SUMMARY RECORD OF THE THIRD MEETING OF DELEGATIONS OF AALCO MEMBER STATES HELD ON FRIDAY, 4TH JULY 2008 AT 12:20 PM

His Excellency Mr. Narinder Singh, President of the Forty-Seventh Session, in the Chair

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

1. **Dr. Xu Jie, Deputy Secretary-General of AALCO**, while introducing the report of the AALCO's Arbitration Centres mentioned that the Secretariat Document No. AALCO/47th/HEAD QUARTERS (NEW DELHI) SESSION/2008/ORG 3 contained the Reports of the Directors of Kuala Lumpur, Cairo and Tehran Regional Arbitration Centres.

2. In his report, 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 it was decided to establish Regional Centres for International Commercial Arbitration at the Doha Session in 1978. The Regional Arbitration Centres were one of the most successful ventures of AALCO. He congratulated the Directors and thanked the Host Governments for their energetic support and assistance.

3. He further recalled that, as a step further in the direction, during the Forty-Sixth Session in Cape Town 2007, the Agreement between AALCO and the Government of the Republic of Kenya for the Establishment of the Regional Centre for Arbitration in Nairobi was signed by the Secretary-General of AALCO and the Attorney-General of Kenya. This was in compliance with an earlier decision taken during the Thirty-Third Session held in Tokyo (1994), wherein the Member States directed the Secretariat to consider the feasibility of establishing a Regional Centre for Arbitration in Nairobi for serving the Countries in East and Southern Africa.

4. Dr. Xu Jie informed that the Kuala Lumpur Centre had celebrated its thirtieth anniversary by organizing an International Conference to address the current challenges faced by the developing countries in international commercial arbitration. The Conference was inaugurated by the Deputy Prime Minister of Malaysia and the Keynote address was delivered by Amb. Dr. Wafik Z. Kamil, the Secretary-General of AALCO. In that speech, the Secretary-General thanked the host country Malaysia, and called on all the Member States to fully support the AALCO's Regional Arbitration initiative without which the objective of establishing such Centres would be undermined.

5. Finally, he had extended warm welcome to the Directors of Kuala Lumpur, Cairo, and Tehran Centres to present their respective reports.

6. **Dr. Mohamed Abdel Raouf, Secretary-General, CRCICA, Cairo,** in his report briefly highlighted the activities of the CRCICA for the period 2007-2008. He mentioned that AALCO was the founding father of the CRCICA which would be celebrating its thirtieth anniversary in 2009. In his presentation he mentioned six points that he would touch upon. The first related to the cases with the centre. The number had reached 586 International Arbitration cases, out of which till date 531 cases had been settled, whether by Final Arbitral Awards, including Arbitral Awards on Agreed Terms or by subsequent Conciliation. He mentioned that currently there were 55 cases pending before the Cairo Regional Centre. The case referrals in 2008 represented more than 70% of total annual referral in 2007. The types of contractual disputes referred to the Cairo Regional Centre were of various types, the most important being "Construction Disputes" or "Construction Contracts", wherein such contracts were

usually dispute oriented, and were regularly referred to the Cairo Centre. Besides these cases, the Centre also had before it "Hotel Management Cases", "Leases", "Commercial Agencies" and so on. The details of the same had been distributed to all delegates. Dr. Raouf mentioned that recently disputes related to "Privatization" had been referred to the Centre. Most importantly disputes related to "Information Technology" had been referred to in 2007-2008.

7. He explained that the nationalities of Parties and Arbitrators involved in CRCICA cases were wide ranging, in addition to Egyptian parties, there were parties from Lebanon, Saudi Arabia, Kuwait, Japan, Hungary, Greece, Denmark, the UK, Germany, Switzerland and Belgium, these were that nationalities of the parties to the dispute. The Arbitrators were nationals of Egypt, Jordan, Lebanon, Morocco, France, Italy, the UK, Greece and the USA.

