SUMMARY RECORDS OF THE FIFTH GENERAL MEETING HELD ON THURSDAY, 30 JUNE 2005 AT 2.30 PM

H. E. Y. Bhg. Tan Sri Abdul Gani Patail, the Vice-President of the Forty-Forth Session in the chair

A. Jurisdictional Immunities of States and Their property

1. **Amb. Dr. Ali Reza Deihim, Deputy Secretary General of AALCO** introduced the item on 'Jurisdictional Immunities of States and Their Property'. He recalled that in accordance with the General Assembly resolution 32/151 of December 1977, the topic 'Jurisdictional Immunities of States and Their Property' was included in the programme of the work of the International Law Commission (ILC) in 1978. The ILC had at its 43rd Session in the year 1991, adopted a set of 22 draft articles on the Jurisdictional Immunities of States and Their Property and recommended that the UN General Assembly convene an international conference of plenipotentiaries to examine the draft articles and conclude a Convention on the subject. Following this, the focus shifted to the General Assembly wherein the draft articles were reviewed, first within a Working Group of the Sixth Committee and later within the Ad Hoc Committee on Jurisdictional Immunities. The Sixth Committee has focused on resolving the outstanding substantive issues over the ILC's draft articles and evolve a consensus towards the finalization of the draft articles.

2. Finally the General Assembly of the United Nations adopted the Convention on Jurisdictional Immunities of States and Their Property in its resolution 59/38 on 2 December 2004 and invited States to become parties to the Convention. Its adoption was the culmination of 35 years of work by the International Law Commission, the Sixth Committee of the UN General Assembly and the Ad Hoc Committee. The Convention is open for signature by all States from 17 January 2005 until 17 January 2007.

3. The Deputy Secretary General said that the adoption of the Convention on Jurisdictional Immunities of States and Their Property along with the understandings thereto by the UN General Assembly was a consolidated text incorporating the comments and observations of States as expressed over the past several years on this topic. The preamble of the Convention underlines that the concept of jurisdictional immunities of States and their property is an accepted principle of customary international law. Keeping in view the compromises reached in the process of resolving differences on various issues, it further clarifies that those matters that are not governed by the proposed Convention are regulated by the rules of customary international law.

4. He urged that, as the Convention is open for signature, Member States may consider signing and ratifying the Convention so that it would enter into force without much delay. He requested Member States to forward to the Secretariat, materials relating to national legislation, court decisions and any related materials for the purpose of compiling national legislation, jurisprudence and practices of the AALCO Members on this item.

5. The **Delegate of the Republic of Indonesia**, at the outset, welcomed the adoption of the United Nations Convention on Jurisdictional Immunities of States and Their Property. The Delegate felt that the Convention would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of practice in this area. The existence of a binding and generally acceptable legal instrument on Jurisdictional Immunities of States and Their Property would help to clarify the scope and nature of those immunities in proceedings concerning commercial activities of States. The Delegate

observed that the convention was designed to save from harm the immunity of State and its property from the jurisdiction of the courts of another state, to define limits to the right of immunity for a State entering into commercial activities, and to ensure that States privileges and immunities be accorded traditionally-granted diplomatic activities. The Delegate urged AALCO Member States to take concrete steps to disseminate and sign as well as incorporate the convention into their national legal instruments.

6. The **Delegate of India** welcomed the adoption of the United Nations Convention on Jurisdictional Immunities of States and Their Property. He said that the Convention has evolved over the years, by taking into account the views of all Member States expressed in the Sixth Committee of the UN General Assembly at various stages of its preparation. The Convention represents a fair and delicate balance between the concerns expressed by Member States. The Delegate believed that the Convention would significantly contribute to the development of international law on immunities and provide the requisite uniformity, clarity, and certainty regarding the scope and nature of immunities of States and Their Property with regard to legal proceedings concerning their commercial activities.

7. The **Delegate of the Islamic Republic of Iran** welcomed the adoption of the Convention on the Jurisdictional Immunities of States and their Property and mentioned that the efforts of the ILC and the subsequent negotiations in the Ad Hoc Committee and the Sixth Committee attest to the fact that the international community could not and should not rely on national legislations to define the limits of immunity of States and their property. This is because, in the absence of a unified binding international legal instrument, proliferation of fragmented regimes pertaining to this important aspect of international relations leads to uncertainty and develops further disputes between States.

8. The Delegate said that the Convention reflected the customary international law pertaining to immunity of States and their property. He further said that the permissibility of reservations to this legal instrument is neither encouraging for the unification of the relevant national laws nor conducive enough to the prevalence of the rule of law in international relations, which has been the primary goal of 27 years of deliberations and negotiations. He urged that Member States should be encouraged to sign and ratify this Convention without recourse to reservations.

9. The **Delegate of the Arab Republic of Egypt**[1] stated that despite its importance the Convention on Jurisdictional Immunities of States and their Property took long time for its adoption. He appreciated the work of the International Law Commission and the United Nations General Assembly and welcomed the adoption of the Convention.

10. The **Delegate of Japan**, while mentioning that upon their proposal the matter was taken on to the agenda of AALCO, stated that the AALCO Member States took part actively in the drafting of the Convention. He said that his Delegation believed that the Convention reflected the existing customary international law. He informed that the Japan did not have any domestic law on jurisdictional immunities and they followed absolute immunity. He further informed that they were in the process of ratifying the Convention and might think of formulating national legislation. He said that if they adopted any national legislation they would inform the same to AALCO Member States.

11. The **Delegate of Republic of Kenya** said that they were seriously considering becoming a State Party to this Convention. He said that the Convention represents a common ground and consensus among States representing different legal systems providing stability and predictability in corporate law,

[1] Statement delivered in Arabic. Unofficial translation from interpreter's version.

business practices and commercial transactions between states and private parties. He further mentioned that the importance of the subject has been recognized internationally due to the growing direct participation of states in international business and commerce. He noted that the Convention did not cover criminal proceedings and would cover immunities in such areas as property of diplomatic and consular offices. He said that they believed that the Convention provided a uniform regime to promote consistency in such international business transactions between states and private parties, including those arising in judicial litigation.

12. The **Delegate of Nigeria** said that looking at the Convention one tends to think that there were various situations where immunity could not be invoked. He cautioned that the Convention had to be looked at carefully.

13. The **Delegate of Pakistan** said that the Convention attempted to rationalize the notion of jurisdictional immunity and to bring it in conformity with practices and requirements. She further said that the Convention no doubt leads to the dilution of a State's immunity in different areas. However, it also serves as a standard for harmonizing State practices in matter of jurisdictional immunities. Article 3 of the Convention seeks to reassure the concerns of states, which may arise from one of its provisions. The article speaks that the present Convention is without prejudice to the diplomats and the head of States, as accorded under international law.

14. The Delegate observed that substantial exception has also to be taken into consideration in the Convention. The Convention does not cover the diplomats, and the criminal proceedings in Courts; rather it is concerned with civil proceedings. The delegate raised several points, which include: whether a State can be tried/put to proof for victimization of an individual? whether a Diplomat can escape under the umbrella of immunity in case of any criminal proceeding, under the domestic legislation based on certain faith or personal laws in the resident country?; whether any judgment of a foreign Court will be a forum non-judice? The Delegate further underlined that it would be advisable to draw some parameters for jurisdictional immunity without infringement to the Sovereign status of states having different legal system and yardsticks.

15. The **Delegate of Thailand** welcomed the successful adoption of the United Nations Convention on Jurisdictional Immunity of States and their Property. This new instrument represents a brilliant achievement on the codification and progressive development of international rules and practices relating to jurisdictional immunity of states and their property. He said that they believe that this adopted Convention is a result of compromising work and would bring together the uniformity and harmonization of State laws and practices in this field. This legally binding instrument reflects most important part of customary international law by making clarifications and creating more legal certainty. It would be beneficial to inter-state relations if States implement their national legislations and their domestic legal system in compliance with the global standards and norms. He said that Thailand would seriously consider becoming party to the Convention.

16. While referring to some lawyers' encouragement to Tsunami victims and their relatives to proceed against Thailand the delegate said that it was more than crystal clear that in the matter of Tsunami incident they have not done anything which could be called *acta jure gestionis* or commercial activities, and hence they were under the aegis of State immunity. He informed that what they have engaged in providing the appropriate assistance to such victims, subject to their capacity, could not in anyway be considered as exceptions to immunity. Under Article 2 of the Convention, the definition between *acta jure imperii* and *acta jure gestionis* has been distinguished. In order to determine what a "commercial transaction" is which would not bar States from being proceeded against, he said that they agreed that they need to focus on

both nature and purpose of the contract or transaction. Any interpretation that would reject Thailand's claim to immunity would surely derogate Thailand's right under international law and misrepresent sincere efforts in helping the victims to achieve restoration in due course.

B. Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949

17. **Amb. Dr. Wafik Z. Kamil, Secretary General,** in his statement highlighted Israel's violation of international law including United Nations Security Council and General Assembly Resolutions. He focused on the Advisory Opinion rendered by the International Court of Justice on *Legal Consequences of a Wall in the Occupied Palestinian Territory*; UN General Assembly Resolution calling Israel to comply with ICJ Advisory Opinion; Palestinian election; Sharm-el Sheikh Summit; and other major developments.

18. He said that the developments in the last one-year were a matter of concern for all of us. Firstly, by the sad demise of President Yasser Arafat, the world had lost a great statesman and a committed freedom fighter, who relentlessly fought against the illegal occupation of Palestine and for right of self-determination of the Palestinian people. Secondly, Road Map had largely not been implemented. The Israeli government had failed to take the necessary steps in adherence with its obligations therein. Moreover, Israel had continued with its atrocities on the Palestinian civilians which include, targeted killings, excessive use of force during military incursions, arbitrary and long periods of incommunicado detention, and torture and other forms of inhuman and degrading treatment.

19. On the other hand, it was a welcome step that the Palestinians had elected their new leadership through a successful democratic process. He took the opportunity to appreciate the prudence and sense of responsibility shown by the Palestinian people in successfully holding the elections. Successful conclusion of Palestinian election and the election of a new president had rekindled the hope that the Palestinians would pursue their legitimate struggle for an independent Palestine State through a democratic and peaceful manner.

