

**X. SUMMARY RECORDS OF THE FIFTH
GENERAL MEETING**

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HELD ON THURSDAY, 24 JUNE 2004 AT 3.00 PM**

1. **The Vice-President Honorable Mr. Ambrose Patrick Dery in the Chair.**

A. Human Rights in Islam

2. **Amb. Dr. Ali Reza Deihim**, Deputy Secretary-General of AALCO presented the report on 'Human Rights in Islam'. At the outset he recalled the proposal and effort of the Republic of Saudi Arabia for inclusion of this item on the agenda of the organization. He emphasized the relevance of this topic in the emerging state-of-affairs across the globe, particularly post September-11 terrorist attacks. In this regard he referred to the concern expressed by the Commission on Human Rights at its 60th session at the negative stereotyping of religions and also made a brief reference to the report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance. He said that the Secretariat report had made an attempt to dispel some of the misunderstandings as regards Human Rights in Islam. He outlined the content of the report and said that the first part of the report brought out the deliberations of the Forty-Second session and the second and substantial part was focused on a comprehensive study of the quality and content of Human Rights in Islam, wherein the report analysed the role of philosophical appraisal, the sources of Human Rights in Islam, position of humankind in Islam, the definition of rights in Islam and the specific Human Rights in Islam. He concluded by proposing to explore the feasibility of holding a seminar or workshop on this subject in order to provide an opportunity to deliberate on this subject in detail.

3. The **Delegate of Oman** elaborated various rights enshrined under the Islamic law largely under the four heads, namely rights between parent and child, rights of children, women's rights and some other rights. While elaborating rights between parent and child, she emphasized that Islam endorsed the natural child – parent relationship by specifying the rights and obligations of one to the other. She added that the parents were held at the highest position in regard to love and loyalty by their children and in several places, the Quran puts tender loving care (*ihsan*) of parents next to belief in Allah. With respect to the rights of children in Islam, she provided that the cardinal rights of children in Islam were the right to be born with no actual or potential genetic disorder, prohibited killing a child for any reason whatsoever, the right to life of children, including unborn child, the right to legitimacy, the right to a good name and breast feeding up to 24 months of age. Islam recommended that parents make arrangements for their children's future security and the parents were made directly responsible for the proper education of their children. Children in Islam had the right to equitable treatment and preference of sons and suppression or neglect of daughters was denounced. Regarding Women's rights in Islam, she noted that from time immemorial women had always been suppressed wherever they were, however Islam championed all movements to improve the status of women, at a time when societies were overtly traditional and socially underdeveloped. Islam raised

the status of women and gave them human, civil, social and economic rights never previously given to women, for instance the Muslim woman had an independent personality, the right to education, right to total control of her property, She could not be forced into marriage by her family or guardian; she had to give her consent for her marriage to be valid, she had a right to demand, at the time of the marriage contract, the power to divorce plus the power to disallow polygamy by her husband, she had inheritance rights in family property, as a mother she was placed ahead of her husband in regard to the children's loyalty and affection. She added that Islam had also guaranteed for women the right to participate in religious and worldly affairs as well as the right to work and be involved in trade and commerce. She expressed her dismay that although these rights were vested in a woman and a child under Islam for over one thousand four hundred years ago, on the issue of children's and women's rights, it was observed that many Muslims in different parts of the world did not implement the divine law, to the letter, in this respect. Amongst other rights she underlined the right to protect one's mind, right to life and property and women's reputation.

4. The **Delegate of Saudi Arabia**¹ highlighting the relevance and importance of this topic stated that the working paper of Saudi Arabia on this topic dealt with very important matters in which a lot was explained last year. He provided that Human Rights in Islam had become a subject of discussions and research and was dealt with sometimes in scientific manner, and sometimes in very provocative manner. International community and media had given extensive consideration to this and thus it had become an important topic for consideration. He explained that these rights under Islamic law were not endowed by any leader or rules but these were committing rights brought straight from heaven and thus could not be subject to any limitations or changes. In Saudi Arabia's *Sharia* Law there were no alternatives but to carry out the Islamic provisions. However, problem lied in the fact that many international organizations, whether affiliated to United Nations system or otherwise, or other bodies relating to human rights or humanitarian law had failed to understand these rights in Islam in the right perspective. He added that as human rights in Islam were bestowed by heaven, therefore any condemnation aimed at these rights would be considered as condemnation aimed at Islam and therefore they were considered as part and parcel of the religion. Thereafter, he thanked the Secretariat for their excellent and concerted efforts for elucidating and detailing these rights and also thanked the Oman delegate for explaining these rights in Islam. He concluded by reiterating that as these rights were endowed straight from heaven, therefore any encroachment and infringement of these rights would be encroachment and infringement on Islam.

5. The **Delegate of State of Qatar**² stated that including the item 'Human Rights in Islam' in AALCO's agenda at the initiative of Saudi Arabia was a positive step. It aimed to clarify the real picture of these rights and how they were implemented practically in the Islamic societies. He added that Human Rights in Islam were the invariable rights since 15 centuries and Islam had been very keen since its inception to realize the

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

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fundamental basic human rights by implementing group of principles like equality. It is the basis for individual relationship among individuals and it is implemented in the different aspects that required social justice and would be required in order to realize the dignity of human beings. Also, Islam had equality in both civil and criminal rights that were represented in the responsibility and punishment. Further, people had the right for culture and education according to Islamic rules and there was equality between both genders.

