

**X. SUMMARY RECORD OF
THE FIFTH GENERAL MEETING
HELD ON THURSDAY,
5TH JULY 2007 AT 3:00 PM**

Her Excellency Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session of AALCO in the Chair.

A. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949

1. **Amb. Mr. Reza Tabatabaei Shafiei, Deputy Secretary General of AALCO** in his introductory remarks recalled that 9th June 2007 marked the Fortieth Anniversary of the longest military occupation, in modern history, the tragic 1967 Israeli-Palestinian conflict. Unfortunately, the history of forty years was the countless deaths and ongoing humiliation and degradation of the people living in the Occupied Palestinian Territory (OPT). The conditions in the Occupied Palestinian Territory, including East Jerusalem were grim and worsening and it was absolutely essential that concrete negotiations be taken up in earnest.

2. He stated that the Middle East Region would not experience peace unless the conflict between Israel and Palestinians ends. Only and only a two-State solution, including the return of all Palestinian lands and refugees, would lead to a fair and sustainable solution. These views were also highlighted at the two-day United Nations African Meeting on Palestinian Rights, which took place in Pretoria, the Republic of South Africa, 9-10 May 2007, which

aimed at strengthening the international and regional efforts to relaunch the Middle East peace process.

3. The Deputy Secretary-General noted that since the Forty-Fifth Session of AALCO held in New Delhi last year, and despite the fact that at this juncture broad international and regional efforts were being made to relaunch the Israeli-Palestinian peace process, Israel continued with its war crimes in the Occupied Palestinian Territories, particularly in the Gaza Strip. The Israeli Government's plan to remove troops and Jewish settlements from the Gaza Strip had not ended Israel's occupation of the territory and Israel continues to wield overwhelming power over the territory's economy and its access to trade. Subsequent Israeli actions had proved this point. The deliberate destruction of the Gaza Strip's only electricity power station, water networks, bridges, roads and other infrastructure including restrictions on movement of Palestinians is a clear violation of the provisions enshrined in the Fourth Geneva Convention of 1949 and had major and long-term humanitarian consequences for the 1.5 million inhabitants of the Gaza Strip.

4. The Deputy Secretary-General observed that Israel had rejected the Advisory Opinion of the highest judicial power of the United Nations, as well as the will of the international community and continued with the construction of the separation wall, which is totally illegal and contrary to international law. People in the Occupied Territories had started facing the adverse consequences of the construction of the illegal barrier, which in essence was an "apartheid wall", including loss of access to Palestinian land, affecting the agricultural production and water resources and rising unemployment,

apart from the political implications. He welcomed the appointment of three international experts to begin work of establishing a Register of Damage caused by Israel's construction of the separation wall in the Occupied Palestinian Territory.

5. He observed that the reluctance on part of the Occupying Power, Israel not to respect the democratic choice of the Palestinian people was highly condemnable. Israel had gone to the extent of the arrest/detention of Ministers, Speaker and lawmakers of the Palestine Legislative Council. AALCO was gravely concerned with the situation in the Middle East. The DSG appreciated the generous initiative of His Majesty, King Abdullah of the Kingdom of Saudi Arabia, for his efforts in reaching the agreement in the Holy City of Mecca to form Palestinian National Unity Government. The recent internal strife in the Palestinian territories was the outcome of the prolonged and deliberate policies of the Occupying Power, Israel. This had aggravated the situation and resulted in a major humanitarian crisis in the Occupied Palestinian Territories. Also, it would have serious implications on the Middle-East peace process. He stressed on the fact that Israel should stop the policy of squeezing the legitimate movements and democratic initiatives of the Palestinian society.

6. Another noteworthy milestone in the Middle East Peace Process, he stated was the Nineteenth Summit of the Arab League held in Riyadh, Kingdom of Saudi Arabia (28-29 March 2007) that re-emphasised the Arab Peace Initiative of 2002, proposed by the Kingdom of Saudi Arabia and adopted at the Beirut Summit of 2002. The Riyadh Declaration adopted by the Summit affirmed the option of just and

comprehensive peace as a strategic option for the Arab nations; in accordance with the Arab Peace Initiative that draws the right path for reaching a peaceful settlement for the Arab-Israeli conflict based on the principles and resolutions of international legitimacy, and the land for peace formula.

7. He stated that delegations could deliberate on the following points, namely violations of international law, particularly international humanitarian law and human rights law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT), with special focus on the recent Israeli military exercise in the Gaza; ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory and the adverse effect of the wall on the Palestinian people and the economy; the need to respect the democratic choice of the Palestinian people; and condemning the Israeli attempt to incapacitate the Palestinian leadership. The deliberations could also highlight on the role of the international and regional communities to pressurize Israel to comply with its international obligations, including the recent initiative of His Majesty, King Abdullah of Saudi Arabia and the League of Arab States; and also highlight the need for establishing an independent sovereign State of Palestine as a prelude to establishing everlasting peace in the Middle East

8. To conclude, he said that lasting peace in the Middle East requires respect of all international law principles, norms and impartial implementation of innumerable United Nations Security Council and General Assembly Resolutions starting from 1949 onward such as resolutions 194 (1949), 242 (1967), 338 (1973), 425

(1978), 1397, 1402, 1403, 1405, 1435 (2002), 1515 (2003) and 1544 (2004). The accurate and fair implementation of these Resolutions was essential, because they had rightly designed the workable settlement of the very core of the problem, namely, the creation of peace and the independent Palestinian State, which is now long overdue.

9. The **Delegate of Pakistan** stated that his country consistently extended unequivocal and unreserved support to the Palestinian cause, the fundamental elements of which were total withdrawal of Israel from occupied Arab territories including Jerusalem and the restitution of the inalienable rights of the Palestinian people including establishment of an independent homeland, with Al Quds Al Sharif as its capital. The delegate stated that his country supported the resolution of the Palestinian issue in accordance with UN Security Council Resolutions 242 and 338. The delegate further supported the Quartet's roadmap and the Arab Peace Plan, which was reendorsed at the 19th Arab League Summit of March 2007 and, which offered establishment of normal relations of the Arab World with Israel, in return for Israeli withdrawal to 1967 borders, implementation of UN Security Council resolutions, creating Palestine, with East Jerusalem as its Capital, and right of return of the refugees.

10. The delegate expressed their concern over the immigration of Palestinians from the occupied territories, settlement of Jews, and construction of wall in the Palestinian areas and strongly supported the recognition of the rights of the Palestinian refugees to return to their homeland. Pakistan had been concerned over the inter-factional fighting as a result of which the

Palestinian Government was dissolved recently. The delegate hoped that new government would work to establish reconciliation between the Palestinian factions for onset of political process and economic development. The delegate also welcomed the recent indications on lifting of economic sanctions on the Palestinian government by US and EU, the release of frozen tax funds to the Palestinian Authority and release of 250 Palestinian prisoners and hoped that these would contribute towards easing of economic constraints of the Palestinian people.

11. The **Delegate of the Islamic Republic of Iran** recalled that it was his delegation that submitted this item to the Twenty-Seventh Session of the AALCO in 1988, and since then it was witnessed that Israel continued to defy the will of the international community particularly the numerous United Nations resolutions and decisions.

12. The Delegate noted that the Israeli criminal acts against the Palestinians and other peoples in the region was the gravest threat currently posed to regional, as well as international peace and security. He observed that indiscriminate use of military force, wilfully killing, collectively punishing, racial discrimination and apartheid, family separation, destroying their homes and infrastructures, trying to economically strangulate them, unrelenting expansion of Jewish settlements on the occupied lands, was a form of the new colonialism, targeted assassinations and humanitarian crisis and the withholding of funds from the Palestinian Authority, prohibited under the international law, had continued during the year under review.

13. He underscored that the Wall that Israel was presently building largely in Palestinian territory, was clearly illegal. The International Court of Justice in its Advisory Opinion of 9 July 2004, asserted that it was contrary to international law and that Israel was under obligation to discontinue construction of the Wall and to dismantle those sections that had already been built. The Wall had serious humanitarian consequences for Palestinians living within the closed zone, that is, the area between the Green Line and the Wall. They were cut off from places of employment, schools, universities and specialized medical care, and community life was seriously fragmented. Moreover they did not have 24-hour access to emergency health services.

14. The Delegate was of the view that establishing the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory by UN General Assembly, in its resolution (A/RES/ES-10/17) adopted on 15 December 2006, would serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, which he opined could be a suitable mechanism to follow up the ICJ Advisory Opinion .

15. He noted with concern that it was unfortunate that the Israeli regime had violated a number of rights proclaimed in the various International Human Rights Instruments. (the International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), freedom from arbitrary arrest and

detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It had also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”, freedom from hunger, and the right to food (art. 11) and the right to health (art. 12)).

16. In addition, the Zionist regime had, violated the most fundamental rules of international humanitarian law, which constitutes war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians and civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, Israeli regime had violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the

consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constituted a gross form of collective punishment.

17. The Delegate stated that during the year 2006 the world had witnessed aggression of the Israeli regime against Lebanon, and its subsequent humiliating defeat, the Israeli regime had not stopped to continue threatening the Lebanese people and Government. As had been repeatedly indicated by UNIFIL, the Israeli regime continued to occupy the Lebanese lands in violation of Security Council resolution 1701, including through daily violations of Lebanese airspace and harassment of UNIFIL forces. Such dangerous practices would undoubtedly create more instability and serve to inflame tension and threaten to further destabilize the situation in that volatile part of the region.

18. The constitution of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1, (11 August 2006), entitled "The grave situation of human rights in Lebanon caused by Israeli military operations", highlighted in its report (A/HRC/3/2, 23 November 2006) a significant pattern of excessive, indiscriminate and disproportionate use of force by Israeli Defence Force (IDF) against Lebanese civilians and civilian objects, failing to distinguish civilians from combatants and civilian objects from military targets. The Commission was able to verify for itself the circumstances of a number of incidents, which occurred during that conflict.

19. With regard to precautions taken by Israel to minimize civilian casualties, the delegate noted that the

Commission came to the conclusion that IDF did not give effective warning as required under international humanitarian law. Where warnings were given, they often did not allow sufficient time for the population to leave, and in any event, civilians were at risk of being attacked if they did leave and did not have access to safe humanitarian exit corridors.

20. In the same vein, he said, that the Commission documented various cases of direct attacks on medical and relief personnel. The Commission received various testimonies regarding the obstacles and difficulties the medical and humanitarian relief personnel had to face in reaching civilians in need of medical care and humanitarian assistance due to IDF-imposed constraints. The concurrence system adopted to satisfy IDF requirements was not adapted for an efficient humanitarian assistance. On a number of occasions the IDF conducted hostilities either directly against relief assistance movements or indirectly.

