

STATEMENT

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Excellencies, ladies and gentlemen,

1. I thank the Secretary-General of the Asian-African Legal Consultative Organisation for extending me invitation as a Special Invitee to this Session of the AALCO. It is an honour to deliver a Statement as an incoming member of the International Law Commission from 1 January 2023. I express deep gratitude to distinguished representatives for the same.
2. I extend warm gratitude to Mrs Meenakshi Lekhi, Honorable Minister of State for External Affairs of India, for her encouragement and support for the enhanced contribution of AALCO towards the codification and progressive development of international law to realise the goals of the UN Charter.
3. AALCO and the ILC share and work for several common goals which is inclusive of values, legal systems and aspirations of Asia and Africa and the cooperation and exchange of views between ILC and the AALCO are vital as the work which emanates from the ILC if have sound encapsulations of aspirations and concerns of the Asian and African states, the ILC work not only will stand the test of time but will find more easy acceptance among these nations. Transformation of international legal system from Eurocentric traditions to inclusive system covering all regions can only ensure universal appeal, relevance and utility of international law.

4. My statement shall cover developments on topics that happened at the 73rd session of the International Law Commission in 2022; views on strengthening of relations between the Commission and the 6th Committee of the UN General Assembly and ideas and suggestions which can enhance contribution of the Asian and African states to the work of the Commission in general.
5. The 73rd session of the Commission took place between 18 April to 3 June and 4 July to 5 August 2022 in Geneva in hybrid format due to prevailing pandemic situation.
6. The draft articles on the Crimes against humanity, adopted by the Commission and the debates in the 6th Committee of the UN General Assembly in 2021, shows that undoubtedly, an attempt has been made to fill gaps in international law but 'building consensus' remains an important task before any expediting calls are made, amidst of the debate on the 6th Committee procedures and to break away from the consensus approach and resort to voting procedures. This topic continues to engage legal advisers and state representatives in differing stances as some draft articles are largely based on existing international conventions and devoid of international practice, as well as over-dependence on the non-universal international criminal tribunals, and missing out the regional approaches, content and aspirations. In this context, it goes without saying that fight against impunity, a cherished goal of large international community, can be realised when the whole of the international community acts together and finds a balanced and consensus approach There can never be a possibility to evade accountability.

7. The Commission adopted the entire set of draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), comprising 23 draft conclusions and an annex and recommended to the General Assembly. While the Assembly will take note of the same, input including positions and observations on the identification of peremptory norms by Asian and African states will enrich the overall quality and will be helpful in forging consensus when the topic is debated at the 6th Committee. The Commission has addressed the norms for the principles, provided criteria for their identification; outlined their bases in customary and other international law; and provided details on the elements and evidence for their acceptance and recognition and subsidiary means for their determination. My understanding of the debates in the 6th Committee leads me to observe that there are voices within the 6th Committee as to whether the draft conclusions on the peremptory norms constitute simply a doctrinal exercise. Similarly, there are concerns as there is a need felt that to avoid including a non-exhaustive list and need on the part of the Commission to provide convincing arguments for including such norms in accordance with its own criteria.

8. As we all are aware, environmental effects occurring both during and after armed conflict have the potential to pose a serious threat to the livelihoods and existence of individuals and communities. Taking into consideration three temporal phases — before, during and after armed conflicts, the 27 draft principles and commentaries, adopted by the Commission, on the protection of the environment in relation to armed conflicts, provide an important opportunity to international community to take note of the draft principles and encourage the widest possible dissemination by states and international organisations, through the adoption of the resolution by the UN General Assembly.

9. An important topic “Immunity of state officials from foreign criminal jurisdictions” which has been under its deliberations shows that the Commission adopted 18 draft articles and a draft annex and that comments and observations by states will be called upon to be submitted to the UN Secretary-General by 1 December 2023.

10. As far as the topic of “Succession of States in respect of State responsibility”, is concerned, the work is in progress – the latest ILC report allows us to observe that the fifth report addresses the problems relating to a plurality of injured successor States or of responsible successor States. It is also important to note that the outcome on this topic is likely to be draft guidelines instead of draft articles which was the case earlier. It is important to note that the draft articles and commentaries are intended to apply in the absence of an alternative solution agreed upon by the States concerned. Undoubtedly, the work of the Commission clarifies the interaction between the law of succession of States and the law of responsibility for internationally wrongful acts and fills the gap to this extent particularly bearing in mind the importance of maintaining consistency with the previous work of the Commission on various aspects of the two areas. Nevertheless, the latest discussion with regard to the future of articles of responsibility of states for international wrongful acts, in various forums, suggest that the state responsibility topic itself requires certain re-examination in view of state practice and doctrines.