6. Further, these human rights emanated from the Divine and these were some of the principles that had been adopted by the Islamic order to protect those rights. He added that those principles and rules drafted legal and humanitarian principles that had its effective role in the lives of the Muslims through the past years and participated in developing humanitarian principles in general, that had excellence from other human rights in realizing justice in all its concepts in order to preserve human being against any violation of the freedom, rights and dignity and humanity. He, however, highlighted that what they saw today of those human rights to had become merely an excuse that were being used by the stronger countries to interfere in the internal affairs of other countries on the pretence of preserving human rights in these countries. Hence, his delegation felt that the time was ripe for the specialist and intellectuals to undertake concrete studies about the concepts of human rights and its freedom according to the Islamic Sharia and to make use of the declarations and statements that had been passed during the past two decades, in order to develop an Islamic Declaration of Human Rights that included the methodology of these human rights and fundamental freedom and this methodology was the basis for our cause.

7. The **Delegate of the Republic of Indonesia** at the outset enunciated the disagreement of the scholars with respect to the universality of the provisions contained in the Universal Declaration of Human Rights and stated that the Islamic scholars argued that the provisions contained in the Declaration were not transcendental values from the God for human being. He also underlined that in Islam, human rights were inherently rooted in the belief that God was the only source of all human rights and due to their Divine origin, no ruler, government, or any authority could curtail or violate in any way the human rights conferred by God. He noted that this conviction was clearly reflected in the Cairo Declaration of Human Rights, and for that reason, the presumption that human rights existed “objectively”, “independent of culture, religion, ideology was not acceptable to the Islamic communities. Within this context, his delegation was of the view that it was important not to search for the differences of existing human rights concepts, but look for the similarities, so that we would be able to develop and implement the concept of human rights in the existence of diverse political, economics, social and cultural system. In this regard, he highlighted some points contained in the Jakarta Declaration adopted in the International Conference of Islamic Scholars held in Jakarta, February 23-25, 2004, like the said Declaration reiterated one of the very nature of Islam as *Rahmatan Lil Alamin* (blessing for the universe). Further, the said Declaration affirmed that the teachings of Islam upheld the values of human dignity and recognized the equal opportunity of human beings in interpersonal relationships, the need to enhance the awareness among all Muslims of the importance of upholding universal peace and the

importance of supporting the efforts to enhance constructive and interactive dialogue to increase mutual understanding and respect of other religions. He added that as guidelines for action, the Jakarta Declaration also highlighted the roles of Islamic media. Finally, he also touched upon the issue of terrorism and underlined that Islam strongly condemned terrorism since it was against the basic tenet of Islamic conviction on humanity, tolerance, and mutual peaceful co-existence. Therefore, terrorism should not be referred to Islam. His delegations reiterated that campaign against terrorism could only be won through comprehensive and balanced measures, particularly by addressing the root causes of terrorism, such as injustices, exclusion, poverty, intolerance, and double standards. Lastly, his delegation considered it necessary to promote the utilization of AALCO as a forum to facilitate the efforts to improve further understanding not only on the universalization, interconnection, diversification, specification on human rights norms and values but also to eliminate misperception about human rights in Islam.

8. The **Delegate of Malaysia** began by thanking the Secretariat of the AALCO for its report, which had analysed the understanding of the concept of human rights in Islam and that it provided an excellent base for further discussions on issues relating to human rights in Islam. The delegate also commended the effort made by the Intergovernmental Group of Experts of the Organization of Islamic Countries (OIC), which recently had convened a meeting in Jeddah to deliberate the Draft Covenant on the Right of the Child in Islam. He emphasized that according to Malaysia the discussion on “Human Rights in Islam” must be approached cautiously to ensure that any principle of human rights derived from the discussion were fully in line with the *Sharia* principles as laid down in the Holy *Quran* and *Hadith* of the Holy Prophet. He added that Malaysia believed that AALCO could be the means to bridge the gap between the international norms of human rights and the Islamic norm and proposed that an intergovernmental expert group, which consisted of eminent jurists in Islamic law from Member States of the AALCO, be established under the auspices of the AALCO, to deliberate the issue in order to preserve the Islamic standard in human rights and this may take the form of seminars or workshops. In conclusion, the delegation reiterated their concern that in considering the topic of “Human Rights in Islam”, AALCO should take into account the issues mentioned by the distinguished delegates to ensure that all Member States can fully benefit and contribute to this agenda item.

9. The **Delegate of the Islamic Republic of Iran** also acknowledged the significance of the subject ‘Human Rights in Islam’ in the given situation and said that the deliberations would provide a clear picture of Islam in dealing with the human rights issues and promote better understanding among different religious conceptions. He said that God, the Almighty, had created man in the best of images and made him master of what the heavens and the earth held. Therefore, Islam stressed the importance of human dignity, human rights and strengthens in man his awareness of his dignity, his rights and his attachment to them and his protection thereof. He emphasized that the existence of numerous laws regarding reciprocal rights of an individual towards himself, others, wife, children, parent, friend, society, government and even reciprocal right of an individual toward God demonstrated comprehensiveness of Islamic law in ensuring human rights which were divided into general categories relating to religious, social, judicial, political

and economic matters. He elaborated that the Islamic norms provided for the development of women's personality and protection of their material and spiritual rights as well as legal supervision during pregnancy, custody of children and in time of old age. He noted that the rights of minorities in Islam were much richer in content than those in other legal systems and that there were rules articulating for the protection of the rights of combatants, citizens and public property of countries in time of war. There were also comprehensive rules for protection of the rights of children, the elderly, the sick, the insane and legally incapacitated persons, captives, prisoners, and refugees. He pointed out some human rights invoked by Holy *Quran* and Prophet's (PBUM), namely the security of life and property, the protection of honor, sanctity and security of private life, the security of personal freedom, freedom of expression, freedom of association, protection of religious sentiments, the right to basic necessities of life, equality before law and the right to participate in the affairs of the State.