21. Further, the delegate said that the Commission considered that the excessive, indiscriminate and disproportionate use of force by the IDF went beyond reasonable arguments of military necessity and of proportionality, and clearly failed to distinguish between civilian and military targets, thus constituting a flagrant violation of international humanitarian law. The Commission has formed a clear view that, cumulatively, the deliberate and lethal attacks by the IDF on civilians and civilian objects amounted to collective punishment.

22. Furthermore, the Commission was able to verify that the IDF carried out attacks on a number of medical

facilities in Lebanon, despite their protected character. The Commission also noted that the Red Cross Movement was not spared during the conflict, as indicated in several incidents reported by the International Committee of the Red Cross (ICRC) and the Lebanese Red Cross (LRC). In some cases, medical personnel were the victims of collateral damage.

23. Finally, the delegate highlighted that it was clearly evident that peace in the Middle East could not be achieved through aggression, state terrorism, intimidation and occupation. It was long overdue for the international community to take meaningful measures to restore the legitimate rights of the Palestinian people. The Charter of United Nations bestowed immense responsibility upon this world body to help find a fair, just and durable solution to this crisis, which constitutes the core of the Middle East conflict. He believed that a durable peace in Palestine would be possible only through the full restoration of the rights of the Palestinian people including the return of all Palestinian refugees to their homeland and establishment of a Palestinian state with Al-Quds- Al-Sharraf as its capital.

24. The **Delegate of Arab Republic of Egypt**¹ thanked the Deputy Secretary General and reiterated the points highlighted by the Leader of the delegation of Iran. The delegate highlighted Arab Republic of Egypt's total support to the Palestinian cause. The delegate reiterated that their country needs peace and gave prominence to national security. His country's stand was that to assist all people who had lost their rights due to

¹ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

aggression. Palestinian cause was a major concern for all Egyptians. Israel had totally ignored all United Nations Security Council and General Assembly resolutions and the Advisory Opinion of the International Court of Justice. The delegate emphasized on the non-legitimacy of the occupying power. The delegate highlighted the demographic changes that Israel had made in the occupied territories since 1967 and also Jewish settlements in the OPT. The delegate explained his country's opposition to the coercive deportation of the Palestinians and demanded that they have to return to their homeland. Then only just and lasting peace is possible. The delegate stated that Israel had violated the Ibrahimic holy shrine and violated the sanctity of the shrine. The delegate also highlighted the negative consequences of the construction of the separation wall and Israeli aggression on the Golan Heights of Syria and Lebanon. The delegate stated that Arab Republic of Egypt wanted peace for all people and all countries, including Israel.

25. The **Delegate of the Republic of Indonesia** stated that the Palestine autonomous region issue had been a fundamental and lasting dispute between Israel and Arab countries. Despite the fact that the Road Map to Peace as a blueprint for peaceful co-existence for Palestine and Israel remained unsettled despite many efforts that had been made by different quarters thus far. It was the most volatile conflict on the globe today, and continued to pose a clear and present danger to international peace and security.

26. As regards this situation, the delegate expressed deep concern about the continuing dangerous deterioration of the situation in the occupied

Palestinian territory. In this context, he reaffirmed Indonesia's long-standing and relentless commitment to support and contribution in the process towards finding a peaceful solution that would fulfill the rights of the Palestinians to self-determination and statehood, to independently define and conduct its foreign relations, and to live in peace, and the rights of every Palestinian refugee to return to his or her homeland.

27. The Delegate noted that it was imperative that the international community, especially the Asian and African governments, take action at this juncture to prevent a further deterioration of the situation. Therefore, the Indonesian Government also urged the parties concerned to renew their efforts towards facilitating the resumption of the interrupted peace process and the implementation of the Road Map. He underlined that failing to address the present stalemate was to run the risk of a critical worsening of the humanitarian situation in the Palestinian territories, which was already dire as a result of the cutting off of the international financial aid. Indonesia, he said, also supports the United Nation's initiative to conduct the international conference on the question on Palestine.

28. The Delegate drew attention on the fact that Israel was a party to the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. However, time and again, Israel refused to apply the Fourth Geneva Convention to the Occupied Palestine Territory even though international community called on the Israeli Government to accept *de jure* application of the Fourth Geneva Convention in Palestine. Since Palestinian Territories are not part of Israel, it should strictly follow these

principles, not only towards its nationals but also in protecting the rights of Palestinians. Israel should accept the applicability of international human rights and humanitarian law. Israel should also incur international responsibilities arising from a continuing violation of international obligation. Therefore, Israel was under obligations to stop its grave breaches of international human rights law, and to bring all the perpetrators of human rights atrocities to justice.

29. The Delegate welcomed both the November 2006 cease-fire agreement between the Government of Israel and the Palestinian Authority and the understanding reached at the Summit between Israeli Prime Minister Ehud Olmert and Palestinian Authority President Mahmoud Abbas on 23 December 2006. The meeting of the Quartet in Washington, DC on 2 February 2007 and in Berlin on 21 February 2007 was also commendable developments. In this regard, he stressed the vital role of the Quartet in reviving the peace process and in the implementation of the Road Map. Indonesia also welcomed the appointment of the new United Nations special envoy for the Middle East, Mr. Tony Blair, tasked with mobilizing international aid and overseeing the development for the Palestinians. Indonesia hoped that he would bring continuity and intensity of focus to the work of the quartet in support of the Palestinians, within the broader framework of the quartet's efforts to promote an end to the conflict in conformity with the roadmap.

30. He also underlined the urgent need for the Palestinians to agree to establish a unity government. He therefore, welcomed the signing of the Mecca Declaration by President Mahmoud Abbas and Hamas Leader

Khaled Meshaal on 8 February 2007, which laid the foundation for the formation of a national unity government in Palestine. It was their fervent hope that this agreement would immediately be implemented and supported by the international community.

31. The Delegate believed that peace could not fully be obtained by diplomacy alone, but it also required the commitment of the parties concerned to the conflict to cease the use of force and begin to develop collaboration. Thus his delegation encouraged the Israelis and Palestinians to exercise restraint and avoid any action that would obstruct the cease-fire and the implementation of the understanding between them, which was critical to the fulfillment of the economic and social rights of the Palestinians.

32. The **Delegate of Syrian Arab Republic**² while referring to the situation in the occupied Palestinian territory stated that firstly, AALCO could be very close to the rights of people and positively affects them through defending these rights and highlighting the violations against these rights. Secondly, that Israel was not serious in implementing the resolutions of UN Security Council and the General Assembly, which obliges her to withdraw from, occupied Palestinian territories since 1967 throughout negotiations or without negotiations.

33. He stated that this was confirmed by the fact that Israel disregards the Advisory Opinion of the International Court of Justice on the Legal Consequences of Building the

Wall in the Occupied Palestinian Territories. This opinion was adopted by the General Assembly in April 2004 and called upon Israel to abide by it, and to stop building the wall and remove the parts that have been built.

34. He highlighted that while discussing this issue, the Member States were obliged – by necessity- to tackle and discuss the issue of terrorism, “State terrorism” in particular which was being practiced on the lands of others. State terrorism, he noted was closely connected to the Israeli practices in the occupied Palestinian lands.

35. The **Delegate of Senegal**³ congratulated the Secretariat in bringing out a detailed report on the Occupied Palestinian territory and the Israeli aggression on the Palestinian people. His country had been chairing the Commission on Palestinian rights. The delegate pointed out that the situations were really deteriorating. There were daily violations of the human rights of the Palestinians. Israel had violated the will of the international community in the construction of the separation wall. The delegate stated that this position could not be accepted. The construction of the wall was a shame on the history of humanity. The delegate deplored the Israeli practice of forceful taking of Palestinian land and forceful deportation of the Palestinians. This was a clear violation of all norms of international law. The only solution was to have an independent State of Palestine with Al Quds as its capital.

36. The **Delegate of Japan** expressed its deep concern over the current situation in the Palestinian

² Statement delivered in Arabic. Unofficial translation from the Interpreter's version

³ Statement delivered in French. Unofficial translation from interpreter's version.

territories, particularly in the Gaza Strip where Hamas seized control and humanitarian situation continued to deteriorate. Such a situation curtailed the hopes of those who wished to achieve the Middle East Peace based on the two-state solution. The Government of Japan supported the efforts of President Abbas of the Palestinian Authority to promptly end the crisis, such as the formation of an emergency government, and strongly called on all the parties concerned to cooperate with the President's efforts in order to prevent further worsening of the situation. The delegate informed that, the Government of Japan was considering providing direct economic assistance to the Palestinians through the Office of President in order to show its support for the President's efforts in a tangible manner.

37. The **Delegate of Malaysia** noted that this item had been on the agenda of AALCO for the 20th time since the Twenty-Seventh Session held in 1988 on reference made by the Government of the Islamic Republic of Iran. It had remained on the agenda of AALCO, with the Secretariat being tasked to monitor legal developments in the Middle East including Israeli Practices in Arab Occupied Territories. He commended the efforts of the Secretariat for its comprehensive reporting on this issue over the years.

38. The Delegation reiterated its previous positions on this issue in its paper submitted last year at the Forty-Fifth Session in New Delhi concerning the plight of the Palestinian people. Malaysia noted with regret that there had been little progress in terms of the Palestinian peoples' right to self-determination and their inalienable right in Palestine.

39. He recounted that the numerous United Nations resolutions, individual and collective calls from the international community had been ignored by Israel whereby no action had been taken to enforce them by the Security Council. Israel further continued to ignore the Advisory Opinion of the International Court of Justice (ICJ) in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory/OPT* with the continuing construction of the Wall in other parts of the Occupied Palestinian Territory. Israeli acts of violence, use of force against Palestinians resulting in injury, loss of life and destruction, coercive migration and deportation continue to violate the Fourth Geneva Convention of 1949 and human rights law. However, Malaysia noted with satisfaction that a General Assembly resolution (A/RES/ES-10/17) to establish a Register of Damage and an office to serve as a comprehensive record (in documentary form) of the damage arising from the construction of the Wall by Israel in the Occupied Palestinian Territory was adopted on 15 December 2006 by the United Nations General Assembly (UNGA) in its 10th Emergency Special Session on Israeli actions in the Occupied Palestinian Territory.

40. The Delegate noted that one of the latest instances of Israeli hegemony was the attack on a residential area in Beit Hanoun on 8 November 2006 that resulted in the deaths of at least 18 Palestinians, including 8 women and 7 children. Malaysia noted that a UNGA Emergency Special Session resolution (A/RES/ES-10/16) passed on 17 November 2006 called for the establishment of a fact-finding mission by the Secretary-General and was being implemented although the success of the mission remained to be

seen. The resolution also reiterated the call for Israel to abide by its obligations under the Fourth Geneva Convention of 1949; it is yet to be heeded, demonstrating Israel's blatant disregard of Palestinian sovereignty and the rules of international law.