20. He pointed out that that International Court of Justice (ICJ), had rendered its Advisory Opinion in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion).* It was a welcome decision that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, was declared illegal and contrary to international law. The Court also opined that all States were under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction.

21. He said that the United Nations General Assembly overwhelmingly supported a resolution (20 July 2004) demanding Israel to comply with the ICJ Advisory Opinion. Israel had rejected the Advisory Opinion of the highest judicial power of the United Nations and will of the international community and was continuing its flagrant violation of International Law, International Humanitarian Law and UN Resolutions regardless of all dangerous consequences.

22. He drew the attention to the Sharm-el -Sheikh Summit in February 2005 which was another milestone in the peace process. The Summit had affirmed the commitment of both parties to the ceasefire, expressed its hope that it would help to put the peace process back on track as soon as possible, in accordance with

the principles and requirements contained in the Road Map, the Arab initiative and the resolutions that embody international legitimacy. Moreover, Israel was planning to disengage from the Gaza Strip and the four settlements in the Northern West Bank, an initiative that could be the first practical test of the possibility for peaceful coexistence between Palestine and Israel. Mr Mahmoud Abbas's recent visit (27 May 2005) to the US had raised many expectations. President George Bush's commitment to provide $50 Million for new housing and infrastructure projects in Gaza following Israel's withdrawal and asking Israel to end settlement expansion was a welcome development.

23. He stated that regardless of all the peace initiatives it was a fact that Israel still continues with its settlement expansion activities in the OPT. He emphasized that "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East".

24. He concluded his statement by stating that despite these lapses on the part of Israel, it was hoped that the Sharm-el Sheikh Summit could end the four years of violence and lead to achieving a just, lasting and comprehensive peace. Peace for Palestinians means the establishment of a democratic Palestinian state alongside Israel. Although a lot of concrete action needed to be taken to bring the peace process to fruition yet recent events in the Middle East should hopefully be remembered as "a new start on the road towards peace" rather than a "slide back into conflict and violent confrontation".

25. He also emphasized that the need of the hour was to end all forms of violence and initiate a constructive process that would hasten the creation of an independent Palestinian State. Full and honest implementation of the Road Map would accelerate the peace process. To achieve this goal, Israel, the occupying power, should undo the illegal occupation of the Palestine land; stop constructing Jewish colonial settlements and violations of the Fourth Geneva Conventions in the Occupied Palestinian Territory. Israel should also abide by the relevant United Nations Security Council and General Assembly Resolutions. He said that it could never be overemphasized that lasting peace in the Middle East required respect of international law principles and norms and impartial implementation of Security Council Resolutions 194 (1949), 242 (1967), 338 (1973), 425 (1978) and 1397 (2002). The accurate and fair implementation of these Resolutions was essential, because they had rightly designed the workable settlement of the very core of the problem, namely, the creation of peace and the independent Palestinian State, which was long overdue.

26. The **Delegate of Cyprus** in his statement stated that his country had been itself the victim of aggression and continuing occupation of part of its territory by a powerful neighbor, had a particular sensitivity on the issue under debate. The policy of massive transfer of settlers from the occupying power to the territories it occupied in order to create irreversible situations on the ground which would render an eventual solution difficult if not impossible, was unfortunately one with which the Republic of Cyprus was only too familiar with. He pointed out that Article 49 of the Fourth Geneva Convention of 1949 specifically proscribed this kind of policies.

27. Cyprus believed that international law was one and indivisible which applies equally to all the countries of the world, big or small, powerful or not. In the same vain, Security Council Resolutions were binding on all UN

members States and should be respected and fully implemented by all at all times. Failure to do so creates frustrations and cultivates a climate of despair and disillusionment easily exploited by various extremists with devastating effects.

28. He said that respect of international law should not be done on a piecemeal manner and double standards should not be allowed. On the issue of the Palestinian question, his country supported the Road Map and the full and strict adherence to it by all parties involved. He also believed that the security of one side could not be pursued at the expense of the security of the other. In the same, vain, unilateral actions, which preclude the outcome of negotiations by creating de facto situations, should be avoided.

29. The **Delegate of Republic of Indonesia at** the outset, expressed their grave concern over the tragic events in the Occupied Palestinian Territory, including East Jerusalem, since 28 September 2000 and the continuing deterioration of the situation, including the rising number of deaths and injuries, mostly among Palestinian civilians, the deepening humanitarian crisis facing the Palestinian people and the widespread destruction of Palestinian property and infrastructure, both private and public, including institutions of the Palestinian Authority.

30. Indonesian Delegation also expressed their profound concern over the repeated military actions in the Occupied Palestinian Territory and the re-occupation of Palestinian population centers by the Israeli occupying forces. Moreover, Indonesia reiterated the importance of the safety and well being of all civilians in the Palestinian territory, and condemning all acts of violence and terror against civilians on both sides, including the extra judicial executions and the excessive use of force engaged by Israel.

31. For seventeen years the issue of Palestine had been subject to discussion among AALCO Member States. Lot of progress and developments had been achieved within those years, but still there was hostility in that region which obstructed the efforts of maintaining peace and security in the Middle East region, especially in the Palestine territory. Indonesian delegation delivered some comments on the recent developments on the questions of Palestine, namely, the Advisory Opinions rendered by International Court of Justice, and other recent developments regarding the question of Palestine.

32. On July 9th, 2004, the International Court of Justice had marked a historical development to the question of Palestine. The court had rendered its Advisory Opinion to the question submitted by the United Nations General Assembly at its Tenth Emergency Special Session through UN General Assembly Resolution A/RES/ES-10/14 of December 2003. It was the first time the highest judicial body of the United Nations addressed a substantive issue related to the question of "*What are the Legal Consequences arising from the Construction for the Wall being Built by Israel, the Occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as Described in the Report of the Security-General, considering the Rules and Principles of International Law, including in the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions*."

33. The Court had rendered its opinion that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, departing from the armistice line of 1949 was illegal under relevant norms and principles of international law and must be ceased and reversed. Israel was under obligations to fully and effectively respect the Fourth Geneva Convention as well as Additional Protocol I to the Geneva Conventions to the Occupied Palestine Territory, including East Jerusalem. Israel was under obligation to stop its grave breaches of international human rights law, to bring all the

perpetrators of human rights atrocities to justice and respecting all norms and principles provided by international human rights conventions in the Occupied Palestine Territory, Including East Jerusalem. Moreover, Israel was under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem.

34. Indonesian delegation welcomed and supported the Court's Advisory Opinion that the construction of the wall in the occupied Palestinian Territory, including in and around East Jerusalem, were contrary to international law. The delegation was of the view that the United Nations, especially the General Assembly and the Security Council, should consider further action required to bring to an end the illegal situation resulting from the construction of the wall, taking due account of the present Advisory Opinion. Indonesia believed that the Court's Advisory Opinion could provide an authoritative and important guide to create a positive contribution of the Israel-Palestine peace process. Indonesia called all peace loving nations to compel Israel to abide the Court's Advisory Opinion so that a just and equitable solution could be found for the Palestinian problem.

35. Indonesia supported the result of the United Nations International Meeting on the Question of Palestine held at Geneva, 8 – 9 March 2005 which produced a bold commitment of all participants to give support to the efforts of achieving a resolution of conflict through direct negotiations leading the goal of two States; a safe and secure Israel and a sovereign, independent, viable, democratic and territorially contiguous Palestine, living side by side in peace and security. Secondly, Indonesia was of supporting the Quartet Meeting in Moscow, May 9th, 2005 which produced the commitment of a just, comprehensive and lasting settlement to the Arab-Israeli conflict based on UN Security Council Resolution 242 (1967) of November 22nd, 1967 and UN Security Council Resolution 338 (1973) of October 22nd, 1973, and would remain engaged with all parties to that end.

36. He concluded with the conviction that achieving a final and peaceful settlement of the question of Palestine, the crux of the Arab-Israeli Conflict, was imperative for the attainment of comprehensive and lasting peace and stability in the Middle East.

37. The **Delegate of Bangladesh** pointed out that deportation of Palestinian from their paternal land and other Israeli practices like massive immigration and settlement of Jews in occupied territories had been going on in an unabated way. In its submission before the international court of Justice (ICJ) Bangladesh very candidly said that such activities of deportation, construction of wall by destroying houses, lands and other sources of their likelihood were clear violation of 4th Geneva Convention 1949 and its two Protocols and such activities also fall within the purview of offences as defined in the Rome Statute 1998. He further said that provision of 4th Geneva Convention confirmed provision of Hague Convention (IV) of 1907, which inter alia, provides that 'the occupying power shall respect private property'. Bangladesh believed that provisions of Hague Convention and 4th Geneva Convention prohibited any act by the occupying power that result in deprivation of the occupied people. This was a blanket prohibition, which does not admit of any derogation. So deportation of Palestinians people under various pretexts is clear violation of 4th Geneva Convention 1949, which may attract criminal liability in international law.

38. Bangladesh was always supportive of Palestinian people's just cause and believed that a permanent and durable solution of this burning problem could be attained by compelling the Israeli authority to abide by the UN Security Council resolution 242 (1967) which was reaffirmed by the subsequent resolutions Nos. 338 (1973), resolution No. 1402 of 2002. Compliance of Security Council resolution 242 in letter and spirit could ensure just and lasting peace in that area

in general and for the Palestinian people in particular.

39. The **Delegate of Arab Republic of Egypt**[2] emphasized on the repeated violation of International humanitarian law by the occupying power, Israel in the Occupied Palestinian Territories. In addition to the violation of international humanitarian law, the building of the separation wall would lead to demographic change. Demolishing the houses, confiscation of Palestinian lands; killing of children, destruction of villages and killing of innocent civilians had been condemned by the international community, including League of Arab States and NAM. Arab Summit of 2002 had called Israel to fully withdraw from the Occupied Palestinian Territories, repatriation of refugees and full implementation of Road Map. Sharm El Sheikh Commitments had to be taken seriously by Israel. .

