article 41 of the 1961 Vienna Convention on Diplomatic Relations and article 55 of the 1963 Vienna Convention on Consular Relations, all persons referred to in those articles have the duty to respect the laws and regulations, including labour laws, of the host country. At the same time, under article 38 of the 1961 Vienna Convention on Diplomatic Relations and article 71 of the 1963 Vienna Convention on Consular Relations, the receiving State has a duty to exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of the mission or the consular post.

#### **With respect to articles 13 and 14**

The expression “determination” is used to refer not only to the ascertainment or verification of the existence of the rights protected, but also to the evaluation or assessment of the substance, including content, scope and extent, of such rights.

#### **With respect to article 17**

The expression “commercial transaction” includes investment matters.

#### **With respect to article 19**

The expression “entity” in subparagraph (c) means the State as an independent legal personality, a constituent unit of a federal State, a subdivision of a State, agency or instrumentality of a State or other entity, which enjoys independent legal personality.

The words “property that has a connection with the entity” in subparagraph (c) are to be understood as broader than ownership or possession.

Article 19 does not prejudge the question of “piercing the corporate veil”, questions relating to a situation where a State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim, or other related issues.

## ANNEX II

### SUMMARY OF DELIBERATIONS AT THE 42<sup>nd</sup> SESSION OF AALCO HELD IN SEOUL, REPUBLIC OF KOREA (2003)

2. The **Delegate of India** tracing the evolution and progress of the work of the ILC and Sixth Committee, welcomed the outcome of the Ad Hoc Committee's work (February, 2003) in successfully resolving the outstanding issues through a combination of amendments to some of the draft articles and "understandings" on the others. As regards the final form of the draft articles, the delegate favoured the adoption of a legally binding instrument, i.e. a Convention, as it would meet the objectives of providing clarity, certainty and uniformity to the rules of international law on the topic. However, his delegation was flexible on the question of the procedure for adopting a Convention, whether by convening of a diplomatic conference or through a resolution of the General Assembly.

3. The **Delegate of Myanmar** said that the Convention on Jurisdictional Immunities of States and their Property was not only a normal treaty, but a treaty that was mixed with principles of sovereign immunity and corporate law. He favoured analyzing the draft articles in the light of corporate law. It was a bold attempt, he said, to restrict the jurisdictional immunities of States in commercial transactions done by the State and various State commercial organizations.

Welcoming the progress made by the Ad Hoc Committee, his delegation agreed with the understanding reached among the States with respect to certain provisions of the draft articles, i.e. Articles 10, 11, 13, 14, 17 and 19. The general understanding that the draft articles do not cover the criminal proceedings, in his view, was practically in line with the scope of commercial transaction nature of the Convention.

While expressing preference for the draft articles to assume the form of Convention, the delegate wished to see early adoption of the Convention, with the preamble mentioning the principles of restrictive rules of jurisdictional immunities of States and their property concerning commercial activities and also with final clauses including time for signature indefinitely, and open for accession after the entry into force of this Convention.

4. The **Delegate of Japan** expressed his satisfaction over the progress achieved by the Ad Hoc Committee on Jurisdictional Immunities at its recent meeting in February 2003. In view of the completion of the UN, exercise to codify the important rules would certainly constitute to the stability of legal relations among States.

As regards the final form of the draft articles, there were two views. While Japan and a great number of other States prefer the form of a convention, a considerable number of other States, particularly those which have domestic laws on jurisdictional immunity, are not yet prepared to adopt a Convention.

With a view to satisfying both groups of States, as well as avoiding wrecking the consensus achieved by prematurely convening a diplomatic conference for adoption of a Convention, the delegate felt it preferable to give some time until the draft articles settle down as they were in the practice of States. In this connection, the delegate informed that Japan had floated an idea in the Sixth Committee last year of a two step approach. This is to suggest the adoption of a resolution at the forthcoming session endorsing the draft articles and at the same time deciding to consider, after some years later, whether to proceed to adopt these draft articles as a Convention. He urged the AALCO delegations to examine this approach and come prepared to the Sixth Committee this year.