8. Dr. Raouf stated that it was reported to AALCO last year that the new Amended Rules of the Cairo Centre, based upon the UNCITRAL Rules of Arbitration, had entered into force in 2007. One of the most important amendment introduced by the Cairo Centre related to the possibility of rejecting the "Appointment" made by one of the parties of an "Arbitrator". According to their experience they had encountered problems regarding the choice of certain Arbitrators, who may not be qualified or at least lacked the contractual or legal requirements. In 2008 it was reported that for the first time the CRCICA was seized of a request made by one of the parties in a dispute involving an African and a European party, to apply that rule, in order that the Cairo Centre could reject the appointment of an Arbitrator. According to him, the amended article gave a significant boost to the Centre's institutional role in monitoring the arbitral proceedings. It also marked as strategic expansion of its institutional decision making, by involving CRCICA three member high level committees, constituted from the CRCICA Board of Trustees and for the first time such high level committees would be called upon in order to decide.

9. He highlighted the events organized by the Centre. In 2007-2008 events hosted by CRCICA included hosting 1300 users and beneficiaries from 50 different countries from around the world. The Centre collaborated with various eminent institutions and International Organizations world-wide including the UNCITRAL, the FCAI, the Chartered Institute of Arbitrators, London, the Queen Mary University, the UNCTAD, and OADAF from Africa. The practitioners were from Lebanon who participated in the conferences, Syria, Jordan, Iraq, and the Gulf States, were the most important countries represented or participating in the Centres events. He was proud also to note that last year Nigerians, Kenyans, Azerbaijanis, and Pakistanis who steadily got into the scene. On the whole there was a radical increase in the representation of profiles of the CRCICA members who were non-Egyptians, from 15-20% to 35-45%.

10. The Secretary-General mentioned that CRCICA was one of the rarest institutions in the region which published its awards. As they were confidential in nature they were published without mentioning the names of the Parties, by doing so the CRCICA was considered by UNCITRAL as one of the most important institutions that give the UNCITRAL an idea about the application of the UNCITRAL Model Arbitration Rules. The Centre had published the first volume of its awards and by the end of 2008 it was likely that the second volume would also be published, covering arbitral awards issued from 2000-2008. The CRCICA also published a periodical in cooperation with the Union of Arab Arbitrators, the Journal of Arab Arbitration had published 10 volumes till 2007, and the

10th Volume was an Index, a very useful one comprising all articles, cases published in the previous 9 volumes. The Centre also had its website which was regularly upgraded in order to give an updated version of the activities, the rules and the events of the Centre.

11. Dr. Raouf said that the CRCICA collaborated with other institutions, universities in order to have training courses specifically tailored according to the request of the requesting Organization. Each year they received trainees from Georgetown University, Brooke land Law School from the USA, currently they had a trainee from France and another trainee from the University of Moreal, in addition to Egyptian and Arab trainees from the region. The training courses ranged between one month to three months according to the request. The CRCICA was ready to collaborate with the AALCO Member States in order to receive trainees and also send its trainers to their respective countries. As one of the means of promoting arbitration, the CRCICA hosts at its premises NGO's specializing in arbitration, also they host the regular meetings of the Egyptian Arbitration Forum and the Egyptian ADR Association, which was started in 2007.

12. He concluded by giving a brief insight into the future events, the most important of which would take place next November. Egypt would be the only country in the region to celebrate the 50th Anniversary of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards; this would be done in collaboration with the UNCITRAL. The Centre had collaborated with the Cairo University to have an International Arbitration Diploma; this would be done in collaboration and cooperation with the School of International Arbitration of the Queen Mary University of London, and the Chartered Institute of Arbitrators, London. The diploma would be a comparative and unfolds a remarkable balance between the theoretical and practical aspects of arbitration. The Centre focused its activities on training and raising awareness about arbitration and developing the skills of practitioners. The Centre had also launched for the first time "The CRCICA Young Arbitrators Forum" for practitioners under 40 years. Lastly, the Centre was also developing a very interesting training programme for under graduates and was planning to have a team to participate in the Vienna Moot Court next March 2009. The Secretary-General hoped that he could count on the support from AALCO Member States.