40. The **Delegate of Republic of Kenya** pointed out that the conflict between Israel and Palestine had for decades eluded a peaceful and lasting solution, in spite of numerous initiatives by the international community. The Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict was one such initiative. It had been advocated by the Quartet, namely the European Union, United Nations, United States and Russia, and laid out a viable plan which aimed to create two states living side-by-side in peace and security. The Road Map, like other initiatives before it, could however only be achieved through an end to violence on both sides and a clear and unambiguous acceptance of both parties to negotiate a settlement. Such a settlement would necessarily lead to the emergence of an independent, democratic, and viable Palestinian State, living side by side in peace and security with Israel and its other neighbours.

41. She stated that the Road Map sets out three phases. Phase I starts with bringing an end to the terror and violence that had been prevalent in the region, normalizing Palestinian life, and building Palestinian institutions. Phase II focuses on the transitional issues in which creation of an independent Palestinian State with provisional borders and attributes of sovereignty, based on a new constitution, as a beginning down the road to a permanent status settlement. Phase III focuses on a Permanent Status Agreement and an end to the conflict, taking into account the views and actions of both parties. This also involved consolidation of reform and stabilization of Palestinian institutions, sustained, effective security, and Israeli-Palestinian negotiations aimed at a permanent status agreement. The plan had received wide support from the international community, but the onus for sustained peace and security in the Middle East region lies with the parties concerned. As a country that firmly believed in the peaceful settlement of disputes, Kenya supported the Road Map, and called on all parties to demonstrate their commitment and to discourage any action aimed at derailing the peace process.

42. The Delegate supported the plan as it established a realistic timeline for implementation. However, its success was hinged upon the goodwill and commitment of the parties without which no progress could be achieved. Kenya commended the two parties for the latest agreement arrived at from 17-19 June 2005, and applauded Israel's withdrawal from Gaza Strip as a critical step towards the implementation of the road map for a lasting peace in the region.

43. The **Delegate of Kuwait** said that the General Statement delivered by the Head of the Delegation of Kuwait, requested that AALCO keep on placing this agenda Item on the coming session of AALCO as a kind of placing pressure for the wrong practices and violations to the International Humanitarian law especially the violations to the Geneva Convention of 1949. Israel became a perfect example at International level to be described as a bad negotiator that escaped the obligations promised to fulfill. The proposal

[2] Statement delivered in Arabic. Unofficial translation from interpreters version

made by Head of the Delegation would not be of any effect to left off the ordeal of the Palestinian people. If was not supported by member states of this organization at the International gathering, or by bringing Israel attention to fulfill its obligations, and to respect International covenant and treaties that International community had accepted.

44. The **Delegate of Syria**[3] drew the attention to the report regarding the refusal of the Israeli settlers in Gaza strip to evacuate the settlements with the pretext that the settlements became a part of Israel and they threatened to resist their government if it tried to evacuate them. This was the result of the international community and the international organization's disregard over the Israeli occupation of the Palestinian lands. It reaffirmed the credibility of what all had clarified in a previous session that the rules of the international law, human rights and international humanitarian law were sometimes theoretical and sometimes implemented selectively and with double standards. Israeli practices were in violation of all norms of international law and international humanitarian law. This violation was not only in the Palestinian territories, but also in Syrian Golan Heights since 1967. The law issued by Israel, which is called "the annexation law of Golan", was a flagrant violation of all international conventions and agreements. This falls under the state organized terrorism which was being exercised against the people in all the occupied Arab lands and was considered the most dangerous thing which threatens culture, existence and identity of the people as well as security and stability of the societies. He also condemned the selectivity and double standards in the implementation of international law.

C. Human Rights in Islam

45. **Amb. Dr. Ali Reza Deihim, Deputy Secretary General,** in his introductory statement recalled, the Secretariat report of the previous year, had focused on Human Rights in Islam from civil law point. The present report primarily focused on the human rights dimensions of the Islamic Criminal Law. He said that the objective was to clear the misunderstandings related to Islamic criminal law and to highlight the key objective of Islamic criminal law i.e., to protect human rights and fundamental freedoms. He said that to have an elaborate view on the Islamic Criminal Law, the Secretariat document had been divided into two parts. Part I gave an overview of International and national criminal law, which include, sources of international criminal law; general principles of international criminal law; specific offences or crimes under international criminal law; the definition of crime or offence; specific offences under national legal systems; general defenses under criminal law; and forms and theories of punishment. Part II gave an account of the sources of Islamic criminal law; Islamic law on crimes and punishment and key objectives of Islamic criminal law and punishment.

46. Amb. Dr. Deihim pointed out that Islam laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances whether such a person was resident within the territory of the Islamic state or outside it, whether he was at peace or at war. Islamic law was a unique system, which governed each and every aspect of human life. It limited the power of the State and governed the relationship between the State and its citizens. He was of the view that human rights and fundamental freedoms provided by the modern international human rights instruments had been guaranteed in the Islamic law, centuries ago.

47. He said that in Islam, human blood was sacred in any case and cannot be spilled without justification. And if anyone violates this sanctity of human blood by killing a soul

[3] Statement delivered in Arabic. Secretariat acknowledges with gratitude the official translation provided by the Delegation of Syria

without justification, the Holy Quran equated it to the killing of entire mankind.

> *"...Whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, should be as if he had slain mankind altogether." (5:32)*

48. Amb. Dr. Deihim stated that Islamic Criminal law was unique in several aspects. One such aspect was that it had an inherent body of law for preventing crime and thereby protecting the human rights of the people. Prevention of crime, ensuring justice, maintenance of peace and security and protection of human rights and fundamental freedoms were the main objectives of Islamic criminal law. It intended to create a peaceful society where religion, life, intellect, property and lineage (honor) were preserved and protected.

49. He also spoke on Islamic penal law. He said that the critics had regarded Islamic punishments as the most vulnerable part of the Islamic law. Islam's penal policy was unique. It was just as well as efficient. It punished only when punishment was due. And it punished in the manner most conducive to the upkeep of society and elimination of crime. Its benefits, however, could be fully availed in only the strictly Islamic context. He said that it was integral to Islam's socio-political dispensation. Its ethics could be fully understood and truly appreciated only when we understand and appreciate within its wider Islamic context. Islam took care of the social, cultural as well as biological consequences of the offending act.

50. He said that in Islam, punishment really does not belong to mortals, but to Allah alone. Only in order to keep civil society together, and protect innocent people from crime, certain principles were laid down on which people could build up their criminal law. He clarified that we must always remember that Allah not only punishes but forgives, and forgiveness is the attribute which is more prominently placed before us. It was not our wisdom that could really define the bounds of forgiveness or punishment, but his Will or Plan, which is the true standard of righteousness and justice.

51. Islamic penal policy also had a scheme for reformation and rehabilitation of the culprit. In Islam an evil deed may be forgiven by repentance, subject to conditions. Under Islamic criminal law the whole penalty could be remitted if the aggrieved party agrees, out of brotherly love. However, in meeting the demand the culprit should equally be generous and recognize the good will of the other side.

52. He concluded his statement with the hope that the Secretariat Report and the deliberations would help to judge the Islamic criminal law in its right perspective. Analyzing the human rights dimensions of Islamic criminal law was important in the current global situation, where Islam and its moral and legal aspects had been thoroughly misunderstood.

53. The **Delegate of Pakistan** was of the view that since ages human rights had been recognized as a privileged entitlement. People inherit these rights simply because they were human beings. The very first and the most important document, which spoke of equality of men *i khutba-e- Hajjatulwida*, when the Holy Prophet (P.B.U.H) delivered his last sermon, focusing on respect and privilege of the life and liberty of one individual onto other. This Vision was never deliberated before. He pointed out that the Holy Christ fought for defending the rights to think and speak freely. Socrates, Aristotle, Saint Buddha had also been propagating it for good. Prophet Mohammed (P.B.U.H) stressed up on the concept of humanity, equality and Justice for all. Later, when the post-Renaissance period confronted with the issue of protecting Human Rights, Magna Carta 1215, and the Bill of Rights 1669 were conceived as a complete code of conduct. The philosophy behind these rights was the equal protection to each individual, irrespective of the race, color or creed.

54. The Delegate held that unfortunately, the aspiration to lead a life with honour and dignity had not been achieved so far, despite a lapse of considerable period. He pointed out that correct formulation of this problem is difficult to design, but this could be done by the will and the active participation of respective actors in the scenario. He said that the basic theme of the concept was that "every one has a right to use one's intellect, skill and inspiration in order to fulfill his physical, mental, social, economic and spiritual needs to enable himself to lead a life of honour and dignity".

55. He stated that Islam had dealt with this theme from the various aspects many centuries back. The idea of human rights as a fundamental principle could be seen throughout Islamic teachings. The verses of the Quran and the traditions handed down from the Prophet (P.B.U.H) and deliberations from all the Imams emphasized the fundamental rights of man. Then we had IJMA (consensus) and QIYAS. (Analogy). He said that his principal intent was to answer some questions, which could be raised in this regard. It was a question of great concern as to whether the efforts made during the decades since the Second World War, in the name of human rights had been successful in their purpose or not. A glance at the conditions of the underdeveloped societies of the world, who form the major part of the human population, revealed that not only the major part of humanity could not achieve their true rights during the last fifty plus years, but the methods of encroaching upon the rights of the deprived nations had become more sophisticated and complex and more difficult to remedy. He said that the calamity was that advocating human rights for years, would not serve the purpose unless a commitment was there. He rightly pointed out that grabbing the most fundamental human rights from the people of the Third-World countries would ignite the situation, instead of any pacification.

