

**STATEMENT OF H. E. AMB. DR. WAFIK ZAHER KAMIL,  
SECRETARY-GENERAL OF THE ASIAN-AFRICAN LEGAL  
CONSULTATIVE ORGANIZATION (AALCO), DURING THE FIFTY-  
EIGHTH SESSION OF THE INTERNATIONAL LAW COMMISSION  
(ILC).**

**21 JULY 2006**

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

1. It is indeed my privilege and honour to address the Fifty-Eighth Session of the International Law Commission (ILC), an august assembly of distinguished jurists.

2. Mr. Chairman, I would like to avail myself of this opportunity to extend heartiest congratulations and best wishes on behalf of the AALCO and on my own behalf on your election as the Chairman of this august body for the present session. Mr. Chairman, we are confident that under your able leadership and guidance, the current session will preserve and uphold the traditions and fulfill the functions of the Commission towards the progressive development and codification of international law.

3. The AALCO continues to attach great importance to its traditional and longstanding relationship with the Commission. Mr. Chairman, it is the statutory obligation for AALCO to examine those subjects that are under the consideration of the Commission and thereafter to forward the views of the Member States to the Commission. Fulfillment of this mandate over the years has helped to forge closer relationship between the two organizations. It has also become customary to represent each other during our respective annual sessions.

Mr. Chairman, please allow me to express my sincere appreciation and gratitude on behalf of the AALCO for the presence of Prof. Djamchid Momtaz, Chairman for the Fifty-Seventh session of the International Law Commission as the representative of the ILC at the Forty-Fifth Annual Session of our Organization and appraising the developments in the Commission's work during the second part of the Fifty-Seventh session of the Commission. I also wish to extend my gratitude to Amb. Chusei Yamada, who in his capacity as representative of his country made valuable contributions to the deliberations on the work of the Commission. Mr. Chairman, the AALCO on its part will always appreciate the representation of the Commission at our annual sessions.

4. Mr. Chairman, allow me to briefly explain the activities of the AALCO since I last addressed the Commission in July 2005. This year is an important milestone in the history of AALCO. AALCO turned 50 now. Established in 1956 as a tangible outcome of historic Bandung Conference, AALCO has grown from seven Members in 1956 to 47 Members now. Another significant achievement for AALCO is the inauguration of the permanent headquarters building of AALCO in New Delhi.

5. Thus, in this backdrop, the 45<sup>th</sup> session of the AALCO was held in New Delhi from 3-8 April 2006. The session had elected H.E. Narinder Singh, Legal Adviser and Joint Secretary, Ministry of External Affairs, Government of India as its President and H. E. Vincent Damian Lyimo, Permanent Secretary and Deputy Attorney-General, Republic of Tanzania as its Vice-President. Along with the deliberations on the agenda items, three half-day special meetings took place on three different topics. The permanent headquarters building, which was constructed with the generous support of the Government of India, was inaugurated by His Excellency, the Minister of State for External Affairs,

Government of India, on 6 April 2006. Keeping in view the significance of the Session, many Member States deputed high-level delegations, who took active part in the deliberations.

6. During these deliberations many delegations who attended the New Delhi Headquarters session offered elaborate comments on the thrust of the Commission's work on various topics as well as their country positions on individual draft articles. Mr. Chairman, the session has mandated me to bring to the attention of the ILC the views expressed by AALCO Member States on the work of the Commission. However, due to the paucity of time and also keeping in view the final stage of the work in the present quinquennium I confine my self to certain general observations made by the Member States on some of the topics on the agenda of the Commission.

7. Mr. Chairman, to begin with, on the topic "Diplomatic Protection", in general, the Member States of AALCO welcomed the progress achieved on this topic.

-Many Delegates were pleased to see that the draft articles adopted in the first reading reflected, the customary rules of international law on diplomatic protection. They hoped that the ILC would continue its efforts to improve the draft articles and its commentaries, taking into account comments from States, so that the second reading on this topic could be completed on schedule. Several Delegates welcomed the Special Rapporteur's conclusion that the clean hands doctrine should not be included in the draft articles so that the Commission can focus more on matters of a practical nature that needed further elaboration.

8. On the topic of "Reservations to Treaties";

-Delegates welcomed the tenth report of the Special Rapporteur and appreciated the comprehensive manner in which the report addressed the core issues in the reservations regime and also in developing a Guide to Practice on reservations to treaties. They believed that the guidelines and commentaries, once adopted, would reduce uncertainty and assist the States and international organizations in their treaty practice.

