

## **AALCC LEGAL ADVISERS MEETING, NEW YORK, 26<sup>TH</sup> OCTOBER 2000**

### **Statement by H. E. Amb. Dr. Wafik Z. Kamil, Secretary General of AALCC at the Legal Advisers Meeting, New York, 26<sup>th</sup> October 2000.**

H.E. Amb. Aboul Gheit, President of AALCC, Distinguished Chairman of the ILC, Ambassador Yamada, distinguished Legal Advisers of the AALCC Member States and our honoured guests from non-member States,

I am beholden to all of you that in spite of your busy schedules and commitments you have chosen to grace the AALCC meeting today. It is indeed an honour for the AALCC and a source of great strength for me in particular as it is my first opportunity to hold the AALCC's Legal Advisers Meeting in New York. On behalf of the AALCC, I extend to all of you a very hearty welcome.

Mr. President, you have been my dear friend and colleague for 30 years. You were also a valuable support to me in very important turns in recent years. I still consider the same relationship continues to strengthen our bonds. I thank you for your kind words. I would like to assure you all that it would be my endeavour to discharge my duties as the Secretary General in most efficient manner and take the AALCC to greater heights.

As the distinguished Chairman has just informed you the Agenda for today's meeting has two items. First one, Rationalisation of the work programme of the AALCC and the second one, Jurisdictional Immunities of States and Their Property.

The first item, rationalisation of the work programme of the AALCC is of immense importance. A Background Note on this item prepared by the Secretariat has been placed before the Meeting. The status of the items currently on the agenda as approved in the AALCC's Cairo Session could be found in pages 5 to 7. On some of these items, the Committee has held exhaustive discussions and on some others, discussions are based on simply reviewing the progress made stressing the need for rationalisation of the work programme. The Secretariat note makes few suggestions regarding the new items which may be taken up for consideration. The inclusion of these items and updating the agenda is considered essential to bring it in line with the current changes. Further, suggestions have been made to establish Working Groups and comprehensive programme to facilitate in-depth consideration of certain issues. Moreover, the organisation of seminars, workshops, expert group meetings during the inter-sessional period and training courses for officials of the Member States are considered effective ways towards making the AALCC's Work Programme more progressive. Finally, attention has been drawn to the recent initiative of the Secretariat to prepare a roster of the experts of the AALCC Member States which would facilitate organising seminars and meetings with high-level participation.

I would very much appreciate comments from the participants. It would help us immensely to prepare our agenda for the AALCC's 40<sup>th</sup> Session which our founder member Indonesia will be hosting in Bandung. We also plan to hold a Special Meeting on that occasion on legal issues concerning International Migration jointly with the International Organisation for Migration. We had the privilege of the visit of the Director General of IOM to New Delhi and signing a Co-operation Agreement with IOM.

The second item on Jurisdictional Immunities of States and Their Property is focussed for consideration at the Workshop which will begin soon.

Within the AALCC, the topic “Jurisdictional Immunities of States and their Property” was placed on the work-programme of the Committee, following a proposal of the Government of Japan. Accordingly, the subject was discussed at the 39<sup>th</sup> Session of AALCC held at Cairo in February this year. The Committee’s deliberation was enriched by the presence of Prof. Gerhard Hafner, the Chairman of the Sixth Committee’s Working Group on this topic. It is my pleasure to once again welcome him in our midst today and I am confident that this meeting would be immensely benefit by his participation.

Mr. President, the present meeting is an exercise towards the fulfillment of the mandate given to the Secretary-General by the Assembly of Member States and Heads of Delegations at its Cairo Session. The resolution adopted at the session, directed the Secretariat to :-

- (a) consider the feasibility of compiling national legislation, jurisprudence and practice of the AALCC Member States on this item; and secondly
- (b) consider the possibility of organising a workshop with the participation of legal advisers and jurists from the AALCC Member States, prior to the next meeting of the Working Group of the Sixth Committee.

Pursuant to this mandate the present meeting is convened. With a view to compiling the jurisprudence of AALCC Member States on this topic, I had written to all AALCC Member States to furnish the relevant national legislation, decisions of national courts and any other relevant material indicative of the jurisprudence and State practice relating to jurisdictional immunities. In response to this, the Secretariat has received replies from 3 Member States – Botswana, Japan and Myanmar.

Mr. President, to facilitate our discussion today the AALCC Secretariat has prepared a background note on the subject bearing the number AALCC/UNGA/LV/2000/3. The Annex to this document in pages 29 to 39 contains the communications received from the three AALCC Member States that I have mentioned earlier.

Part II of the Background note focuses on the five outstanding issues that have been the subject of discussion within the Sixth Committee. The outstanding issues relate to :

- (a) Concept of a State for purposes of immunity;
- (b) Criteria for determining the commercial character of a contract or transaction
- (c) Concept of a State enterprise or other entity in relation to commercial transactions
- (d) Contracts of employment; and
- (e) Measures of constraint against State property.

Efforts to narrow down differences relating to the draft articles were made within the framework of Informal Consultations, the Sixth Committee’s Working Group and also the

International Law Commission. The Secretariat note primarily aims at highlighting the changes effected in the formulation of provisions relating to the five issues identified.

Mr. President, Distinguished Legal Advisers of AALCC Member States, Ladies and Gentlemen.

The difficulties in bridging the gap on the outstanding issues is quite understandable. Even within the membership of the AALCC there are distinctly different viewpoints on many of the substantive issues. Such differences stem from the differences that exist among AALCC Member States in terms of the legal system, the role of the State, the stage of economic development and the reluctance to deviate from the already established jurisprudence laid down by municipal courts on matters relating to jurisdictional immunities.

While acknowledging these difficulties, it must also be noted that the new trend of globalisation, makes it necessary to move on. Therefore, I hope that this present meeting would provide the opportunity for the AALCC Member States to engage in a constructive exchange of views so as to identify common as well as formulating tenable legal positions for articulation within the Sixth Committee.