

STATEMENT BY AMB. DR. WAFIK ZAHER KAMIL, SECRETARY-GENERAL, AT THE AALCO'S LEGAL ADVISERS' MEETING, NEW YORK, 30 OCTOBER 2003

Madam Chairperson, Excellencies, distinguished Guests, Members of the Diplomatic Missions, Ladies and Gentlemen.

It is indeed an honour for me to welcome you all at the AALCO's Legal Advisers' meeting. Madam Chairperson, I am particularly grateful to you that the Republic of Korea in the capacity of President of AALCO is chairing today's meeting, and on behalf of Amb. Choi I would like to extend to all of you his deep apology for not being able to chair this meeting due to an extremely tight schedule.

In fact earlier we had planned to hold two separate meetings on 30th October, Legal Advisers' meeting and on 3rd November, meeting of AALCO Member States with members of the International Law Commission (ILC). However, now we are compelled to hold only one meeting on 30th October, which will cover both the agendas. This is because we have been informed by the UN Secretariat that on the 3rd of November the Sixth Committee will have a very heavy schedule and it might overlap with our meeting, as the members of the ILC as well as delegations of AALCO Member States would be busy attending the Sixth Committee.

However, Madam I cherish the memories of AALCO's 42nd Session held in Seoul in June this year. The able guidance, and the efficient manner in which Hon'ble Choi Young Jin presided over that session proved to be most effective. The Session was historical one as well. It was first time, the Member States decided to implement the proposal to rationalize the consideration of agenda items at AALCO's annual session, which provided ample time and opportunity for an in-depth consideration of selected items on the agenda of the Session. It was also for the first time a Summary Report of the entire proceedings of the session prepared by the Drafting Committee was adopted by the Session.

On a personal note, I was unanimously reelected as the Secretary-General for another term of three years. I seize this opportunity to reiterate my gratitude to all the Member Governments for the confidence they have reposed on me and my deep conviction to enhance the work and image of AALCO during my tenure.

Madam Chairperson, at the Seoul Session, a decision was also taken to accept the kind invitation of the Government of Indonesia to host AALCO's 43rd session at Bali in 2004. Indonesia, as a founding member of AALCO has made useful contributions towards the growth of the Organization. I understand, the Government of Indonesia is preparing for the commemoration of the 50th Anniversary of the historic Bandung Conference. As you know, AALCO has historic links with Bandung Conference. It owes its origin to that Conference. On the eve of such commemoration, AALCO's 43rd session will therefore be an occasion to find ways and means to further strengthen our

links. I would like to suggest that we could ponder over these matters at our forthcoming 43rd session scheduled to be held in Indonesia.

Madam Chairperson and distinguished participants, as you know for the last 20 years, AALCO's Legal Advisers' Meeting in New York held in conjunction with the annual Session of the General Assembly provides a useful forum for exchange of views in an informal manner. The agenda of the Meeting remains flexible. The discussions are at high level and no formal decisions are taken to bind any Government. It is meant in fact to direct me and the Secretariat about AALCO's activities. The timing of this meeting is also very convenient as along with legal advisers, International Law Commission members are also present during this time.

Against this backdrop, when we were preparing for today's meeting, the first question raised was the tentative issues for discussion and their relevance in the context of AALCO's current and future work programme. As regards the current agenda, there are as many as 15 items. Taking a clue from the outcome of Seoul Session, it is my presumption that at least 8 or 9 items will be taken up for in-depth consideration at AALCO's 43rd session.

It may be mentioned in this regard that an important innovation at Seoul deliberations was the rationalization of the agenda of the session. The subjects, on the basis of their contemporary relevance, as well as for ensuring focused discussion were divided into two categories: deliberated and non-deliberated items. This division ensured that a fruitful discussion took place on the deliberated items. As regards the non-deliberated items, Member States were requested to furnish their written comments to the Secretary-General and these non-deliberated items would be placed for consideration depending upon the developments related to these items and mandate received from Member States at the subsequent annual sessions of the Organization.

The deliberated items were: (1) International Law Commission (2) International Criminal Court (3) An Effective Legal Instrument against Corruption (4) Jurisdictional Immunities of States and their Property (5) Establishing cooperation against Trafficking in Women and Children (6) Deportation of Palestinians (7) Human Rights in Islam (8) WTO (9) Environment and Sustainable Development.