41. The Delegate noted that although Security Council Resolution 242 of 22 November 1967 together with the principle of returning land in exchange for peace was the basis of the Middle East peace process, certain parts of the Occupied Palestinian Territory remained under occupation. Malaysia's concerns remained that the Palestinian issue warrants serious international commitment. In this regard, Malaysia re-urged AALCO Member States to enhance their efforts in enforcing existing UN Resolutions on Palestine and support efforts towards achieving a lasting peace in the Middle East.

42. The Delegate recalled that at the Forty-Fifth Session, Malaysia expressed its concern over the reactions of certain States to Hamas' victory in the Palestinian Elections in January 2006, particularly the withholding of financial and other aid to the new Government as it undermined basic principles of democracy. This tantamount to interference in the internal affairs of a State as prohibited by the principles of the United Nations Charter.

43. He welcomed the signing of the Mecca Agreement on 8 February 2007 and the formation of Palestinian Unity Government where Fatah and Hamas agreed on the urgency to take constitutional measures to form this government. This demonstrated that Parties who had differences with each other were able to set aside those

differences for the sake of unity to benefit the Palestinian people.

44. However, he noted with alarm the recent development on the dissolution of the Palestinian Unity Government by President Mahmoud Abbas and the sacking of Prime Minister Ismail Haniyeh and his government following Hamas' bloody seizure of the Gaza Strip in between 9-15 June 2007. The fighting between these two groups had damaged the very fragile truce and relationship that was formed in the Holy City of Mecca; it also has direct bearing on the already desperate situation of the Palestinian people.

45. The Delegate stated that a year down the road and in the wake of President Mahmoud Abbas' sacking of the Hamas-led unity government, aid was beginning to trickle into the Occupied Palestinian Territory. The United States had lifted its 15-month embargo on direct aid; USD86 million was unblocked for the restructuring of security forces loyal to the president while USD40 million was being channeled through the UN Relief Works Agency (UNRWA). The European Union had similarly pledged to resume direct aid to the new Palestinian Government of newly appointed Prime Minister Salam Fayyad. Israel, on 24 June 2007 agreed to release desperately needed funds to the Palestinian President starting with the USD550 million in frozen Palestinian tax revenue that it collected on behalf of Palestine.

46. Although the much needed financial aid would be welcomed, the actions of the US, the EU and Israel had not only undermined democracy and the Palestinian people's freedom of choice but also formented and

contributed to the disintegration of Palestinian society into civil war.

47. The Delegate also noted with interest the outcome of the meeting in Sharm-El-Sheikh on 25 June 2007, between President Abbas, Israeli Prime Minister Ehud Olmert, Egypt's President Hosni Mubarak and Jordan's King Abdullah II which attempts to rally Palestinian support behind Abbas and isolate Hamas. The Israeli Prime Minister had promised to release 250 Palestinian prisoners as a sign of goodwill and to improve life in the West Bank. However, the Prime Minister did not promise an immediate resumption of peace negotiations, but merely said that the steps he was announcing aimed to prepare the ground for them.

48. In this regard, he believed that action on previous Israeli and Palestinian commitments, such as the removal of roadblocks, the release of prisoners and the evacuation of settlement outposts, must be undertaken immediately to alleviate the desperate situation of the Palestinian civilians. The Delegate also called for the end of violence and reform of the Palestinian Authority institutions, which would contribute to ensure the achievement of peace and lasting stability in the Occupied Palestinian Territory.

B. The International Criminal Court: Recent Developments

1. **Amb. Mr. Tabatabaei, Deputy Secretary-General of AALCO** introduced the item on "International Criminal Court" and said that the Organization had been following the developments related to International Criminal Court since its Thirty-Fifth Session. The DSG informed that as of 1st May 2007, 104 States Parties had ratified the Rome Statute. The Statute recognizes that States had the primary responsibility for investigating and punishing the crimes and the Court was complementary to the efforts of States bringing to justice perpetrators of international crimes. The DSG also added that Court was the focal point of an emerging system of international criminal justice, which includes national courts, international courts and tribunals with both national and international components.

2. The Deputy Secretary-General informed that the Secretary-General of AALCO had finalized the text of the Memorandum of Understanding with the President of the ICC, and it might be soon signed.

3. Despite all noteworthy developments towards the effective functioning of the ICC, the Deputy Secretary-General noted that the "Definition of the Crime of Aggression"; one of the core issues, under the Rome Statute of the ICC remained elusive. He informed that the Statute mentioned the time frame for providing the Definition of the Crime of Aggression under Article 121. He also informed that work on an acceptable Definition of the Crime of Aggression was in progress in the Special Working Group on the subject constituted by the Assembly of States Parties.

4. The Deputy Secretary-General highlighted some of the issues for the discussion regarding the “Concept of Aggression”, namely, General versus Enumerative Approach of the Concept of Aggression; Wrongful Acts under the definition of aggression; Individual versus State Responsibility; Role of the ICC for enhancing the Security Council’s responsibility with regard to maintenance of international peace and security, and Alternative mechanism in case of Security Council’s failure or declining to identify the act of aggression.

5. The Deputy Secretary-General also made a proposal for convening an “Inter Sessional Meeting of Experts on International Criminal Law from the Asian-African Region” to formulate an acceptable definition of the Crime of Aggression for AALCO Member States, which could then be placed for consideration of the Special Working Group and hoped that the proposal materialises before the next Annual Session.

6. The **Delegate of Japan** informed that his country had been taking the domestic procedures to accede to the Rome Statute of ICC. He also informed that his country intended to deposit its accession document with the UN Secretary-General on 17 July 2007, and would thus officially become a Party to the Rome Statute. He added that Japan’s contribution to the ICC would, specifically, be financial contribution, as Japan would be the largest contributor among all the members of the ICC. He also informed that his country wished to contribute to the activities of the ICC by way of sending a judge, and in due course would be approaching the AALCO Member States of the ICC to request a most favourable consideration of a Japanese Judge candidate.

7. The delegation hoped that Japan’s accession to the ICC would lead to further increase in membership of the ICC through the further accession of countries in Asia and other regions. He added that many African Member States of AALCO were Parties to the ICC and four cases were currently dealt with by the ICC. He also opined that the AALCO was a common fora for conducting the exchange of information on the experiences of the states in Asia and Africa.

8. The delegation said that it would be important to determine the definition of the Crime of Aggression at an early date in order to ensure the effective functioning of the ICC against the international crime. The delegation informed that Article 5(2) of the Rome Statute stipulates that its provisions concerning the Crime of Aggression shall be consistent with the relevant provisions of the UN Charter. He also informed that the UN Security Council could request the postponement of the investigation or prosecution by the ICC under Article 16. It could therefore be assumed that the basic thinking underlying the provisions of Rome Statute was that the ICC activities be carried out, fully respecting the judgements of the UN Security Council.

9. On the other hand, the delegate said that upon dealing with specific cases of crime of aggression, it could happen that the views of the ICC differ from those of the UN Security Council, which might prevent the ICC from taking effective action against the said crime of aggression. Consequently, it would be necessary to duly consider that the action taken by the ICC and by the UN Security Council be consistent with each other.

10. The **Leader of the Delegation of Sudan**⁴ said that International Criminal Court was not one of the principal organs of the United Nations like the ICJ, General Assembly, Security Council etc. It was a tribunal established by consensus amongst some States by adopting the Rome Statute of the ICC. He stated only one third of the AALCO Member States had ratified the Statute. He stressed that ICC did not have any jurisdiction over the non-ratifying Parties, and it should not intervene in to the internal matters of any such State. He also recalled the statement of the ICC representative, which mentioned that there was no doubt about the integrity and impartiality of the justice dispensation system of Sudan. Therefore, he questioned the issuance of warrant by the ICC for trial against two Sudanese citizens. He also stressed that there was no right to try these Sudanese citizens by the ICC. He also alleged that the decision of the ICC against Sudan was clearly a political one backed by the western countries. The delegate also requested AALCO to adopt a declaration questioning the jurisdiction of the ICC with respect to non-parties to the Rome Statute, as two third of the Member States of AALCO had not ratified the Statute.

11. The **Delegate of Republic of South Africa** informed that to provide a legislative framework to ensure that the Rome Statute was implemented effectively in South Africa, his country enacted the Implementation of the Rome Statute of the International Criminal Court Act on 16 August 2002. He also reminded that the establishment of the International Criminal Court represented a massive step forward for the international

community and humanity in general. He added that for the first time in history the world had a judicial institution aimed at terminating impunity for the perpetrators of the most serious crimes of concern to the international community.

12. The delegate said that to complete the historic process, apart from full ratification of the Statute there was a need to find mutually acceptable solutions to the definitional and jurisdictional issues surrounding the crime of aggression, in order to ensure that the upcoming Review Conference could amend the Rome Statute to include such a definition. He also informed that Article 5(1) of the Rome Statute lists the Crime of Aggression as one of the crimes under the jurisdiction of the ICC. However, the exercise of that jurisdiction depends on Article 5(2), which provides that the Court “shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”. He also informed that a Special Working Group on the Crime of Aggression was established in 2002 by the Assembly of State Parties to continue discussions on the definition, elements and jurisdictional conditions of the crime of aggression.

13. He informed that during the Princeton meeting on Special Group on the Crime of Aggression, there appeared to be an emerging consensus that the issues of attempt to commit an act of aggression and command responsibility would not be required, in view thereof that these issues were of

⁴ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

mere theoretical relevance to the crime of aggression. He also added that broad support had been reached on a text that would require a minimum threshold for the crime of aggression. That was in line with the injunction that the Court had jurisdiction with regard to the most serious crimes of international concern, as well as with practical realities. The jurisdiction of the Court with reference to act of aggression, the delegate believed that if due regard was given to the principles of equality before the law and the independence of the Court, consensus on appropriate roles for the General Assembly, the International Court of Justice and the Prosecutor could be obtained, allowing for a revision of the Statute at the upcoming Review Conference.

14. The **Delegation of Sultanate of Oman**⁵ said that the establishment of the International Criminal Court was a great step forward in history materializing the will of the international community to combat the most dangerous crimes against the humanity. The delegate also said that the efforts of the international community at the Conference reflected the visions and opinions in preserving international criminal justice, and it guaranteed that the system encompasses a complete framework of the organization at the envisioned level. This meant the inclusion of the crime of aggression as a crime that falls within the competence/jurisdiction of the Court considering it was the basis of committing all other crimes. He informed that the above said inclination reasoned his country to sign then final document of the ICC.

⁵ Statement delivered in Arabic. Secretariat acknowledges with gratitude the official translation provided by the Delegation of Sultanate of Oman.