-It was pointed out that the approach regarding definitions adopted by the draft guidelines should ensure uniformity in the formulation and admissibility of reservations. An observation was made that defining core terms in the international treaty regime would alleviate interpretation problems and thereby reduce subjectivity and welcomed the Special Rapporteur's efforts in defining complex concepts such as "object and purpose".

-One Delegate said that any reservation entered into by a Member State to a Convention must not be incompatible with the objects and purposes of the treaty. That would enhance customary international law and boost the incontrovertible fact that States were still capable within their scope of unilateral acts, to refrain from committing themselves to a treaty that they might not agree with.

-A view was expressed that the gamut of law on reservations ushered in by the Vienna Convention on the Law of Treaties, 1969 along with the Vienna Convention on succession of States in respect of Treaties, 1978, and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986, had, by and large, served well the needs of the international community. The rules established by the above-mentioned Conventions, due to their wide acceptance, have acquired the status of customary norms and it might not be wise to derail them now. The existing regime of reservations to treaties, as incorporated in Articles 19 to 23 of the Vienna

Convention on Law of the Treaties, 1969, were sufficiently flexible and did not pose any problems. The regime established by the Vienna Conventions struck a balance between the objectives of preservation of text of the treaty by imposing a limitation on States that the reservation should not be “incompatible with the object and purpose of the Treaty” and universality of participation in the treaty.

-One delegate said that their country did not make any distinction between human rights treaties and other treaties with respect to the regime of reservations as all treaties stipulated normative and contractual obligations. The Vienna Convention on the Law of Treaties also did not differentiate human rights treaties from any other set of normative treaties. If a different regime was established for human rights treaties, which did not permit reservations it would impair the objective of universality of participation in such treaties.

#### 9. On the topic “Unilateral Acts of States”;

-One view sought the Commission to identify some basic principles governing the Unilateral Acts of States, which could serve as reference points for States. Another view opined that the Commission should formulate concrete principles and guidelines on those Unilateral Acts of States, which create legal obligations before looking into the possibility of drafting legal rules for such acts.

-On the issue of whether a statement should be treated as creating legal obligation or merely of a political nature, one Delegate was of the view that the intention of the state concerned remained the determining factor. Another Delegate added that it was critically important to formulate a clear definition of unilateral acts of States, which create binding legal obligations so as to distinguish it from those that merely create political obligations.

10. On the topic “Responsibility of International Organizations” the following observations were made.

-One delegation observed that the formulation of the Draft Articles on the Responsibility of International Organization was timely in view of the increasing range of activities that international organizations have come to regulate in international affairs.

-Another delegate agreed with the Special Rapporteur that wrongful act of the International Organization could consist of either an act or an omission and was satisfied with the fact that the draft articles cover both these possibilities.

-It was also observed that the whole exercise of the Commission should not go beyond the extent where it would be inappropriate to draw analogies with regard to attribution and responsibility applicable to States in order to develop and articulate principles applicable to International Organizations.

11. On the issue of “Fragmentation of International Law”;

Delegates appreciated the initial but delightful results achieved by the study group on the subject. They expressed hope that the study on fragmentation of international law would facilitate an international consensus on the issue, besides establishing the primary status of the basic principles of international law and standardizing international practice. They expressed optimism that the study would help realize the objective of promoting rule of law throughout the international Community.

12. On the topic “Shared Natural Resources”, the Member States made the following observations:

-It was emphasized that draft articles should be aimed at formulating basic principles, and leave the specific rules to the bilateral and regional arrangements, as transboundary aquifers in the world differ from one case to another.

-One Delegate also expressed support for the use of the word “*encouraged*” in draft Article 14 in relation to the taking of a precautionary approach by aquifer States in respect of preventing, reducing and controlling the pollution of a transboundary aquifer or aquifer system that might cause significant harm to other aquifer States.

-Another Delegate recognized the need for elaboration of an international legal instrument to guide the use, allocation, preservation and management of transboundary aquifers or aquifer systems and hoped that the framework would later subsequently be expanded to include other shared natural resources such as oil and gas too.

-It was also believed that it would be inappropriate to apply the principle of "equitable use" embodied in the 1997 Convention on Non-navigable Uses of Water-courses, for the purpose of building a regime on ground water, where the role of "riparian rights" in the utilization of water was less pronounced.

