

**XII. SUMMARY RECORD OF  
THE THIRD MEETING OF  
DELEGATIONS OF AALCO  
MEMBER STATES  
HELD ON FRIDAY, 6<sup>TH</sup> JULY 2007,  
AT 6:00 PM**

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

**A. Report on the AALCO's  
Regional Centres for  
Arbitration**

1. **Dr. Xu Jie, the Deputy Secretary-General of AALCO**, introduced the agenda item "Report of the AALCO's Arbitration Centres" contained in document AALCO/46<sup>th</sup>/CAPE TOWN SESSION/2007/ORG 3. He recalled that the AALCO Regional Arbitration Centres, were the result of the AALCO's Scheme for the Settlement of Disputes in Economic and Commercial Transactions and the decision to establish Regional Centres for International Commercial Arbitration taken at the Doha Session in 1978. He reaffirmed that the Regional Arbitration Centres could be considered as one of the most successful ventures of AALCO, and on this occasion, he congratulated the Directors, the Host Governments and all other Member States for energetically supporting and assisting these Centres.

2. He recalled that a Memorandum of Understanding (MOU) was signed between the Government of the Republic of Kenya and the AALCO for the Establishment of the Regional Centre for Arbitration in Nairobi before the Member States during the Forty-Fifth Session in New Delhi, on 3<sup>rd</sup> April 2006.

This was in compliance with an earlier decision that was taken during the Thirty-Third Session, held in Tokyo in 1994, wherein the Member States had directed the Secretariat to consider the feasibility of establishing a Regional Centre for Arbitration in Nairobi for serving the Countries in East and Southern African. He mentioned that it was significant to note that during the current Forty-Sixth session, on 2<sup>nd</sup> July 2007, the Agreement for Establishing the Regional Centre for Arbitration, in Nairobi, had been signed by the Secretary-General of AALCO and the Attorney-General of Kenya. He wished this institution to become a prominent one on dispute settlement in Eastern and Southern African sub-regions.

3. Finally, he extended on behalf of the Secretariat, his warm welcome to the Directors of Kuala Lumpur and Tehran Regional Arbitration Centres and invited them to present their reports.

4. **Dato' Noorashikin Binti Tan Sri Abdul Rahim, the Acting Director of the Kuala Lumpur Regional Centre for Arbitration**, highlighted the activities of the Centre. At the outset, she welcomed Nairobi Regional Arbitration Centre on behalf of KLRCA. She informed that since the contractual tenure of the last Director of KLRCA expired in February 2007, she was appointed the Acting Director with effect from March 2007.

5. She drew the attention to page 22 of the report wherein there was a reference to the Malaysian Arbitration Act was adopted in 2005 and not in 2006 and also that the Act came into force on 16<sup>th</sup> March 2006. On behalf of KLRCA, she congratulated the Government of

Malaysia for the Arbitration Act, which was primarily based on the UNCITRAL Model Law. It was also informed during the Session that the KLRCA was invited at the meetings prior to the drafting of the said Bill. Recalling that Section 34 of the 1952 Act was like a double sided sword and not favourable to KLRCA, the present Act which contained the 'opt-in' and opt-out' provision reflect the party-autonomy, which was the salient feature of arbitration. She raised her primary concern with regard to the Act, which was on the enforcement of arbitral awards. She mentioned that the Malaysian Attorney-General's Chamber had looked into the Malaysian Arbitration Act during its first meeting held on 26 June 2007.

6. It was stated that in order for KLRCA Rules and Guidelines to be in parallel with the provision of Arbitration Act, they were intending to revamp their Rules and Guidelines. She informed further that the KLRCA Rules on Arbitration on Islamic Banking and Financial Services Arbitration was launched on 27 March 2007, during the Global Islamic Financial Services Forum. It was commendable to note that the new wing of KLRCA has now been occupied and it was an honour that the Honourable Minister in Prime Minister's Department had officially opened the new wing on 19 June 2007.

7. She mentioned that the KLRCA would turn 30 years old in 2008. She extended her invitation to the Secretary-General to attend the Conference in conjunction with its 30<sup>th</sup> Anniversary, which was proposed to be officially inaugurated by the Honourable Prime Minister of Malaysia.