15. The delegate also informed that it established a permanent national committee concerned with following up of the developments in the ICC through specialised experts from concerned authorities in the country. The Committees first decision was a recommendation to sign the Rome Statute.

16. The delegate informed that Article 5 of the Rome Statute provided that the Court should pursue defining the crime and its constituents together with the provisions of the United Nations. He also said that this Article had created a legal problem that was not easy to solve or overcome. He also added that his country recognised the difficulty of the task ahead of the group concerned with defining the crime of aggression that achieved the ICC's effectiveness in pursuing those who commit the crimes without prejudice to the provisions of the United Nations.

17. While concluding the delegate reiterated that his country diligence at following the developments of the ICC and believed that preserving international safety and security, protecting humanity's blood and ensuring a future for coming generations by safety and peace would not be achieved unless a legal institution in the form of the ICC was there. The delegate hoped that the Court was capable of pursuing those who committed dangerous crimes at the international level.

18. The **Delegate of the Islamic Republic of Iran** said that since the Nuremberg and Tokyo Trial the crime of aggression was considered as the supreme crime. In between 1998 and 2002 there were repeated meetings that had taken place before finalising the Rome Statute, and unfortunately, the

issue of the definition of Crime of Aggression remained as elusive. He also added that the Review Conference for the Statute was very close. He also informed that his country would not accept the political decision like the Security Council. He also made a proposal for having a special meeting under the leadership of Secretary-General Amb. Dr. Wafik Z. Kamil to collect the Asian-African views regarding the definition of the Crime of Aggression, so that it could be conveyed to the Special Working Group on the Crime of Aggression at its next meeting. In conclusion, he believed that ICC was an independent judicial organ, and it should not be subordinate to even the International Court of Justice. The delegate observed that, his delegation was of the view that the International Criminal Court was an independent judicial organ. However, in situations in which the Security Council had determined that there was commission of an act of aggression, under the provisions of Rome Statute, the Security Council was empowered to refer the matter to the ICC. Other possible options, if there was no reference by Security Council, could be, in his view, was informing the Office of The Prosecutor as well as bringing it to the notice of the Secretary-General of the United Nations. The delegate observed that there was no sub-ordination involved in such a situation, rather it was based upon cooperation. The Cooperation Agreement between the UN and the ICC provided for such cooperation between the two bodies. Moreover, under the Charter of the United Nations, there was possibility of referring the matter for the Advisory Opinion of the ICJ.

19. The **Delegate of Kenya** said that war crimes, genocide and crimes against humanity were the most

heinous crimes for which the perpetrators must be brought to justice. He also informed that his country published the International Crimes Bill, 2006, with a view to domesticating the Rome Statute. The Bill was currently being subjected to intensive discussion by the stakeholders with the intention of ensuring that it complied with the treaty obligations. The delegation also welcomed the deliberations on the Definition of the Crime of Aggression especially by the Special Working Group on the Crime of Aggression.

20. The delegate noted that only fifteen Member States of AALCO had ratified the Rome Statute and out of these, eleven were from Africa and four were from the Asian region. The delegate added that his country would like to encourage States to consider becoming State Parties to the ICC in order to send a clear signal of universal rejection of impunity.

21. The delegation was aware that some of the AALCO Members who were either signatories or States Parties to the Statute of the ICC had come under intense pressure to sign Non-Surrender Agreements. The delegate said that his country acknowledged the sovereign right of States to enter into agreements, the forum of AALCO offered an opportunity for guidance to its members to determine whether such Non-Surrender Agreements were in compliance with their obligations under the Rome Statute. Such guidance would ensure that perpetrators of the crimes covered under the ICC should not be shielded from justice through bilateral arrangements.

22. The **Delegate of Republic of Indonesia** stated that his delegation attached great importance to the fundamental principles of the work of

the ICC, namely independence, impartiality, the rule of law, and the professionalism. He added that the application of the principle of complementarity was the key to the survival and vitality of the ICC work and national juridical system, social tradition and culture deserve due respect. He also said that National Court should be given the primary role in the prosecution of human rights violations, and believed that it would encourage universal acceptance of the jurisdiction of the ICC.

23. The delegation reiterated that it would be prudent to observe at the first instance on the implementation of the Rome Statute and the operation of the ICC. He also added that it did not mean that his country lacked commitment to stop human rights violations.

24. With regard to the Definition of Aggression, the delegation consistently maintained that Definition of Aggression should be in conformity with the Charter of the United Nations. The delegate welcomed the development of the matter made by the Special Working Group on the Crime of Aggression. The delegate also believed that there was a clear chance of establishing a successful definition on Crime of Aggression. He also hoped that international society would settle the issue in a practical and cooperative way.

25. In light of conditions for the exercise of jurisdiction of the ICC over the Crime of Aggression, the delegation attached much significance that the ICC should exercise its jurisdiction in a manner consistent with the provisions of the United Nations Charter. Although the Security Council had primary role in the determination of an act of aggression, the delegation

was of the view that lack of a determination by the Security Council as to the existence of an act of aggression committed by the State concerned should not impede the exercise of the Court's jurisdiction with respect to referral to it.

26. The **Delegate of the People's Republic of China** said that the International Criminal Court was an outcome of decades-long relentless efforts by the international community to end impunity and punish the most serious international crimes, and also an achievement in mechanism-building after a century of hard work to ensure individual criminal responsibility for the crimes. He also informed that at the very beginning of the negotiations of the Rome Statute establishing the Court, his country had taken an active and constructive part in every stage of the process to set up the Court and had made its due contribution.

27. The delegate was of the view that the Court's activities should be conducted in strict compliance with the principle of complementarity set forth in the Statute, and should be a true complement to national judicial systems. He added that the investigation and prosecution of serious international crimes should be in the first place handled by national judicial systems rather than by the International Criminal Court.

28. With regard to Crime of Aggression the delegate informed that the Special Working Group on the Crime of Aggression set up by the Assembly of States Parties to the Statute that met recently, and made progress in the definition of the crime of aggression. Difference in views remained unresolved, and the delegate hoped that all the gaps could be solved

properly within the framework of the UN Charter.

29. The delegate hoped that the Court would effectively address the concerns of Asian-African States, prove to the international community, through its operation and work, its just and independent role in strict compliance with the principle of complementarity, and win wider trust and support among States.

30. The **Delegate of Malaysia** reiterated its support for the establishment and operationalization of the first permanent International Criminal Court (ICC). The delegate said that the success of the ICC ensured that the perpetrators of heinous crimes against unprotected civilian populations were brought to justice and that future actors were deterred from such acts.

31. The delegate reiterated that over and above the constitutional, legal and procedural issues of Rome Statute membership, her government remains concerned on how the powers of investigation and prosecution would be exercised, particularly in relation to the principle of complementarity. She also questioned the actions of the ICC regarding the issue of warrants of arrest against alleged Darfur war criminals in view of clear objections from Sudan (a non State Party). The delegate welcomed the transparency of the ICC Prosecutor for providing his explanations on the basis for the ICC's claim to jurisdiction over the two cases. The delegation hoped that the legal issues surrounding the implementation of the Rome Statute could be addressed in a manner where the concerns of all parties would be addressed satisfactorily.

32. With reference to the issues highlighted by the AALCO Secretariat in its brief the delegate preferred the enumerative approach of the concept of "act of aggression" for the definition of the Crime of Aggression in the interest of clarity and certainty. In this regard, delegate was of the view that the exhortation in Article 5(2) of the Rome Statute that the definition of "crime of aggression" had to be consistent with the relevant provisions of the UN Charter was pertinent. This was because, Article 39 of the Charter referred to the trigger element as "act of aggression" and not "armed attack".

33. The delegate also said that there exists no guidelines for the Security Council to determine whether there has been an "act of aggression" other than General Assembly Resolution 3314. It was clear that should the Security Council be called upon to make a determination, it would refer firstly and primarily to that Resolution. She added that the General Assembly Resolution 3314 adopted both a generic definition and a non-exhaustive enumerative approach of instances of aggression. This definitional approach had stood as the unchallenged *de facto* definition of "act of aggression" since 1974.

34. For the above said reasons the delegate said that her government would prefer the term "act of aggression" to "war of aggression" although it was recognized that almost all "acts of aggression" were necessarily caused by "aggressive wars" and therefore should be criminalized as international crimes offending the Charter of the United Nations. The delegate noted that Article 5(2) of the General Assembly Resolution 3314 appears to draw a distinction between the consequences of a "war of aggression" and mere "act

of aggression". In the case of the former, it was a crime against international peace and entailed international criminal responsibility. On the other hand "acts of aggression" only gave rise to international responsibility of State. The delegate was of the view that the drafting of new Rome Statute definition was a timely opportunity to standardize and clarify the use of terms, and based on the current text of Art. 8 *bis* in the Coordinator's Revised Paper, States should agree to adopt "act of aggression" as the standardized term with the agreed meaning.

35. On the issue of the role of the Security Council under the Rome Statute, the delegate maintained the view that although it recognized the role of the Security Council to make a determination on the existence of an "act of aggression" under Article 39 of the Charter of the United Nations and to suspend the investigation or the proceedings of the ICC indefinitely under Article 16 of the Rome Statute, all efforts should be made to ensure that the lack of such a determination and such power do not hinder the ICC in its pursuit of justice. In this regard, the delegate noted that the Discussion Paper proposed by the Chairman of the Special Working Group on the Crime of Aggression contained some workable options that merit further consideration.

C. Establishing Cooperation against Trafficking in Women and Children

1. **Amb. Mr. Reza Tabatabaei Shafiei, the Deputy Secretary-General**, introduced the agenda item "Establishing Cooperation against Trafficking in Women and Children" contained in Document AALCO/46th/CAPE TOWN SESSION/2007/S 8 and its Addendum. He stated that the Secretariat has been consistently following all the recent developments in the field of legal regulations for combating trafficking in women and children since its inclusion as an agenda item at its Fortieth Session in 2001 upon the request of Government of Republic of Indonesia.

2. Summarizing the Secretariat report, he stated that it, *inter alia*, focused on the international obligations of a State in combating trafficking in persons, which includes crime prevention, and protection of human rights of the trafficked persons. Moreover, the report envisaged other regional initiatives specifically from the African and Asian regions in combating trafficking in persons especially women and children. He mentioned that the regional initiatives in Africa like the Joint Economic Community of West African States (ECOWAS)/Economic Community of Central African States (ECCAS) Conference of Ministers to combat Trafficking in Persons and the Bali Process were noteworthy. Therefore, despite this issue being repeatedly addressed at various international and regional fora, this topic remained highly significant.