11. With regard to the topic of “General Principles of Law”, the Commission discussed the issue of transposition, general principles of law formed within the international legal system, and the functions of general principles of law and their relationship with other sources of international law. As you may be aware the ILC is working to develop its work on all the

sources of international law and most recently on the Subsidiary Means of Determination of the Rules of International Law. It is imperative to be involved in the evolution and codification of the law on this topic as it can have far reaching interpretative issues.

12. An important topic of "Sea-level rise in relation to international law" saw a reconstitution of the Study Group which had before it, a paper concerning issues relating to statehood and to the protection of persons affected by sea-level rise.
13. It is important to note that the Commission decided to include the (a) "Settlement of international disputes to which international organizations are parties", (b) "Prevention and repression of piracy and armed robbery at sea", and (c) "Subsidiary means for the determination of rules of international law," in its programme of work and also appointed Special Rapporteurs for each of these topics.
14. I will touch upon later on the procedure and working methods of the ILC but it is important to note that the Commission decided to re-establish the Working Group on the long-term programme of work and the Working Group on methods of work. Furthermore, the Commission decided to include in its long-term programme of work the topic of "Non-legally binding international agreements".
15. The work and contribution of the ILC to the codification and progressive development of international law has been immense which in turn has directly and indirectly contributed to the goals and objectives of the UN Charter. ILC is a subsidiary organ of the UN General Assembly which abides by clearly set rules. It works on selected approved topics that are suitable for codification and development of international law. The work of

the ILC and its products take years and in a couple of cases it has taken indeed decades but we all are reminded that the work which the Commission does, is not what we see in the media or by experts in the field. The Commission strives to ensure that the progressive development of international law and its codification must always be inclusive in considering law texts, State practice, precedents and doctrines. In the process, the Commission seeks to provide us all a common language, a rules-based system, for the conduct of peaceful and harmonious relations among States, guided by the principles and purposes of the Charter of the United Nations.

16. At times, a global citizen may think why the Commission is unable to study 'visibly pressing' topics and come out with products but the work of the Commission is based upon three fundamental considerations while choosing a topic, namely, the Commission applies three tests for the choice of topics: the 'topic should reflect the needs of States', the 'topic should be sufficiently advanced in stage in terms of State practice' and the 'topic is concrete and feasible'. This well-established practice remains an article of faith. As far as the content is concerned, the thoroughness and technical quality of its work is central to the authority and persuasiveness of its outputs.

17. During my interactions with the delegations in New York in 2021, I did emphasise that a study is required on the question of how to improve the capacity of States to engage meaningfully in the debate on the Commission's report, either through adjusting the timing of the respective sessions of the Commission and the Sixth Committee, and/ or finding ways to make the Commission's report more accessible and digestible. It is important that the Commission finds ways and means to engage in this important discussion. This is along the lines of UN Secretary-General

initiative back in 1971 when the International Court of Justice was going through a phase of renewed interest yet scepticism and the UN Secretary-General invited member States to give recommendations on the Enhancement of Role and Effectiveness of the International Court of Justice. Similar exercise in the context of the ILC as it celebrates 75 years of its establishment will certainly be helpful to the Commission, to the international community and moreover it will also generate interests in academic and research community to promote studies and research in international law.

18. The output of the Commission is one of the most important means to measure its effectiveness. Draft convention on the basis of ILC draft articles remains perhaps the most important and even desired outcomes but the fact remains that during the last 15 years – no convention has been adopted by the General Assembly, nor under its auspices, on the basis of a final draft by the International Law Commission. In the past two decades, the Commission has submitted to the Assembly nine final drafts on diverse topics, all aimed to eventually serve as the basis of international codification conventions.

19. As the Commission members enter into quinquennium from 1 January 2023, certain ideas based on my reading and understanding of the Commission's functioning and work are presented. I believe that the Commission should focus on general international law, while there may be calls for more specialization, I personally believe that to achieve more effectiveness and avoid constraints of expertise on overly specialized topics in the final products, this can be kept in mind. Equally important to keep in mind is the number of topics, five to six topics can be considered each year. Another vital suggestion is that the Commission should continue to strive to adopt and achieve a truly universal approach, by enhancing its ability to understand the practice and the precedents of the

various regions of the world and by considering due regard to the rules concerning the linguistic coverage. On part of the States, it is highly desirable that States clearly convey their expectations regarding the Commission and its work. In this regard, States can more actively propose topics for the attention of the Commission. A very important suggestion is that where the common concern of humankind is evident, the 6th Committee can entrust proactively work to the Commission to develop international law. More involvement of States in the topic selection as well as enhanced interests and proactive submission of inputs to the Commission's work will be highly welcome.