5. The **Delegate of Indonesia** expressed his appreciation to the work of the AALCO on the issue of Jurisdictional Immunities of States and their Properties, particularly its efforts to assist its Member States in the meetings of Sixth Committee of the UN General Assembly in ascertaining the feasibility of compiling national legislation, jurisprudence and legal practices.

The delegate said that work of the Ad Hoc Committee was pertinent on two accounts. First, it successfully streamlines the divergent views by forging a common understanding from those outstanding issues. Furthermore, by streamlining them the Ad Hoc Committee has generated a momentum concerning possible conclusion of the draft text in the near future.

The delegate noted with appreciation the substantial progress achieved with regard to the five substantive issues which have been reduced to three, namely, criteria for determining the commercial character of a contract or transaction, concept of a State enterprise or other entity in relation to commercial transactions as contracts of employment. The difficulty in bridging the gap on the three issues, the delegate said, was quite understandable. In this context, he called upon states to make every effort to resolve the remaining outstanding issues in the interest of arriving at an agreement.

6. The **Delegate of Pakistan**, at the outset welcomed the progress made at the Ad Hoc Committee on resolving the outstanding issues and hoped that it would serve as a basis for the adoption of model laws or a convention on the topic. The transformation of the law from the notion of an absolute restrictive immunity, has witnessed the practice of making a distinction between acts *jure gestionis* and act *jure imperii*. Such distinctions form the basis of all regional and national legal frameworks developed in recent years. The delegate pointed out that, draft article 12 of the ILC work on Jurisdictional Immunities dealing with tortious liability does not maintain this distinction. Given the strong tradition of tortious litigation in some developed countries, the delegate pointed out that the application of Draft Article 12 in its present form would expose developing country governments to costly litigations.

7. The **Delegate of the Republic of Korea** thanked the Secretariat for its excellent report on the topic.

The delegate said that the draft articles are generally acceptable and would like to

commend the Ad Hoc Committee for its successful adoption of a clean text and to all participating States for their spirit of compromise.

As regards the final form of the draft articles, the delegate supported the form of a convention rather than a model law. A Convention on State Immunity, the delegate felt, provides a strong opportunity for States to develop common rules and a starting point for the further development in this field.

Referring to the level of inter-regional cooperation among European countries, the delegate said that prior to the February 2003 Meeting of the Ad Hoc Committee, the countries of EU had prior consultations amongst themselves and were able to reach consensus on the outstanding issues concerning draft articles of 2002. During the Meetings, the EU together with several other Central European countries that are non-EU Member States formed a single negotiating position and spoke with one voice to add more weight to their views. In contrast, the delegate regretted that although many Asian and African countries actively participated in the meeting and have very similar positions on a number of outstanding issues, there was no such prior co-ordination and all cooperation between Asian and African States happened on an ad hoc basis.

Against the backdrop, he called for exploring the possibilities of reaching consensus among AALCO Member States on the final form of draft article and cooperation in the Sixth Committee on this matter. Seeking the views of AALCO States on this matter, he invited all interested States for informal consultations and discuss possible cooperation at the UN Sixth Committee.

8. **The Delegate of the People's Republic of China** was pleased to note the great breakthrough achieved by the Ad Hoc Committee. The delegate commended the AALCO Secretary-General for sending letters to its Member States encouraging them to take an active part in the Ad Hoc Committee session early this year.

As regards the draft articles, the delegate believed that the present text was the best possible outcome, which States might have achieved. As participants were under tremendous pressure and there was little room for them to negotiate remaining legal issues, her delegation was ready to accept the adopted text as a final compromise.

As regards the form of the draft articles, the delegate preferred the adoption of a convention. However, if it was not acceptable to other States, China could also consider to first adopt a resolution by the UN General Assembly with the adoption of the draft articles submitted by the Ad Hoc Committee, with a view to concluding a convention soon.

9. **The Delegate of the Arab Republic of Egypt** commended the AALCO Secretariat for the excellent report prepared on this topic. He noted that the AALCO has been following up the developments on the matter since the inclusion of this agenda item to AALCO's work programme at the Cairo Session (2000).

Expressing appreciation for the progress made by the Ad Hoc Committee on jurisdictional immunities, he expressed satisfaction over the formulation arrived in respect of articles 10,11,13 and 14. The delegate was appreciative of the improvements effected in the definition of 'commercial transactions'.