



**STATEMENT DELIVERED BY H. E. Dr. KAMALINNE PINITPUVADOL,
SECRETARY-GENERAL OF AALCO AT THE SEVENTY-FOURTH
SESSION OF THE INTERNATIONAL LAW COMMISSION UNITED
NATIONS OFFICE AT GENEVA, 18 JULY 2023**

Madam Chair,

*Distinguished members of the International Law Commission,
Ladies and gentlemen,*

It is a privilege and honour for me as the Secretary-General of the Asian-African Legal Consultative Organization (AALCO) to represent the Organization at this Session of the International Law Commission. This is my first time to represent AALCO at the ILC session as I started my term of office on 1 January 2022. I extend my warm congratulations to all of you on your election/re-election and wish you the very best in the important task of progressive development and codification of international law.

I express my heartfelt gratitude to the Commission for inviting AALCO to participate year after year in these important sessions. The AALCO continues to attach great importance to its longstanding relationship with the Commission. It would be my earnest endeavour to further strengthen this relationship in the years to come.

Distinguished Members of the International Law Commission,

As you are aware, one of the functions assigned to the Asian-African Legal Consultative Organization (AALCO) under its Statute is to study the subjects which are under the consideration of the Commission and thereafter forward the views of the Member States on them to the Commission.

Fulfilment of this mandate has enabled to forge a close relationship between the two organizations. It has also become customary for AALCO and the ILC to be represented during each other's sessions. My presence here to reaffirm that the work of the Commission continues to be held in the highest esteem by the Member States of AALCO.

The Members States of the AALCO normally meet once annually for its regular session. This meeting, called “**AALCO Annual Session**”. The Government of Member States appoint high-level representatives to attend the Annual Sessions which provide a vital platform for Member States to deliberate upon the myriad dimensions of international law. Notably, during our Fifty-Ninth and Sixtieth Annual Sessions in 2021 and 2022 respectively, many Member States highlighted the value of a strengthened and enduring cooperation between our two organizations. We are convinced that such collaboration not only enriches our understanding of the diverse aspects of international law but also furthers our mutual objectives. Member States invested considerable time in examining selected ILC agenda items. The robust discussions underscored the importance these topics hold for the Asian-African States. Moreover, the active engagement of ILC Members at our Annual Sessions has greatly enhanced our Member States' understanding of the ILC's current work programme and the essential topics under its consideration. The insights shared by the ILC Members have served to deepen the Member States' comprehension of these issues and have equipped them to engage more effectively in the discussions surrounding these topics. Their presence not only enriches our understanding of complex legal principles but also helps in contextualizing these principles within the broad framework of Asian-African concerns.

Indeed, the participation of Members of the ILC at our Annual Sessions is of critical importance. I take this opportunity to profoundly thank, the members of this Commission— **Prof. Dire Tladi, Ambassador Marcelo Vázquez-Bermúdez, Ambassador Nguyễn Hồng Thao and Prof. Bimal Patel**, for enriching AALCO's deliberations on the ILC matters at its Sixtieth Annual Session in 2022. Your experience and expertise illuminate our discussions, providing invaluable insights that help shape the perspectives of our Member States. Special thanks also go to **Prof. Nilüfer Oral and Prof. Patrícia Galvão Teles and Amb. Marcelo Vázquez-**

Bermúdez for joining us in our webinars on “Sea-level Rise” and “General Principles of Law” on 7 June 2022 and 6 April 2023 respectively and for briefing the participants on the work of the Commission on the two topics.

Madam Chair,

Let me take this opportunity to make **few initial remarks about AALCO** before I start dealing with the most important part of my presentation, which is the summary of the views of the Member States of AALCO on some selected agenda items of ILC articulated at the Fifty-Ninth and Sixtieth Annual Sessions of AALCO held in Hong Kong SAR in 2021 and in New Delhi in 2022 respectively.

The Asian-African Legal Consultative Organization (AALCO) is a unique Organization, as perhaps, it is the only legal consultative body of its kind in the family of inter-governmental organizations. It was established in 1956, as a tangible outcome of the historic “**Bandung Conference**”, held in Indonesia, in April 1955. The lessons of the Conference can be summarized in three key words - friendship, solidarity and cooperation. These came to be known as the Bandung Spirit. The conference had a profound effect on how Asian-African States saw international legal order as well. Established a year after the Bandung Conference, the Asian-African Legal Consultative Organization (AALCO), the organization that I serve, is considered to be a tangible outcome of this Conference.