13. **Mrs. Eunice Oddiri,** Director of the Regional Centre for International Commercial Arbitration, Lagos, Nigeria reported on its activities during the year 2007 and the anticipated activities in the remaining segment of the year 2008.

Case Load:

14. In 2007, 20 dispute/cases were arbitrated at the Center. The cases were all ad-hoc arbitrations involving Nigerian registered companies. Worthy of note was the fact that about 60 %(sixty percent) of these arbitrations utilized the international scale of fees of the Lagos Centre, that of the London Court of International Arbitration (LCIA) and that of the International Chamber of Commerce (ICC).

15. However, over and above reporting the number of cases recorded, the Lagos Centre acknowledged the benefits derivable to the development of arbitration practice within the sub region from the progressive rulings emanating from some arbitral tribunals sitting within the sub region. In this connection and consequent on the confidentiality rule guarding most arbitrations - domestic or international- the Lagos Centre secured the express consent of parties involved in two such arbitrations in order to divulge the following salient rulings

which in her view would add to advancing the course of arbitration within the region.

16. Thus in an arbitration held at the Lagos Centre in the period under discussion, the arbitration clause in the contract from which the dispute arose provided that – "any dispute arising from that contract shall be settled by arbitration under the International Chamber of Commerce (ICC) Arbitration Rules". A disagreement arose between the parties as to the true interpretation of the arbitration clause.

17. To party A, it meant that because ICC arbitration clause had been inserted in the contract, the proceedings of such arbitration were automatically institutional; hence the arbitration must be conducted not at the Regional Centre in Lagos but administered by ICC in Paris. Party B however disagreed and contended that the intention of the clause was merely to direct parties to utilize the ICC Arbitration Rules in an ad hoc arbitration; more so as the seat of arbitration was Nigeria since the contract provided that the law applicable to the arbitration and the contract itself was the Nigerian Law. The Arbitral Tribunal ruled that the seat of arbitration shall be Nigeria; hence the Lagos Center's facilities were utilized for the arbitration.

18. This decision had been implemented in the revised Rules of the Lagos Centre, so that the Centre's Rules even though institutional may be adopted for use in ad hoc arbitrations by parties who so desire.

19. In a second important ruling, the issue was that of enforceability of preservatory interim orders and the question was: Having regard to the fact that both the substantive law of the arbitration (Nigerian Arbitration Law) – and UNCITRAL Model Arbitration Law upon which the Nigerian Law is fashioned do not expressly provide for the enforcement of interim orders, - the Nigerian Law provided only for the enforcement of Interim Awards, "can the application for an interim order of preservation made by one party be refused by the Arbitral tribunal on the grounds (as contended by the opposing party) that such an order cannot be enforced in view of the fact that the Law of the arbitration did not expressly provide for the enforcement of Interim Orders".

20. The Arbitral Tribunal ruled in favour of the applicant granting the Interim Order; however the enforceability of the Interim Order made by the Tribunal was not tested in the courts, since the parties reached a settlement and the Tribunal instead entered a Consent Award.

Amendment of Centre Arbitration Rules:

21. The Arbitration Rules of the Lagos Centre were drafted in 1999 and were based on the UNICTRAL Arbitration Rules with certain modifications to introduce institutional features into the latter Rules. Operating these Rules within the past 9 (nine) years have witnessed some successes and challenges; the list of which while not being exhaustive includes:

22. The ambiguity existing in the clause fusing the institutional part of the Centre's Rules with the UNCITRAL Arbitration Rules and also the clause which deals with the commencements of arbitration and the Rules in force at the date of commencements of the arbitration.