3. He recalled that trafficking in human beings has acute security implications due to its transnational nature. The vicious circle of trafficking in persons and other organized crimes

has steadily increased because of internationalization of work, trade, transport and communication. Such wide networks prove to be difficult for States to combat trafficking effectively without the active cooperation of other countries. He urged the Member States that it is therefore essential to coordinate among States to take initiatives for crime prevention. Describing the viewpoint from a trafficked person's perspective, he said that their basic human rights are violated and they are negated from enjoying their full freedom. He informed that the report attempts to opine that the trafficked persons who have given their consent self/voluntarily should also be included within the gamut of genuine victims so that their rights are protected and they are not subjected to penalization. He stressed that there is a clear interface between different regimes in international law with the issue of trafficking and this has been highlighted in the present report.

4. Reaffirming the active participation of the AALCO Member States in combating trafficking in women and children by virtue of either ratification or accession to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children stated that till date 34 AALCO Member States are signatories to the Convention and 23 of them are signatories to the Trafficking in Persons Protocol. He requested the Member States of AALCO who have not yet ratified the Convention and the Protocol to do the same at the earliest and then to formulate rules and regulations in the form of national legislation in order to prevent and prohibit trafficking in persons besides

including necessary provisions in their domestic legislation which shall prevent such crimes from occurring in future.

5. He reiterated that the Secretariat had drafted the first set of revised draft articles in accordance with the mandate received to it vide RES/43/SP 1 and after undertaking a thorough study of the national legislations received from Member States. He stressed that at this Session, the Secretariat had presented before its Member States a set of revised draft articles as an addendum for consideration. The need for such a revision of the draft articles occurred because the earlier version was in the form of a draft Convention that may have been more binding on its Member States. Further, keeping in view the mandate given, the Secretariat reformulated the previous draft articles in the form of Model Act, which can be adopted as a national legislation by Member States once it is finalized. However, some earlier model legislations, for example, "Model Legislation on the Status and Treatment Refugee", prepared by the Secretariat were in the form of Model Acts, which could easily be enacted in their national legislation by any State desirous of doing so.

6. He invited the attention of the Member States towards assisting the Secretariat with their valuable suggestions reflecting their experience in preparing an effective Model Legislation.

7. The **Delegate of Senegal**⁶ stated that such a delicate matter has been carefully dealt with by the Secretariat and in fact it was of great

⁶ Statement delivered in French. Unofficial translation from the Interpreter's version.

significance to note that such a new phenomena like trafficking has been addressed with such vigour. He raised great concern over the matter and stressed that this menace has occurred due to the very political, economic and social changes or transitions that have taken place in Africa. The factors or reasons for such a growing menace were poverty, and special internal reasons of certain countries like fragmentation of political structures. Destruction of family also leads to such crimes and it leads to grave human rights violations. There is a clear interface between trafficking in drugs and arms, money laundering, corruption, etc. and the States in order to combat such crimes had signed the Palermo Declaration. He stated that Senegal due to its geographical reasons was either a transit or destination country and hence, had incorporated various international norms and laws, which aimed at punishing people who were trafficked. In this attempt, Senegal had ratified all the three protocols that were supplementary to the Convention.

8. The **Delegate of Tanzania** in his statement said that they were witnessing women and children who were denied basic rights to life, right to education and the right to make decisions that affect their lives and consequently were reduced to profit making instruments by satisfying the lust of other inhuman mortals. The pretext that some of the victims expressed a choice to be trafficked in order to access employment had to be carefully weighted against all odds. Poor women were invariably lured to accept unconscionable terms based on incorrect information at the time of departure from their homes. He welcomed the initiatives to contain this problem and to ensure and uphold the

social, cultural and economic rights of these vulnerable groups.

9. The Delegate observed that the crime of trafficking was predicated on sexual abuse in many countries and must be addressed in all its forms. He mentioned that the jurisprudence in this area must evolve on the protection of victims rather than criminalizing and penalizing them. The victims should be witnesses rather than offenders. They should be compensated for their sufferings instead of being punished and they should be reintegrated with their families.

10. The Delegate further observed that the freedom of movement including that of women was a basic right, which must not be compromised in any way. Women had the right to travel without unreasonable impediments in order to allow them to search for their education and employment in a legitimate manner. The protection of the vulnerable women and children should in no way be translated as meaning that they are denied of their basic freedom of movement. He said that the right to freedom of movement and the needs of protecting the vulnerable sections needed to be carefully balanced while searching for the framework of cooperation in this area. The Delegate said that Tanzania would encourage the AALCO Secretariat in its work in this area and would assure unwavering support in order to realize a scheme of cooperation that guaranteed the protection of rights of women and children.

11. The **Delegate of South Africa** in his statement informed that South Africa had ratified the United Nations Convention against Transnational Organized Crime and the Protocol to

Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. Accordingly, the obligation on the South African government to bring its domestic laws and policies in line with the standards set by the Protocol had been effectively meted out by the establishment of the South African Law Reform Commission (SALRC). This Commission was required to conduct an investigation to addressing trafficking in persons within the South African context by recommending legislative and non-legislative measures in order to facilitate the effective prosecution of trafficker, protection of victims of trafficking and the prevention of trafficking in persons. The SALRC had gone through an extensive consultation process, including the release of discussion papers, widespread workshops and so on over a period of many years and was now in the process of finalizing its report.

12. He observed that pending the finalization of their comprehensive legislation on trafficking in persons, a chapter on trafficking in children was included in their national legislation titled, Children's Act, 38 of 2005 and that Act criminalizes the trafficking of children and certain behaviour facilitating trafficking in children. Further, the Act dealt with the reporting and referral of child victims of trafficking and the repatriation of such children and bestows the national courts with extra-territorial jurisdiction in respect of the offence of trafficking in children. In addition to this Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Bill in the interim criminalises trafficking in persons for purposes of sexual exploitation. Pending the adoption of

that legislation, in compliance with the Trafficking in Persons Protocol, the transitional provisions in the Bill relating to the trafficking in persons for sexual purposes were provisionally provided for partial compliance of their international obligations.

13. He listed all the national legislations so far adopted by the South African Government in seriatim, which penalises and criminalises the acts relating to sexual exploitation, prostitution, rape, kidnapping, etc. He observed that South African Government was engaged in regional efforts aimed at improving mutual legal assistance and the signing of extradition treaties. Keeping in view the importance of such regional initiatives the Government had proposed to constitute a committee on trafficking in women and children. He mentioned that South Africa had been observing with keen interest the existing programmes in their region, which were led by international organisations, such as the IOM's Southern African Counter Trafficking Assistance Programme (SACTAP). He also referred to the First Regional Anti-Human Trafficking Conference in Eastern Africa, held in Kampala, Uganda from 19 to 22 June 2007, which enabled to harmonise on aspects such as Prevention (Sensitisation and awareness raising), Victim protection and assistance, Legislative framework and policy development, Law enforcement as well as Cooperation. He suggested that similar processes could be initiated within AALCO too.

14. The **Delegate of the Republic of Indonesia** informed about the various initiatives taken in his country at three levels, namely (1) Legal Framework; (2) National Policy, and (3) Law Enforcement Process; to

eradicate trafficking in persons, especially women and children.

15. As regards the Legal Framework level, the Government of Indonesia had already approved by the House of Representative Law Number 21 year 2007 on Eradication of The Criminal Act and Trafficking in Persons (Combating and Fight Trafficking in Persons). The formulation of this Law constituted a manifestation of Indonesia's commitment to observe the UN Protocol of 2000 on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children (the Palermo Protocol), to which Indonesia was a signatory. In accordance with the UN Protocol 2000, the regulatory coverage of of this Law included preventing and eradicating trafficking in persons, punishing the traffickers of witnesses and victims and cooperation that could be at the national and international level.

16. The Delegate informed that the element of the criminal act of the trafficking in persons in this Law, was anyone who recruits, transports, harbors, sends, transfers or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploitation or which causes the exploitation of a person, shall be punishable by prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years.

17. He informed that 'exploitation' shall mean an act committed with or without the consent of the victim

which includes but is not limited to prostitution, forced labor or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse of the reproductive organs, or the illegal transfer or transpation of body organs or the use of another person's labor or ability for own's own material or immaterial profit.

18. The Delegate observed that Government of Indonesia had also submitted the United Nations Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children (along with its two Protocols) to be ratified as soon as possible by the Indonesian House of Representative. At the same time, the Government had already prepared and submitted national regulations to be approved by the House of Representative to implement the UNCTOC and its protocols with, inter alia, the Trafficking of Women and Children Act and the Protection of Witnesses and Victims Act. Other regulations related to the efforts to prevent and combat trafficking are also being submitted to be ratified/approved by the House of Representative, such as the ratification of the UN Convention against Corruption and the enactment of the Mutual Legal Assistance in Criminal Matters Act.

19. The delegate observed that the UNCTOC was already ratified by Indonesia, laws and regulations, etc., concerned with the efforts to prevent and combat trafficking of women and children must be integrated and coordinated into each other, and each one of them should have a mechanism to conduct international cooperation with a view to maximize achievement

in preventing and combating trafficking of women and children.

20. As regards, the National Policy level, his Government had specifically endorsed a special Presidential Decree to set up a National Action Plan to Eliminate the Trafficking of Women and Children, including by establishing an intersectional Task Force to implement such action plan. The task force was constituted as a coordinating body with the duty to: a) coordinate efforts to prevent and address the criminal act of trafficking in persons; b) provide advocacy, socialization, training and cooperation; c) monitor developments in the provision of victim protection including rehabilitation, return, and social reintegration; d) monitor law enforcement; and e) conduct report and evaluation. It was expected that all efforts to prevent and combat trafficking of women and children would be more integrated with the efforts to prevent the root causes of the trafficking of women and children, namely poverty, inadequate education, chronic unemployment, broken family, gender imbalance and patriarchal culture, consumerism and weak legal enforcement against the perpetrators. The Task Force was expected to collaborate with other Task Forces related to efforts at combating transnational organized crime such as the Money Laundering Task Force, which for example may present information regarding the occurrence of transnational crime in the form of money laundering which was indicated to come from the performance of trafficking of women and children.

21. Furthermore, the delegate stated that on the Law Enforcement level, Indonesia's efforts to prevent and combat trafficking were under two sub levels, namely, one at the national

level and second at the bilateral/regional/international level.

22. Finally, since the nature of trafficking of women and children was transnational/global, no country can ever successfully combat trafficking without the assistance of another country, therefore the delegate reiterated the urgency of collaboration among nations through bilateral, regional and multilateral forum.

23. The delegate also informed that the Delegation of the Republic of Indonesia had submitted to the AALCO Secretariat its National Law No. 21/2007 on the eradication of the criminal act and trafficking in persons as a proposed model law for AALCO.