AALCO consists of a body of legal experts, advisory in nature, aimed at dealing with problems pertaining to international law that were referred to it by its Member States. Further, it also aims at promoting exchange of views and information on matters of international law, which were of common concern to the Member States. Today it has a membership of 47 Member States from Asia and Africa. It has a rich history of 67 years behind it in addressing the international law concerns of Asian-African States and promoting the realization of Afro-Asian perspective in the codification and progressive development of international law.

Currently, AALCO has **18 topics on its Agenda/Work Programme**. AALCO is also evolving its agenda and activities according to the needs of its Member States. Here are some important topics :

- Matters Relating to the Work of the International Law Commission
- The Law of the Sea
- The Environment and Sustainable Development
- Expressions of Folklore and its International Protection
- The Status and Treatment of Refugees
- Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine
- Legal Protection of Migrant Workers
- Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties
- Violent Extremism and Terrorism (Legal Aspects)
- Establishing Cooperation Against Trafficking in Women and Children
- The International Criminal Court: Recent Developments
- An Effective International Legal Instrument Against Corruption
- International Law in Cyberspace
- The Work of UNCITRAL and Other International Organizations in the Field of International Trade and Investment Law
- The WTO as a Framework Agreement and Code of Conduct for World Trade
- Managing Global Financial Crises: Sharing of Experience
- Human Rights in Islam
- Peaceful Settlement of Disputes

I would like to take this opportunity to inform you that there are three ways in which a matter is placed on the Work Programme of AALCO :

- 1) Reference by a Member State
- 2) ***Suo-moto*** initiative of the Secretary General
- 3) Through follow up the work of the ILC

Madam Chair,

Now, allow me to summarise the views/opinions of our Member States on Selected Items on the Agenda of the ILC as expressed in the 2021 and 2022 Annual Sessions. The Verbatim Record of the statement made by the Member States of AALCO during the deliberations on Selected Items on the Agenda of the International Law Commission at the 59th and 60th Annual Session of AALCO would be circulated to all the Members of the Commission.

First let me deal with the topic of ***Immunity of State Officials from Foreign Criminal Jurisdiction.***

I. Immunity of State Officials from Foreign Criminal Jurisdiction

This topic is of high sensitivity and entails a keen balancing act between the fundamental principle of sovereign equality and the urgent need to combat impunity for serious international crimes.

In 2021, the Member States of AALCO delivered significant comments and observations on this matter.

- **Some Member States** expressed their reservations about Draft Article 7. They insisted it lacked the codification of customary international law and adequate support from State practice, thus recommending the Commission to revisit this Article. They emphasized the need for consistent state and treaty practice to support Draft Article 7. They suggested that the status, nature of duty, gravity of the offence, and international law concerning immunity, among other factors, should be considered while determining immunity.
- **Some suggested that** it fails to respect the principle of immunity *ratione personae*, which is fundamental for the functioning of officials.
- **Some** called for a more thorough study of the Draft Articles due to their complexity and sensitivity.

- **While some States** underscored the need for the Commission to mediate divergent opinions on this topic before completing the first reading of the Draft Articles.
- **Some** acknowledged that the concepts of immunity and jurisdiction often conflict, and a careful balance has to be placed when determining the procedural and substantive aspects in such matters as they have a political impact on relations between States.
- In 2022, the sentiments expressed by the Member States were largely consistent with those from the previous year.

II. Protection of the Environment in Relation to Armed Conflict

In the 2022 Annual Session on the topic of "**Protection of the Environment in Relation to Armed Conflict**", **Member States** acknowledged the customary and treaty laws that prohibit belligerents from causing unnecessary environmental damage during armed conflicts. **Some** emphasized the need to adhere to principles of proportionality, distinction, and prohibition of unnecessary destruction.

- While noting the draft principles' application to international and non-international conflicts, expressing concerns over the different obligations of governments and non-state actors, **some States** argued that non-state actors can't be expected to compensate for environmental damages, however, this shouldn't be an excuse for states to neglect their duties under International Humanitarian Law.
- **Member States** expressed gratitude towards the Commission for its work on the 27 draft principles and preamble on the protection of the environment during armed conflicts. They agreed that these principles reflect the increasing global awareness of the issue and would contribute to the progressive development of the relevant international law.

- **Some also** asserted that the protection of the environment in armed conflicts has a strong basis in international law. They appreciated the inclusion of principles applicable during armed conflict in the draft principles, underlining their importance in providing environmental protection, comparable to the protection accorded to humans. They objected to the use of the term "**Indigenous people**" in draft Principle 5, maintaining that their national policy does not recognize such concept.