23. The Rule States:

> "The Rules applicable to the arbitration shall be those in force at the time of the commencements of the arbitration unless the parties have agreed otherwise".

Parties often-times were confused as to the true meaning and intent of this clause. Did it mean the Centres Rules or the UNCITRAL Rules in force at the commencements of the arbitration?

- The default appointment of the Secretary General of the Permanent

Court of Arbitration(PCA) Hague, when appointment of arbitrators is dead locked;

- The inadequate provisions on Rules relating to evidence in arbitration as well as the ever contentious rising cost of arbitration.

- The increased need for involvement of the institution in communications between parties prior to formation of the arbitral tribunal; this is to dissuade contact between parties and the arbitrators and to further guarantee the neutrality of the arbitral process.

- The need for an expedited formation of the arbitral tribunal in circumstances where a party requests same on or after commencement of the arbitration, such an application stating specific grounds for such exceptional urgency in the formation of the Arbitral Tribunal.

24. In revising its Rules the Lagos Centre also desired to add more speed, flexibility and neutrality to arbitrations administered by it. Consequently from 2005, the Centre embarked on gathering views of experts and practitioners of international commercial arbitration through circulation of questionnaires, on the perceived problem areas.

25. Between 2006 and 2007, the Rules were debated and several drafts produced, which were scrutinized by very experienced practitioners. The final revised draft has been approved by the Advisory Committee of the Centre.

Participation in Arbitral Events

26. In the International Congress of Maritime Arbitrators ICMA XVI in Singapore held on 26th February – 2nd March 2007, the Lagos Centre presented a paper on the usefulness of the establishment of the Centre in Sub-Sahara Africa for the purpose of resolving disputes by arbitration and other Alternative Dispute Resolution (ADR) methods in maritime and other commercial, economic and investments disputes.

27. The Lagos Centre was also represented at the Annual Workshop and Mock Arbitration of the ITA in Dallas which lasted between 20th June – 21st June 2007. It was a forum utilized to introduce the Center to international arbitrators, arbitration counsel and organizations who may need to resolve disputes by arbitration in the future such as multinational corporations.

Educational Activities

ADR Moot Competition

28. Under the Lagos Centre's educational Programmes, since 2006 the Center has been in collaboration with Alternative Dispute Resolution (ADR) Consultants from the School of Oriental and African Studies – University of London; some of who facilitate the Annual William C. Vis Arbitration Moot in Vienna Austria, for the purpose of initiating ADR Moot Competition among Universities within the sub- Sahara African region; beginning with universities in Nigeria and incorporating other West African countries as we proceed.

29. This was intended to continue the promotion of the Law and Practice of various ADR mechanisms within the sub-Sahara Africa region; and gradually to the rest of Africa. Sponsoring of such an event would promote the Lagos Centre's role in propagating arbitration and other ADR methods for the resolution of domestic and international disputes.

30. It was also envisaged that the Moot Competition would contribute to the learning and education of students in

substantive and procedural Law and acquisition of advocacy skills.

Diploma and LL.M Programmes in Arbitration

31. In addition to the Moot Competition, other educational programmes involving the Centre includeed; the Diploma in Arbitration started in collaboration with some universities and the LL.M in Arbitration co-sponsored by the Lagos Centre and some universities in Nigeria.

Promotional Activities

32. Promotional activities to promote other Alternative Dispute Resolution (ADR) awareness within the sub region are as listed below for the second segment of 2008.

1. **Establishment of Intellectual Property Dispute Resolution Scheme**

33. The Centre in conjunction with the Intellectual Property Lawyers Association of Nigeria (IPLAN) was already at an advanced stage of negotiations towards establishing a dispute resolution scheme for the intellectual property industry in Nigeria.