8. **Dr. Moshkan Mashkour, Director of the Tehran Arbitration Centre**, presented the highlights of the activities of the TRAC. He thanked Dr. Xu for having introduced the topic on Arbitration Centres. He congratulated the Republic of Kenya, AALCO Secretariat as well as all Member States for the conclusion of the Agreement pertaining to the establishment of the Nairobi Regional Arbitration Centre, which would be the fifth arbitration centre established under the auspices of AALCO. He wished them all success.

9. He said that Tehran Regional Arbitration Centre or TRAC could be regarded as an international institution and enjoyed the privileges and immunities necessary for the purpose of executing its functions and the Government of Islamic Republic of Iran had undertaken in the Seat Agreement to respect the independence of TRAC.

10. Dr. Mashkour informed that the activities of TRAC began in 2005, when His Excellency Ambassador Kamil, the Secretary-General of AALCO, had approved the Rules of Arbitration. While preparing the Rules, TRAC had followed two main objectives, namely, comfort and quality. Hence, it was decided that the Rules of Arbitration shall essentially follow the UNCITRAL Rules of Arbitration, which were well known to the practitioners and, as a widely used set of procedural norms, would be capable of offering a higher comfort to the Parties. The Rules recognized the largest possible freedom to the Parties who may determine the number of arbitrators, appoint the arbitrator of their choice or define the procedure for their appointment. The Parties were also free to select the place of arbitration, the

procedural rules and also the substantive law that may be applied by the arbitrators. He raised his concern as to the fact that the Interventions of TRAC were limited to the strict minimum and only to the extent necessary to assist the arbitration to proceed. He added that despite the use of the word “regional” in Tehran Regional Arbitration Centre’s name, which may convey the idea of certain geographical restrictions, irrespective of their nationality there were parties willing to insert a TRAC arbitration clause in their contract and subsequently choose to submit their dispute to TRAC for final settlement.

11. He informed that following the adoption of the Rules, TRAC had undertaken a promotional activity. As a result of which the arbitration clause of Tehran Regional Arbitration Centre had been inserted in more than 150 major international contracts in various domains such as construction of dams, telecommunication, acquisition of highly sophisticated software, oil and gas services, oil and gas offshore drilling operations, construction of petrochemical complexes, export credit, bank guarantees, etc. He also stated that these concern those contracts also which were concluded between nationals of AALCO Member States such as People’s Republic of China, Islamic Republic of Iran and United Arab Emirates, and also nationals of non-Member States such as Austria, Finland, France, Germany, Tajikistan, Sweden, United Kingdom and Venezuela.

12. In 2006, only one year after the establishment of TRAC, the first international dispute was referred to it. Despite the highly technical issues involved, a final decision in that case

was rendered within less than six months. He reminded that, very often, arbitration concerning construction disputes might last for two or more years. The decision delivered by the TRAC was welcomed by both parties and was in fact fully implemented. The settlement of a complex construction dispute within a short period of time gave comfort to all concerned of the ability of TRAC to efficiently administer complex international disputes.

13. He made a reference that in 2006, TRAC was appointed as ESCROW agent and as appointing authority. During 2006, TRAC had prepared a first draft of its Rules of Conciliation, which were also based on the UNCITRAL Rules. He noted that TRAC had also undertaken the initiative to translate its Rules from English to Persian so as to provide more facility for the protection of business relations, in particular, those, which involve Persian-speaking communities in other countries.

14. He stated that in the coming year, TRAC would start its initiatives to translate its Rules into Arabic too with intent to facilitate the use of TRAC’s services to further users in the Region.

15. While mentioning one of the outstanding achievements of TRAC during last year, he informed that TRAC had become financially independent from governmental resources, although, under the Seat Agreement the Government of the Islamic Republic of Iran had generously accepted to provide financial assistance to TRAC, they had done their best to avoid asking for grants in 2006 and he hoped to achieve the same standard in the year 2007 too.

16. There was an enhancement of the volume of international transactions, which necessarily led to an increase in international disputes. Arbitration, being one of the most appropriate and efficient means of settlement of these disputes, in his concluding remarks, he requested that it was the expectation of the Arbitration Centres established under the auspices of AALCO from its Member States, was to sufficiently support these Centres. He stated that various number of international disputes concerning AALCO Member States continued to be settled in London, Paris, Geneva, Zurich, The Hague, Stockholm or New York under the rules of European and American arbitration institutions, which was not beneficial for the Arbitration Centres. Thus, every year millions of dollars that may be spent in AALCO countries were paid to law firms and arbitrators in Europe or the United States. In addition, he substantiated by saying that an examination of the awards and the result of arbitrations show that the proceedings were not always fair and that in many instances European parties benefited from a better treatment. He requested that though arbitrations that take place under the rules of European and American arbitration institutions may not necessarily be unfavourable to nationals of the third world countries, yet it was also required to understand that AALCO Arbitration Centres were able to properly administer international arbitrations with fairness and high quality.