56. The analytical study of world religions revealed that every religion has protected and provided for the human rights. The Holy Prophet (P.B.U.H) introduced the concept of human rights fourteen hundred years ago. Islam being a code of conduct and life laid down *Haqooq-ul-Allah* and *Haqooqul-ibad* (right of people), which were equally important pillars sustaining the edifice of Islam. Islam strongly forbids the violation of human rights and addressed the dignity of a man and woman, by prohibiting slavery and by recognizing women's right in property and consented marriages. He quoted some of the main issues dealt in the last sermon. i.e. the dignity of mankind is recognized without any distinction of religion, race, colour, age or gender. The humiliation of mankind was strictly prohibited and the accusation of a woman is against the privilege and dignity of a woman. Islam permits freedom of association and expression.
Quran says:
O' believers, let no group mock another group, who may perhaps be better than them (49/11)
There is no coercion in the matter of Din (religion) so would you force the people to become Muslim? (10/99)
Killing of one human being is like killing all the mankind.(5;32)

57. He highlighted the constitutional protection of human rights in Pakistan. The Constitution of the Islamic Republic of Pakistan guaranteed the fundamental rights by providing and securing social, political and economic justice, freedom of thought and expression, belief, faith, worship and association, profession and political participated, subject to law and public morality. The rights of disadvantaged people like women, minorities had been protected. Forced labour, trafficking and child labour and marriages were prohibited with the independence of judiciary.

58. He said that the Government of Pakistan established a National Commission on Child Welfare and Development (NCCWD). A National Commission on the Status of Women (NCSW) was also being established, beside a PISCES project had been launched for the capacity building of the

immigration staff. This would help in curbing trafficking. Role of Judiciary for protection of human rights was incredible. GoP is committed for elimination of injustices and poverty. An independent Human Rights Commission was also established. The present regime had initiated various projects and played an important role in suppressing terrorist acts. The President Musharraf and the Prime Minister Shaukat Aziz of Pakistan were taking very keen interest and took personal notice to any violation of human rights

59. He pointed out that all the universal standards for protection and promotion of Human Rights were conceived from the divine teachings of Islam. Islam does not appreciate any kind of violence. It settled the criminal responsibility extremely personal; hence any act of violence done or committed by an individual does not constitute the whole community responsible for the same. Difference between crime and violation of human rights was evident. The Leader of the Delegation concluded by highlighting the need for a diversified mechanism to sensitize the international community.

60. The **Delegate of the Kingdom of Saudi Arabia**[4] stated that the Holy Quran had honored human beings by guaranteeing the right to a decent living and all other creations have to serve human beings. Human beings have a right to live according to Islamic *Shariah*. Human beings have to be respected and human dignity has to be protected. No one could be punished as long as he/she is on the right path. However, he/she tries to harm human beings he/she should be punished. Right of human beings to live in security has also been provided in the Holy Quran. A Muslim should stand against terrorism and body and mind of the human beings are to be protected. Islam had prescribed severe punishment for certain crimes to protect the society and family. Islam cares for right to education. Islam also asks for respect women and children and treats them well. Kingdom of Saudi Arabia is successful in implementing Islamic Sharia and continues to do it.

61. The **Delegate of Sultanate of Oman** spoke on a number of Human Rights in Islam, which had not been dealt with her before at the AALCO Annual Sessions. She pointed that when we spoke of human rights in Islam, we mean those rights, which had been granted by God and no legislative assembly in the world, or any government on earth had the right or authority to make any amendment or change in the said rights. She explained some of the basic human rights in Islam laid down for man as a human being, irrespective of his creed, religion or gender. The first and foremost basic right was the right to live and respect human life. The Holy Quran stated that:
Whosoever kills a human being intentionally, without any reason, and unlawfully, it is as though he had killed all mankind. And, whoever saves a life it is as though he had saved the lives of all mankind.

62. With regard to homicide, she said it should be noted that no human being had any right, by himself, to take human life in retaliation for murder or otherwise. Only a proper and competent court would decide, whether or not, an individual had forfeited his right to life by disregarding the right to life and peace of other human beings. Saving a life could be by helping the sick or the wounded, as necessary, or, by feeding a person dying of starvation. This was irrespective of his nationality, race or colour.

63. She dealt about the economic rights the Holy Quran enjoined upon its followers that in their wealth there was acknowledged right for the needy and destitute. This injunction was given in Mecca where there was no Muslim society in existence at the time. The clear meaning of this verse was that anyone who asked for help and anyone who was suffering from deprivation had a right in the property and wealth of the Muslims; again irrespective of his nationality, origin or religion.

[4] Statement delivered in Arabic. Unofficial translation from interpreters version

64. She pointed out that it was a well-known fact that Traffic in Slave Trade went on for hundreds of years all around the globe, both in the East and the West. People were captured for forced labour. Arabian Peninsula was no exception in this case. Since slaves were dependant on their lords and the lords depended on the services provided by their slaves, if slavery had been forbidden overnight the economy would have collapsed. She said that Islam tried to solve the problem of the slaves that were in Arabia by encouraging the people, in different ways, to set their slaves free. The Muslims were ordered that in expiation of some of their sins they should set their slaves free. Freeing a slave by one's own free will was declared to be an act of great merit. Furthermore, slaves were declared as one of the eight categories of people who were eligible to get "Zakaa" which was the third of the five pillars of Islam.

65. She said that it should be noted that Zakaa was not charity but rather an obligation of all Muslims to pay from their wealth annually, and, a right of those eight recipients who are specified in the Holy Quran. The "Zakaa" paid to the slave could be used as a ransom and the slave be freed by himself or by a third party. During the era of
Khalifa Omar bin Abdel Aziz all the Zakaa collected by the State was being given to the slaves. This was so until all slaves who were not prisoners of war were freed. Thus the problem of the slaves of Arabia was solved in a short period of thirty to forty years. After this, the only form of slavery, which was left in Islamic society, was the prisoner of war who was captured on the battlefield. These prisoners of war were retained by the Muslim Government, as were Muslim prisoners of war held by enemies, until such time as their government agreed to receive them back in exchange for Muslim soldiers captured by them; or, arranged the payment of ransom on their behalf.

66. She noted that the It had been prohibited and condemned that a man be arrested and imprisoned without proof of his guilt in an open court and without providing him an opportunity to defend himself against those charges. This had been exemplified by the famous case of *Hatib bin Abi Balta'ah* who passed military secrets to the Holy Prophet's enemies regarding the impending attack of Mecca. Here, a military secret had been betrayed and common sense demand that Hatib should be tried in camera. However, the Holy Prophet summoned Hatib to the open court of his mosque, and in the presence of hundreds of people the accused was allowed to speak in defense. Judgment was in his favour and he was acquitted.

67. She also discussed the rights of the enemies, which Islam has conferred. Islam had first drawn a clear line of distinction between the combatants and the non-combatants of the enemy country. As far as the non-combatant population was concerned such as women, children, the old and the infirm, etc., the instructions of the Holy Prophet were "not to kill any old person, any child or any woman; nor the monks in monasteries or the people who are sitting in places of worship." Other rights include protection of the wounded, the prisoners of war should not be slain, no prisoner should be put to the sword, no one should be tied to be killed and no looting or destruction in the enemy's country.

68. She concluded by pointing out that till date world had not been able to produce more just and more equitable laws than those embodied in Islam. On the other hand, it hurts one's feelings to note that Muslims, although in possession of such a splendid and comprehensive system of law, yet they look forward for guidance to those leaders of the West who could not have dreamt of attaining those heights of truth and justice, which was achieved a long time ago.

69. The **Delegate of Republic of Kenya** stated that Kenyan Constitution had a whole chapter on fundamental Human Rights. Freedom of religion was a protected right that was respected in practice. She said that these same rights were enshrined in the Kenyan constitution and were further strengthened in the draft constitution. She highlighted that the

Kenyan constitution had the provision of freedom of religion, which laid the foundation for the practice of Islamic 'personal law. She pointed out that the exercise of these rights by Kenyan Muslims had clear evidence of the compatibility of these Islamic rights with the Bill of Rights. She suggested that all Member States should look at the common issues that bring the secular and Islamic aspects of human rights to the same common ground rather than what brings them apart. To accomplish this feat it was important to recognize and sought the proper implementation of these shared rights universally.

70. The **Delegate of Republic of Indonesia** said that some might argue that Moslem could not embrace the United Nations Declaration of Human Rights without renouncing fundamental teaching of Islam and some might also argue that Islam teachings does not have any thought concerning the principle of human rights protection. Indonesian delegation was of the opinion that neither view was correct. All elements of human rights had been already inherent in the Holy Qur'an and the Hadith since the 6th centuries before the Magna Charta, nearly 14 (fourteen) centuries earlier than the United Nations Instruments on Human Rights been concluded.

71. The delegate said that with regard to the principle of human rights contained in the Holy Qur'an and the Hadith, the Islamic World had strong commitment to develop and explore their understanding on human rights, especially the human rights protection by declaring the Cairo Declaration on Human Rights in Islam, fourteen years ago. With respect of these two instruments, the United Nations Declaration on Human Rights and the Cairo Declaration on Human Rights in Islam, Indonesian delegation recognized that the said instruments basically were in line and paired.

72. For further implementation, Indonesian delegation emphasized the importance to give education on Universal Declaration on Human Rights, alongside with the efforts to strengthen various religious beliefs and the teachings of moral standard, as well as greater respect for and observance of the fundamental rights of human being. By doing so, Indonesian delegation was of expectation that it would widen a new and brighter horizon to humanity. Moreover, Indonesian delegation supported every practical measure, such as in depth-study on this item continuously.

73. Indonesian delegate conveyed some information regarding the efforts taken by the Government of the Republic of Indonesia in promoting a harmonious multi-religion's world. He said that Indonesia was determined to promote understanding and foster harmony and faith among communities across the world. The overwhelming majority in their societies wants peace, harmony and prosperity. There was much potential for all communities in the region to cooperate more closely to further our spiritual, social and economic development goals. Faith and community leaders had an important role to play in suppressing extreme acts which using faith and religion as their blanket, so that the world could develop a sincere trust between communities. In light of this, Indonesia, co-sponsored by Australia, had held an Interfaith Dialogue on December 6, 2004, in Yogyakarta, where 124 religious leaders from 13 countries, representing the various faith and religious traditions are participating.