34. The scheme when established would particularly address the settlement of cases arising from trade marks and patents opposition hearings at the Trade Marks Registry, settlement of civil claims in copyright cases as well as issues relating to franchise, licensing and intellectual property aspects of technology transfer or industrial property. The proposed conciliation rules for trademarks opposition hearing was already awaiting government approval.

35. It was also gladdening to note that the various regulatory agencies in the area of intellectual property were not opposed to the idea of an ADR scheme in the industry.

2. Domain Name Dispute Resolution Scheme

36. The Centre was working with the World Intellectual Property Organization (WIPO) and the Nigerian domain name service provider to create an ADR service for the resolution of domain name disputes. The Centre hoped to sign a cooperation agreement with WIPO in that regard in the last quarter of 2008.

3. Entertainment and Sports Arbitration

37. The experience of the Centre in handling sports arbitrations had resulted in a closer examination of the various issues arising from entertainment and sports contracts. To this end the Centre was now working with some entertainment and sports organizations with a view to assisting in the settlement and management of disputes in entertainment and sporting activities; particularly the development of sports arbitration.

Future Activities of the Centre

38. The underlisted events were slated for 2008 and 2009. It was worthy to note that some of the events were either yearly or quarterly events that had started previously. Some were therefore in their second or third series

(1) Improving the use of Arbitration in Government contracts – July 2008

Duration : 2 Days
Venue : Transcorp Hilton Hotel, Abuja

(2) Workshop on Arbitration and Intellectual Property – early August 2008

Duration : 3 Days
Venue : Regional Centre for International Commercial Arbitration-Lagos, 6th Floor, Marble House, 1 Alfred Rewane Road, Falomo Ikoyi, Lagos

(3) International Construction Arbitration Workshop – early 2009

Duration : 3 Days
Venue : An African State (to be designated)

(4) Moot Arbitration for Nigerian Universities 2008/2009

Duration : 3 Days
Venues : Nigeria/Vienna

(5) Maritime Arbitration Workshop- November 2008

Conclusion

39. In summation, the Lagos Centre had endeavoured to create considerable awareness of the use of arbitration and other forms of Alternative Dispute Resolution in commercial transactions, particularly on the need to resort to the Centre's Rules, for settlement of such disputes.

40. The results of these efforts were evident in the number of local Arbitration and ADR bodies that had emerged to provide services relating to ADR within the sub – region; such as professional associations, training and accrediting institutions and other ancillary service providers.

41. Governments within the sub - region had tended to enact legislations which enabled parties choice to resort to ADR methods for settlement of their commercial disputes. Also, a number of bilateral and multilateral investment treaties (BIT and MIT) being executed by these Governments provide for ADR methods for settlement of such commercial disputes.

42. However the Lagos Centre wished to observe that for the essence of the establishment of the AALCO Regional Arbitration Centres to be fully achieved, the patronage of Member States of AALCO was desirable. Presently, it would seem that parties within the regions still prefered to settle a large percentage of their international commercial disputes in the western regions of the world as evidenced by statistics from our various regions. A solution to counter this unfortunate situation may lie in the AALCO Member States encouraging their various Governments to patronize these regional Centres since substantial volumes of commercial disputes emanate from Governments.

43. **Dr. Moshkan Mashkour, Director of Tehran Regional Arbitration Centre,** in his report highlighted the activities of the TRAC. At the outset, he congratulated Professor Dr. Rahmat Mohamad for his election as the new Secretary-General of AALCO and wished him all success. He emphasized that during the previous years the Centre had the opportunity to appreciate the support of the Secretariat of AALCO and also of Amb. Kamil personally, to whom he extended his special thanks. He informed that the Report of the activities of Tehran Regional Arbitration Centre (TRAC) had been distributed by the Secretariat. He highlighted only certain key points relating to the status of TRAC and its activities in 2007.