24. The **Delegate of Qatar**⁷ observed that their domestic laws were in conformity with the international standards on human rights law because Qatar law was keen to protect the human rights of the people. He stated that their Constitution guaranteed public and private freedom, which effectively dealt with combating sexual exploitation, kidnapping, rape, etc. On these aspects, he referred to the law, which prohibits children working in camel races under the age of 16 years and penalises such act.

25. The **Delegate of Thailand** in her statement stated that they would be promulgating a Draft Act on Prevention and Suppression of Human Trafficking. While referring to the importance of the Act, she observed that the Act covered all aspects of the trafficking in persons regardless whether or not they were genuine or self-voluntary trafficking cases. Expressly mentioning that consent of

⁷ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

the person was not a defence against such crimes. Further, the law considered the trafficked persons as victims and no criminal proceedings be initiated against them. It also guaranteed basic civil rights protection and due process to all victims vis-à-vis guaranteeing to keep the victims identification matters strictly confidential. Further, the Thai Penal Code also incorporated offences related to travel documents in order to criminalise the production, possession, use, distribution and procurement of fraudulent travel documents, to be punishable by heavy fines and long-term imprisonment. She also emphasised that considering that the Thailand was a sending country, transit country and receiving country, the Thai government had entered into bilateral arrangements with their neighbours.

26. The **Delegate of Malaysia** noted the increasing global profile accorded to the Trafficking in Persons (TIP) issue. He also acknowledged that this scourge must be addressed from both a criminal perspective in relation to the traffickers while humanely dealing with trafficked persons who were often rescued or found in untenable living conditions with little regard for their basic human dignity.

27. The Delegate reiterated that TIP could only be addressed effectively if the source and destination countries took the necessary preventive measures. In source countries this meant addressing conditions of economic poverty and unemployment. In the case of destination countries, that meant addressing the demands of the sex industry, forced labour and servitude and demands for human organs.

28. The Delegate informed that Malaysia had just enacted its comprehensive Anti-Trafficking in Persons Act (ATIP) 2007 which was compliant with the TIP Protocol. In that process, Malaysia had recourse to the Bali Process Model Laws as well as the UNODC Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols thereto (2004).

29. The Delegation acknowledged the efforts of the AALCO Secretariat to reformulate the draft Model Law from its Convention format to a Model Act format. Malaysia would also like to contribute to the development of this Model Law and would provide to the Secretariat a copy of the ATIP 2007 for its reference later.

30. The Delegate noted the issues identified by the Secretariat for the focused deliberations at the Forty-Sixth Session. On the issue of distinguishing genuine and self/voluntary trafficking, it had been Malaysia's position that a distinction needs to be drawn to discourage the abuse of the destination States' generosity and limited resources to deal with trafficked persons. This was not intended to minimise the suffering of those who found themselves in predicaments though they knowingly engaged in high-risk areas. Nevertheless it was recognised that a person who satisfied the definition of "trafficked persons" in the TIP Protocol and the ATIP 2007 was a genuine victim and would be dealt with accordingly. Guidelines would however still had to be developed to assist the relevant agencies in identifying such victims as opposed to illegal migrants seeking the protection of the ATIP regime.

31. On the issue of reducing demand and targeting criminals, his Delegation agreed that the best way to help and protect the vulnerable groups of persons was to identify, arrest and prosecute the traffickers, with the assistance of the trafficked persons being the best witnesses. Schemes which maximise this approach should be the most effective. Malaysia also agreed that legalising prostitution did not reduce demand but exacerbates the problem. The best means was to educate the public on the horrors of TIP both as a preventive action for victims as well as a deterrent to those who feed the demand. Stricter enforcement of laws would also be essential.

32. In complying with the TIP Protocol and the other applicable standards such as the OHCHR's 'Recommended Principles and Guidelines on Human Rights and Human Trafficking', countries would also be emphasising the need to enforce and protect the human rights of trafficked persons.

33. Apart from the enactment of the ATIP 2007, Malaysia was also involved in ASEAN's efforts to combat TIP. All these various efforts include the action lines for the implementation of the 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children and participation in the 7th SOMTC in Vientiane from 25 to 28 June 2007.

34. At the 4th China-ASEAN Prosecutors General Conference held in Macau from 10-12 April 2007, Malaysia urged the Attorneys General/Prosecutors General to work together to combat TIP in the region and to realise the vision of the various ASEAN instruments on transnational

crime, including TIP. In addition, the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries was now in force among Brunei, Laos, Malaysia, Singapore and Vietnam with Lao's ratification on 20 June 2007. Malaysia also had bilateral Mutual Legal Assistance Treaties with Australia, USA and Hong Kong and bilateral extradition treaties with Thailand, Indonesia, USA, Hong Kong and Australia.

35. The Delegation emphasized once again the importance of formulating a regional legal framework to facilitate co-operation to combat trafficking in persons as domestic law by itself cannot curb trafficking. It would take enforcement, not just by Malaysian authorities. He also emphasized that the underlying causes of the trafficking in persons needed to be effectively dealt with to prevent the offence from occurring and to ensure trafficked persons who were rescued in transit and destination countries could be repatriated to their home countries as soon as possible. Measures were also required to prevent re-victimization. The Delegate concluded by stating that his delegation supported the continued efforts of AALCO to combat TIP.

36. The **Delegate of the Islamic Republic of Iran** observed that along with fighting to protect the human rights of the trafficked persons, the public especially the potential victims need to be informed about the phenomena and its consequences. He recalled the supply of human being for prostitution, forced labour or removal of organs could not be stopped unless demand for them is not controlled. Keeping in view such problems the Iranian Parliament had adopted a law against trafficking in persons in 2004.

37. Further, he observed that at the third session of the Conference of Parties to the United Nations Convention against Transnational Organized Crime, the Iranian delegation expressed the view that protection of witnesses and victims, assistance to and protection of victims in receiving states and repatriation of victims of trafficking in persons were important. The Delegation of the Islamic Republic of Iran stated that the human rights norms and obligations should be observed, for victims and witnesses who are trafficked in different stages of investigations and prosecutions in the receiving States.

38. The **Delegate of Japan** stated that his country considered trafficking in persons as a serious crime and a grave violation of human rights and dignity. From such a standpoint, his country had established the Inter-Ministerial Liaison committee at the Prime Minister's Office in April 2004 and adopted the Comprehensive National Action Plan of Measures to combat trafficking in persons. The Penal Code had already been amended to criminalize and punish severely all acts of human trafficking.

39. The Delegate informed that the Japanese Diet approved the conclusion of the Protocol on Trafficking in Person on 8 June 2005. After that relevant measures were taken and the Government would ratify the Protocol in due course. He further added that in order to conduct consultations with the concerned Governments, his Government had sent governmental team to Thailand, Indonesia, in May 2006, and to Laos and Cambodia in January 2007. With Thailand, agreement was reached to set up a joint task force for cooperation for

prevention, law enforcement and protection of victims.

40. The Delegate informed that Japan had organized an International Inter-agency coordination meeting for collaborative interventions to counter trafficking in Tokyo in September 2006.

41. With regard to the exercise of making Model Legislation, the Delegate observed stated that, it would be important to avoid unnecessary duplication with the Bali Process.

42. The **Delegate of Sudan**⁸ reiterated that the phenomenon of trafficking was a humiliation and affects good rising up of the children if parents leave them destitute. They would be forced to practice trafficking. Such acts occur in gangs that use lot of money in order to benefit from such activities. Punishing the perpetrators should be the main motive and States should cooperate in fighting this menace. He observed that States must enter into bilateral agreements to combat it and also to conduct seminar, workshops and conferences to address this issue. He suggested that AALCO should adopt the methodology to introduce subjects of ethical nature and should act collectively.

43. The **Delegate of State of Kuwait**⁹ stated that their country places utmost respect to human rights of the individuals and quoted from the Holy Quran stating that human being was the best form of life. The constitution and all the national legislations of their State emphasised on dignity of human beings. All the legislations prohibit trafficking and the

⁸ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

⁹ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

State of Kuwait had ratified almost all the major international conventions so far adopted in this regard. He also suggested that AALCO could help in investigating against those who would practice such acts and strengthen cooperation.

44. The **Delegate of Republic of Kenya**,¹⁰ stated that the growing problem of trafficking of women and children required a multi-faceted approach and the Government of Kenya has taken significant steps in strengthening its legislative framework, as well as taking concrete actions to prosecute offenders, protect the vulnerable victims and to take preventative measures. The delegate referred to its recently enacted an Act titled Sexual Offences Act which criminalizes the trafficking of children and adults for sexual exploitation. He stated that law prescribed penalties that were considerably stringent. The office of the Attorney General was, in collaboration with other Government Ministries and civil society, in the process of drafting a law to prevent, penalize and eradicate Trafficking in Persons.

45. He observed that since the beginning of 2007, the Government of Kenya had increased its law enforcement activity and investigations of trafficking incidents and reports. The Government of Kenya had also widened the support services given to issues of trafficking, and had improved its assistance to protect children facing labor exploitation. The Department of Children Services launched a free hotline for children to report abuses. The Department had also been involved in private sector initiatives to curb the practice, and has participated

in various meetings on trafficking. He informed the session that in 2006, the Social Services Departments of the City Councils of Nairobi, Mombasa, and Kisumu established shelters to rehabilitate street children vulnerable to forced labor and sexual abuse.

46. The Government had also taken various preventive actions to counter the problem. The Ministry of Home Affairs and UNICEF conducted joint research on child sex tourism and commercial sexual exploitation of children on the coast, which underpins a Kenyan Government report released in December 2006. In response to the study's findings, steps to address human trafficking were incorporated into the Ministry's annual work plan. In early December 2006, government ministries formed a National Trafficking Task Force to draft a National Plan of Action.

47. The delegate commended the AALCO Secretariat in the production of the model law and had appreciated the opportunity provided by the Forty-Sixth Session to deliberate on the issue and share information on country practices applied in combating this growing crime.

¹⁰ The statement was circulated and deemed to be read.

D. Human Rights in Islam

Mr. Eddy Pratomo, Vice President of the Forty-Sixth Session of AALCO in the Chair.

Human Rights in Islam

1. **Amb. Mr. Reza Tabatabaei Shafiei, Deputy Secretary General of AALCO** introduced the item "Human Rights in Islam" contained in the Secretariat document: AALCO/46th/CAPETOWN SESSION/2007/S 15.

2. He informed that the AALCO Secretariat had been seriously involved in the research for the past five years on this topic. All the studies were prepared in a comparative framework involving international and national legal systems. He said that during the process of research it was found that the Islamic legal system was unique in various aspects, even though there might be no fundamental differences in several aspects with the international and national human rights framework. The Secretariat Report for the year 2003 set out the framework for further study in the coming years. The Secretariat report for 2004 included the distinctive characteristics of human rights in Islam, and specific human rights in Islam, which include civil and political rights; and economic, social and cultural rights. In the years 2005, and 2006, the Secretariat had examined the criminal law; and criminal procedural laws of Islam, respectively, from a human rights perspective.