The non-deliberated items were: (1) Law of the Sea (2) Extra Territorial Application of National Legislation (3) International Terrorism (4) Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law (5) the Status and Treatment of Refugees (6) Legal Protection of Migrant Workers. I would appreciate very much if the distinguished participants present today could give us some guidance on how to reorganize our agenda.

Madam Chairperson, as it has now become customary at the annual sessions of AALCO a one-day special meeting is held on any topical subject of interest to our Member States. This year the chosen theme was "The Relevance of International Humanitarian Law in today's Armed Conflicts". The meeting was organized with the full

cooperation of the International Committee of the Red Cross (ICRC) and the host government-Republic of South Korea. It saw participation from the most eminent personalities in the field of international humanitarian law. Another milestone of the session was the adoption of the “Seoul Resolution on International Humanitarian Law”.

Today three topics may be taken up for discussion, which are on AALCO’s agenda. These topics are: Measures to Eliminate International Terrorism, international Cooperation in the Fight against Transnational organized Crimes and An Effective International Legal Instrument against Corruption.

Madam Chairperson, the item entitled ‘International Terrorism’ was placed on the agenda of the AALCO’s session in New Delhi upon a reference made by the Government of India. The discussions at AALCO’s 40th, 41st and 42nd sessions were focused on the issues raised in the context of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly to elaborate a draft comprehensive convention to combat international terrorism.

International terrorism poses most serious threat to international peace and security. It is unfortunate that the beginning of the 21st century witnessed new dimensions and the magnitude, which this threat has assumed. In the wake of the tragic events of 11 September 2001, the international community has demonstrated a rare unity to condemn such acts and resolve to take prompt and concerted action to deal with these problems. This topic is particularly of importance to Asian and African countries, as they have become victims of this menace. Although acts of terrorism continue to occur more frequently around the world, particularly in Asia and Africa, unfortunately the work in the Ad Hoc Committee is at a very slow pace. Thus I would urge Member States of AALCO to try within this forum as well as other fora to at least come to a consensus on some of the contentious issues.

I would like to draw your attention to the UN Convention against Transnational Organized Crime and its three Protocols. It is worthwhile to mention in this regard that the UN Convention against Transnational Organized Crime has entered into force on 29 September 2003. The perusal of the Convention and its Protocols points to the fact that the forms of transnational organized crime are varied in nature. From money laundering to weapons smuggling and human trafficking, it encompasses many aspects and touches upon many facets of human activity. No doubt that, the present Convention and its Protocols will constitute an important legal framework towards preventing and criminalizing these illegal activities. It is encouraging that to date 30 AALCO Member States have signed the Convention.

During the 42nd session, AALCO delegations stressed the urgent need for cooperation within the framework of the Convention and its Protocols. The resolution adopted at that session, *inter alia*, encourages Member States who have not yet done so to consider signing and becoming party to the Convention. I hope that deliberations on the topic during the ongoing General Assembly session may result in some significant

outcome, thus bringing in more parties from AALCO Member States to the Convention and its protocols.

It is significant to mention in this regard that the Delegate of Indonesia suggested at the Seoul session that the special meeting to be held in conjunction with 43rd session of AALCO, in 2004, might be dedicated to the issue of 'Establishing Cooperation against Trafficking in Women and Children'. The valuable feedback from this meeting is made known to Member States as well as placed before AALCO's Liaison Officers Meeting in New Delhi, which according to our statutory rules approves the draft agenda of the Session.

With regard to the topic of Combating Corruption it may be recalled that the UN General Assembly had established an Ad Hoc Committee to negotiate a broad and effective international convention against corruption. Taking note of the great importance of this matter for the Asian and African countries, this topic was considered in the AALCO's Legal Advisers' meeting held in New York in 2001 and the item was listed on the agenda of the 41st session of AALCO. Since then it has been under AALCO's consideration. The UN Ad Hoc Committee after negotiating for seven elaborate sessions has come up with a draft, which is expected to be adopted in the Ministerial Signing Conference to be held from 9-11 December 2003 in Mexico. The AALCO has been actively participating in the negotiation process at the Ad Hoc Committee as well as the Global Forum and will be taking part in the Ministerial Signing Conference in Mexico.