44. He explained that the TRAC is an international institution and functions under the auspices of AALCO to which it submitted its annual reports. Pursuant to the Seat Agreement which had been concluded with the Government of the Islamic Republic of Iran, TRAC enjoyed in Iran the privileges and immunities necessary for the purpose of executing its functions. The foreign personnel of TRAC would be immune from legal process in respect of oral or written speech and for all acts undertaken in their official capacity. Furthermore, the Government of the Islamic Republic of Iran had undertaken in the Seat Agreement to respect the independence of TRAC. The Centre began its activities in 2005, after their Rules of Arbitration were approved by the Secretary-General of AALCO. In preparing the Rules, TRAC followed two main objectives, which were comfort and

quality. It had thus been decided that the Rules of Arbitration should essentially follow the UNCITRAL Rules of Arbitration, which were well known to the practitioners and, as a widely used set of procedural norms, were capable of offering a higher comfort to the parties to international disputes. Certain provisions of the UNCITRAL Rules of Arbitration, which were designed for *ad hoc* arbitrations, were however, modified in order to take into consideration the institutional character of arbitrations that would be conducted under TRAC's Rules of Arbitration. In addition, in an effort to be as comprehensive as possible, a number of issues such as the constitution of arbitral tribunals in cases where more than two parties were involved, had been addressed with due regard to the most recent experience of other institutional arbitrations and judicial precedents.

45. He pointed out that the Rules of Arbitration of TRAC recognized the largest possible freedom to the parties who might appoint the arbitrator of their choice, determine the number of the arbitrators or define the procedure for their appointment. TRAC offered to practitioners to register on its list of arbitrators through its website or by sending a resumé to its Secretariat. At this moment, the Centre had over 30 international arbitrators of high calibre registered on TRAC's list of arbitrators. The list of arbitrators would, however, not bind in whatsoever manner either the TRAC or the parties. It would only be a tool that may be used by any party for their free choice of an arbitrator. This meant that the parties might chose an arbitrator irrespective of whether he was or was not registered on the list. TRAC might also appoint arbitrators not appearing on the list.

46. The Parties might also freely select the place of arbitration, the procedural rules and also the substantive law to be applied by the arbitrators. Interventions of TRAC were limited to the strict minimum and only to the extent necessary to assist the arbitration to proceed. It should be added that despite the use of the word "Regional" in TRAC's name, which might convey the idea of certain geographical restrictions, all willing parties, irrespective of their nationality, might insert a TRAC arbitration clause in their contract and chose to submit their dispute to it for a final settlement.

47. He further explained that, on the basis of information that had been made available to the Centre, the arbitration clause of the Tehran Regional Arbitration Centre had been inserted in more than 1000 major domestic and 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…. These concern contracts were concluded not only between nationals of AALCO Member States such as People's Republic of China, Islamic Republic of Iran and United Arab Emirates, but also between nationals of non-Member States such as Austria, Finland, France, Germany, Tajikistan, Sweden, United Kingdom and Venezuela.

48. One of the main advantages of arbitration over court proceedings was celerity. In that respect TRAC had shown that it might give comfort to all concerned of its ability to efficiently administer complex international disputes and give a framework for their proper settlement in a relatively short period of time. TRAC had also been appointed recently as escrow agent and as appointing authority. In view of the current state of affairs in the world business, Alternative Dispute Resolution mechanisms were evidently at their highest prominence, since never before. Being aware of this, TRAC felt compelled to make a contribution to this by developing a set of Rules for Conciliation. After having translated its Rules from English into Persian to assist companies who had a preference for using

the Persian version of the Rules of Arbitration and also to provide more facility for the protection of business relations, in particular those which involved Persian-speaking communities in other countries, TRAC had commenced the translation of its Rules into Arabic. The Centre was sure that this would facilitate the use of TRAC's services by further users in the Region.

49. He informed that one of the outstanding achievements of TRAC during last year was its financial independence 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, the Centre had done its best not to ask for any grant in 2006 and 2007 and the Centre hoped that it would be able to achieve the same in 2008.