10. The **Delegate of Sudan**³ thanked Saudi Arabia for tabling this important matter for discussions as he considered it to be a matter worthy of discussion and studies as Islam had sublime legal principles relating to human rights as well as humanitarian law. He noted that it was very important to be drafted in a proper way so that the international community could benefit from them. He stated the Islam was a heavenly religion which dignified men and was one of the first religions where there were no compulsions. While discussing human rights in Islam there could be no shortcomings or shortcuts from the Member countries because they saw see inspired objective from which they could profit, thus enriched international law and also contributed to the national laws by activating with one another the legal principles according to everyone's background. Furthermore, he appreciated the efforts exerted by AALCO Secretariat in this regard and supported the views of the delegations that the discussion on this important subject should be directed towards drafting of specific provisions. Islam was full of sublime provisions like the right to life, personal freedom, justice, equality, basic rights, political rights and other economic rights. Therefore, he proposed the Secretariat to organize workshop so that Member States could study this topic in detail. The importance of this subject was realized when the international community had considered Islamic impunity actions punishing crime of theft and viewed matters which were not understood. He cited a principle from the Rome Statute relating to ICC of not having life sentence and that this punitive action should not be in contravention of human rights law but rather should be applied in consonance with human rights principles. This should be applied in light of the principle of amnesty which was provided in Islamic *Sunnah*. This principle was developed in Anglo-Saxon countries, i.e. the common law countries. Finally, he emphasized to build up ICC based on sublime goals which humanity would agree upon and this could be carried out only by agreement on international impunity by taking into account all cultures, religions creed and civilizations.

11. The **Delegate of Palestine**⁴ acknowledged the presentation and research of Amb. Dr. Deihim and congratulated the Oman delegation for her intellectual and scholarly

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presentation. He also congratulated all the preceding delegates who made statements and supported the idea of workshop or seminar on this subject.

12. The **Delegate of Kuwait**⁵ in his short statement expressed thanks to Amb. Dr. Deihim for presenting the document on Human Rights in Islam and the references to the Holy *Quran* and *Sunnah* made therein. He also thanked all the preceding delegates for their enriching presentations which tackled various issues in detail and highlighted the glory of Islamic religion. He emphasized that if we adopt Human Rights we would avoid lots of problems which humanity was suffering. Instructions and teaching of Islam had been very noble. Fourteen centuries ago Islam imbibed Human Rights principles and preferred public interest over personal interests. Finally, the delegate also supported other delegations' views to hold a workshop on Cairo Declaration in Human Rights in Islam.

B. Expressions of Folklore and its International Protection

13. **Amb. Dr. Wafik Z. Kamil Secretary-General of AALCO** said that he was greatly honoured to introduce the new item "Expressions of Folklore and its International Protection" (Secretariat document no. AALCO/43/BALI/2004/SD/S 15), which the Secretariat had prepared in anticipation of the inclusion of this item on the agenda of Forty-Third Session. He expressed his gratitude for the Member States for supporting the initiative. His participation at the Sixth Session of the "WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore" (WIPO IGC) held in March 2004 and the intensive consultations he had there inspired him to propose active involvement of AALCO in formulating an international legal framework for the protection of 'expressions of folklore'. In this regard, within the framework of the Cooperation Agreement signed with WIPO in August 2000, an Explanatory Note was sent to all Member States on 27 April 2004, requesting them to consider inclusion of this item in the Agenda of 43rd Session. This proposal was in line with Article 4(d) of the AALCO's Statutes which provided for exchange of views and information on matters of common concern having legal implications.

14. The Secretariat report provided an historical overview of the attempts made at the international level for the protection of expressions of folklore and the work of the WIPO Intergovernmental Committee.

15. 'Expressions of folklore' was an important element of the cultural heritage of every nation. The Asian and African countries were home to majority of world's expressions of folklore and the protection of folklore was of paramount importance to the countries in this region. However, there was widespread illicit and improper exploitation of expressions of folklore for commercial and business interests. Though the last two decades had witnessed great momentum in the area of legal protection of expressions of folklore at the national and international level, it was an accepted fact that there was no unified international legal protection of folklore.

⁵ The statement was delivered in Arabic. This is unofficial text of translated version.

16. However, there was a general consensus among the nations, especially among the developing countries, that this new global issue should be tackled together in a comprehensive manner. The option of the existing intellectual property rights protection regime, as an instrument of protection for the expressions of folklore was inadequate to address all the issues involved because of the multi-faceted nature of folklore. The earlier attempt at the international level by WIPO and UNESCO culminated in the formulation of Model Provisions for national laws relating to legal protection of folklore in 1982. However, it was disappointing to note that the international attempt concluded with developing model legislative provisions rather than an international treaty for the protection of folklore. Even though a draft treaty for protection of folklore in line with the Model Provisions was prepared, it was not adopted.

17. Pursuant to the constant demand from the Member States, the Governing Council of the WIPO, in 2001 established an Intergovernmental Committee (IGC) to discuss the policy, legal and international dimensions of the intellectual property protection of expressions of folklore. The Committee had so far convened six sessions and had already led to a much greater understanding of the concept and issues it had addressed, and had clarified how to deal with concerns and inadequate recognition and protection of Expressions of Folklore. The discussions highlighted the expectation of a number of countries that specific steps should be taken to strengthen protection, including the development of specific new international instrument and the need to explore the full potential of existing Intellectual Property rights and systems to protect Expressions of Folklore.

18. He strongly believed that there was indeed a need to negotiate a legally binding international instrument to protect 'expressions of folklore'. AALCO being an intergovernmental legal body, with representation from a large number of nations of Asia and Africa, could be a forum for further discussion and deliberation on the protection of folklore. This would help in consolidating the position of the Asian-African countries on the substantive aspect of the future international instrument for the protection of folklore.

19. The deliberations at this Session could pave the way to hold a joint AALCO/WIPO Expert Meeting on folklore matters. The joint Expert Meeting could also start discussing a draft of an International Instrument to Protect Expressions of Folklore, which is under preparation by the International Bureau of WIPO. The outcome of the deliberations during this Session and the Expert Meeting can also be reported at the Committee's Seventh Session to be held in November 2004, with the hope that this exercise could be considered as a concrete step forward in the work of the Committee in general and for the benefit of Asian and African Member States in particular, for the drafting of an International Instrument for the Protection of Expressions of Folklore.