17. Dr. Mashkour strongly requested all the delegates of the Member States, to strongly recommend to the public entities in their respective countries and also to private companies to use AALCO Arbitration Centres and to insert in their

contracts arbitration clauses providing for referral of disputes to either of these Centres. He reaffirmed that this would be in their own interest from a financial point of view and would also further assure them to receive a more fair treatment along with expanding the contribution of legal professions in the AALCO countries.

## **B. Report of the Chairman of the Drafting Committee**

1. The President invited the Chairman of the Drafting Committee, Advocate Simelane, Director-General, Department of Justice and Constitutional Development, Republic of South Africa to submit his report on the work of the Drafting Committee.

2. **Advocate Mr. Simelane, Chairman of the Drafting Committee** informed that the Forty-Sixth Session of AALCO had established the Drafting Committee on 2<sup>nd</sup> July 2007 and entrusted it with the task of preparing documents of the Session, namely, Draft Resolutions, Summary Report and a text containing a Message of Thanks to the Head of State of the host country. Following past practice, a Representative of the host country chaired the Committee and he was honoured to perform the duty entrusted to him. He reported with pleasure that the delegates met after long hours of plenary meetings, early in the morning and late in the evening. The Drafting Committee had been able to complete its work. He informed that the Committee was an open-ended body with membership open to all delegates on voluntary basis. He stated that the AALCO Secretariat prepared all the drafts considered in the Drafting

Committee and then the Drafting Committee had done its utmost to capture the essence of deliberations acceptable to all delegations.

3. The Chairman of the Drafting Committee congratulated all the delegates who had participated in the discussions. He expressed his special gratitude to all the delegates for giving their valuable time and participation in the work of the Committee diligently, which had helped him in discharging his responsibilities very smoothly. He also stated that the useful contribution made by the delegates enriched the quality of the documents. He also appreciated the presence of the Deputy Secretaries-General and the able AALCO Secretariat staff during the deliberations and observed that their wisdom, experience and resourcefulness were a big help for the completion of the work of the Drafting Committee. He thanked everyone from the Member States and the Secretariat present during the Meeting.

4. On behalf of all Member States, the Secretary-General thanked the Chairman of the Drafting Committee and the members who really worked very hard early in the morning and later after the Session. He also requested the President for placing the Resolutions and Summary Report for adoption. He also informed that the third document Provisional Summary Records was distributed and the Member States had six weeks to go through it and send their comments and amendments to the Secretariat by the end of six weeks i.e., by 21<sup>st</sup> August 2007.

### **C. Adoption of Resolutions and Summary Report**

1. The first resolution considered by the Meeting was **RES/46/ORG 1** on “**Report of the Secretary-General on Organizational, Administrative and Financial Matters**”. As there were no comments the resolution was unanimously adopted.

2. The next resolution taken up for consideration by the Meeting was **RES/46/ORG 2** on “**AALCO's Budget for the year 2008**”. The **Leader of Delegation of Uganda** requested for a clarification regarding the operative paragraph 7 of the resolution. He asked when and how the operative paragraph 7 of the resolution would be operationalised? The Secretary-General appreciated this very pertinent question and informed that as soon as he gets back to New Delhi he would start negotiations and consultations with the Liaison Officers. As soon as they finalized this matter, he would inform the Member States through their Embassies/Missions in New Delhi. The **Leader of Delegation of the Republic of Korea** felt that it would be very difficult to deal with the arrears problem. However, he proposed to consider streamlining the budget of 2008 in accordance with the previous budgets. He also requested the Member States to suggest measures to effectively manage AALCO's budgetary resources and measures of dealing with the arrears problem. As there were no further comments, the resolution was adopted.