3. He apprised that in continuum of the previous work, the present report was divided into two parts. Part one examined the overarching theme of peace over human rights in Islam, to emphasize that Islam was a religion of peace in general and, human rights in

Islam were nourished from the Theme of Peace. The implication was to show how wrong were those advocates of Western propaganda that linked Islam with acts of Terrorism. Part two of the report contained a summary of the Meeting of International Experts on Human Rights in Islam, held in Kuala Lumpur, Malaysia (15-19 May 2006)

4. He reported that at the Forty-Fourth Session of AALCO held in Nairobi, the Member States adopted Resolution [RES/44/S 16 (1 July 2005)], which highlighted the Malaysian Delegation's preparedness to host the meeting of the experts on human rights in Islam. Pursuant to this resolution a Meeting of International Experts on Human Rights in Islam (MIEHRI) was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006. It was organized by the Government of Malaysia in collaboration with the Government of Kingdom of Saudi Arabia and Asian African Legal Consultative Organization (AALCO) Secretariat. The Meeting was a great success in highlighting the human rights principles in Islam. The Meeting covered almost all important aspects relating to the topic which included, General overview on Human Rights-Islamic Law and International Law; Islam and Human Rights-Managing Diversity; Civil and Political Rights; Social, Economic, and Cultural Rights from Islamic Perspective, International law perspective and possible area of convergence; Human Rights of Women and Children; and Islam and War on Terrorism. Apart from the Plenary Sessions, the intricacies of each topic were discussed thoroughly in detail in the working groups, by a galaxy of experts and purposeful recommendations were made.

5. He pointed out that peace was a central theme in Islamic teachings.

However, Islam was often stereotyped as aggressive and violent in the Western discourse. Western media often projected the violent and aggressive images of Islam and linked this religion to the acts of terrorism. Certain historical writings also made negative depictions of Islam. An objective research could reduce the negative characterizations of Islamic society and religion in both popular and academic literature, particularly to eliminate ill-founded generalizations about Islamic ways of thinking, believing or living. The Deputy Secretary-General proposed that the deliberations could be focused on the following points: Islam as a religion of peace; Key Islamic principles related to "Peace"; Human Rights in Islam stems from the notion of Peace; and Highlighting the Islamic principles of peaceful resolution of conflicts.

6. The **Delegate of Pakistan** stated that it was well justified to claim that the first regular international manifesto of the fundamental human rights was found in the Last Sermon of the Holy Prophet Hazrat Muhammad (Peace Be Upon Him), in which Holy Prophet (PBUH) imposed the duty upon every Muslim to give rights to all other human beings and to protect their honour, life and property, i.e., the right of leading an honourable and pious life, freedom of expression, getting instant justice, protection of social, political and economic rights, rights of living an independent life according to the creed and belief. Hence minor or major, poor or rich, male or female were equal in an Islamic State. Islam also provided safeguards to the rights of the minorities. Human rights in Islam had been granted by Allah (God) and no worldly authority had the right to amend, change or withdraw them. This conviction had been clearly reflected in the Cairo Declaration on

Human Rights of August 5, 1990. Every Muslim or administrator who claimed to be Muslim accept, recognize and enforce these rights.

7. The delegate pointed out that Islam granted certain basic human rights to all people, Muslims and non-Muslims, and regardless of their race, nationality, ethnic origin or language. The first of these rights was the right to live and respect human life. Only a proper and competent court of law could decide to take a life in retaliation for murder or punishment for spreading corruption on the earth. Only a properly established government could decide to wage war. No human being had the right by himself to take a human life or for causing mischief on the earth.

8. The delegate observed that Islam granted the individual the right to freedom. It was categorically forbidden to capture a free person and make him a slave or sell him into slavery. Every human had the right to the safety of life. Islam recognized absolute equality between people. All people were descended from Adam and were as brothers and sisters. Each human being had inherent value and distinction as God creation. Apart from these general human rights that Islam gave to all, there were other rights set down by Islam dealing with issues such as the rights of citizens in an Islamic state, basic standard of life to all individuals, rights of women and the rights of enemies during times of war. The delegate stated that his delegation considered that it was necessary and recommended that under the auspices of AALCO this item might be prompted for further understanding by the member states in order to clarify the concept of human rights in Islam.

9. The **Delegate of the Republic of Indonesia** opined that AALCO forum should be able to provide delegates an arena for sharing best practices and lessons learned on advancing human rights norms and standards, be it universal or from the perspectives of Islam.

10. The Delegate underlined that even though the Vienna Declaration and Plan of Action was universally accepted, there was still frequent contention on the way it was applied, including the notion of the indivisibility of all human rights – civil, political, social, economic and cultural. This could contribute to politicization and selectivity. The Delegate believed that exchange of views and experiences during the Session would contribute further to establish a common understanding on perceptions and concepts, through a commonality of interpretation of and priorities on the notion of “right”. In order to guarantee this commonality of perception of the notion of right, it was very important to give the two main groups of rights – civil and political rights on the one hand, and economic, social and cultural rights on the other – equal value. These two sets of rights must be treated on a par. She said that Indonesia considered this as fundamental principle, as exemplified in the simultaneous ratification by the government of the two Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights, in 2006.

11. The Delegate said that having experienced a transition towards a democratic Indonesia, they were now seriously engaged in the efforts for the promotion and protection of human rights at the national level. The practical application of this process was reflected in the two successive

National Plans of Action (1998-2003, and 2004-2009) that were initiated with the beginning of the reform era. Within this time frame, Indonesia had ratified several human rights conventions.

12. The Delegate said that Indonesia was currently party to six core Conventions and would be ratifying further conventions in the near future, among others the Convention on Migrant Workers. Indonesia would also be signing the Convention on the Rights of Persons with Disabilities and the Convention against Enforced Disappearance. Furthermore, Indonesia had recently enacted its new Citizenship Law No. 12 of 2006. This new law was a landmark for providing equal citizenship rights for all Indonesians highlighting non-discriminatory approach towards the citizenship of women and children. As a State Party to the Convention on the Elimination of Racial Discrimination, Indonesia was in the process of formulating a draft bill on anti-discrimination, which was expected to become law this year.

13. The Delegate informed that they had invited a number of Special Rapporteurs to visit Indonesia, as they believed their input was valuable in strengthening their human rights institutions and domestic promotion and protection mechanisms. This willingness, she hoped, demonstrated their full support for the human rights mechanisms, as well as their desire to fulfill the pledges and commitment they had undertaken in this regard. The reforms that they had undertaken in the framework of National Plan of Action in recent years, and the pledges that they had undertaken in respect of its implementation had, she believed, convinced the international community of their strength of purpose.

14. The Delegate underlined that societal issues keep emerging as a result of man's progress on the planet. Indeed, technological change, medical advances and sundry other issues and their applications were always liable to threaten man's fundamental freedoms, wellbeing or survival. In response to this progress, she said, we must focus our common efforts to attend to the major existing issues that have yet to be resolved. Among these, violations of important civil and political rights such as human trafficking, torture, extra-judicial killings, enforced disappearances, or violence against women and children, must remain at the forefront of its preoccupations and efforts.

15. The Delegate suggested that among some of the strategic objectives that AALCO must keep in sight, poverty must surely rank as one of the most pressing. Attainment of the Millennium Development Goals remained a crucial key to the fulfillment of the basic human rights of millions of the world's poorest, yet so much more ground still needed to be covered before we could claim to have truly reached our goal. She said Indonesia looked to the AALCO and its mechanisms to approach this problem in a holistic manner since extreme poverty was the mainspring of most of the worst human rights abuses. In this regard, economic, social and cultural rights had a big part to play. The delegate called upon AALCO to promote further the deliberations of these rights and the right to development. She said that there was a close correlation between development and poverty and that to neglect this aspect was to jeopardize the capacity to promote and protect human rights effectively.

16. She also suggested that AALCO spearhead efforts to promote a more systematic dialogue between different cultures and religions. Indonesia, for its part, was and would continue to be actively engaged in interfaith dialogue with various stakeholders at national, regional and international levels, since they believed that there were many unexplored avenues for greater understanding in this respect. She hoped to work closely with other delegates in expanding this idea.

17. The **Delegate of Malaysia** said that Malaysia had been following closely the deliberations on this topic since its inclusion at the Forty-First Session of AALCO in 2002. They took note that at the Forty-Third Session of AALCO the focus was to analyse Human Rights in Islam from the civil law perspective. At the Forty-Fourth Session the Secretariat report analyzed the criminal law of Islam through the prism of human rights and at the Forty-Fifth Session last year, criminal procedural laws from human rights perspectives were looked at. At this session, the Secretariat put up an informative paper on this item to draw specific attention of Member States on two areas, firstly on the concepts of peace and human rights in Islam; and secondly on the Meeting of International Experts on Human Rights In Islam which was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006.

18. The Delegate observed that Malaysia regarded the discussion on the concept of peace and human rights as enshrined in Islam as an extremely important area to be deliberated upon. This was particularly so, as the Secretariat's Paper rightly pointed out, due to the present trend in many parts of the world, in the West or in the East

alike, to argue a case against Islam by creating an unfounded nexus between religion, particularly Islam, with terrorism and violence.

19. He said that they took note of the five issues for focused consideration on this matter as suggested in the Secretariat's Paper. On the first issue they found that paragraphs 6-45 of the Secretariat's Paper had provided with a good basic understanding on the concept of peace as propounded in Islam. Thus, the Delegate did not intend to dwell much on the first issue, except to share what Malaysia was currently undertaking with respect to fulfilling its duty in administering social and economic justice and empowerment through the institution of zakat.

20. The delegate pointed out that the AALCO Report highlighted the importance of providing economic justice, which was a major component of the Quranic teachings. The Report also stated that in addition to individual Zakat or charity, the State was obligated to provide for the poor population through Zakat and Bayt-al-mal (public treasury).

21. He informed that the eradication of poverty using Zakat fund was highlighted by the Right Honourable Prime Minister of Malaysia at the Extraordinary Summit of the Organisation of Islamic Conference (OIC) held in Mecca from 6 – 8 December 2005. In his speech, the Right Honourable Prime Minister had suggested that a special fund with the resources coming from zakat be established to tackle poverty. The zakat fund was proposed to be utilized for the development of resources especially in the area of human capital development. Zakat should not be viewed merely as charity or as a means

for short term relief for those in need. Zakat should be issued as a means of providing assistance that would have a lasting effect. This call was reiterated at the 33rd OIC Foreign Minister's Meeting held in Baku, Azerbaijan, from 19 – 21 June 2006.