74. Indonesia was of the view that this event would help empower the moderates and underpin the key role of faith and community leaders in bridging differences and building harmony in the South East Asia region. The Interfaith Dialogue would provide a platform to give important messages to their communities on mutual understanding, tolerance and peaceful co-existence. By promoting understanding and learning from each other's experiences would foster a common regional resolve to meet challenges such as terrorism and to work together to further social and economic development.

75. Indonesian delegation was of the view that purported clash of civilizations could be,

and must be, avoided. He said that, instead, a dialogue among civilizations must be promoted. Moreover, religion and culture were the core components of civilization. Hence, promoting interfaith dialogue among nations was an important global agenda.

76. The **Delegate of Malaysia** commended the work of the Secretariat of the AALCO in producing the report on the agenda item on *Human Rights in Islam* that focused on the comparative study between International Criminal Law, National Criminal Law and Islamic Criminal Law. Malaysia studied the report with interest and hoped that the report would be a basis for their further considerations on the agenda item. Malaysia reiterated its commitments on various efforts taken at the international level especially with regard to the issue of international criminal law and human rights. Malaysia had ratified several international criminal law instruments in various fields and two key international human rights instruments, namely the United Nations Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women. Malaysia was also currently a Member of the United Nations Commission on Human Rights.

77. The delegate noted that Islam had been subjected to many criticisms as far as its compatibility with some human rights principles were concerned and this had been aggravated against the backdrop of the recent political and ideological disputes between the West and the Muslim world. For the aforesaid reasons, Malaysia fully supported the inclusion of the item "Human Rights in Islam" in the agenda of the Annual Session of the AALCO.

78. The delegate said the Report on the item " Human Rights in Islam" prepared by the Secretariat was particularly important in its attempts to elucidate the principles of International Criminal Law and National Criminal Law as contained in Part I of the Report, and the explanation on the philosophy and principles of Islamic Criminal Law with the view to elaborate the nexus between those principles and its main aim of protection of human rights, as contained in Part II of the Report. Delegation of Malaysia was enlightened by the exposition of the five key objectives of Islamic Criminal Law, namely the protection of faith, life, intellect, property and progeny (dignity) and the elucidation of the linkage of those objectives directly with human rights. Malaysia had adopted the universality of these objectives. It was based on this premise that the concept of "Islam Hadhari" (Progressive Islam) was launched by the Prime Minister of Malaysia.

79. Malaysia had proposed at the Forty-Third session of the AALCO in Bali that an intergovernmental expert group, consisting of eminent jurist in Islamic law from Member States of the AALCO might be mandated to deliberate the issue in order to preserve the Islamic standard. As a follow up, Malaysia at the current session proposed that an expert group meeting comprising member States of AALCO be convened to achieve a concrete study in respect of the issue of human rights in Islam. To this end, Malaysia was prepared to host the first meeting of the expert group in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia, the initiator of the subject matter. Malaysia also proposed that the Secretariat of AALCO submits and presents the findings and recommendations of the study of the expert group to the Member States in the Forty-Fifth Session of the AALCO.

80. The **Delegate of Kuwait**[5] stated that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and many other conventions had been signed by many members of the United Nations, however, many of them do not protect the human being. His country had developed many institutions and mechanisms, which protect the human rights at national and international levels. He strongly supported the

[5] Statement delivered in Arabic. Unofficial translation from interpreters version.

proposal of the Kingdom of Saudi Arabia that this item should be placed on the agenda of AALCO. He said Islam guaranteed many fundamental rights, like the right to life, right to work, right to a decent living ect. He said AALCO is uniquely placed to take up these issues in other international forums. He hoped that AALCO would pay more attention to this topic and proposed that like other international organizations AALCO consider adopting a Declaration on Human Rights.

81. The **Delegate of Qatar**[6] in his statement highlighted the importance of family, as it was the nucleus of the Society. He identified several human rights, which were provided by Islam. It includes right to equality. Islam emphasized on right to equality and non-discrimination. He pointed out that Islam wanted equality of people in all fields, including economic field. Islam provided equal job opportunity. He said that God had made land for human beings and human beings should eat well from earth. He explained the various human rights that were ensured by the Islamic *Shariah.* Right to live peacefully; right against torture and discrimination and right to non-interference in person, family, and honor. Freedom of human beings was ensured in Islam. Slavery was not accepted in Islam. He said that human beings were free in Islam. Respect for other divine religions was also fundamental to Islam. He pointed out that nobody could compel another human being to his religion. He said that freedom of movement was also ensured in Islam.

82. The **Delegate of Nigeria** wanted to know why Islam has prescribed a severe punishment like death penalty for crimes like adultery and stealing.

83. The **Delegate from Saudi Arabia**[7] responded that the crimes of adultery and stealing were considered to be the most heinous crimes and the severest form of punishment had been prescribed in Islam for commission of such offences provided there were witnesses to the crime being committed. However, the accused did have the right to take back his confession at any stage during investigation. The rational behind the severe punishment was that it should be deterrence for committing such crimes, which were considered as the worst in Islam.

D. Expressions of Folklore and its International Protection

84. The **President** then called upon the Mr. Motokatsu Watanabe, Deputy Secretary-General of AALCO to present his introductory remarks.

85. **Mr. Motokatsu Watanabe, Deputy Secretary-General** recalled that the Governing Council of the WIPO, in 2001 had established an Intergovernmental Committee (IGC) to discuss inter alia the policy, legal and international dimensions of the intellectual property protection of expressions of folklore. Realizing that the protection of expressions of folklore is of paramount importance to the Asian and African countries which are home to majority of world's expressions of folklore, the Secretary-General had proposed the inclusion of this item on the agenda of AALCO at the 43rd Session held in Bali and this was well appreciated by AALCO Member States.

86. The IGC had so far convened seven sessions and had already led to great understanding of the concept and issues involved in the protection of the expressions of folklore. At these sessions discussions were focused on different options available for the States to effectively protect folklore. However, he noted that at the Eighth Session of the IGC, a clear disagreement between developing countries and some developed countries emerged. While both sides agreed to move forward on general guidelines and statements of principles for the protection of folklore, some developed countries were unwilling to continue work on drafting substantive

[6] Statement delivered in Arabic. Unofficial translation from interpreters version

[7] Statement delivered in Arabic. Unofficial translation from interpreters version. This response was delivered just before the conclusion of fifth General Meeting

provisions for a possible international treaty. He felt that it is crucial for at least the developing counties to be able to agree among themselves on the best possible model. The Member States should also utilize all available options, whether inside or outside the Intellectual Property system, preventive or defensive, national or international, to seek the objective of effective protection of our expressions of folklore.

87. In this context, he strongly believed that AALCO could be a suitable 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 aspects of the future international instrument for the protection of folklore. AALCO also feels that a joint AALCO-WIPO seminar on folklore matters would be pertinent at this juncture.

88. The **Delegate of Republic of Indonesia** noted that WIPO and UNESCO had been active in the field of folklore over the past three decades, including the launching of a joint Model Provisions that provide "*sui generis*" model for intellectual property-type protection of traditional knowledge-related subject matter. He then shared some of Indonesia's experiences in this field.

89. As an archipelagic country composed of more than 17.504 islands, Indonesia is endowed with vast natural resources and cultural heritage. It has 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 was certainly a great and valuable asset for Indonesia that needs to be protected.

90. For that reason, Indonesia noted with great apprehension over the years 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 give 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 needs outmost attention and immediate actions. In light of this, Indonesia exerts continued 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 the protection of genetic resources, traditional knowledge and folklore.

91. Moreover, Indonesia believed that other member countries of AALCO had also similar experiences and common interests for the protection of folklore in their respective country. Further discussion on the possible international protection of folklore was therefore worth discussing. We stressed upon the paramount importance to strengthen international cooperation to tackle this issue in a constructive manner. He believed that this meeting could serve its purpose by identifying possible areas of legal cooperation between the two regions. He recommended AALCO to participate in WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore as an observer. He believed that AALCO's participation in the afore-mentioned meeting could benefit WIPO by sharing AALCO's experiences in this field.

92. **The Delegate of People's Republic of China** said that Folklore is an important part of living cultural heritage of nations. However, dissemination of folklore sometimes leads to improper exploitation of cultural heritage, and any abuse or distortion of folklore prejudices the cultural and economic interests of nationals. There was indeed a widespread illicit and improper exploitation of expression of folklore for commercial and business interests. Though the last two decades have witnessed great momentum in the area of legal protection of expressions of folklore at national level as well as at international level, it is still an accepted fact

that there was no unified international legal framework for the protection of folklore.

93. Expressions of folklore manifesting intellectual creativity deserve intellectual property-type protection. Such protection of expressions of folklore is indispensable for their development, maintenance and dissemination. As a country consisting of 56 ethnic groups that speak a number of dialects, China was endowed with vast cultural heritage. Such diversity, coupled with a civilization of more than 5000 years, was certainly a great and valuable asset that needs to be protected.

94. The Chinese government had attached great importance to the protection of the traditional knowledge and expression of folklore and had exerted continuous efforts to the protection of traditional cultural expressions through its domestic laws such as Copyrights Law. Various measures had been taken to ensure the implementation of the law in this regard. The State Council had also set up an Office for the Protection of Intellectual Property, consisting of the relevant governmental bodies, such as the Bureau of Copyrights, to coordinate in the protection of folklore.

95. The Chinese government appreciates very much the efforts taken by WIPO and UNESCO in the protection of folklore over the past three decades, which culminated in a joint Model Provisions that provide *sui generic* model for the intellectual property-type protection of traditional knowledge-related subject matter. In this light, the Chinese government had closely observed the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore under the aegis of WIPO to explore the proper mechanism for the protection of genetic resources, traditional knowledge and expression of folklore.

96. The Chinese government believed that it was now high time to tackle this issue in a constructive manner and therefore supported the formulation of a legally binding instrument for the protection of traditional knowledge, genetic resources and folklore. The Chinese delegation was of the view that, with similar experiences and common interests of Asian-African States for the protection of folklore, the AALCO provides an enabling forum for further discussion on the issue, with a view to facilitate an early conclusion of a legally binding international instrument on the protection of folklore. Against this backdrop, the Chinese delegation believes that a joint AALCO and WIPO seminar on folklore matter would be pertinent at this juncture.

