

STATEMENT OF H. E. AMBASSADOR DR. WAFIK ZAHER KAMIL, SECRETARY GENERAL OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE, MADE AT THE FIFTY-SECOND SESSION OF THE INTERNATIONAL LAW COMMISSION, 10TH AUGUST, 2000

Mr. Chairman, Distinguished Members of the Commission, Ladies and Gentlemen,

1. At the outset, I should like to thank you for affording me the privilege and honour to address the Fifty-second session of this august assembly of distinguished jurists.
2. Mr. Chairman, since I am taking the floor for the first time, I should like to avail myself of this opportunity to extend the AALCC's congratulations on your election as the Chairman of this eminent body. I should also like to register our deep congratulations to the other distinguished members, H. E. Dr. Kamil Idris and Mr. Djamchid Momtaz on their election. Mr. Chairman, we are confident that under your able stewardship the Commission has succeeded during this Session to preserve and uphold the traditions and fulfil the functions of the Commission in the progressive development and codification of international law.
3. Mr. Chairman, being the first Egyptian and the first Diplomat belonging to the Arab world to assume the duties of the Secretary General of AALCC, I would like to present myself to the honourable members of the Commission in my mother tongue.

English interpretation of the brief intervention in Arabic is as follows:

4. "I said that I would like to introduce myself to your Assembly. I did not want to introduce myself to all the members of the ILC because among you there are members who know me personally and who I know since circumstances have brought us together in the context of work in previous AALCC Sessions. There are also some among you whom I know and who do not know me, but I know them because of their international reputation and because of the important role they have played in the whole sphere of international law and there are others whom I shall have the honour of getting to know in the course of this Session. Let us hope that our relationship will be strengthened in the course of the Sessions to come".
5. "Mr. Chairman, those who know me among members of this Commission, know well that I am not new within the AALCC because I worked in the Secretariat since September 1995 as Deputy Secretary General until my election as the Secretary General of the Asian-African Legal Consultative Committee at the 39th Session in Cairo in February 2000. During the period from 1995 to 2000, I dealt with a number of issues which the AALCC had already dealt within its annual sessions and in inter-sessional periods. Despite the fact that the issues related to your Commission were dealt with by one of my colleagues but I was following with great interest the work of your Commission in the context of codification and development of international law. Mr. Chairman, since this is the first time that I take the floor since I have assumed my duties as the Secretary

General in May 2000, I would at the end of this brief intervention like to express my esteem, appreciation and admiration for the important and tangible achievements of the International Law Commission over the recent sessions in the establishment and codification of major basis of international public law. Allow me, now, Mr.Chairman to go back to English in order to introduce to you and to the distinguished members of the Commission my basic report in English". (end of Arabic text)

6. I was saying that everyone working in the field of international law is fully aware of the prominent role which the Commission has played in determining the shape and content of contemporary international law. Most of the draft articles produced and elaborated by your Commission concerning key areas of international law have been the basis for the conclusion of 16 multilateral conventions all of which are landmarks in the domains to which they relate.
7. The AALCC attaches great significance to its traditional and long-standing ties with the ILC. Mr. Chairman, one of the primary objectives of the AALCC is to examine questions that are under consideration by the ILC and to arrange for the views of the Member States to be placed before the Commission. This mandate has over the years helped to forge closer bonds between the two fora. In fact, it has now become customary for the Commission and the AALCC to be represented at the each other's annual sessions.
8. In recent years the ILC has also been represented at the meeting of the Legal Advisers of Member States of the AALCC convened at the United Nations Headquarters in New York during the General Assembly Session. The former Chairman of the Commission H.E. Mr. Galicki had attended the meeting of the Legal Advisers of Member States of the AALCC held in New York in October 1999. Mr. Chairman, I look forward in earnest to welcoming you to the meeting of the Legal Advisers of the Member States proposed to be convened in New York during the Fifty-fifth session of the General Assembly.
9. Mr. Chairman as to the activities of the AALCC since my predecessor H.E. Mr. Tang Chengyuan addressed this Commission, permit me to state that the Thirty-ninth Session of the AALCC was held in Cairo, Egypt from 19th to 23rd February, 2000. The Committee elected Hon'ble Mr. Farouk Seif El-Nasr, Minister of Justice, Arab Republic of Egypt as President and Hon'ble Mr. Abdul Matin Khasru, Minister for Law, Justice and Parliamentary Affairs, People's Republic of Bangladesh, as Vice-President of the 39th Session of the AALCC. The Minister of Justice after his election requested the approval of all the Delegations to nominate Dr.Ghattas, the Assistant Minister of Justice for International and Cultural Relations as an alternate President.
10. Mr.Chairman, I would like to register here my profound admiration to my predecessor Mr.Tang Chengyuan with whom I worked with full co-operation and friendship and who succeeded with great wisdom and experience to contribute tremendously in the work of the AALCC and to solve crucial problems, among them the permanent headquarters.

