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COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW
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26th meeting
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42ND ANNUAL MEETING OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION
(SEOUL, 16-20 JUNE 2003):

CONSIDERATION OF THE DRAFT ARTICLES ON JURISDICTIONAL IMMUNITIES
SUMMARY AND STATEMENTS BY THE JAPANESE AND CHINESE DELEGATES

Document submitted by the Observer of Japan

Summary Report
42 Session of the AALCO

Agenda Item III: Jurisdictional Immunities of States and Their Property

8.1 Dr. Li Zhenhua, Deputy Secretary-General of AALCO, introduced the item of jurisdictional immunities of States and their property, and outlined the progress of the work on the draft articles on jurisdictional immunity at the ad hoc committee. He noted that the ad hoc committee had adopted the draft articles in February 2003, and outlined the five main issues with respect to the articles. He suggested that AALCO Member States use this Session to discuss the draft articles and identify common positions where possible, which would be useful when the final form of the draft articles and other outstanding issues are discussed at the forthcoming meeting of the Sixth Committee of the UN General Assembly.

8.2 Delegations from India, Myanmar, Japan, Indonesia, Pakistan, Republic of Korea, People's Republic of China and Egypt expressed satisfaction with the considerable progress that had been made on the outstanding issues and welcomed the adoption of the draft articles. On the form of the future instrument, most delegations stated that the articles should take the form of legally-binding convention. It felt however, if consensus cannot be achieved on the matter during the coming session of the General Assembly, a two stage process could be taken, whereby a resolution is adopted by the General Assembly, endorsing the draft articles, with a view to concluding a convention later.

Statement by Amb. Chusei YAMADA
Jurisdictional Immunity

June 19, 2003

Mr. President,

The Government of Japan is satisfied that the Ad Hoc Committee on Jurisdictional Immunity held in New York last February finalized by consensus the draft articles of jurisdictional immunity. In view of the ever increasing number of cases where States are sued in foreign courts, the completion of the UN exercise to codify these important rules would certainly contribute to the stability of legal relations among States.

We must now decide the form of these draft articles at the forthcoming session of the UN General Assembly this fall. A great number of States wants to have a convention. It is also the final goal of the Government of Japan to have them adopted as a convention. On the other hand, a considerable number of States, in particular those States which have domestic laws of jurisdictional immunity are not as yet prepared to adopt a convention. We must therefore find a way to satisfy both groups of the States.

My Government also recognizes that the draft articles adopted by the Ad Hoc Committee are result of constructive compromises on all sides. To hold a diplomatic conference prematurely to conclude a convention would have a risk of destroying the precarious balance achieved by the Ad Hoc Committee and bring us back to square one. In our view, it would be preferable to give some time until the draft articles settle down as they were in the practices of the States.

The Government of Japan floated an idea of two step approach in the Sixth Committee last year. This is the approach we adopted at the UN General Assembly in 2001 in the case of draft articles of "Responsibility of State". That is to say that at the forthcoming session of the UN General Assembly this fall, we adopt a resolution endorsing the draft articles as reflecting the current laws of jurisdictional immunity, and at the same time deciding to consider after several years whether to proceed to adopt these draft articles as a convention.

My Government would appreciate it if the member States of the AALCO would carefully examine this proposal and come to the Sixth Committee prepared to take an action on the for of the draft articles.

Statement by Ms. XUE
Jurisdictional Immunity

June 19, 2003

Mr. President,

The Chinese Delegation is pleased to see that the Ad Hoc Committee on Jurisdictional Immunity of States and Their Property, held in the UN headquarters from February 24 to 28, 2003, made a great breakthrough. As a result of joint efforts of all participant States, the committee finally adopted the text of draft articles. We feel that the accomplishment of this session is extremely valuable after so many years efforts made by the Sixth Committee of the UN General Assembly.

Having this in mind, Mr. President, please allow me, on behalf of the Chinese Delegation, to express my appreciation to the Member States of the AALCO, participating in the Ad Hoc Committee for their spirit of cooperation and compromise, which helped to overcome the obstacles that blocked the negotiations for many years. In this regard, I would commend the Secretary-General of the AALCO, Dr. Kamil for sending letters to its Member States, encouraging to take an active part in the Ad Hoc Committee session early this year. The Chinese Delegation highly regards these efforts made by the AALCO Secretariat.

In regard to the draft articles, frankly speaking, we do not deem them as satisfactory as we would like them to be. As the Secretariat's background document has pointed out, however, "the adopted text offers promising compromises on outstanding substantive issues". We believe that the present text is the best possible outcome which States might have achieved. The participants were under tremendous pressure and there was little room for them to further negotiate remaining legal issues. The Chinese Delegation feels ready to accept the adopted text as a final compromise.

As regards the form, the Chinese Delegation proposes for the adoption of a convention. If other States do not feel ready, China can also consider to first adopt a resolution by the UN General Assembly with the adoption of draft articles submitted by the Ad Hoc Committee with a view to concluding a convention soon. With closer contacts and economic cooperation among States, more and more legal issues concerning jurisdictional immunities arise in practice as a result of the increasing conflicts between different national legal systems on the jurisdictional immunity. This shows that after about 25 years of hard work, it is time for the international community to have such an international convention.

Thank you Mr. President.