50. The Director of the TRAC also outlined the expectation of the AALCO Arbitration Centres from the Member States. The enhancement of the volume of international transactions necessarily led to an increase in international disputes. Arbitration, was one of the most appropriate and efficient means of settlement of these disputes. AALCO Member States had been conscious of this need since the 1970's and this was the reason for the establishment of arbitration centres in Kuala Lumpur, Cairo, Lagos, Tehran and finally in Nairobi. He expressed his thanks to the Member States for having adopted a Resolution during the Forty-Sixth Annual Session in Cape Town, Republic of South Africa, on the necessity for the governments of Member States to promote and support the use of Regional Arbitration Centres. He also expressed his happiness that a similar Resolution was proposed for adoption at this Forty-Seventh Session in New Delhi. That call was not addressed only to the five Member States that were kindly hosting the Arbitrations Centres functioning under the auspices of AALCO but was also addressed to all other Member States.

51. The awards rendered by international arbitral tribunals played a major role in the development of international law, by providing interpretation to international norms or by participating in the formation of new rules. It was therefore of utmost importance that Member States provided the opportunity to lawyers of AALCO countries to be actively present in this area. Presently, a very great number of international disputes, including those concerning nationals of 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. This was indeed an unfortunate situation, which had several consequences. He cited three of them. Those were: First, from an economic and financial point of view, tens of millions of dollars that might be spent in AALCO countries were paid to law firms and arbitrators in Europe or the United States. Second, an examination of the awards and the result of arbitrations showed that the proceedings were not always fair and that in many instances European parties benefited from a better treatment. He clarified that he didn't mean that all arbitrations taking place under the rules of European and American arbitration institutions were necessarily unfavourable to nationals of the third world countries, but he affirmed that AALCO Arbitration Centres were able to properly administer international arbitrations with fairness and high quality. Third, the participation of the jurists of AALCO Member States in the development of international law was seriously jeopardized by their under-representation in arbitral proceedings as arbitrator or counsel.

52. He 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. This would be in their interest from a financial point of view and would further assure them to receive a more fair treatment. This would also be a contribution to the expansion of legal professions in the AALCO countries and a more active participation of their jurists in the development of modern international law. On the other side AALCO Arbitration Centres should have also to prove that they were able to provide a reliable, efficient and fair mechanism for the settlement of international disputes.

53. The **President** noted that the reporting of all the Regional Arbitration Centres had concluded. Thereafter, he gave the floor to the Executive Director of the Indian Arbitration Council for his observations.

54. **Mr. G. K. Kwatra, Executive Director, Indian Council of Arbitration**, thanked AALCO for giving him an opportunity to give his suggestions on the promotion of institutional arbitration in this region. He endorsed the view of the Director of the Lagos Centre that the objective of AALCO was to bring the venue of international commercial arbitration from the western world to our own region.

55. He then offered some suggestions. He noted that for promoting institutional arbitration, one had to examine firstly, whether the AALCO Member countries have adopted the UNCITRAL Model Law. He felt that there are few countries still left who have to adopt the UNCITRAL Model Law. To build up the confidence in the institutional arbitration, the main prerequisite was the adoption of the UNCITRAL Model Law. People who believed in the traditional court litigation, UNCITRAL model law gave a possibility to come out of the court litigation and reduce the court intervention. His first suggestion to the Session was that the Member countries who have not adopted the UNCITRAL Model Law, must adopt it at the earliest.

56. On the issue of strengthening the institutional arbitration in this region, he made few suggestions. First question that comes before any institution was the quality of arbitrators. Good arbitrator, he meant, had the institutions lay down strict and strong criteria based on which a panel of arbitrators is empanelled. He felt the need to examine the criteria existing and if it is not strict, countries need to improve it and make it as strict as possible. Because the two contracting parties look at the list of arbitrators given by the institutions and to build the confidence in their mind the institution must give them good arbitrators.