11. Coming back to the Cairo Session I would like to state that this Session was honoured by the presence of four distinguished members of the ILC. Besides Professor Gerhard Hafner who officially represented the Commission, and had rendered an illuminating presentation regarding agenda item of ILC, the deliberations at the Committee's session were enriched by your presence Mr. Chairman, Ambassador Chusei Yamada, Ambassador Dr. Nabil El-Araby and Dr. P. S. Rao.
12. Mr. Chairman, the AALCC on its part appreciates the representation of the Commission at its annual sessions.
13. As many as 14 substantive items were considered in the course of the Session. For lack of time, in depth deliberations was possible only on some of the agenda items. The substantive matters included the work of the International Law Commission at its 51st session.
14. Mr. Chairman, the items currently on the agenda of the International Law Commission are of immense interest to the governments of our two regions and to the AALCC as a body in the services of its Member States.
15. The AALCC at its 39th session, affirmed inter alia the significance of the contribution of the International Law Commission to the progressive development of international law and its codification. While commending the ILC on the adoption of a set of draft articles on Nationality of Natural Persons in relation to the Succession of States, the Committee requested the Secretary-General to bring to the attention of the ILC at its 52nd session the views expressed on different items on its agenda at the Thirty-ninth Session of the AALCC.
16. Mr. Chairman, accordingly I wish to provide a summary of the views of the AALCC Member States on the work of ILC concerning the item on "State Responsibility". At the Cairo Session a view was expressed that it is preferable for the Commission to retain as far as possible the substance of the draft articles adopted on first reading and to change them only if there were very good reasons for doing so. Some preliminary remarks were made on some of the new proposals submitted by the Special Rapporteur and discussed during the last session of the Commission.
17. Article 20 of the present draft refers to the distinction between obligations of conduct and obligations of result. One delegation was in favour of the retention of this article. This distinction is of particular value to developing countries which do not generally have equal means at their disposal to achieve the result required of them. The distinction seems useful and as has been rightly pointed out during the discussion in the Commission, the notion of an obligation of prevention could be submitted under the rubric of obligations of conduct and therefore any reference to this notion could be deleted from the draft article.
18. Article 26 bis on the exhaustion of local remedies, as proposed by the special Rapporteur, is an established rule of general international law. The use of local remedies provided the wrongdoing State with the opportunity to remedy what appeared to be a breach of an

international obligation. The exhaustion of local remedies is a precondition to an international claim and that the breach of an international obligation would therefore take place only at the time of exhaustion.

19. Coming to Article 33 dealing with the notion of necessity, the delegates agreed with the interpretation given by the Special Rapporteur. The article as it stood did not cover humanitarian intervention involving the use of force on the territory of another State.
20. Finally a delegation referring to article 30 commented on countermeasures in respect of an internationally wrongful act. The delegate agreed with the inclusion in the draft article of Special rules on the application of countermeasures. He also supported the linkage between countermeasures and compulsory dispute settlement. It goes without saying that this procedure must be available to both parties, that is the State which has committed the internationally wrongful act but also to the State suffering from the act.
21. As regards International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law, the delegates commended the work done by Dr.P.S.Rao and supported the concepts of “Polluter Pays” and “equity” which the Special Rapporteur had adopted . Concerns were expressed that the decision of the Commission at its last session to suspend the work on the topic of ‘liability’ should not lead to any undue delay in the completion of the work on this item. Another delegate expressed the preference that the final outcome on this item should take the form of a ‘framework convention’.
22. Mr. Chairman, in respect of the topic “Reservation to Treaties”, the view was expressed that the Vienna Convention regime on treaties provided a flexible and pragmatic balance between the unity and integrity of treaties on one hand, and achieving universality of adherence on the other. Against this backdrop, it was felt that the formulation of a set of guidelines would be a more practical exercise in filling the gaps, if any, in the Vienna regime. On the proposal to empower monitoring bodies of human rights instruments to determine the validity or acceptance of reservations, it was pointed out that such a role would exceed the mandate of these bodies and result in conferring retroactive authority to them. It was also felt that there is need for a flexible system which would also balance the integration of the human rights agreements.
23. Mr.Chairman, you will recall that special meeting on the item Reservation to Treaties was convened in conjunction with the AALCC’s 37th Session which was held in New Delhi in April 1998. The views of the Member States on the issue of reservation to treaties expressed during the Special Meeting were forwarded to the ILC by my predecessor at the 50th Session to be incorporated in the report on Reservations to normative multilateral treaties, including human rights treaties.
24. Mr.Chairman, talking about special meeting I would like to state that we will be very happy to organise a similar meeting on another item on the agenda of the ILC. I would welcome your view as well as of the other members of the Commission in this respect.