Madam chairperson, with a view to facilitating discussion at this meeting, the Secretariat has prepared a document entitled "Notes and Comments on Selected Items before the 58th Session of the General Assembly" (Doc. No. AALCO/UNGA/58/2003).

Further, I would like to bring to your notice an important recent event. AALCO had organized a two-day seminar in collaboration with United Nations High Commissioner for Refugees (UNHCR) on the topic of "Strengthening Refugee Protection In Migratory Movements" at New Delhi, on 17 – 18 September 2003. This Programme was in accordance with the Resolution 41/3 adopted at the 41st session of AALCO in Abuja (Nigeria) in July 2002. The Agenda covered diverse topics such as: Migration and Refugee Protection in the Asian African Context: Policy, Law and Practice, Strengthening Asylum Systems: Challenges and Legal Responses, and Asylum and National Security Concerns in a Refugee Context. Fruitful discussions took place on various dimensions of the issue as the participants at the seminar were from different backgrounds.

Before concluding I would like to draw your attention to the rather modest budget of AALCO and while thanking Member States who have paid their contribution, urge those who have not so to make their contributions in time to facilitate the work of the Secretariat. I would also urge those Member States who have not cleared their arrears to do so for the same reasons.

As this meeting is divided into two parts we come to an end of the first part of the legal Advisers' meeting and I now request the Delegations present to air their views on any or all of the preceding agenda items.

Madam, Chairperson, I have the honour and pleasure to start with the second part of our agenda related to ILC-AALCO meeting. First of all, I would like to welcome the Chairman of the His Excellency ILC Mr. Enrique Candioti and Mr Giorgio Gaja and Amb. Chusie Yamada, Members of the ILC.

The AALCO attaches great significance to its traditional and long-standing ties with the International Law Commission. One of the primary objectives of the AALCO, as envisaged in its Statutes is to examine questions that are under consideration by the Commission and to arrange for the views of the Member States to be placed before the Commission. This mandate has over the years helped forge closer bonds between the two organizations. In fact, it has now become customary for the Commission and the AALCO to be represented at the each other's annual sessions.

In this backdrop, I suggested in my address to the fifty-fifth session of the Commission for holding a daylong seminar on any of the topics that would be of interest to both the organizations. This proposal was very much welcomed by ILC Members and it was made keeping in view the fact that it helps to have an in-depth discussion on the particular issue, as this seminar would bring together the Legal Advisers of the Member States of AALCO and the distinguished members of the Commission. This would also help to have a focused discussion on the concerned topics and to elicit the views of the Asian and African countries.

The topics that were chosen for discussion for today's meeting are (1) Cooperation between the ILC and the AALCO (2) Responsibility of International Organizations (3) Shared Natural Resources (groundwater) and 4) Jurisdictional Immunity.

With regard to the topic of 'Responsibility of International Organizations' at its fifty-second session, in 2000, the Commission decided to include it in its long-term programme of work. The General Assembly in its resolution 55/152 of 12 December 2000, took note of the Commission's decision and in paragraph 8 of its resolution 56/82 of 12 December 2001, requested the Commission to begin its work on the topic.

At its fifty-fourth session, in 2002, the Commission decided to include the topic in its programme of work and appointed Mr. Giorgio Gaja as Special Rapporteur for the topic. At the same session a Working Group was established, and at the end of the session, the Commission adopted the report of the Working Group.

At the fifty-fifth session this year, the Commission considered the first report of the Special Rapporteur dealing with the scope of the work and general principles concerning responsibility of international organizations. Following the consideration of the above report the Commission referred three draft articles to the Drafting Committee.

The Commission further adopted articles 1 to 3 as recommended by the Drafting Committee together with commentaries. It may be mentioned in this regard, as we all know, that the Commission had adopted draft articles on 'Responsibility of States for Internationally Wrongful Acts' in the year 2001.

At its fifty-fourth session (2002), the commission decided to include the topic 'Shared Natural Resources' in its programme of work and accordingly appointed Amb. Chusie Yamada as Special Rapporteur for the topic. The General Assembly, in paragraph 2 of resolution 57/21 of 19 November 2002, took note of the Commission's decision to include the topic in its programme of work.