III. Peremptory Norms of General International Law (*Jus Cogens*)

In the 2021 Annual Session, Member States offered their insights on the topic of ***peremptory norms of general international law (jus cogens)***.

- **Member States** appreciated the International Law Commission's efforts in providing clarity on the identification and legal consequences of ***jus cogens***. They stressed the importance of ensuring the conclusions and commentaries accurately guide states, national and international courts, and other parties, who may need to consider the existence of ***jus cogens norms***.
- **Some Member States** requested for clarity on whether draft conclusions, guidelines, and similar documents have a prescriptive or descriptive nature and what their status in international law is. They emphasized that any resolutions or acts conflicting with ***jus cogens*** norms should not impose obligations on states, even those issued by the UN Security Council. **Some also** highlighted the importance of clarifying the identification of ***jus cogens*** norms.
- **Some Member States applauded** the Special Rapporteur's work, agreeing that there is not sufficient state practice on ***jus cogens*** and praising the balance maintained between theory and practice. They requested further clarification on draft conclusion 3, highlighting the need for clear identification standards for ***jus cogens***. They also debated the existence and definition of regional peremptory norms, welcoming the Commission's stance that "***regional jus cogens does not exist.***"

- **Member States** agreed to the importance of ***jus cogens*** and acknowledged the need for careful interpretation based on sound studies. While they acknowledged the value of the draft conclusions, they pointed out controversial areas, such as conflicts between Security Council resolutions and *jus cogens*, and the non-exhaustive list in the annex.

IV. Succession of States in respect of State Responsibility

Further, in the 2021 and 2022 Annual Sessions, AALCO Member States provided their comments on the topic of "***Succession of States in respect of State Responsibility***". While the states generally supported the work on the topic, some raised the following points:

- Emphasis was made on the importance of agreements between concerned parties in addressing state responsibility issues following succession.
- The questioned whether ***state practice*** was sufficient to establish universal rules on the matter and whether the draft article 1(2) **accentuates the auxiliary** nature of these drafts.
- Lack of state practice and the theoretical nature of the topic. It was proposed to have the outcome in the form of draft guidelines or an analytical report.
- The principle of non-succession generally applies, with exceptions under specific circumstances like the successor agreeing to share the responsibility of the predecessor state. The priority should be given to agreements between states and highlighted the need for negotiations to occur freely and within an appropriate timeframe.
- Concerns towards **the insufficient state practice** to justify codification of this topic. The proposal to ILC is to first identify if there is enough state practice to recognize certain general principles of law.

- **Some States** noted the need to address the complexities arising when there's a succession of states involved in wrongful acts.
- **Some States** favoured the draft taking the form of guidelines rather than articles and questioned the automatic succession and *clean slate theories*. They preferred a *"softer"* outcome, such as draft guidelines or conclusions, over a treaty or agreement on the topic.

V. General Principles of Law

Allow me to present the observations of the AALCO Member States on the topic of *General Principles of Law* made in 2021 and 2022 Annual Sessions.

- **Some Member States** suggested that principles recognized only by a small number of countries should not be considered as *"common principles"*.
- Emphasis on the sources of international law, it was also suggested that the general principles of law should be considered a *supplementary source*, rather than *a subsidiary or secondary one*.
- **Some Member States** agreed with the proposed formulations in draft conclusions 4, 5, and 6. However, expressed concern over draft conclusion 3(b) and emphasized the need for caution on draft conclusion 7.
- The ILC's attempt to replace the term *"civilized nations"* with *"community of nations"* was applauded.

In 2022, **the Member States** commended the Special Rapporteur's third report, acknowledging the recent decisions made by the Commission.

- They noted that the topic's inclusion in the Commission's long-term programme of work was significant for the progressive development of international law.
- The States found the report more balanced with systematic discussions on the functions of the general principles of law and looked forward to more work of the Commission including the need for a diverse analysis of the world's legal systems and anticipate further consideration of Asian law in the Special Rapporteur's future reports.
- **Member State** sought comprehensive analysis, deliberation, and inclusion of Secretariat's observations and comments in future reports.
- **Some States** still expressed concern about the inclusion of the concept of general principles formed within international law, questioning whether such principles serve as a category of general principles of law as outlined in the ICJ Statute. They suggested that the Commission should examine the issue more entirely.
- While **Some States** believed that there is a lack of theory and practice to support the existence of general principles of law formed within the international legal system, the need for further discussion on the topic was highlighted.
- **Some States** underscore the complimentary role of general principles to other sources of international law and anticipate a **methodical approach** to the origin and creation of a general principle.