20. **Mr. Wend Wendland**, Representative of WIPO said that it was indeed a great honor to address this gathering and appreciated the Secretary-General and the Secretariat for the preparation of the documents. He then gave a brief highlight about the development of international protection of folklore and said that this was one of the long

standing demands from many States and communities. Touching on the work of the WIPO Intergovernmental Committee, he said that the main concern was to international legal and policy framework and a possible international instrument or instruments.

21. He informed that the WIPO had conducted many fact-finding missions and consultations and compilation of national legislations on folklore protection. The main objective of folklore protection was to Prevent misappropriation, distortion and imitation ('defensive protection'), Enable communities to protect expressions of folklore developed, used and maintained by them ('positive'), Contribute to sustainable economic, cultural and social development, Regulate use of folklore on equitable terms, Promote certainty and transparency, Promote continued development of folklore, Promote respect and preservation of cultural heritage, Promote cultural diversity and distinctiveness etc.

22. He said that in the future international legal instrument for the protection of folklore should be sufficient flexibility for national and local policy development, because of the diverse national legislative approaches and it should be responsive to aspirations of relevant communities. There should be a balance and proportionality between the holder of the folklore, users and public/protection and creativity/protection and preservation/maintenance and development/individuals and communities. For this there should be coordination with other international and regional instruments and processes.

23. He said that there was a need to combine and adapt the existing Intellectual Property regime for the protection of folklore or develop and *sui generis* methods of protection. Most importantly there was need for effective, appropriate and accessible mechanisms for the management and enforcement of rights.

24. He then drew attention to some of the possible specific principles in the protection of the folklore such as:

- *Subject matter and criteria for protection*: products of human intellectual activity; 'traditional'; in any mode or form of expression
- *Rightsholders and beneficiaries*:
 1. Protection for the benefit of the indigenous, traditional and other cultural communities that maintain, use and develop them;
 2. Shared folklore: joint ownership/competent authority;
 3. Regional folklore: regional arrangements, rights management and dispute resolution
- *Period of protection*: For as long as the folklore continues to be maintained and used by the indigenous, traditional or cultural community
- *Rights*
 1. prior and informed consent/exclusive rights to authorize or prevent disclosure and exploitation of, and the acquisition of IP over, sacred or secret expressions of folklore or derivatives thereof, which have either been registered or in respect of which it would be reasonable to be aware that they are sacred or secret;

2. authorize or prevent the fixation, reproduction, public communication and other acts in respect of performances of expressions of folklore
3. for exploitation of, including the acquisition of IP over, other folklore and derivative works, outside the traditional or customary context, indigenous, traditional or other cultural communities should be:
4. identified as the source of any derivative work;
5. able to prevent any distortion or derogatory action in relation to the folklore which would be offend against or be prejudicial to the community or the integrity of the folklore;
6. able to prevent false or misleading indications in the course of trade as to the origin and other characteristics of goods or services that draw upon or evoke expressions of folklore; and,
7. where the exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on mutually-agreed terms or as determined by a competent authority.

- *Exceptions and limitations*
 1. customary uses not affected
 2. conventional copyright exceptions, unless culturally offensive
- *Formalities for acquisition and maintenance of rights*
 1. none, but voluntary registration
 2. no documentation of folklore
- *Management and enforcement of rights*
- *Application in time*
- *Relationship with IP protection*
 1. No prejudice to acquisition of IP over derivative works
- *International protection*
- *Effective and enforceable international protection*

25. He finally said that the comments from the Member States would help the WIPO in ongoing work and anticipated an active participation.

26. The **Vice-President** of the Forty-Third Session, who was presiding the meeting, because of the constraints in time, requested the member States to be brief in their interventions and sent their written comments to the AALCO Secretariat for compilation and presentation to the WIPO IGC.

27. The **Delegate of Republic of Indonesia** congratulated the Secretary-General of AALCO for including this item in the agenda and said that this forum would be benefited from such exercise in further discussion issues related to the possible international protection of folklore.

28. He said that Indonesia was aware that WIPO and UNESCO had been active in the promotion of folklore over the past three decades, including the launching of a joint

Model Provisions that provide “*sui generis*” model for the intellectual property-type protection of traditional knowledge-related subject matter. In this light, Indonesia closely observed the work conducted by the intergovernmental committee under the aegis of WIPO to explore the proper mechanisms for the protection of genetic resources, traditional knowledge, and expression of folklore.

29. He then shared Indonesia’s experiences in this field. As an archipelagic country composed of more than 17,504 islands, Indonesia was endowed with vast natural resources and cultural heritage. It had more than two hundred and twenty million people comprising of 749 ethnic and sub ethnic groups that speak about approximately 731 dialects. Such diversity coupled with a long cultural history is certainly a great and valuable asset that needs to be protected.

30. For that reason, Indonesia noted with great concern over the years of the emergence of various types of exploitation of expressions of folklore or “traditional cultural expressions – TCE” as referred by WIPO IGC. This type of exploitation had been crafted in such a way that gave precedence to development of technology and expansion of business interests over respect to fundamental cultural and economic interests of the concerned community. It was a distressing development that needed their utmost attention and immediate actions. Given this fact, Indonesia exerts continuous efforts to promote the protection of TCE, including the inclusion of adequate provisions in the national Copyright Law. Indonesia also established a National Working Group on the Empowerment of Genetic Resources, Traditional Knowledge and Folklore with the aim to study and prepare a national system for their protection. He realized the need to further strengthen Indonesia’s capacity and institutions by designing and implementing various effective measures.

31. Moreover, he believed that other member countries of AALCO had also similar experiences and common interests for the protection of folklore in their respective countries. Further discussion on this issue was therefore worth discussing. He stressed upon the paramount importance to strengthen international cooperation to tackle this issue in a constructive manner and believed that this meeting could serve its purpose by identifying possible areas of legal cooperation between the two regions.