22. The Delegate reported that following this, Malaysia organized an International Conference on Zakat on 28 November 2006, with the objectives, *inter alia*: 1. To generate and pool ideas and thoughts from representatives of OIC Member States during the Conference; 2. To share the experiences with the participating nations on matters pertaining to management, collection and the disbursement of the Zakat fund; 3. To establish and promote global discourse and identify areas of cooperation to strengthen the management of Zakat; and 4. To solicit views, comments and support for the establishment of an International Zakat Organization. Malaysia was in the midst of establishing the said international zakat organization and, the Delegate hoped that concerned Member States would consider the proposal positively.

23. The Delegate said that they were of the view that the third, fourth and fifth issues suggested by the Secretariat for focused consideration on this topic were inter-linked. The issue relating to the Islamic principles of peaceful resolution of conflicts merited serious consideration and deliberation by Member States. In this respect, the Delegate suggests that the Secretariat provide with detailed analysis on this matter in its Paper on this Agenda Item at the Forty-Seventh AALCO Session.

24. The Delegate emphasized on the second issue suggested by the Secretariat, which was on countering

the attempt by the Western world to associate Islam with violence, aggression and terror. The Delegate said that his Delegation was of the view that the oft-quoted contention that associating Islam with violence, aggression and terror was within the exclusive domain of the Western world was not always accurate. It was a global phenomena. The United Nations Commission on Human Rights at its 55th session in 1999 adopted by consensus the much-debated but now-forgotten Resolution E/CN.4/199/L.40 Rev.1 on the subject of "Defamation of Religions" in which it reaffirmed that discrimination against human beings on the grounds of religion or belief constituted an affront to human dignity and a disavowal of the principles of the Charter of the United Nations. The Resolution was particularly historic and important based on the following:

1. it reaffirmed the call of the World Conference on Human Rights for all Governments to take all appropriate measures to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including desecration of religious sites;
2. underlined the importance of creating conditions to foster greater harmony and tolerance within and among societies and conscious of the importance of education in ensuring tolerance of and respect of religion and belief;
3. emphasized that non-governmental organizations, religious bodies and communities had an important role to play in the promotion of tolerance and the protection of freedom of religion or belief;
4. expressed deep concern at negative stereotyping of religions;
5. expressed deep concern that Islam was frequently and wrongly associated with human rights violations and with terrorism;
- and 6. urged all States to take all appropriate measures to combat hatred,

discrimination, intolerance, and acts of violence, intimidations and coercion motivated by religious intolerance.

25. The Delegate pointed out that seven years had passed since the adoption of that Resolution and the matter was still being discussed. He said that his Delegation was highlighting this Resolution only to remind all to reflect at the sincerity in dealing with the crux of the issue – discrimination, hatred, intolerance against human beings on the grounds of religion or belief; and the commission of acts of violence, intimidations and coercion motivated by religious intolerance. The Resolution was not merely addressing the Western world but the international community as a whole. The delegate believed that this Resolution was still relevant to this day and the Delegations must return to capitals being reminded of the commitments they made in 1999.

26. The Delegate said that they noted that the issue relating to violence, aggression and terror and their linkage to Islam was discussed during Plenary Six of the Meeting of International Experts on Human Rights in Islam (MIEHRI). As this discussion had been elaborated so eloquently in the Report of MIEHRI by the Secretary-General, he said he did not intend to elaborate in great detail. He only wished to highlight that the Plenary Session emphasized on the fact that Islam was a religion of peace, tolerance and respect for human life in all its variation and that Islam with all its diversities as a religion had never propagated violence. The Plenary Session and the Working Groups highlighted the need to provide numerous fora for further discussion to promote understanding of the precepts and tenets of Islam and remove all

attempts to link Islam to terrorism. Islam, as a matter of fact condemned terrorism as it was a religion of peace. There was also a need to identify and address the underlying causes of terrorism. He highlighted that the experts of the Plenary Session stated that the Islamic concept of jihad had more meaning than one generally portrayed by the West. Its main emphasis was on the greater jihad rather than the smaller jihad. Even so, Islam endorsed smaller jihad only under a special condition and within set perimeters. In Islam, one was supposed to be defensive not offensive. Not everybody in Islam was empowered to declare jihad. Only those who had reached the highest stage of *ijtihad* or independent reasoning in commanding widest spread of respectability across the Muslim world could declare jihad.

27. The Delegate observed that AALCO comprised 47 Member States from both Muslim and non-Muslim countries. He believed that deliberations on the paper entitled "Human Rights in Islam" in the manner that had been prepared by the Secretariat at this session could further assist all parties concerned to better understand each other. In the same manner one must understand existing norms and principles that had been accepted by the international community in respect of human rights.

28. The Delegate further reported on the Meeting of International Experts on Human Rights in Islam organized by the Government of Malaysia in collaboration with the Government of the Kingdom of Saudi Arabia and the AALCO. He said that the main theme of the meeting was "Understanding Human Rights as Understood in Islam". Based on this theme, MIEHRI was set to serve as a platform for

experts from various fields to examine the Islamic principles of human rights with the main purpose to dissuade misunderstanding of Islam and the Muslims, predominantly against the backdrop of the current tensions between the Muslim and the non-Muslim worlds. Experts were able to identify and develop practical recommendations that could be used to enhance international cooperation based on mutual respect, tolerance and understanding.

29. There were six Plenary Sessions preceded by 18 Working Groups. Apart from having the benefits of the presentation by the speakers at the Plenary, the experts were able to utilize the time allocated for each Working Group to engage in substantive discussions on the topics chosen. The key conclusions and recommendations of MIEHRI were as follows:

- The Universal Declaration of Human Rights is generally in accord with Islam;
- The Islamic *fiqh* (jurisprudence) for minorities should be developed to address the rights of Muslim minorities living in non-Muslim countries and the OIC should adopt a project to deal with the development of Islamic *fiqh* (jurisprudence) for minorities;
- A balance should always be sought between the rights and freedoms of individuals and the security requirements of a State. Legislation must be proportionate to the protection of individual liberties;
- There is a doctrine of reciprocity and mutual respect embedded in Islam that must be observed in relations between Muslims and non-Muslims wherever they are;

- It is important for Muslims to unite in projecting Islam as a religion of peace, renewal and reform as its true teachings reflect;
- Terrorism is not an act that can be attributed to any religion, Islam in particular;
- Although everyone is at liberty to maintain divergent views, Muslims should not allow those differences to undermine the religion of Islam or to have it misunderstood;
- The equality of rights of women is a major concern in Islam. The equal rights for women in all fields, existing in the human rights instruments must be implemented, as long as they are not opposed to Islam;
- States should enact and strictly enforce laws to prohibit all forms of violence against women and children including honour killings;
- The social, economic and cultural rights must be ensured to individuals and groups in all Muslim societies in keeping with the Shariah principles;
- The Government in all the Muslims countries must faithfully discharge their responsibilities under the human rights law in respect of distributive justice in all its aspects;
- Proper economic growth for all sections of the society must be ensured in all Muslim countries since that it is a must for guaranteeing the protection of human rights.

30. The Delegate informed that the summary of the deliberations, discussion, suggestions and recommendations at the Plenary Sessions and the Working Groups were

provided in paragraphs 54 - 120 of the Secretariat Report. A summary record of the proceedings could also be found in AALCO Quarterly Bulletin Volume 2, Numbers 1 & 2 (March - June 2006). As a follow up to Resolution "RES/45/S16" of 8 April 2006 adopted at the 45th Session of AALCO on this Agenda Item, he said that they had submitted the official copy of the Report of MIEHRI to the AALCO Secretary-General. He noted that the Secretary-General had published the Report as contained in document "AALCO/EGM/REP/Human Rights in Islam/15-19 May 2006" and dispatched to all Member States in December 2006.

31. He said that his delegation wished to express their sincere gratitude to the Government of the Kingdom of Saudi Arabia for their support, particularly in financial aid and the attendance and participation of key scholars from Saudi Arabia at the meeting. He appreciated the Secretary-General of AALCO and other officials of the AALCO Secretariat for their immense contribution to ensure the success of MIEHRI. He thanked the Ministry of Women, Family and Community Development of Malaysia for co-sponsoring the meeting. He also appreciated all the Member States of AALCO and the speakers and scholars who had participated in the meeting. The Delegate underlined that to his Delegation, the measure of success of such an important meeting was not mere congratulatory messages and kind words on the successful organization of the event. But more importantly, all must ensure to work together to achieve and implement most, if not all, of the recommendations adopted at MIEHRI.

32. The **Delegate of the Islamic Republic of Iran** appreciated the Secretariat report for rightly bringing

out the concepts of peace in Islam. The delegate also commended on the Deputy Secretary-General's lucid introduction on the topic. The delegate also thanked the Government of Malaysia and H.E. Mr. Abdul Gani Patail, Attorney General of Malaysia for the successful conclusion of the MIEHRI. The delegate pointed out the certain mass media had Islamphobia. There was a deliberate attempt to project Islam as enemies of democracy. The delegate quoted one instance in which how a non-Muslim neighbor should be treated. The delegate highlighted that the basic teaching of the Holy Quran was to have mercy and forgiveness. The God had created human being as vicegerent in this earth. The delegate also emphasized on the sacredness on human life and quoted the Quranic verse, which says that if a man kills another person without valid reason, he stands before God as if he had killed the entire humanity. The delegate focused on the differences between the Islamic perspective on human rights and western concept on human rights: while the western philosophy is based on individual rights, Islam concentrate on group rights and in Islam there is no immunity for any section of the society, and human beings are responsible for all words and deeds.

33. The **Delegate of Qatar**¹¹ highlighted various provisions of the Holy Quran and the Hadith, which highlighted important principles of human dignity and human rights. God had created Man in the most dignified manner and superior to all other creations. In the Farewell Speech, the Prophet called for principles of equality, between men and women and the sovereign and the people.

¹¹ Statement delivered in Arabic. Unofficial translation from the Interpreter's version

According to the Shariah, human beings Man had a pivotal role in the society and God had created human beings as viceroy on the earth. The delegate informed the Qatar's participation in the international and regional human rights instruments, regarding non-discrimination, protection against torture, forced slavery, child rights, discrimination in work places and galaxy of other agreements. Qatar was also Party to the Cairo Declaration on Human Rights in Islam. However, Qatar had made reservations to some agreements. The delegate informed that the Qatar had build up domestic institutions to implement the international obligations at the domestic level, for instance, Supreme Council for Family Care.

34. The **Delegation of the Arab Republic of Egypt** handed over to the AALCO Secretariat their statement in Arabic. However, due to time constraint, it was very difficult to translate into English and reproduce its summary. Nonetheless, the full text of the statement would be reproduced in the Verbatim Record of the Forty-Sixth Session after translation.

The Meeting was thereafter adjourned.