

**INTERNATIONAL LAW COMMISSION
SIXTY-SECOND SESSION, 14 JULY 2010**

**ADDRESS BY PROF. DR. RAHMAT MOHAMAD,
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His Excellency Amb. Mr. Nugroho Wisnumurti Honourable Chairman of the International Law Commission, Distinguished Members of the Commission, Ladies and Gentlemen;

Mr. Chairman,

1. At the outset, I congratulate you on behalf of the Asian-African Legal Consultative Organization (AALCO), its Member States and on my personal behalf on your recent election as the Chairman of the International Law Commission.

2. It is my privilege and honour, to address the International Law Commission. It is for the first time, since assuming charge as the Secretary-General of the Asian-African Legal Consultative Organization (AALCO) in August 2008 that I am making this address. The Commission and the AALCO has more than five-decade long mutually beneficial relationship. The AALCO continues to attach great importance to its traditional and longstanding relationship with the Commission. It would be my earnest endeavour to further strengthen this relationship during my tenure.

3. Mr. Chairman, it is the statutory obligation for AALCO to examine those subjects that are under consideration of the International Law Commission and thereafter to forward the views of its Member States to the Commission. Fulfilment of this mandate over the years has helped to foster closer relationship between the two organizations. It has also become customary for both the Organizations to represent each other during their annual session. Allow me to express my sincere gratitude to Mr. Narinder Singh, distinguished member of the Commission for his able representation of the AALCO in his capacity as the President of the Forty-Seventh

Session of AALCO, during the Sixtieth and Sixty-first annual sessions of the Commission.

4. Recalling our customary practice of institutional representation at Annual Sessions of both the Organizations, I would like to extend an invitation to all the distinguished members of the Commission to participate in the capacity of Observer in the work of our Forty-Ninth Annual Session scheduled to be held, at the invitation of the Government of the United Republic of Tanzania from 5 to 8 August 2010 in the historic and beautiful city of Dar es Salaam.

5. Mr. Chairman, during the course of our Forty-Ninth Annual Session on Friday, 6th August a thematic debate entitled “Making AALCO’s participation in the work of International Law Commission (ILC) more Effective and Meaningful” is proposed. The initiative to conduct this thematic debate emerged, as concerns have been expressed by Member States that the present methodology of considering ILC topics by AALCO was not an optimal means towards achieving the goal of consolidating and where possible presenting the views of Member States as one voice at the United Nations and the International Law Commission. Furthermore, in the past suggestions such as constituting a body akin to ILC to be established within the auspices of AALCO; examining in-depth the ILC subjects at the Inter-Sessional Meetings of Experts both prior to and after the commencement of the Annual Session of the ILC; and assisting AALCO Member States in responding to the questionnaire prepared by the ILC on the subjects under its consideration; have been received from Member States. To enrich the deliberations of this thematic debate, I look forward for representation at our Annual Session by distinguished members of the ILC.

6. Mr. Chairman, allow me to briefly highlight the activities and work programme undertaken by the Organization since its Forty-Eighth Annual Session held at Putrajaya, Malaysia from 17 to 20 August 2009. The plenary organ of the Organization adopted the “Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization” on 20 August 2009. In the history

of AALCO, we witnessed a strong political will by our Member States to strengthen AALCO, extending their support and reaffirming their commitment to the Organization. The Declaration recognizes AALCO's significant contribution towards strengthening Asian-African solidarity, particularly in the progressive development and codification of international law.

7. At this instance, I would like to draw your attention to paragraph 4 of the Putrajaya Declaration, which subscribe to the reverberating role of international law as an indispensable instrument to shape a new world order. In this regard, may I quote,

“...We acknowledge that since its establishment in 1956, the AALCO has constructively and consistently contributed in enabling the Asian-African States in developing enlightened international legal policies and positions and should play their due role in shaping a *just and equitable* world order.” – [end of quote.]

8. Complying with our statutory obligation of reporting on matters relating to the Work of the Commission, the Forty-Seventh Session of AALCO had deliberations on the Sixtieth session of the Commission. Some of the ongoing agenda items of the Commission were discussed and delegates while appreciating the meticulous work of the Special Rapporteurs on those agenda items, offered some comments and suggestions for improving or incorporating in the forthcoming works of the Commission. On “*Protection of Persons in the Event of Disasters*” one of the delegates, emphasised that there was a need to put in place a well-regulated legal framework to provide expedient relief for the people who were in need of rehabilitation. Also guaranteeing physical security and basic necessities for those affected by disasters could be achieved only through adopting a rights-based approach. Under the agenda item “*Reservation to Treaties*”, a delegate pointed out that the Commission should be cautious while discussing the powers of the treaty monitoring bodies to assess the validity of reservations and consequences of

assessment, as they did not have any binding force on the States that made those reservations.