13. On the topic of “Effects of Armed Conflicts on Treaties”, the following observations were made by the Member States:

-One Delegate emphasized that the study under this topic should also cover treaties entered into by international organizations; the scope of “armed conflicts” in the draft articles should be strictly confined to international armed conflicts; and further in-depth study was needed on the issue of the legality of the use of force, as it did have a bearing on treaty relations.

-Another Delegate was of the view that this subject was not limited to the law of treaties and had close relationship with other domains of international law; *inter alia*, international humanitarian law, particularly law of self-defense and State responsibility.

-Another Delegate observed that the topic should be considered on the basis of armed conflicts of international nature, that being the scope within which international law invariably applied. It might in the future proceed to include conflicts of a non-international nature, but must be done within the confines of customary international law principles.

-While considering draft Article 4, one Delegate said that there was a need to examine the question of ‘intention’, and added to this the Commission should consider other criteria which should be determined in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties as well as the nature of the armed conflict.

#### 14. On the topic of “Expulsion of Aliens”;

-One Delegate said that the focus of the study should be on how to strike a balance between the right of a state to expel aliens and the human rights of those expelled aliens.

-Another Delegate believed that the decision to expel aliens was a sovereign right of State. However, the state should exercise this right in accordance with established rules and principles of international law, particularly fundamental principles of human rights. Any expulsion should be based on legitimate grounds, as defined in domestic law, taking into account issues such as public order and security or other essential national interests.

-Another Delegate said that the topic was particularly relevant in the contemporary world where globalization had made transboundary movement of people more intensive. Moreover, the Delegate emphasized that a state's right to expel aliens was a right which was inherent in the sovereignty of that state, but that right could not be considered absolute. The Delegate suggested that the Commission should be further encouraged to undertake a detailed consideration of existing customary international law and treaty law, including a comparative study of international case law both at the global and regional levels as well as to include national laws and practice.

15. Mr. Chairman, briefly these were the views expressed by the Member States of our Organization at Forty-Fifth session of AALCO and the main points of deliberations of the 45<sup>th</sup> Session will be reflected in the Yearbook of the AALCO, Vol. IV, 2006. Mr. Chairman, with a view to enabling the Commission to be informed of the law and State practice of the Asian and African States, the 45<sup>th</sup> Session of AALCO in a resolution adopted on this subject, urged the Member States to communicate their comments and observations regarding issues identified by the ILC on various topics currently on its agenda. Further, the resolution also appreciated the fruitful exchange of views on the items deliberated during the joint AALCO-ILC meeting in conjunction with AALCO Legal Advisers' Meeting held in New York in October 2005. The Member States of AALCO have requested me to continue convening such, meetings in future. In

continuation of this practice I look forward to your views and suggestions regarding the topics that may be taken up for discussion in the forthcoming AALCO-ILC joint meeting.

Mr. Chairman, and Distinguished Members,

16. Mr. Chairman, as to the future cooperation between the AALCO and the Commission, the Secretariat of the AALCO 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 AALCO to the Sixth Committee in their deliberations on the report of the Commission at its Fifty-Eighth Session. Further the item entitled “Report on Matters Relating to the Work of International Law Commission at its Fifty-Eighth Session” would thereafter be considered at the Forty-Sixth Session of the AALCO.

17. Mr. Chairman and Distinguished Members, the Forty-Sixth session of the AALCO would be held in Sudan in 2007. Allow me to take this opportunity to extend to you and your distinguished colleagues, on behalf of the AALCO an invitation to participate at the Forty-Sixth Session of the AALCO to be held in Sudan next year. I shall in due course communicate to you the date and exact venue of the Session. I look forward to welcoming you all to the next Session of the Organization and for closer future collaboration with the Commission.

18. As it is going to be the last session of this quinquennium I take this opportunity to congratulate all the Members of the Commission for their outstanding contributions to the work of the Commission in the last five years. The Commission has achieved a considerable progress in respect of all the topics that are under its consideration. The Commission has largely completed the work on some. The new topics that are taken up by the Commission are of immense

significance and it is hoped that the incoming composition of the Commission would carry forward the work with same vigour and enthusiasm. I also take this opportunity to wish all the Members every success in their future efforts in the field of international law and wish success of those Members who have been nominated by their respective countries for reelection for the next quinquennium. Once again I extend my sincere congratulations for the efforts made by the Members of the Commission during the past five years in fulfilling the mandate entrusted to them.

19. Finally, Mr. Chairman, let me place on record my sincere gratitude to you and to the Commission for allowing me to address this august body of eminent jurists and for the attentive and patient hearing you have given me.

Thank you.