

Seventy-first session of the International Law Commission (address delivered at the Fifty-Eighth Annual Session of AALCO, Dar es Salaam, United Republic of Tanzania)

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Thank you Mr. Secretary-General. Mr. President, who is the actually Vice-President I am honoured to be under your Chairmanship and to see you chairing the session.

Mr. Secretary-General, Excellencies, Ladies and Gentlemen. Unlike my previous speakers, Ambassador Hassouna and Professor Nolte, the distinguished Members of the Commission who gave a general outline about the functioning of the Commission and its relationship with the Sixth Committee I wish to focus on specific topics that were discussed this year at the 71st Session of the International Law Commission. Professor Nolte has touched briefly on some topic, I would speak about others. I intend to limit myself to four topics and make very brief comments; as one could imagine the report of the Commission runs into 394 pages it would not be realistic to do an exhaustive analysis. What I wish to do is to try to highlight the stage at which a specific topic is, and thereafter highlight some of the important issues on which the views of the Member States of AALCO would be of importance in deciding how the Commission should proceed on these topics.

The first topic was touched upon by Professor Nolte, the peremptory norms of general international law (*jus cogens*). The topic stands at the procedural stage where the Members of the Commission considered the fourth report of the Special Rapporteur and the Commission has completed the first reading. Therefore, at the Sixth Committee it would be helpful to see what the States would have to say not only on the fourth report but also on the first reading. I intend to highlight some fundamental aspects that might of interest or special concern for Member States of AALCO.

The first aspect that emerges from the work is draft conclusion 3 where the International Law Commission makes reference to fundamental values of international community. The question arises as to how the words fundamental values of the international community ought to be interpreted and taken into account. Fundamental values has been an issue of special concern for countries from Asia and Africa, rather which values

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constitute the basis of international relations has been a matter of concern for States from Asia and Africa, due to lack of their participation in the conceptualization and early formation of international law. It would therefore be helpful to see how the States from Asia and Africa perceive these issues or the choice of fundamental values to be characteristic feature of peremptory norms of general international law.

Secondly, it would helpful to see how states perceive the distinction between characteristics and criteria that the International Law Commission tries to make in draft conclusion 3 and 4 respectively. The draft conclusion 3 the Commission identifies the characteristics that is how to define a peremptory norm or how to understand peremptory norm, but the actual criteria emerges in draft conclusion 4. Would this lead to any sort of confusion or is it sufficiently clear this something that the States would have to reflect and tell the International Law Commission as to what they think on these issues?

The third point is what sources of international law can realistically and convincingly form the basis of the formation of peremptory norms international law. The Commission has identified that customary international law is the most obvious or the most probable source of formation of peremptory norms. It has been historically well known that the Asian and African states have had certain amount of reservation towards customary international law, due to lack of their participation in the formation of some of these rules. Thus would it be appropriate to give a higher position to customary international law? Or what should be relationship of customary international law and treaties? Or general principles of law in relation to formation of peremptory norms of general international law?

There is also a related issue of how far violations of all norms of peremptory norms of general international law (*jus cogens*) would result into *erga omnes* obligations? Or only serious violations of *jus cogens* norms as noted in Chapter III (Articles 40-41) of the Articles of State Responsibility would result into violation of *erga omnes* obligations. These are the limited topics in relation to *jus cogens* where I thought the views of States would be of importance for the International Law Commission.

The second topic I would briefly touch upon is in relation to succession of States in respect of State responsibility. This year the Commission considered the third report and some part of the Commentary that the Rapporteur presented this year. It would helpful to see what the views of the Member States are in relation to the report as well as the commentary at this juncture.

Some very fundamental issues in relation to succession of state responsibility arise. One of them is whether the Commission should follow