V. **Sea-level Rise in relation to International Law**

The topic of *Sea-level Rise in relation to International Law* was discussed in 2021 and 2022 Annual Sessions of AALCO. First, I will summarise the observations of the Member States from the 2021 Session.

- **The Member States** highlighted the importance of the issue of sea-level rise on maritime law and the rights and interests of countries, particularly the survival of small island developing countries and low-lying countries.
- **Some States** stressed the importance of reflecting the positions and concerns of all countries in the study, avoiding premature conclusions, and respecting the mandate of the Study Group. They also emphasized the need to address sea-level rise issues within the law of the sea, considering the balance of rights and obligations stipulated in UNCLOS.
- **Member States** acknowledged the challenges posed by sea-level rise and highlighted its disproportionate impact on small island developing States. The issue's impact on territories, economies, food security, health, education, cultures, and livelihoods were also highlighted. They also advocated for reducing the vulnerability of States and strengthening their resilience to climate change while believing that any approach towards this topic should be based in principles of equity and fairness.
- The international community was encouraged to seek an acceptable solution to the international legal dilemma relating to baseline and maritime boundaries impacted by sea level rise.

Further, the topic was again placed on the agenda of the Annual Session in 2022, Allow me to highlight a few observations as below:

- **Some States** emphasized the need for caution when considering the presumption of continued statehood for States directly affected by sea-level rise, highlighting the implications this might have on the criteria of the **Montevideo Convention** on the Rights and Duties of States 1933.
- **Some** also raised concerns about the ambiguous effects under international law of some affected States' initiatives to construct artificial islands as a means to preserve their statehood. They suggested that future obligations for the

protection of persons affected by sea-level rise should be based on several factors including the principle of common but differentiated responsibilities, the national capacity of non-affected States, humanitarian principles, and case-by-case evaluations.

- **Some Member States** emphasized on the need to maintain certainty, security, and predictability, along with the preservation of the balance of rights and obligations in the face of changes to the natural landscape caused by sea-level rise. They insisted that such changes should not impact existing maritime boundary agreements and expressed its respect for the charts or lists of geographical coordinates of baselines that have been deposited under the United Nations Convention on the Law of the Sea (UNCLOS). They also welcomed the idea of further work on the topic, particularly in relation to issues of statehood and the protection of people affected by sea-level rise.
- **The Member States** reaffirmed the pivotal role of UNCLOS in dealing with issues emerging from sea-level rise, including the steadfast belief that maritime boundaries should not change due to the effects of sea-level rise.
- It was encouraged that the Study Group to incorporate aspects of international environmental law into their studies and emphasized that states need to fulfil their environmental commitments in order to effectively cope with sea-level rise in the long term.

VII. Provisional Application of Treaties

- Regarding the topic of "*Provisional Application of Treaties*," in 2021 Annual Session of AALCO, a **Member State** suggested a possible rule of construction that a treaty should not be considered provisionally applicable unless expressly and categorically stated in the treaty text or other relevant instrument. This suggestion aligns with their national practice and respects the realities of *republican states* where treaty negotiation falls under the executive's purview but foreign policy powers are shared with other governmental bodies.

- **Another State** emphasized that the provisional application of treaties as stated in Article 25 of the Vienna Convention does not impose any obligation on states, thereby ensuring that it does not restrict their future conduct concerning a provisionally applied treaty.
- **Some reservations** to Guideline 6 were noted. It underscores the differences between the provisional application of a treaty and the treaty's accession. It is believed these differences illustrated the distinct characteristics of the provisional application of treaties. Therefore, it was raised that Guideline 8, which defines a responsibility regime, contradicts the provisional application regime's nature and could undermine countries' willingness to apply treaties provisionally.

VIII. Protection of the Atmosphere

Regarding the topic "***Protection of the Atmosphere,***" in the 2021 Annual Session of AALCO, **the Member States** acknowledged the valuable contribution of ***Professor Murase*** and the Commission in completing the guidelines on this topic.

- **The Member States**, in principle, applauded the report and quoted it as a step in the right direction, some raised concerns over the guidelines' exclusion of the transfer of funds and technologies, including intellectual property, to developing countries. This exclusion, they argued, neglects a fundamental principle in international environmental law, making the guidelines incomplete and constituting a setback for international environmental law.
- **Some States** supported the replacement of the term "***pressing concern of the international community***" with "***common concern of humankind***" in line with the 2015 Paris Agreement.
- **Other States** stressed the paramount importance of international cooperation in law enforcement against environmental offences.