97. The **Delegate of Republic of Kenya** stated that the item is a relatively new area in the field of intellectual property rights. The mechanisms in place to curtail the wrongful and unfair exploitation of folklore and traditional knowledge were by and large limited. The delegate proposed that there should be an internationally legally binding instrument to protect Folklore Traditional Cultural Expressions. He stated Kenya had been adequately represented in all the sessions of the Intergovernmental Committee including several seminars and workshops dedicated to this subject. However, it had been unable to articulate a unilateral position on matters relating to protection of genetic resources, traditional knowledge and traditional cultural expressions.

98. He added that this situation had arisen due to lack of comprehensive legislation at the national level. The misappropriation of Traditional Cultural Expressions is a major challenge and it is necessary for developing countries to be clear on how to protect and implement the protection of the Traditional Expressions in their countries, and enforce the rights of the communities who own the knowledge.

99. The position adopted by Kenya in the Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in the WIPO is that there should be an internationally legally binding instrument to protect the traditional

cultural expressions. He strongly believed that AALCO is the appropriate forum for the African and Asian group of countries to protect expressions of folklore, as the countries of Asia and Africa were a major source of the world's traditional knowledge, and folklore.

100. The delegate underscored that the illicit and improper exploitation of expressions of folklore for commercial and business interests with no benefit to the communities who nurtured and created these materials had resulted in the exploitation of indigenous communities. The protection of traditional knowledge and folklore would address the issue of the millennium development goals of poverty alleviation as well as correct perception by developing countries.

101. He highlighted that Kenya identified itself with the position of the African Group chaired by Morocco at the 8th session of the IGC on Intellectual property, Genetic Resources, Traditional Knowledge and Folklore (WIPO) held from 6 to 10 June. He recognized the efforts made by WIPO and UNESCO and other intergovernmental bodies towards these endeavors. At the national level Kenya and undertaken several measures to protect Traditional Knowledge, Genetic Resources and Traditional Expressions of Culture and Folklore, which included mechanisms to deal with bio piracy, misappropriation and illicit use of Traditional Knowledge and Folklore. In his view this was crucial, as protection of traditional knowledge goes in line with the concept of sustainable economic development.

102. Finally, he stated that the Copyright Office in the Department of Register General had formed a working group comprised of various stakeholders both from Government and Non Governmental Organizations to work on forming draft legislation to protect Folklore Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, at the national level.

103. The **Delegate of Nigeria** said that the unauthorized reproduction of expressions of folklore not only denies indigenous community the economic benefits accruing to them but also sometimes offends the sanctity of their religious beliefs. For the indigenous communities, the theft of their folklore represents the final blow to their civilization from "invaders". It was an extension of the plunder mentality. It signifies that culture was open to pillage in the same way that Aboriginal lands and resources had been for over 200 years. Survival for indigenous people the world over was not merely a question of physical existence, but depends upon maintaining ancestral and spiritual links with the land and the communities.

104. The exploitation of folklore was extensive and diverse. Indigenous art copied onto carpets, T-shirts and greeting cards; traditional music fused with techno-house dance rhythms to produce best selling world music albums; hand-woven carpets and handicrafts copied and sold as authentic; the process for making a traditional musical instrument patented; indigenous words and names trademarked and used commercially. In essence traditional knowledge had attracted widespread attention from an enlarged audience; and had at the same time taken on new economic and cultural significance with a globalized information society. These assertions were at the heart of the demand for the creation of legal frameworks for the protection of expressions of folklore both at domestic and international levels.

105. Opinions are however sharply divided on the nature or framework of protection to be accorded to folklore. While some favour their protection under the conventional intellectual property subjects, others believe that an entirely new system was required. Nigeria shared the view that no single template or comprehensive 'one-size-fits-all' solution was likely to suit all national priorities, legal and cultural environment, and the needs of all traditional communities in all countries.

106. Presently, the Nigerian Copyright Act protects expressions of folklore against reproduction, communication to the public by performance, broadcasting, distribution by cable or other means, adaptations, translations and other transformation when such expressions were made either for commercial purpose or outside their traditional or customary context. There were however certain exceptions to these rights, such as their utilization of folklores for educational purposes.

107. The practical enforcement of the law however presents some challenges. This was mainly because a number of fundamental issues are still unsettled. These include the issue of identifying the source communities of particular folklore and streamlining the administrative framework under the control of the Nigerian Copyright Commission. For instance, it was always difficult to determine the community/communities who are the owners of a given expression of folklore since many of them have similar culture and folklore.

108. The need for an international instrument on the protection of traditional knowledge and folklore was therefore imperative. The current initiative on securing an acceptable international framework for the protection of folklore and other traditional knowledge was being spearheaded by the WIPO IGC, which was established in 2000. This could form a good foundation for the elaboration of an internationally acceptable instrument on the subject. His delegation expressed full support for the initiative and look forward to working with the AALCO Secretariat in this endeavour.

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

109. The **President** then called upon the Mr. Chen Meidi, Deputy Secretary-General of AALCO to present his introductory remarks.

110. **Mr. Chen Meidi, Deputy Secretary-General** while introducing the document said that The Cancun Ministerial Conference of the World Trade Organization was expected to assess the progress in the Doha Round of trade negotiations, but failed and ended without adopting a Ministerial Declaration. He noted that after intensified negotiation, agreement was reached on a frameworks and the WTO General Council adopted the "July package" on 1 August 2004. The major breakthrough in the 'July package' was the adoption of a rather unambiguous framework for the negotiation of agriculture, which was the major issue, which led to the failure of the Cancun Conference. The July Decision also adopted 'not so specific' modalities for the negotiation of non-agriculture market access. On agriculture, most, if not all WTO Members generally welcomed the July Package as a positive development. General Council Decision revealed slightly more flexibility and stronger language in favour of developing countries on market access compared to earlier texts.

111. The 'Singapore issues', another contentious issue was finally dropped from the Agenda. The strong opposition from the developing Members led to the complete dropping of the negotiation in three Singapore issues i.e., trade and investment, trade and competition policy, and transparency in government procurement from the Doha Development Agenda. However, the developing countries were made to compromise on one Singapore issue, i.e., Trade Facilitation, which was retained. As regards the review of the DSU, as usual there was no progress. It could be seen that since 1997 when the review initially started, till date, consensus had been reached only on very few provisions, mostly procedural ones'. It was disappointing to note that neither the Cancun Ministerial Conference nor the 'July package' did reflect on the progress and direction of the review of the DSU, except

reiterating the earlier decisions and extending the deadline.

112. He noted that since the adoption of the 'July Package', no encouraging signs to find compromise solutions among the Member States was visible. Only in the case of negotiation in the area of Agriculture there was slight progress. At the 'mini-ministerial' meetings held in May 2005 at Paris, a deal was struck facilitated by the 'five interested parties' (Australia, India, the EU, Brazil and the US) by reaching a compromise on how to convert 'specific agriculture tariffs based on quantities imported into 'ad valorem' equivalents (AVEs), i.e, tariffs based on the price of the product. Apart from this positive development the entire Doha Development Agenda was moving at snail phase.

113. In the case of implementation related issues and concerns, which are crucial importance to the developing countries, progress had been disappointing. In the case of special and differential treatment (S&D) for the developing countries, no progress has been achieved and the initial difference between the developed and the developing countries regarding the scope of the Doha mandate still persists. It was hoped that the new approach presented by the Chairman of the Special Session negotiating S&D might contribute to overcome this impasse. Similarly in the case of review of the DSU, the Special Session has met nine times after the Cancun Ministerial Conference, but with no result. It was indeed doubtful whether the deadline proposed in the 'July Package' that was July 2005, for the completion of the negotiation, would be realized at this current phase of negotiation.

114. In the view of the AALCO Secretariat, efforts were needed by both developed and developing countries to redefine their priorities and focus their attention on developing countries concerns before taking further action on each negotiating item. No effort should be spared to settle differences in Agriculture issues, which was crucial for the success of the Doha Development Round. 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.

115. The **Delegate of People's Republic of China** noted that WTO had been playing an increasingly important role in the development of world economy. It had promoted efficient resource allocation through trade and trade-related activities, substantially improved world economic welfare. According to China, more and more countries were benefiting from its sound development. Its coverage had been enlarging through each round of negotiation. Investment, competition, trade facilitation, transparency of government procurement, even labor, environment and other areas are all likely to be included in the future. China felt that now, WTO was in its most powerful days, and it had become a truly economic UN.

116. However, WTO was also facing some challenges, leaving a lot to be desired. To name but a few: the decision-making process lacks transparency and democracy (such as the Green Room Meeting; the text drafting and the appointment of facilitator); imbalance of rights and obligations; some members abuse their advantageous position; some even violate the WTO rules deliberately. All these would result in grave consequences without timely concerted efforts to redress them.

117. Now Doha Round was almost at a standstill, the progress was not satisfactory. Regarding this trend China comments that:

Firstly, China was of the view that Doha round negotiation must realize the theme of development. This round was a round of development. Among WTO members, 85% are developing countries. In the course of economic globalization, developing countries are facing both opportunities and challenges. This round should focus on their concerns. Developing countries, particularly the LDCs should be given the special and differential treatment as an essential part of negotiation so that they can have appropriate policy space to

implement their development strategies. Doha round can never be a successful one, unless so many developing countries can really benefit from the result of the negotiation.

Secondly, China was of the view that Doha Round should effectively promote trade liberalization. To open market larger and deeper, create more jobs were the major goals of the Doha round. Developed countries had been the largest beneficiaries in the course of trade liberalization. They dominate the world trade, enjoying advantageous position in 90% of the trading areas. They should move forward first, take active approaches to open their market, set a good example for other countries.

China, as a developing country, made substantial commitments when entering the WTO. In China, according to UN Standard, there're still millions of people living in poverty. The States need to overcome a lot of difficulties to fulfill the commitments. However, as a nation of high responsibility, China was determined to exert best effort with a view to realize the goals of this round.

