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**STATEMENT  
BY  
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HO'BLE MEMBEER OF PARLIAMENT**

**ON  
AGENDA ITEM 83  
"REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SIXTY-SEVENTH SESSION- CLUSTER-2"**

**AT THE  
SIXTH COMMITTEE OF THE 70<sup>TH</sup> SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

**November 06, 2015**

**Mr. Chairman**

Thank you for giving me the floor. At the outset we would like to appreciate the Special Rapporteur, Sir Michael Wood for his Third Report on the topic, 'Identification of Customary International Law'.

Customary international law is a formal source, whereas conventional law is considered both as formal and material source of international law. The International Court of Justice is mandated to apply the customary international law to settle disputes between States. Customary law consists of 'settled practice' of States and the belief that that practice is legally binding.

**Mr. Chairman**

We would like the ILC to give equal importance to both the elements, 'State practice' and '*opinio juris*'. The practice of States from all regions should be taken into account. The developing States, which do not publish digests of their practice, should be encouraged and assisted to submit their State practice, including their statements made at international and regional fora, and the case-law, etc.

**Mr. Chairman**

We urge ILC to engage with the regional organizations as many developing and least developed countries do not have the capacity to explore the topic. In this context, the efforts of the Asian-African Legal Consultative Organization (AALCO) in facilitating deliberations with the ILC on this topic may be noted. The AALCO established an Informal Expert Group on Customary International Law, which met on 27-28 August 2015 in Bangi, Malaysia. The summary of the Group's Chairman is note worthy in this regard.

**Mr. Chairman**

With regard to the forms of evidence accepted as law (*Opinio juris*), the Rapporteur proposed that the opinions of law officers accepted and acted upon by the government be taken into account. However, given the nature of these opinions, it is difficult to identify them as many countries do not publish the legal opinions of their law officers.

The Third Report elaborates on "Inaction as practice and/or evidence of acceptance of law". It emphasised on "qualified silence" as a relevant practice. We are of the view that this factor needs to be analyzed and deliberated in detail.

Regarding the role of treaties and resolutions, we agree with those members of the Commission who stated that all treaty provisions are not equally relevant as evidence of rules of customary international law and that only those "fundamentally norm creating character" could generate such rules.

Draft conclusion (4) states that while conduct of other actors is not a practice that contributes to the formation of rules of customary international law, but may be relevant when assessing the practice of States and International Organizations. We believe that more clarity is required on the expression "conduct of other actors".

Judicial decisions and writings are relevant for the identification of rules of customary international law. Apart from the ICJ, role and the decisions of other Courts and Tribunals, including national courts should not be ignored. Separate and dissenting opinions of Judges could also be relevant in identifying rules of CIL. As regards the writings, writers of all geographical regions need to be given equal importance.

**Mr. Chairman**

On the topic "Crimes against humanity", we welcome the first report of the Special Rapporteur, Professor Sean D Murphy. The report assessed potential benefits of developing a convention on crimes against humanity and dealt with certain aspects of the existing multilateral conventions that promote prevention, criminalization and inter-State cooperation in dealing with crimes.

After examining various treaty regimes, the Special Rapporteur proposed draft articles on prevention and punishment of crimes against humanity and definition. The Commission, having referred these draft articles, provisionally adopted four draft articles on the scope; general obligation; definition of crimes against humanity; and obligation of prevention.

**Mr. Chairman**

In view of the existing international legal regimes and mechanism dealing with the subject matter, we consider that it needed in-depth study and thorough discussion in the Commission. The proposed obligations should not conflict with the existing treaty obligations and it should not duplicate the existing regimes.

**Thank you Mr. Chairman.**