9. On the issue of “*Immunity of State Officials from Foreign Criminal Jurisdiction*” one of the delegates observed that while applying the act of state doctrine and non-justiciability doctrine, the Commission may consider including the limitation aspect also. In addition to this, it was also mentioned that since all immunities of officials were derived from the immunity of the State, there was a need to approach the question of recognition in relation to the scope of this study with prudence stressing on framing of criterias on the range of state officials who would be eligible to immunity.

10. On “*Expulsion of aliens*”, it was pointed out that the central problem was to reconcile the right to expel with the requirements of international law, in particular with the rules of international human rights law. It was also suggested to clearly define ‘alien’ and distinction be made between loss of nationality and denationalization. One of the delegates suggested that since the draft articles on “*Shared Natural Resources*” dealt with the mechanism for international cooperation for the joint protection and utilization of transboundary aquifers, which were not based on international practices, it was premature to envisage the adoption of a convention in that area.

11. As regards countermeasures undertaken by the international organizations, under the agenda item “*Responsibility of International Organizations*”, a delegate cautioned that it ran counter to the functions of the international organizations for which the international community constituted it. In relation to “*Effects of Armed Conflicts on Treaties*” a delegate while cautioning stated that the mandate of the Commission was to supplement and not to modify the existing law relating to effects of armed conflicts. It was opined since such treaties create *erga omnes* obligation, the Commission while considering the second reading of the draft articles, should take

into consideration the principles of inviolability of treaties establishing boundaries and thus contribute to the international peace and security.

12. Moving on further, I invite your attention to the Joint AALCO-ILC Annual Meetings. The Joint AALCO-ILC Annual Meeting is held in conjunction with the meetings of AALCO Legal Advisers that takes place on the sidelines of the UN General Assembly Session. It is a manifestation of strong relationship between our two Organizations. This practice started in 2003 and has mutually benefited both the organizations. In pursuance of this ongoing practice, previous year, the Joint AALCO-ILC meeting and the Meeting of the Legal Advisers of AALCO Member States was convened on 28 October 2009 at UN Headquarters, New York.

13. The theme for the discussion at the meeting was “How AALCO could contribute to the work of the International Court of Justice and the Sixth Committee”. In my opening remarks during the Joint Meeting, my emphasis was on the importance that AALCO attaches to the work of ILC and other organs of the United Nations. While speaking on the occasion, Mr. Eduardo Valencia-Ospina, distinguished Member of the Commission and Special Rapporteur on the topic “*Protection of Victims of Natural Disasters*” addressed the relationship between AALCO and the International Court of Justice in the context of the draft articles that he had submitted to the UN General Assembly. He remarked that AALCO could consider preparing a study on strengthening the compulsory jurisdiction of the International Court of Justice (ICJ) which in his opinion would be of immense help in dealing with the peaceful settlement clauses of those articles.

14. Among various observations made during the Meeting, AALCO received crucial and reformative suggestions from the representatives of its Member States. One of the suggestions was to cross-check the effectiveness of the deliberations during the Annual Sessions of AALCO on the work of the ILC that had already been convened and completed. Thereby leading to inviting comments and observations from Member States after the annual session of the ILC is convened.

15. The participation of the Asian-African States in the international law-making process and codification needs to be strengthened, therefore, in this regard, I also strongly urge the Commission to take note of the rich processes, practices and principles applied by Asian-African States while pursuing its work programme. It gives me immense pleasure to state that out of 34 elected members of the Commission, 12 of them are from AALCO Member States. May I place on record high appreciation for the work undertaken by the Special Rapporteurs of the Commission while dealing with the topics under consideration.

16. Mr. Chairman, distinguished members of the Commission, the year 2011 is historic for AALCO. The Organization would hold its Fiftieth Annual Session most likely in an Asian State. It would be the golden jubilee of our Annual Sessions, and hence a momentous occasion in the journey of AALCO, as also an appropriate occasion to revisit and rekindle the Bandung spirit of Afro-Asian solidarity, particularly in the progressive development and codification of international law. It is essential to revisit the “Bandung Spirit” in the post-decolonisation and post-cold war era, where globalisation and other concerns have emerged to be addressed by the international community. The essence of the spirit is to understand that the legacy of the Bandung remains not only with the States of the third world countries but with peoples and social movements across the world to establish just and equitable world order.

17. Allow me to express my sincere gratitude towards the Commission for inviting the Asian-African Legal Consultative Organization for participating at the Sixty-second annual session of the Commission.

18. I thank you for the opportunity afforded to me.

19. Thank you Mr. Chairman.