Thirdly, China was of the view that the result of negotiation--the agreement reached, must be implemented faithfully and honestly. Once the agreement had concluded, it must be legally binding to each Member State, otherwise, there was no point to develop new rules. No country should be a pragmatist in this regard. A pragmatist would always just carry out the part beneficial to it, and leave those adverse parts out. The current textile disputes fully show this tendency. Pursuant to the WTO Agreement on Textile and Clothing (ATC) reached 10 years ago, developed countries should phase out quotas within 10 years. However, to China's great regret, developed countries retained most of their quotas (US kept 90% and EU 70%) to the last minute. Then, the developed countries adopted protective measures and blamed developing countries for the surge of textile export. China felt that had developed countries faithfully and honestly fulfilled their commitment, such dispute would have been averted. Such kind of behaviors can only jeopardize the credibility and authority of WTO rules and adversely affect the ongoing Doha round negotiation.

Fourthly, Agriculture was no doubt the key issue of this round of negotiation. China welcomed the progress achieved in the May Paris informal ministerial meeting on the agriculture issue. Though negotiations on other agenda items should be promoted in parallel with the agriculture issue, it must be realized that Doha round can never achieve a satisfactory result unless the situation of severe distortion in agriculture trade be redressed. In the mean time, only the agriculture negotiation get substantial progress, can other agenda items negotiation move ahead smoothly.

Fifthly, China was of the view that the negotiation on service trade and NAMA should be promoted together so as to reach a package deal. In the negotiation, the level of economic development, the capability of bearing the impacts, the substantial commitments, special needs and interests of developing countries and LDCs should be fully taken into consideration.

Sixthly, China was of the view that the classification of developing countries was absolutely not acceptable. China firmly opposed the proposal of classifying developing countries. It should not be an item to be discussed in this round. The term "advanced developing country" has no legal basis, what's more, it was politically dangerous and would not work economically. There was no precedent on this. Classifying developing countries can only lead to the failure of this round of negotiation.

118. In China's view the successful proceeding of Doha round negotiation would be no doubt conducive to the long-term healthy development of world economy. Doha negotiation would direct where WTO goes. If member States could not reach consensus, the current distortion of multilateral trading system would be worsen, the imbalance of world economy will be more serious.

119. The delegate said that China had always attached great importance to the development of WTO. In China coming July, the WTO informal ministerial meeting would be held in Dalian, China. China would like to play a constructive and positive role in Doha round and appealed to the international community to cherish and safeguard the multilateral trading system, eliminate trade protectionism, settle disputes through friendly negotiations. China hoped that the HK meeting at the end of this year would yield fruitful result, and the Doha round negotiation would be concluded successfully.

120. The **Delegate of Thailand** viewed that WTO matters were a matter of bread and butter for developing countries. At times developing countries found it difficult to attain successfully market access and trade liberalization. More often than not, developing countries faceed a wide range of trade restrictions and barriers associated with the environment, labour, human rights, and other forms of non-trade related aspects. Nonetheless, the delegate accepted that the international trade, within or outside the WTO context, was beneficial to developing countries, individually and collectively.

121. As the end of the Doha Round was approaching, Ministers should be provided with substantive inputs so that the Round may be finalized in constructive and meaningful results. For Thailand, the July Package was supposed to serve as a building block, which reflected emerging consensus of the WTO Membership. In the process, developing countries of Asia and Africa needed to exchange views on common concerns and discuss more extensively views to delivering meaningful results at the end of the day as mandated by Ministers.

122. He noted that the review of the Dispute Settlement Understanding (the "DSU") had come to a standstill since Members failed to set a deadline for its revision. While noting that non-compliance with Panel and Appellate Body rulings was the fundamental problem of the DSU application, he feared that the credibility of the WTO would be diminished. In fact, political will to comply with rulings were more than necessary to ensure effective application of the DSU. As a WTO member, Thailand had tabled 3 proposals on the carousel issue, the need to increase Appellate Body members, and the reviewed panel system.

123. In this connection, the delegate said that the AALCO may assist Asian and African countries by organizing workshops and/or seminars on certain issues as time and budget allow, for example, special and differential treatment, Dispute Settlement Understanding (DSU), and WTO rules which had caused a lot of issues on trade remedies while posing somewhat trade restrictions in a wide range of products. It would allow Members firstly to associate themselves with systemic issues and proposals of WTO Members, and secondly to take stock of the state of play, including the negotiations in Geneva.

124. The **Delegate of Republic of Kenya** noted that Kenya is a member of EAC, COMESA, WTO, and the ACP States, and fully supported the creation of regional economic communities so as to strengthen south-south cooperation and to enhance comparative advantage of member States as they engage in global trade. Africa, and indeed Asia, needs genuine development oriented, sustainable and dynamic trading system.

125. Kenya noted that improved and expanded trade of developing countries could substantially ridge the financing gap for the timely implementation of the Millennium Development Goals. Kenya made the following proposals:

- Eliminating market access and entry barriers for products and services of export interest to Africa, including agriculture products. Kenya proposes a tariff-reduction formula for the elimination of tariff peaks and tariff escalation in major export markets of developing countries.

- On the issue of Agriculture, Kenya proposed elimination of export subsidies and all trade distorting support to cotton.
- Extending immediately, on an autonomous basis, duty-free and quota-free market access for all products to all LDCs with simple, flexible and realistic rules of origin.
- Kenya supported the amendment of TRIPs Agreement to prohibit patents on life forms on the ground of ethics and for effective and enforceable international mechanisms under the trips and prevent the misappropriation of genetic resources, and traditional knowledge in an invention and evidence of prior informed consent and benefit sharing.
- Kenya also called for expanding the additional protection of geographical indications for agricultural products under the TRIPs Article 23 to products other than wines and spirits.

126. Kenya finally argued that AALCO members should lobby for grater market access to developed countries. To that end, a course correction was in order from a mercantilist approach to trade negotiations to an approach based on Millennium Development Goals and the Sao Paulo Consensus (SPC), emphasizing fairness, equity and development solidarity.

127. The **Delegate of Republic of Indonesia** noted while it was thought that the establishment of the WTO, would create unprecedented opportunities for its member countries, the experience of Indonesia experience has showed many international conventions on trade are not in developing countries favor. Many of them do not reflect the concern of our country as the developing countries. On the other hand, Indonesia need to comply with WTO provisions into our national Laws and Regulations for serving the purpose of multinational companies coming from developed countries.

128. The current negotiation, on trade had also met gridlock due to many issues that had not been agreed between the developed and developing countries. The lack of progress over the Doha Mandate on the implementation and S&D issues was a source of deep concern to developing countries. The fulfillment of this mandate on a priority basis was extremely important for developing countries. Indonesia therefore believe that there was an urgent need to agree on a work programme for resolving the outstanding implementation issues and S&D issues within specified time frame.

129. Even though Indonesia felt that it was almost impossible to hope that the developed countries would do this voluntarily, Asian African countries should strive on a radical re-shaping of the international economic and financial so that the economic power, wealth and income would be equitably distributed. It had to be forced to do so for the unity of the developing countries in the spirit of Asian-African's Legal Cooperation. The participation of developing countries in the multilateral trading system was intended to achieve their economic development. Effective measures are needed to make trade work as an engine of economic growth and human development. Given the differences in levels of development and the ability of countries to assume obligations, it was imperative to ensure that equal rules do apply to unequal players. The multilateral trading system had to acknowledge that developing countries could not afford to travel at the same speed as developed countries to achieve gains. Therefore, obligations to be undertaken by the developing countries should not arise out any coercion.

130. In order to survive from the globalization era, developing countries must reduce the high tariffs and non-tariff barriers on products of export interest to developing countries. He felt that it was developing countries duty to ensure that *special and differential treatment* for developing countries and policy to deal with sensitive products remain an integral part of all elements of negotiations.

131. He reiterated that the fundamental reform of the world's agricultural trade, which

WTO members committed in the Uruguay Round and in Doha, was essential. The elimination of barriers and distortions in agriculture, mostly applied in developed countries, can play a major role in economic transformation and the promotion of social and political stability in developing countries. While committed with the reform process in the world's trade system, some products of developing countries are yet in the process of accession to the reform process. Therefore, special product and special safeguard mechanism as part of special and differential treatment (S&D), which relates with food security, poverty alleviation, rural livelihood, and employment, had to be an imperative concern of all WTO members.

132. Another important thing he highlighted was about the issue of market access for non-agricultural products. The problems were that the Members are still maintaining its long lists of products, subject to tariff peaks, high tariffs and tariff escalation. Indonesia believed that an improved and secured access to markets was a pre-requisite for development strategies. In the case of trade facilitation, the disciplines proposed in this area would require new policy actions to be taken only in developing countries. At Doha developing countries 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.

133. Finally, Indonesia urged the Conference to reflect on the current situation and to compare it with the lofty *great* goals set at Doha. It was important to recognize the need to rectify the WTO's legal framework and the code of conducts for the world's trade. The Asian and African countries through AALCO should agree on the common ground of what should be done and the objectives obtained. In so doing, the developing countries put high expectations that the 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 the economic development.

134. The **Delegate of India** welcomed the adoption of Legislative Guide on Insolvency Law by the UNCITRAL. He expected that the Guide would serve as an important reference text for all countries engaged in evolving an effective legislative framework for insolvency proceedings and to fulfill its objective of contributing to socioeconomic development, promoting investments and expanding employment.

135. He noted that the Working Group on Arbitration had not been able to arrive at a consensus on the issue of ex parte interim measures. In India's view, all efforts should be made to reconcile differing positions. As regards the possible areas of future work, India would advise caution in undertaking revision of the UNCITRAL Arbitration Rules of 1976 which enjoy widespread recognition and have served as a model for many dispute settlement mechanisms under various bilateral agreements. He welcomed the proposal to celebrate the twentieth anniversary of adoption of these Rules in 2005 by organizing conferences and commemorative events in different regions for Member States to share their experiences.

136. The Draft Convention on electronic contracting seeks to harmonize national laws regarding how electronic contracts can be made. Harmonized domestic legislation is expected to overcome the legal uncertainty in international business transactions when contracting parties are from different countries. Apart from creating a uniform legal regime for electronic transactions, the Draft Convention was also intended to be as technologically neutral as possible, covering electronic communications in various forms.