32. In conclusion, noting that the issue on the international protection of folklore was of great importance for AALCO, he recommended to the President that AALCO participates in WIPO’s Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore as an observer. He believed AALCO’s participation in the afore-mentioned meeting could benefit WIPO by sharing the AALCO’s vision in this field.

33. The **Delegate of Nigeria** welcomed the inclusion of this item on the agenda of this session. He said he was particularly interested in the development of relevant jurisprudence on this item, because African traditions were intractably tied to the expressions of folklore. He said that rather belatedly, several African countries had been exploited for too long. And without an effective legal instrument to protect them, most of

the culture and mythologies would disappear to the abyss. Thus, Nigeria fully supported an international framework.

34. He said that Nigeria had in conjunction with some African countries, participated in regional consultative meeting relating to legal protection of folklore, in Pretoria, South Africa, in 1999. He expressed his gratitude to the joint UNESCO-WIPO initiative for facilitating such discussion, which had assisted his country in the evaluation of the legislations in the protection of folklore. Some aspects of the laws had been modified on the basis of the 1982 framework Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit Exploitation and other Prejudicial Actions. However, he noted that a more appropriate framework must be developed and agreed upon for a better protective international regime of folklore derived from the Model Provisions.

35. He said that AALCO as an Organization provided an enabling forum for the convergence of their experiences from both African and Asian Regions. He therefore called upon AALCO Secretariat to explore its cooperative mechanism with the WIPO for a fuller study of this item and to address in greater length, relevant frameworks for the protection of our folklore. He also proposed that AALCO should draw upon best practices in Member States for the protection of the folklore. Such provision should aim at protecting the content of their oral tradition, devoid of further exploitation for any purposes.

36. He further suggested that the subject matter remain on the agenda of AALCO in the coming Sessions for further in-depth analysis.

37. The **Delegate of Kenya** said that the Intellectual Property Rights of Expressions of Folklore can only be considered in *sui generis* system as it called for special protection measures. He said that Kenya had been one of the African Group voices that had strongly opined that there was a need to restart discussion on a possible international framework for the protection of folklore.

38. During the First Session of the Intergovernmental Committee on Intellectual Property and Generic Resources, Traditional Knowledge and Folklore, the African Group stated that the protection of Traditional Knowledge under existing forms of intellectual property protection was incomplete and inadequate and had its limitations because of the rigidities built in these process and the very nature of traditional knowledge.

39. The African Group was of the view that the establishment of the IGC was itself an opportune moment to redress the current intellectual property protection regime. He said that Kenya therefore supported the formulation of legally binding instrument for the protection of traditional knowledge, genetic resources and folklore

C. WTO as a Framework Agreement and Code of Conduct for the World Trade

40. **Amb. Dr. Ali Reza Deihim Deputy Secretary-General** introduced the Secretariat document AALCO/43/BALI/2004/SD/S 14 on the topic. He said that the Secretariat document highlighted the progress report on the review of the Dispute Settlement Understanding (DSU), with focused attention on the Chairman's Text of proposal submitted to the Special Session of the Dispute Settlement Body, in addition to an update of the developments at the Fifth WTO Ministerial Conference, Cancun.

41. Dr. Deihim said that Cancun Ministerial Conference of the World Trade Organization, was expected to assess the progress in the Doha Round of trade negotiations. At the Ministerial Conference, intensive negotiations were held among the WTO Members on the following issues: Agriculture, Non-agricultural market access, Development issues, "Singapore issues" (i.e., investment, competition policy, government procurement and trade facilitation) and other issues, which included the TRIPS registry for geographical indications for wines and spirits.

42. While explaining the reasons for the failure of the Ministerial Conference, he said, differences cropped up, when developed and developing nations stuck to their positions on many important issues, especially on agriculture and Singapore issues. He said that Doha Development Agenda in itself was an overloaded one. There was lack of political will to fulfil the promises made at Doha in letter and spirit. He brought to the notice of the delegates that this was the second time in the history of the WTO that a Ministerial Conference ended without taking any decision. He was of the view that that even though Members had limited expectations on the outcome of the Cancun Conference, the failure was indeed not a sign in the right direction.

43. He mentioned that the deadlines for the completion of the work on special and differential treatment for developing country Members and implementation issues, which were key issues for the developing country Members, were missed. In Singapore Issues, there were strong differences among the developed and the developing Member countries, resulting in a deadlock.

43. Agriculture Negotiation, he said, was one of the main factors for the failure of the Cancun Ministerial Conference. He highlighted the major areas where strong differences emerged between the Group-20 developing countries, Cairns Group, and the US and European Union, regarding market access, exports subsidies and domestic support.

44. He observed that the concerns of the developing and least-developed nations on the negative impact of the TRIPS Agreement on public health were acknowledged to a certain extent in the 2001 Doha Declaration on TRIPS Agreement and Public Health. An expeditious solution to address the crisis of the WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector in making effective use of compulsory licensing, could not work out due to deep divisions among the members, particularly between developed and developing countries. He pointed out that WTO

General Council decision of 30 August 2003 in this regard was a significant one, but not adequate enough to address the concerns of the developing/least developed countries.

45. As regards the review of the DSU, he informed that the Special Session could not achieve any further progress in the negotiations even after the circulation of a negotiating text of proposals. Though the Chairman's text had attempted to make some of the Special and Differential Treatment provisions mandatory, no explanations as to how these provisions would be implemented and operationalised had been brought out by the text.

46. The only decision that emerged at the Conference was a brief and simple Ministerial Statement, which simply noted that Members would bring into the new phase all the valuable work that had been done at that Conference and in areas where a high level of convergence on texts had been reached, undertakes to maintain this convergence while working for an acceptable overall outcome.