25. As to the subject matter on 'Unilateral Acts of States', the delegates welcomed the third report of the Rapporteur and felt that the ILC should take steps in crystallizing the guidelines on the subject. It was observed that a precise delineation of the scope of 'unilateral acts' intended to be addressed by the ILC was one of primary importance. In this context, emphasis was laid on distinguishing between "treaty acts" and "unilateral acts".
26. Apropos the "Nationality of Natural Persons in relation to the succession of States", the Committee commended the ILC on its adoption of a set of 27 draft articles on this important topic.
27. Mr. Chairman, yet another matter of particular interest to the Commission may be that following a reference from the Government of Japan, the Committee at its Cairo Session included an item entitled "Jurisdictional Immunities of States and their Property" to the agenda of its Work Programme. The presence of Prof. Gerhard Hafner, a distinguished member of this Commission and also the Chairman of the Sixth Committee's Working Group on that topic Jurisdictional Immunities on that occasion and his very informative statement on the developments within the Sixth Committee - provided the necessary backdrop for the deliberations.
28. Almost all the speakers acknowledged the significance and urgency to codify international rules on jurisdictional immunities of States. One delegate highlighted the complexities inherent in the exercise, as the subject straddled the domains of public international law, corporate law and business practices. The transition from an absolute to a restrictive theory of immunities was seen as a necessary concomitant of the changing functions of modern States. Reference was made to the explicit provisions of the draft articles dealing with immunity of "ships owned or operated by a State", a view was expressed that air transportation could also be covered by the draft articles.
29. As regards substantive aspects, a view was expressed that a State should have a say in the determination of the status of 'State enterprises' as an entity for purposes of immunity. Secondly, in the context of the differences that exist as to the appropriateness of the 'nature' or 'purpose' test it was felt that focus needs to be made to evolve a definite criteria to assess whether a particular activity amounted to a commercial transaction. It was also suggested that there is a need, while concluding a comprehensive convention on the subject, to take into account the practice of States and the jurisprudence developed in different legal systems the civil law, common law and Islamic systems.
30. Mr. Chairman, the AALCC in pursuance to a resolution and after due consultations with eminent members of ILC and member States intends to convene a meeting on this subject in conjunction with the AALCC's Legal Advisers meeting in New York in October this year during the fifty-fifth session of the UN General Assembly. The proposed meetings are aimed at enabling the Member States of AALCC to engage in a free exchange of ideas on the draft articles on jurisdictional immunities and also to coordinate their positions in the deliberations within the forthcoming meeting of the Sixth Committee's Working Group on this subject.