3. The President then placed for consideration **RES/46/ORG 3** on “**Report on AALCO's Regional Centers for Arbitration**”. The **Leader**

**of Delegation of Malaysia** requested for clarification with regard to operative paragraph 4 which reads as, 'also reiterates its proposals after consultation with the Directors of the respective Regional Arbitration Centers for holding of an International Arbitration Conference biennially...'. He raised a doubt whether that conference was only within the Regional Arbitration Centers who had an agreement with the AALCO or included other Centers too? The Secretary-General of AALCO clarified that 'everybody is invited for the conference'. The resolution was unanimously adopted.

4. The next resolution placed for consideration was **RES/46/ORG 4** on "**Report on the Center for Research and Training of the AALCO**". As there were no comments, the resolution was unanimously adopted.

5. The President then placed for consideration **RES/46/ORG 5** on "**Report on the AALCO's Permanent Headquarters Building**". There being no comments the resolution was adopted unanimously.

6. The President placed then placed for consideration **RES/46/ORG 6** on "**Admission of the Republic of Cameroon as Member State of the Organization**". The Secretary-General of AALCO welcomed the Delegation of the Cameroon and informed that it was for the first time that Cameroon had attended an AALCO Session as a Member State. Therefore, he requested the delegates to accord it a warm welcome by giving it a big hand. The **Leader of Delegation of Cameroon** thanked the President and the Secretary-General of AALCO and expressed their

happiness in joining AALCO. She also thanked all the Member States for admitting Cameroon in the Organization. She further inquired when was her country expected to pay its dues? The Secretary-General clarified that the payment of annual Membership fee was due from 1<sup>st</sup> of January 2007. The **Leader of Delegation of Malaysia** pointed out that in the pre-ambular paragraph 1 of the draft resolution instead of Article 1, Article 2 should be mentioned. With that rectification, the resolution was unanimously adopted.

7. The next resolution placed for consideration was **RES/46/S 1**, on "**Matters Relating to the Work of the International Law Commission**". As there were no comments, the resolution was unanimously adopted.

8. The President then placed for consideration **RES/46/S 2** on "**The Law of the Sea**". The Resolution was unanimously adopted without comments.

9. The next resolution placed for consideration was **RES/46/S 3** on "**The Status and Treatment of Refugees**". There being no comments the resolution adopted unanimously.

10. The President then placed for consideration **RES/46/S 4** on "**The 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**". The **Leader of Delegation of the Republic of Korea** said that the resolution was political in nature rather than being a legal one. The Secretary-General replied that since

1982, according to requests of the Member States this item was included on the agenda and it was dealt with exclusively from the legal point of view and the political side had been dealt with in other foras. He informed that the subject may be political but the approach by AALCO was legal. The **Leader of Delegation of Senegal** strongly believed that the resolution translated and included the deliberations of the Session and in it reference was made to the United Nations Convention, Human Rights Instruments, Annex to the Hague Convention etc. He stressed that the resolution dealt with international law aspects and it should be kept as it was.

11. The **Leader of Delegation of the Islamic Republic of Iran** said that the references made in the resolution related to International Humanitarian Law. He informed that International Humanitarian Law protects the civil population and civilian objects and all these operative paragraphs referred to the principles of the four Geneva Conventions of 1949 and two additional Protocols of 1977. The other reference was the Advisory Opinion of International Court of Justice. In this regard he appreciated the comments of Amb. Kamil and said that from the legal point of view it was totally correct. The **Leader of Delegation of Malaysia** stated that AALCO as an Organization always remained purely legal, however on this issues the position was different. He stressed that in this instance the UN Resolutions, including 194, 242 and all others were properly quoted and they were right references to international law and therefore this resolution should be adopted. The **Leader of Delegation of the Republic of Indonesia** fully agreed to the point made by Amb. Kamil and

said that even though the title of the topic was political in nature, however the approach adopted here was from the perspective of international law. Finally, the Member States unanimously adopted the resolution.

12. The next resolution placed for consideration was **RES/46/S 5** on “**Legal Protection for Migrant Workers**”. The Resolution was unanimously adopted without any comments.

13. The President then placed for consideration **RES/46/S 6** on “**Extra territorial Application of National Legislation: Sanctions Imposed against Third Parties**”. There being no comments, the resolution was adopted unanimously.

14. The next resolution placed for consideration was **RES/46/S 8** on “**Establishing Co-operation against Trafficking in Women and Children**”. There being no comments the resolution was adopted unanimously.