47. In the view of the AALCO Secretariat, he stated that efforts, even political will, were needed by both developed and developing country Members to redefine their priorities and focus their attention on developing country Members concerns before taking further action on each negotiating item. An overloaded agenda without focus would not only have serious consequences on the outcome of the Doha Development Round, but also impinge on the credibility of the World Trade Organization.

48. The **Delegate of Indonesia** felt that the current negotiation had been experiencing deadlock on many sticking issues resulting in sharp disagreement between developed and developing countries. The lack of progress over the implementation of Doha Mandate and Special and Differential Treatment (S&D) issues was a source of deep concern for most developing countries. The fulfillment of this mandate on a priority basis was extremely important to developing countries. His delegation believed that there was an urgent need to agree on a work programme for resolving the outstanding implementation issues and S&D issues within specified timeframe. In this regard, the work on all the issues pursuant to the Doha Work programme should move in tandem to achieve progress in a balanced manner.

49. He was of the view that Asian and African countries should strive for re-shaping the international economic and financial issues under the multilateral trading system, so that the wealth and income were more equitably distributed. This system had to be able to empower the developing countries to travel at the same speed as developed countries to achieve our common objectives.

50. He said that in order to secure sufficient gains from globalization for developing countries, there was an urgent need to bring down the high tariffs and non-tariff barriers on products of export coming from developing countries. He emphasized that it was their duty to ensure that special and differential treatment was achievable for developing countries and the formulation of common undertaking to deal with sensitive products remained an integral part of all elements of negotiations. All special and differential

treatment provisions in the WTO Agreements should be reviewed by strengthening them and making more effective and operational.

51. He emphasized that the fundamental reform of world agricultural trade to which WTO members committed in the Uruguay Round and in Doha, remained essential. Distortions in world agricultural markets continued to undermine the ability of many developing countries' sectors to contribute meaningfully to sustained economic development and poverty alleviation in line with Doha Mandate. Also, special product and special safeguard mechanism as part of special and differential treatment (S&D), which related with food security, poverty alleviation, rural livelihood, and employment, had to be an imperative concern of all WTO members. Equally important was the issue of market access for non-agricultural products. The problems were that Members still maintain long lists of products subject to tariff peaks, high tariffs and tariff escalation. Indonesia was of the view that improved and secured access to markets was a pre-requisite for development strategies, whereby Indonesia relied to a large degree on external trade.

52. Indonesia fully supported the efforts to undertake review of various aspects of trade-related intellectual property rights (TRIPs) Agreement in order to protect the concern of developing countries, especially regarding the protection of traditional knowledge and folklore as their national heritage.

53. Concerning the WTO dispute settlement mechanism, Indonesia maintained that AALCO members should encourage WTO to speed up the review process of the Understanding on Rules and Procedures Governing the Settlement of Disputes. By doing so, it was their hope that in the future this mechanism could become fair, simple and transparent for all WTO members.

54. With regard to the issues on cross border investment, competition policies, trade facilities, and government procurement, Indonesia was of the opinion that these issues were trade-related. However, the discipline proposed in this area would require new policy action to be taken only in developing countries. At Doha, Indonesia agreed to join the consensus in favor of the Declaration only after it was made certain that these issues need further clarification and that any decision on commencing negotiations on these would be dependent on an explicit consensus on the modalities of each of these issues

55. He observed that the Asian and African countries through AALCO should agree on the common ground of what should be done and on how to achieve the goals. In doing so, Indonesia put high expectations that their participation in a rule-based multilateral trading system would result in securing a fair share in the growth in international trade, commensurate with the needs of their economic development.

56. The **Delegate of Ghana** said that his country's position regarding the WTO negotiations was naturally determined by her domestic agricultural policy and the circumstances of world agricultural trade. His country sought to abide by the aims of the WTO to liberalize and achieve greater security in world trade to ensure economic growth and development.

57. Ghana had sought to implement most of the obligations placed on her as a result of the multilateral trade negotiations. Ghana had accordingly passed the national legislation to conform to international standards.

58. He said that Ghana was of the view that protection under geographical indications should be expanded to include specific products of African origin like the *kente* and *adinkra* designs, traditional knowledge and genetic resources.

59. He informed that Ghana's focus as regards multilateral trade negotiations was in the following areas: agriculture, services, market access for non-agricultural products and TRIPS. The objectives were basically to ensure further enhancement of Ghana's market access opportunities; and that the rules guiding international trade facilitate our efforts at improved trade. To realize these objectives, Ghana would continue to seek elimination of high tariffs and tariff escalation, which discouraged developing countries from developing resource-based industrialization.

60. He assured that Ghana would continue to participate effectively in the current trade negotiations with a view to enhancing market access for her exports, the removal of export subsidies and the gradual reduction or elimination of tariffs.

61. The **Delegate of Kenya** was of the view that the work programme launched at the 4th Session of the WTO Ministerial conference held in Doha, Qatar in November 2001 was wide-ranging and ambitious. However the adoption of the Doha Development Agenda was welcomed as a policy shift from a relentless pursuit of unbridled trade liberalization and deregulation to a programme towards development.

62. As regards the Cancun Ministerial, she said that Kenya was instrumental in the formation of a common African position under the African Union and merged with other Pacific countries under the auspices of the ACP and LCDs to form the G90 negotiating group. Kenya believed that the problems of Cancun started with the Chairman's text commonly referred to as the "Derbez text" which ignored contributions from the developing countries and instead leaned heavily on proposals by the developed countries. The "Derbez text" contained proposals with far reaching implications especially for African countries. In particular, the framework which proposes a non-linear line-by-line reduction approach which could result in deep tariff reductions by developing countries. Lack of consensus on the Singapore issues of investment, competition policy, transparency in government procurement and trade facilitation, also contributed into the Cancun impasse.