31. Emphasizing the need for strengthening the dialogue between the Sixth Committee and the ILC, one delegate suggested that one such way of making such dialogue meaningful, was to ensure timely availability of the report of the Commission to States as it would give reasonable time for governments to examine it, derive impacts from relevant governmental agencies and formulate their policies.
32. Within the AALCC, there is need to identify ways and means of substantially contributing to the work of the ILC. During the annual session there is lack of time, therefore a proposal was made that at its future sessions the consideration could be limited to any one particular item on the agenda of the ILC. Such focussed attention, would facilitate an indepth consideration of crucial topics.
33. Mr. Chairman, Distinguished Members, the other items, apart from the ones that I have already mentioned, that were considered in the course of the 39th session of the AALCC had included the: (i) United Nations Decade of International Law; (ii) Status and Treatment of Refugees; (iii) Deportation of Palestinians and Other Israeli Practices among them the Massive Immigration And Settlement of Jews In The Occupied Territories in Violation of International Law, particularly the Fourth Geneva Convention of 1949; (iv) Legal Protection of Migrant Workers; (v) Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties; (vi) Follow-up of the UN Conference of Plenipotentiaries on the Establishment Of An International Criminal Court; (vii) United Nations Conference on Environment and Development: Follow up; (viii) Legislative Activities of United Nations Agencies and Other International Organizations Concerned With International Trade Law; (ix) Report On the Outcome of the Third WTO Ministerial Conference Held in Seattle; and (x) Report of the Seminar on Issues Relating to Implementation of Intellectual Property Rights held at New Delhi in November 1999 .
34. Mr. Chairman, it is a matter of pride for us that AALCC is one of the intergovernmental organizations having cooperative relationship with the ILC. During the term of my office, I would endeavour to further and intensify the working relationship between the AALCC and ILC. In this context, I wish to place before you two proposals.
 - (i) As I have stated in the opening part of my statement, much of the work of the ILC has resulted in the conclusion of a number of highly important conventions. But it is disconcerting to note that some conventions thus adopted by the vote of an overwhelming majority of the States which participated in their negotiation and conclusion, are unable to secure the required number of adhesions or ratifications to bring the convention into force. More so, where the topic dealt with by the Commission are based on the mandate given by the General Assembly – which is a body reflective of the views of States, I wonder if it would be worthwhile to identify the reasons why States are reluctant to adhere to certain of the conventions that have been elaborated upon the basis of the ILC drafts and also seek to devise ways and means to increase the adhesion of States to these Conventions. Mr. Chairman, the AALCC as an intergovernmental organization with a membership of 45 countries, is I deem a suitable forum to facilitate this study. I would

commend for your consideration that the ILC and the AALCC could jointly organise a symposium, or workshop on this matter. Perhaps, the UN Office of Legal Affairs could also be co-opted in this exercise.

(ii) My second proposal relates to the encouraging of active participation of States in the work of the Commission and the Sixth Committee. Over the years we have observed that, notwithstanding the exhortations of the General Assembly and the Secretary General's encouragement, the response of States to the Commission's questionnaires and its requests for comments has been disappointingly low. The significance of ensuring a constant feedback into the Commission of information, advice and reaction from Member States need hardly be repeated here. I would be glad to hear any ideas or suggestions from the Commission as to what role a body like AALCC could play in this regard.

35. Mr. Chairman, as to the future co-operation between the Committee and the Commission, the Secretariat of the AALCC will continue to prepare notes and comments on the substantive items considered by the Commission so as to assist the representatives of the Member States of the AALCC to the Sixth Committee in their deliberations on the report of the Commission at its Fifty-second Session. Allow me to add that an item entitled "The Report on the Work of International Law Commission at its Fifty-second Session" would thereafter be considered at the Fortieth Session of the AALCC to be held in 2001.

36. Mr. Chairman, allow me to take this opportunity to extend to you and your distinguished colleagues, on behalf of the AALCC an invitation to participate at the Fortieth Session of the AALCC to be held in 2001. I shall in due course communicate to you the exact venue and date of the next Session of the AALCC. I look forward to welcoming you all to the next Session of the Committee and to closer future collaboration with the Commission.

English interpretation of the brief intervention in French is as follows:-

37. "Before concluding, allow me Mr.Chairman, to say a few words in French to explain to francophone countries and francophone members of the Commission my plan to try to attract African and Asian francophone countries to our Committee".

38. "Mr.Chairman, I was entrusted by the Committee a number of time with the task of trying to contact members of the Asian and African countries which are part of the francophone community and ask them to join our community. Given the fact that I was just Deputy Secretary General before being elected to the Secretary General of the Committee, I have not yet had an opportunity to produce a programme or to organise my activities in order to attain this objective. I seek the assistance of the members of the Commission who belong to French speaking countries in helping the Committee to contact all French speaking countries of Africa and Asia and convince them to join the Committee. The first step that I have taken since I assumed duties was to have translated into French the Statutes and Statutory of the Committee and I will shortly be distributing them too all the French speaking countries in order to help them know what the actual aim of the Committee is". (end of French text).

39. Finally Mr.Chairman, I should like to record my gratitude to you and to the Commission for allowing me to address this august body and for the attentive hearing you have given me. Thank you.