57. On the issue of criteria for empanelment of arbitrators, he suggested for the consideration of the member countries, the amendment of the rules of arbitration regarding the appointment of the third arbitrator. Although under the UNCITRAL Rules the two parties nominate the third arbitrator, agreed upon by the parties, and in case of failure the power comes to the institution. Last 42 years, India has deviated from this procedure. To show the presence of the institution, the third arbitrator was appointed by the institution. Because the criterion for empanelment was not that strong, anybody who applies comes in the panel of arbitrators. Parties believe on that and they nominate. But institution can very well understand, feel by the experience, that the two nominated arbitrators lack strength. So when they appoint the third arbitrator, they could see the integrity and experience of the person. To balance the working of the tribunal of arbitration, the institution should choose the third arbitrator, rather than leaving it to the parties.

58. Another consequence of this existing procedure was that the arbitration revolves around only few people. To prevent this kind of situation and to build the confidence in the minds of the business community, institution must show its presence and for that amendment was required in the existing rules. Of course it

was deviation for the UNCITRAL rules, but from India's experience it had worked very well and it was for the consideration of the Member States as well as for the Centres.

59. The third suggestion was that to show the presence of the institution, he pointed to another provision, the scrutiny of awards. At the present time, only the ICC Court of Arbitration provides for the scrutiny of awards. Although the ICC Court does not have the power to amend the arbitral awards passed by an arbitration tribunal, they look only on the procedural aspect. If there is some defect in the procedure, it would be sent back to the arbitrators for correction so that later on it was not challenged. But if one goes to the philosophy behind this provision, it really shows the presence of a good institution. So the Member countries and Centres could adopt similar procedure in the ICC Court of Arbitration, for a better delivery of awards.

60. Finally, he felt that the four Centres are doing activities individually in their region or sub-region. One the one hand, he noted that there was ICC Court of Arbitration, and London Court of Arbitration, there is Charter Institute for Arbitration in London etc., who do their activities to market their institutions. In this context, he suggested that, instead of being individual programmes, by a Centre, if all the four Centres join their hands together, it would build more strength and confidence in the minds of users to use the arbitral clause of these institutions in their respective countries.

B. Report of Dr. M. Gandhi, the Chairman of the Drafting Committee

61. The Chairman of the Drafting Committee addressed the meeting and presented his Report on the working of the Drafting Committee as well as the tasks accomplished by it. The Chairman recalled that the Drafting Committee of the Forty-Seventh Session of AALCO was constituted on the 30th June 2008, the first day of the Session. It was entrusted with the task of preparing documents of the Session, draft resolutions, summary reports and a text containing a Message of Thanks to the Head of State of the host country of AALCO-Republic of India. He stated that it was customary that a Representative of the host country chaired the Committee and was honoured to perform that duty entrusted on him. The Drafting Committee met in morning, before the plenary, and after social events in the evening. Negotiations took place in a spirit of harmony and cooperation.

62. With a view to facilitating the adoption of the drafts by the Plenary Meeting, the Committee Members had done their best to prepare the resolutions in such a way that would be acceptable to all the delegations. As could be found in the drafts, they reflected the ideas and views commonly shared by delegations.

63. Dr. Gandhi seized the opportunity to congratulate all the delegates who participated in the discussion, and was indebted to the delegates for the confidence reposed in him in discharging his responsibility. Their useful contribution indeed, had enriched the quality of the documents ably produced. He also extended his sincere appreciation to all delegations for their maximum flexibility exercised during the deliberations. He pointed out that the work of the drafting committee would not be efficient and effective without the kind cooperation of the members of the AALCO Secretariat. The Chairman expressed his gratitude for their excellent work and assistance extended to the Drafting Committee.

64. The Chairman informed the meeting that, the documents, Draft resolutions, summary report and message of thanks had been circulated to all delegations, and were ready for consideration of the Member States and eventual adoption by the Meeting.

The meeting was thereafter adjourned.