63. As a way forward, Kenya believed that as worldwide consensus to the Singapore issues emerge, a number of issues must be clarified. This included the need to address developing countries research and capacity constraints, the cost of implementing the new rules, how and by whom. Trade facilitation should also not be subject to trade-sanctioned dispute settlement mechanism.

64. On Agriculture, she was of the view that any further reforms should take into account the need for appropriate policy space to enable developing countries pursue

policies that were supportive of their development goals, poverty reduction, food security and livelihood concerns.

65. On implementation, Kenya favoured the adoption of a work programme that provided for clear road map with time-bound and specific benchmarks for the expeditious fulfillment of the mandate on outstanding implementation of some WTO Agreements and Decision, including the difficulties and resources constraints encountered in the implementation of obligations in various areas.

66. The **Delegate of Malaysia** at the outset thanked the Secretariat for the comprehensive report on the WTO as a Framework Agreement and Code of Conduct for World Trade. The delegate pointed out that the Doha Ministerial Declaration mandated for negotiations on improvement and clarification of the dispute settlement mechanism under the World Trade Organization (WTO). Malaysia was committed to making this system more effective and predictable.

67. Malaysia, she said, was concerned with the failure of WTO Members from reaching any consensus despite many packages being prepared on the initiatives of the Chairman of the Special Session of the Dispute Settlement Body. It also saw the powerful signal emitted from Cancun as indicating a new identity for developing countries. Hence, it fully supported AALCO's views that Members need to redefine their priorities and focus their attention on developing countries Members concerns before taking further action on each agenda item.

68. Malaysia was also concerned by the difficulties that developing countries face in participating in the dispute settlement system. Within the framework of the negotiations on Dispute Settlement Understanding (DSU), it was therefore in favour of initiatives aimed at granting to developing countries a better access to the system under the Special and Differential Treatment, as an entrenched WTO principle to be fully accepted by all WTO Members.

69. Towards this end, she said, Malaysia was actively participating in the DSU review process. It maintained the view that the fundamental problem with the DSU was non-compliance with the Panel and Appellate Body rulings. It therefore welcomed proposals to find solutions to enhance compliance. Therefore, Malaysia firmly believed that it was timely for some changes be made to the DSU mechanism.

70. The delegate informed the gathering that Malaysia had made a proposal to introduce Preventive Measures in the WTO DSU. It proposed for this temporary relief, which was based on the concept of equity and fairness. She said that Preventive Measures must be made available to all WTO Members. When a WTO Member State imposed a measure for the purpose of protecting its industry, the measure would inevitably cause damage to the industry of the affected Member states, which might be irreparable. Hence, the affected Member State must be allowed to make application for a provisional order to be prescribed, such as an order to stop the imposition of the measure. Preventive measures would not only seek to minimize the damage suffered by a Member State

imposed with a measure for any alleged WTO inconsistent act, but also to provide temporary relief and allow the suffering Member State to maintain *status quo* while the alleged inconsistency was being determined.

71. She said that Malaysia was very concerned with the time taken for the whole WTO dispute settlement process to be concluded and was of the view that some form of Preventive Measures were necessary to prevent further injury that could lead to irreparable harm.

72. The delegate called upon all AALCO Members to view the proposal seriously, and to support and join them in their efforts to introduce Preventive Measures into the WTO DSU, which would accord fairness and justice to everybody.

73. The **Delegate of Nepal** informed the gathering that Nepal had recently acceded to the WTO Agreement. Nepal had virtually become the 147th WTO member and the first LDC member having undergone the accession negotiation process as required under the WTO regime. He said that it was noteworthy that the studies and deliberations by the AALCO on the issues related with the WTO regime had, to a very large extent, contributed to have a better understanding of the nature and *modus operandi* of the WTO regime on the one hand and to have well conversant with the rights and obligations entailed by the multilateral trade agreements to the members, on the other.

74. He observed that trade related investment measures and TRIPS were major critical areas under the multilateral trade regime, with apparent far-reaching implications over the economic and technological development of developing countries. Preparation of intellectual property legislation striking a balance between the private rights and community rights, in consonance with the TRIPS regime was arguably a difficult undertaking. Similarly developing a *sui generis* system for the protection of plant varieties was another complex area. He said that his delegation strongly observed that the patentability of micro-organisms and microbiological processes as provided for in article 27(b) of the TRIPS had resulted in some far reaching consequences for developing countries particularly in connection with protection of the rights and knowledge of indigenous and local communities and of farmer rights. On the other hand, establishing an effective system for the protection and preservation of biological diversity against what was called bio-piracy was also a cumbersome for a developing country like Nepal.

75. He also pointed out that the outcomes of the Doha Ministerial Conference had put forward some aspirations for developing countries to have some leverage under the WTO regime so that they could ease possible harsh and difficult positions during the implementation of WTO agreements. He was of the view that in order to materialize the rights of parallel import, compulsory licensing and deferral of patent protection of pharmaceuticals, as envisaged in the Doha Declaration, a common standing and collaboration of AALCO members were highly desirable. He wanted the AALCO members to have a common voice and position on the review and revision of WTO agreements as well as on the future trade negotiations. AALCO members should further

develop a quality unity in multilateral trade negotiations and enhance their collective bargaining powers so as to protect and safeguard their common interests.

76. The delegate also made some recommendations and called upon the AALCO Secretariat in the common interests of the AALCO members should consider developing a model legislative guide on compulsory licensing, common position for utilization of the Doha flexibilities, as well as special and differential treatment provisions; develop some alternative *sui generis* models for protection of plant varieties; and provide technical assistance to its member which intends to join the WTO. He also wanted the AALCO Secretariat to carry on studying and monitoring the developments related to the code of conduct for the world trade, which would keep the member governments abreast of the recent developments in this field.