IX. Concluding Remarks

*Madam Chair,
Distinguished members of the International Law Commission,
Ladies and gentlemen,*

During the Fifty-Ninth and Sixtieth Annual Sessions, AALCO appreciated the diligent work of all special rapporteurs and the Commission in general. The Organization recognized the importance of the topics under the ILC's consideration as they represent pressing issues faced by the international community today.

As always, AALCO has remained a key votary of the Commission's work and will continue to support its mission aimed at the codification and progressive development of international law. Our earnest endeavour is to strengthen this relationship even further in the years to come.

The AALCO Secretariat has shown commendable proactiveness in engaging its Member States on topics featured on the International Law Commission (ILC) agenda. In the recent past, as an initiative to facilitate knowledge exchange and cooperation, the Secretariat has successfully organized two significant webinars involving an impressive assembly of panellists from various legal domains.

The first of these webinars, held in June 2022, was titled “***Rising Sea Levels and AALCO Member States : Perils and Protection under International Law***”. This webinar marked AALCO's initiative into discussions surrounding a topic that the ILC had recently incorporated into its work programme. Secretary-General of AALCO. Members of the ILC, ***Professor Nilüfer Oral and Professor Patrícia Galvão Teles*** were among the panellists, contributing to discussions on the ILC 's past and future interactions with the topic. Several representatives of our Member States had participated in these webinars. Following the webinar, the Secretariat compiled and published the proceedings, providing a valuable resource for all Member States and beyond.

The second webinar, held on April 6, 2023, was titled “***General Principles of Law and AALCO Member States***”. This interactive session attracted over fifty participants from Member States and academia. Notably, ***Ambassador Marcelo Vázquez-Bermúdez***, a member of the International Law Commission and the Special Rapporteur of the topic “General Principles of Law,” was part of the esteemed panel. He provided an overview of the draft conclusions adopted by the ILC, thus offering critical insights into the topic. A comprehensive analysis of the webinar, including its presentations, discussions, and recommendations, is currently being compiled and will be released during the upcoming Sixty-First Annual Session of AALCO this year.

Building on our successful webinars, AALCO envisions creating more outcome-oriented engagements with the Commission. We understand that there is a shared need for increasing awareness about the work of the Commission among AALCO Member States from Afro-Asian Continent. Our endeavour, therefore, is to create platforms that allow for a deeper understanding of the ILC's work and foster more meaningful interactions with our member states.

Madam Chair,

Distinguished members of the International Law Commission,

As I have been privileged to have had the opportunity to represent AALCO at this Session, I would like to take this occasion to ask you a question on **what is your expectation from us, AALCO.**

To answer the question of what the ILC expects from AALCO, in my views, it is important to revisit our mandate. AALCO has a pivotal role in being a bridge between the ILC and our Member States, facilitating dialogue and ensuring the flow of relevant information. This involves assisting the Commission in soliciting and collecting State Practice from our Member States. To optimize this process, we invite constructive ideas from the ILC members.

As we move forward, one of our initiatives involves establishing **informal Working Groups on ILC matters**. These working groups would be particularly beneficial for the study of topics included the Agenda of the ILC. This strategy aligns with the model of the AALCO Informal Expert Group's Comments on the ILC Project on ***"Identification of Customary International Law"***, established during the 2014 Annual Session of AALCO in Tehran. The group was designed to formulate responses to the work of the International Law Commission, including the work of Mr. Michael Wood, the ILC's Special Rapporteur on Identification of Customary International Law. Prof. Sienho Yee, an esteemed academic, was the Special Rapporteur for this group.

Moreover, these Working Groups would be a more proactive role by identifying and suggesting the topics under the Work Programme of AALCO which are of common interest among Members States for the Agenda of the ILC. This would be a good opportunity for both ILC and AALCO to develop common topics of their work programme.

Madame Chair, Distinguished Members of the Commission,

In light of the initiatives and aspirations I have just outlined, it would be immensely valuable to have your engagement and insights at our next gathering. I take great pleasure in extending an invitation to the members of the Commission to join us for the upcoming Sixty-First Annual Session of AALCO which will be held in the Republic of Indonesia, one of our founding Member States. We will communicate the exact dates of the Session and the modality of participation in due course.

As we look towards the future, rest assured that AALCO remains resolute in its commitment to cooperate with the Commission. We recognize and honour the mandate entrusted to us by our Member States and will continue to strive for excellence in our collaborative work.

Thank you very much for your attention and continued support.