20. While reflecting on the contemporary developments and expansion of international relations, there will be more topics which will require specific, scientific and technical knowledge. Striking a judicious balance between the limitation of resources and the need of the international community to have Commission output on newer development of international law such as environmental law, information technology and communications is imperative. In the same line of thought, we often hear that the Commission should avoid academically interesting topics but having no relevance to States as it can have impact on the relevance of the Commission.

Excellencies, ladies and gentlemen,

21. One way to promote and generate interest in the work of the ILC and international law in general would be to develop an active group of scholars, researchers and even students who provide valuable input to the governments on substantive topics. In this regard, allow me to state input expected from states on various topics. The idea is to encourage states to become more aware about their input and plan, disseminate the

information so they are in a better position to provide input when the topics will be considered.

22. With regard to sea-level rise in relation to international law, there is a timeline to provide paper before 1 December 2022 covering the aspects of
- a. Laws and practices related to updating of baselines,
 - b. Laws and practices related to updating of nautical charts,
 - c. Maritime boundary treaties and effects related to sea-level rise,
 - d. Sea-level rise and impact on baselines including any coastal regression, and
 - e. Coastal adaptation including any on the preservation of baselines. The contribution of states may, among others include, collection and indexing of laws, notifications, regulations, cases on baselines, nautical charts, treaties and practice on coastal regression, adaptation and preservation. Within this topic, as far as Statehood and Protection of persons affected by Sea-level rise is concerned, the Commission will focus at its 75th Session in 2024 and the states may actively contribute on
- a. Practice on State as a subject of international law and its continuance.
 - b. Practice on nature of territory (Land and maritime zones) of State and its nexus with Sea Level Rise, and
 - c. Protection of rights of persons, before 30 June 2023.
23. For the topic on Piracy and Armed Robbery, contribution in form of
- a. Laws and practice on Articles 100 to 107 of the UN Convention on the Law of the Sea,
 - b. Agreements and practice related to transfer of accused persons for prosecution, and
 - c. Role of international, regional and sub-regional organisations,
- before 1 May 2023, will substantially help the Commission in its deliberations.

24. It is expected that with regard to the topic on the Settlement of international disputes to which international organisations are parties, questionnaires will be sent to states and IOs and they will submit input before 1 May 2023.
25. On the topic of Subsidiary means for the determination of rules of international law, the Commission would appreciate receiving information from States, international organizations and others, by 1 December 2022, on specific items listed in its final report of the 73rd Session.
26. Finally, capacity-building in the field of international law has never been such an urgent requirement. While commending the efforts of the United Nations, many member States in this regard, an establishment of the ILC Trust Fund, at the earliest, to help the Special Rapporteurs in availing research assistance of brilliant minds of international law, in preparation of their reports and relevant materials for the consideration of the Commission is imperative. This topic has been under the discussion in the Commission and in the 6th Committee, I believe AALCO member States together with all other member States of the UN will realise this critical requirement at it deliberates the Commission report at the 77th Session.
27. The philosophy of “Sabka Saath, Sabka Vikas, Sabka Vishwas, Sabka Prayas” meaning, the support of everyone, development of everyone, the trust of everyone and everyone’s effort, as promulgated by Shri Narendra Modi, Honorable Prime Minister of India, can provide a solid base for the peace, prosperity and security of humanity and international law has an important role to play in the realisation of this goal of the humanity. In another context, the five Ss, namely, SAMMAN - Respect SAMVAD - Dialogue SAHYOG - Cooperation SHANTI - Peace SAMRIDDHI –

Prosperity, which India has been promoting embody the inherent perpetual core of international law and it is an honour to serve the humanity through the medium of international law.

28.I thank you all for your patience hearing and assure AALCO of my continuous support and engagement to realise the common goals of the ILC and the AALCO. I also take this opportunity to extend a warm invitation for you all to visit the Rashtriya Raksha University, an Institution of National Importance, established by the Parliament of India, with the Ministry of Home Affairs as the administrative ministry, located in Gandhinagar, Gujarat.