Regarding the topic of shared natural resources, at the present session the Commission considered the first report of the Special Rapporteur on the topic. Under the topic, the Special Rapporteur proposed to cover confined ground waters, oil and gas and initially to limit the work to transboundary groundwaters only.

The Commission would be focusing for the time being on groundwaters within the wider topic of shared natural resources. In the view of the Commission, it would be essential that it collect basic information on groundwaters in order to formulate appropriate rules in this area. Accordingly, the Commission seeks information from Governments and international organizations on the following issues.

- (a) Major groundwaters and their social and economic importance;
- (b) Main uses of specific groundwater relating to their management;
- (c) Contamination problems and preventive measures being taken;
- (d) National legislation, in particular the legislation of federal States that governs groundwaters across its political subdivisions together with information as to and how such legislation is implemented;
- (e) Bilateral and multilateral agreements and arrangements concerning groundwater resources in general and in particular those governing quantity and quality of groundwater.

Therefore, the participants of this meeting may focus their comments on these issues.

The other topic for today's discussion is 'Jurisdictional Immunity'. In accordance with the General Assembly resolution 32/151 of December 1977, the topic "Jurisdictional Immunities of States and Their Property" was included in the programme of work of the Commission in 1978. At the forty-third Session in 1991, the Commission adopted the final text of a set of 22 draft articles on the subject, and recommended that the General Assembly convene an international conference of plenipotentiaries to examine the draft articles and conclude a convention on the subject.

Subsequently, the ILC's draft articles were the subject of examination of a Working Group established within the framework of the Sixth Committee of the General Assembly during the years 1992 and 1993. In furtherance of this process, informal consultations were held in September-October 1994 within the Sixth Committee to identify and alienate differences on substantive issues.

The General Assembly resumed consideration of this topic in 1997 (52nd session) and at its 53rd session in 1998 adopted resolution 53/98 whereby it decided to establish at its 54th session an open-ended working group of the Sixth Committee to consider the outstanding substantive issues related to the draft articles; and also invited the International Law Commission to present any preliminary comments it may have regarding the outstanding substantive issues related to the draft articles.

Accordingly, at its fifty-first session (1999), the ILC established a Working Group on Jurisdictional Immunities of States and their property and entrusted it with the task of preparing preliminary comments as requested by the General Assembly. The ILC took note of the suggestions made by the Working Group and transmitted the same to the Sixth Committee of the UN General Assembly. The fifty-fourth session of the General Assembly established a Working Group within the Sixth Committee which focused on five outstanding substantive issues identified in the report of the Working Group of the ILC, namely:

- (i) Concept of a State for purposes of immunity;
- (ii) Criteria for determining the commercial character of a contract or transaction;
- (iii) Concept of a State enterprise or other entity in relation to commercial transactions;
- (iv) Contracts of employment; and
- (v) Measures of constraint against State property.

Following its deliberations, the Chairman of the Working Group presented a Report to the Sixth Committee.

The Working Group continued its work during the 56th session of the General Assembly. At that session the General Assembly decided to establish an Ad Hoc Committee on Jurisdictional Immunities of States and their Property, to further the work done, consolidate areas of agreement and resolve outstanding issues. In line with this mandate, the Ad Hoc Committee met at the UN Headquarters from 4 to 13 February 2002 and from 24 to 28 February 2003. At its 6th plenary meeting, on 28 February 2003, the Ad Hoc Committee adopted its report containing the text of the draft articles on jurisdictional immunities of States and their property, together with understandings with regard to some of the provisions of the draft articles.

At the same meeting, the Ad Hoc Committee decided to recommend that the General Assembly take a decision on the form of the draft articles. If and when the

General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject. It seems that a consensus has been reached to have a convention.

The topics that I have briefly commented upon are of immense significance and need in-depth consideration with a view to resolving differences of opinion and arriving at a common understanding and to take active part in the work of the International Law Commission and the UN General Assembly. I am grateful to their Excellencies, Chairman of the ILC Mr. Enrique Candioti and Mr Giorgio Gaja and Amb. Chusie Yamada, Members of the ILC to be present among us to guide us in knowing more about these very important issues and I hope, this meeting would serve that purpose. Thank you very much.