D. Report of the AALCO's Regional Centres for Arbitration

77. **Ms. Eunice R. Odirri, Director, Regional Centre for International Commercial Arbitration, Lagos**, presented her report on activities of the centre in 2003. She submitted that during the year 2003, a total of forty-one cases were handled at the Regional Centre for International Commercial Arbitration - Lagos (RCICAL): four international and thirty-seven domestic disputes. Within this period a total of eight commercial disputes were resolved by mediation, under the Conciliation and Mediation Rules of the Centre. The RCICAL acted as an appointing authority in two international cases and eleven domestic disputes.

78. She informed the gathering that Video Conferencing Facility was added to the existing facilities at the Lagos Centre, in 2003, to facilitate the conduct of arbitration hearings at the Centre, so that parties, including witnesses who were unable to travel to the venue of arbitration may be led in evidence, and/or cross-examined via video-conferencing. This facility had been utilized at the centre for International Arbitrations involving parties in Australia, The United Kingdom and Canada, who were unable to physically attend Arbitral Proceedings in Lagos.

79. She also informed that as a result of increasing demand by parties to arbitration at the Centre for urgent delivery of taped proceedings and corresponding transcripts, the Centre installed in 2003, a high speed replicating facility able to replicate sizeable numbers of recordings within minutes. This had facilitated immensely, the work of transcribers and stenographers attached to the Centre.

80. She said that in furtherance of its role in the promotion of arbitration and other methods of Alternative Dispute Resolution (ADR) for resolving disputes arising from International Trade and commerce, the Lagos Centre was fully convinced of the necessity for a better understanding of these concepts, within the region, to enable its wider application. Consequently, as a first step, the Centre had initiated a pilot scheme for the introduction of arbitration curriculum at both the Diploma and Post-Graduate levels, in

higher educational institutions in the region, which do not already teach these subjects. The Lagos Centre had since December 2003 introduced Mock Arbitration sessions on quarterly basis in conjunction with the Department of Commercial Law-University of London. The purpose was to expose potential arbitrators to Simulated Arbitration Scenes, since empirical evidence suggest a great gap between academic knowledge of arbitration acquired from universities or tutorial classes and the actual practice of arbitration. It was also the case that since arbitration was confidential and private, very few potential arbitrators had the benefit of pupillage under the supervision of practicing arbitrators. To encourage the role of the RCICAL, she said that the Host Government of Nigeria had, as from February 2004, made it mandatory for all contracts to which the Government was a party to incorporate the model arbitration clause of the RCICAL. Therefore all disputes both international and domestic arising from the operation of such contracts, should be referred for arbitration to the RCICAL.

81. She pointed out that a situation where the foreign trading partners of African States still insist-in the 21st century, that all disputes arising from their transactions with these states must be settled in European Cities such as Paris, London, Geneva at much more cost to the African States and under conditions which might not be as favourable to these parties, defeats the whole purpose of establishing these Regional Centres in Asia and Africa. She urged member states of AALCO to ensure that their contracts contain the model arbitration clauses of AALCO regional centres, so as to resolve any disputes arising from such contracts under the arbitration rules of AALCO Regional Centres which are the same as the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules; and in this regard, she especially commended the model Arbitration Clause of the Regional Centre for International Commercial Arbitration-Lagos for inclusion in all their contracts.

82. She informed that a reciprocal agreement on the use of the seat of the Regional Centre Lagos for International Centre for Investment Disputes (ICSID) arbitrations was executed Between ICSID and the Centre on 14th and 26th November 2003 respectively; similarly, the Center's arbitrations might be conducted at the seat of ICSID in Washington D.C U.S.A.

83. She also gave an outline of the seminars and workshops conducted; and papers delivered by the Director in the year 2003.

84. **Dato' Syed Ahmed Idid, Director, KLRCA**, presented his report for the year 2003. At the outset he congratulated the President for his election and for the fine arrangements for the Session made possible by efforts between AALCO Secretary-General and Staff and the Indonesian Government. He also congratulated Mr. Ambrose Patrick Dery on his election as the Vice-President of the Session.

85. He assured that as the new Director of the KLRCA, he would do whatever it takes to bring more interest to arbitration and raise the levels of the work and worth of arbitrators so that AALCO centres would be widely recognized.

86. He said that during the year 2003, KLRCA successfully organized the Silver Jubilee Conference attended by local and foreign participants. He also congratulated Dato' Dr. Zakaria M. Yatim, for the success of that Anniversary Conference.

87. He informed the gathering that KLRCA was now a Domain Name Dispute Resolution Service Provider for (● my). The Malaysian Institute of Microelectronic Systems (MIMOS) through their division MYNIC or Malaysian Network Information Centre, developed the Policy for dispute resolution and was responsible for the registration, maintenance and operation of the domain name registry. He expressed the hope that Member States of AALCO would cooperate with KLRCA so that domain name disputes could be settled without going to the Courts.

88. He also informed that Islamic Banking and Takaful Department of Bank Negara Malaysia (or Central Bank) had written to him recently with a view of utilizing the KLRCA in administering arbitrations for Islamic Banking Transactions. He expressed his readiness to liaison with the Malaysian Central Bank to invite suitable persons, well versed in both the requirements of the law and tenets of Islam and banking to become Arbitrators.

89. He wanted all AALCO Members to recommend names of qualified and respected candidates from their countries for emplacement. Parties in disputes were free to choose their arbitrators or the KLRCA could choose one for them.

90. He informed that the KLRCA continued to progress with new partners, in 2003: KLCRA signed an Agreement with VIAC or Vietnam International Arbitration Centre. The Democratic People's Republic of Korea's Lawyers Committee (KLC) and Director of the Dubai International Arbitration Centre (DIAC) had expressed their desire to establish cooperation with KLRCA. He also gave an account of KLRCA relationship with other international bodies namely, Permanent Court of Arbitration, International Chamber of Commerce and UNCITRAL.

91. He also proposed a slight change of name to AALCO Arbitration "Centre". He believed the Secretariat would study the implications and impact of his proposal before a decision could be reached.

The Meeting was thereafter adjourned.