15. The President the placed for consideration **RES/46/S 9** on “**The International Criminal Court: Recent Developments**”. The **Leader of Delegation of Sudan** informed that more than two-third Members of AALCO had not ratified the Rome Statute and none of the countries encouraged for the ratifications or expressed their desire to ratify the Rome Statute. He strongly objected for the inclusion of the words which ‘encourages the Member States to consider, to ratify or accede to the Rome Statute’ in the draft resolution on the agenda item. He also requested for the withdrawal of the item International

Criminal Court because it did not express the wish or the views of the Members of the Organization, otherwise the Members would have signed and ratified the Rome Statute. He felt that it was incorrect to call upon the Secretary-General to convene an inter-sessional meeting on the implementation of the Rome Statute through national legislative mechanism, as nothing was said to that effect during the course of proceedings on the agenda item.

16. The **Leader of Delegation of the Republic of Kenya** informed that his country specifically urged the Members of the AALCO for the ratification of ICC Statute in order to send a clear signal of universal rejection of impunity. He informed that it was accurately reported in the Provisional Summary Record at page 124. The **Leader of Delegation of Senegal** informed that his country was the first country, which ratified the Rome Statute, and also encouraged for ratification of the Rome Statute by other AALCO Member States. The **Leader of Delegation of Japan** informed that his country would also ratify the ICC Statute very soon and hoped that the Government of Japan's decision to ratification could lead to further expansion of the membership of the ICC. The **Leader of Delegation of Malaysia** clarified that the operative paragraph 1 does not encourages the Member States to ratify the ICC Statute but it "encourages Member States to 'consider' ratifying/acceding to the Rome Statute". It was clear that they could 'consider' and there was nothing wrong with it. He also informed that although Malaysia had not ratified the Statute, but it had never stated that the ICC was not good. He also informed that his government was worried about the implementation, and they had their own

strong laws, and were not against the wishes of the majority there. The **Leader of Delegation of the Republic of South Africa** accepted Malaysia's argument and said that the very strong view that had come through the plenary was exactly for countries to 'consider' the ratification. He also said that it should be borne in mind that 140 countries had ratified the Convention and many other countries were considering and doing so. There being no further comments, the resolution was unanimously adopted.

17. The next resolution placed for consideration was **RES/46/S 10** on "**Environment and Sustainable Development**". There being no comments, the Resolution was adopted unanimously.

18. The President then placed for consideration **RES/46/S 11** on "**An Effective International Legal Instrument against Corruption**". There being no comments the resolution was unanimously adopted.

19. The President then placed for consideration **RES/46/S12** on "**Report on the Work of UNCITRAL and other International Organizations in the field of International Trade Law**". There being no comments the resolution was unanimously adopted.

20. The next resolution placed for consideration was **RES/46/S 13** on "**WTO as a Framework Agreement and Code of Conduct for World Trade**". There being no comments, the resolution was unanimously adopted.

21. Thereafter the President placed for consideration **RES/46/S 14** on



**“Expressions of Folklore and its International Protection”**. There being no comments, the Resolution was unanimously adopted.

22. The next resolution placed for consideration was **RES/46/S 15** on **“Human Rights in Islam”**. There being no comments, the resolution was unanimously adopted.

23. The President then placed for consideration **RES/CAPE TOWN/46/SP1** on the Special Meeting on **“International Investment, Trade and Development”**. There being no comments, the resolution was unanimously adopted.

24. The meeting there after proceeded to consider **RES/CAPE TOWN/46/SP 2** on the Special Meeting on **“International Co-operation in Countering Terrorism”**. There being no comments, the resolution was unanimously adopted.

25. The President then placed for consideration the **“Summary Report of the Forty-Sixth Session”**. The **Leader of Delegation of Cyprus** informed that in the introduction of the Summary Report the name of his country did not appear with the other participating Member States. With the inclusion of Cyprus name, the Summary Report was adopted unanimously.

26. The President thereafter called upon the Secretary-General to introduce the next item on the Agenda i.e., **“Venue for the Forty-Seventh Session”**. The Secretary-General informed that he was still in consultation with many Member States to finalize the venue for the Forty-Seventh Session. He requested for some

more time because the next Session had a special nature, and as soon as he gets the final invitation from a Member State, he would inform all the Member States. So, for the time being that item may be kept pending.

**The Meeting was thereafter adjourned.**