137. The Draft Convention incorporates many of the essential principles of the Model Law on Electronic Commerce, including party autonomy and legal recognition of electronic communications.

However, some principles have been significantly modified to meet the need for greater certainty required in a convention, especially provisions on the time and place of contract. New principles had also been incorporated in the Draft Convention, including invitations to make offers, use of automated information systems, and errors in electronic communications, reflecting new legal concerns that have arisen since the release of the first Model Law in 1996.

138. As regards the Working Group on Transport law, it had made progress on a number of difficult issues. The Working Group at its 15th Session held in New York in April 2005 focused on issues relating to freedom of contract, jurisdiction and arbitration. The issue of freedom of contract had gained momentum in this Working Group because of a proposal for inclusion of 'volume contracts' within the scope of the draft convention. Traditionally these contracts are excluded from the contract of carriage. However, in view of the increasing number of such contracts in practice, the Working Group agreed for its inclusion in the draft convention. However, it was reiterated that such contracts should not be permitted to derogate from the mandatory provisions of the convention relating to maritime safety, liability, jurisdiction and protection of third parties. On liability, the Working Group accepted the "one way" approach where the contractual decrease of liability is not permitted but its increase can be allowed. Indian government, supported the inclusion of new provisions in the field of international transportation on "right of control" and "transfer of rights". This would involve extensive examination of a number of related issues including method and procedure for transfer of rights, which may result in subrogation of the contracting party.

139. The **Delegate of the State of Qatar**[8] noted that WTO had taken a prominent role as regards economic issues are concerned and have assumed great importance. The WTO has established a framework agreement and code of conduct for world trade. He recalled that the Dispute Settlement Understanding under the WTO was put for review since 1997. However, there was no much progress, even through many formal and informal meeting were held and many WTO Member Countries including Qatar made many proposals. He also noted that the July Decision of the WTO General Council had received positive response from most of the Member Countries. He also noted that the report on "The Future of the WTO", contained many recommendations and ways to revitalize the WTO and addresses several institutional issues, with recommendations to reform the way the organization works and how decisions are made. While some of the suggestions made in the report are commendable, and needs to be look into, especially those relating to the dispute settlement body and the implementation of the WTO reports.

F. Statements by the Directors of Regional Arbitration Centres

Ms. Eunice R. Odirri, Director, Regional Centre for International Commercial Arbitration, Lagos, presented her report on activities of the Centre in 2004.

(1) <u>Disputes Referred to Arbitration:-</u>

140. She reported that a total of 39 (thirty nine) disputes were referred to the centre for resolution by arbitration or other Alternative Dispute Resolution (ADR) methods within the period under consideration; 6 (six) International and 33 (thirty three) Domestic.

<u>International Disputes</u>

141. Of the 6 (six) International disputes, 5 (five) were for settlement under institutional arbitration Rules and 1(one) under non-institutional Rules (ad-hoc). 3 (three) of the 5 institutional arbitrations were administered under the Lagos centre arbitration rules and 2 (two) under the International chamber of Commerce (ICC) Arbitration rules. The

[8] Statement made in Arabic. Unofficial translation from interpretators version.

parties were German, Austrian, Australian and African.

Domestic disputes:

142. 28 (twenty eight) of the 32 (thirty-two) domestic disputes were referred for settlement under the Arbitration and conciliation Act 1988 of Nigeria whereas the 4 (four) remaining disputes were for settlement by Conciliation/mediation under the Act thereof.

2. Panel Of Arbitrators

International Panel

143. The Lagos Centre continued to update and add to its data- base with regard to its panel of International Arbitrators which was made up mainly of renowned and experienced International jurists, diplomats; On the increase were names of experienced International Construction Arbitrators who were professional Architects, Quantity Surveyors, Engineers and maritime Arbitrators, carefully selected from the African Region and other parts of the world.

3. Awareness programmes: (Seminars, Conferences and Workshops):-

144. The essence of the Lagos Centre's awareness programmes in the form of seminars, conferences, workshops, was to awaken within the African Region the preference for resolving disputes arising from International trade and commerce including investments by arbitration and other ADR methods as opposed to Litigation. The following were organized within the above period:

Seminar on: "Arbitration and Alternative Dispute Resolution (ADR) in African" - 5th - 6th July 2004. Organized in conjunction with the Federal Ministry of Justice of Nigeria and the Chartered Institute of Arbitrators – Nigeria

Conference on: "Energy Co-operation in Africa and the settlement of Energy Disputes by Arbitration" - 25th - 26th November 2004. Organized in Collaboration with the Energy Charter Secretariat. Brussels and the Shell Petroleum Development Company of Nigeria Limited and Total FINA ELF.

145. Workshop on: "The Role of the Preliminary Meeting in Arbitral Proceedings. Organized in conjunction with the International Law Institute – Washington. Venue: Sheraton Hotel Lagos – Nigeria Participants were drawn from countries within Africa, including Ethiopia; United Kingdom, Italy with the faulty consisting renown International arbitrators.

4. Educational programmes:

146. The centre's educational curriculum is based on its conviction that for arbitration and other ADR Methods to become widely accepted and practiced in the African Region there must be a basic knowledge of these subjects and this can partly be achieved by incorporating and teaching arbitration and ADR in higher institutions of Learning across the Region.

147. Consequently, the Lagos centre has increased its invitation to more universities in countries within the job Sub-Saharan Region to incorporate into their teaching modules the International arbitration curriculum, drawn up with the assistance of the school of International commercial arbitration – London; and she was glad to announce the endorsement of this programme into more universities curriculum within the region. The incorporation would be implemented at various times conducive to each university.

5. Quarterly Mock Arbitration Sessions

148. In Order to align academic knowledge therefore with practical experience, on 1st Quarterly mock arbitration session was held on 24th – 26th May 2005 in the large hearing room at the Lagos Centre.

149. The Faculty was made up of Mr. Anthony Connerty Q C-a barrister and an

experienced International arbitrator from London acting as the mock arbitrator with counsel for the parties to arbitration played by a participating advocate from South-Africa and a senior advocate of Nigeria (SAN) acting as counsel for the other party.

150. This afforded the participants the opportunity of witnessing a simulation of an arbitral proceeding which they would not otherwise be availed of view of the confidentiality and privacy clauses in most arbitrations rules. Further mock sessions will be organized on a quarterly basis, with the next one coming up in September 2005.

5. Foreseen Plans In The Last Quarter Of 2005

Installation of advanced modern technology for transcription:

151. The centre recognizes the importance of providing speedily, the transcripts of arbitral proceedings in view of its assistance in finalizing the making of the arbitral award and so plans to introduce in the last quarter of 2005, a most modern technology which permits stenographic ticker tape to be instantaneously translated into word-processed text which can be scrolled up on computer monitors on the desk of arbitrators and advocates and can then be printed immediately.

Conclusion:-

152. In concluding this report she stated that the Lagos centre even though inaugurated in 1989, began functioning in 1999. The centre therefore solicits, once again the patronage of AALCO member states in settling their commercial disputes on the auspices and Rules of the centre. Not to do so would be to defeat the very reasons why these AALCO Centres were established i.e. to stem the flow of arbitration to Western countries of the world but more importantly to settle disputes arising out of International trade and investment in the region where performance of the contract occurred or where parties involved in the dispute are from the Asian/African region.

153. To achieve this aim, parties need only incorporate in their contracts or enter into separate agreements simply stating that – "Any disputes arising from such contracts would be settled under the auspices and arbitration rules of the Lagos centre for settlement

154. **Dato' Syed Ahmad Idid, Director of the Kuala Lumpur Regional Centre for Arbitration** noted with interest that H.E. the President of the Republic of Kenya (H.E. Mr. Mwai Kibaki) took time off from his busy schedule to declare this session open. He also thanked the Government of the Republic of Kenya for the admirable arrangements made which facilitated the useful deliberation and the comfort of all participants.

KLRCA Increase in activities.

155. He report that the use of the KLRCA hearing rooms increased in occupancy. He hoped that in 2006 the Centre should be able to achieve a further increase. The cases too had shown some increases. He expected better results this year and next year.

156. As for matters for arbitration, he reported that the Centre had not done badly despite the severe competition and P.R. done by individuals to take some of the matters to themselves. It was to be noted that in Malaysia, the Architects and Engineers hold their own arbitrations. Private companies offering individuals to arbitrate seem to spring up as there is cash to be gained. This can be a serious threat to arbitral bodies as individuals may cause uncertainty.

Memorandum of Understanding

157. He informed that during the year 2004, KLRCA had done work to interest arbitral bodies and the commercial sector resulting in:

a) MOU signed between KLRCA and Dubai International Arbitration Centre (DIAC), Institute Kelautan Malaysia (Malaysian Maritime Institute) and Multimedia Development Corporation respectively.
b) conducted training courses and symposium

in October 2004, Past & Present Analysis of Malaysian Court Judgments on Arbitration Matters and the Proposed New Act in November 2004, Business Opportunities & Resolving Trade Disputes – China & Malaysia Experience, CIETAC – KLRCA Joint Conference.
in December 2004, Symposium on "The Essentials in Arbitration : Experienced Arbitrators sharing their knowledge, philosophy & skills"

Early in January this year, KLRCA had Miss Aurelia Antonietti from ICSID who came to deliver a talk. In April KLRCA organized a 3-Day International Conference on Construction Law & Arbitration and in May KLRCA organized "Half Day Maritime Arbitration Forum" with IKMAL (Malaysian Maritime Institute)
c) Islamic Banking
He said that KLRCA was happy that the Middle East would also want their own Islamic Banking Arbitrations.

AALCO members have not recommended names of persons for emplacement on our KLRCA International Panel of Arbitrators. Despite that he called on the Member Staes to submit the names of qualified and respected candidates from their countries, as KLRCA feel confident that with the International Panel of Arbitrators, KLRCA may begin our work as an Arbitration Centre for Islamic Financial Business.

Domain Name Dispute Resolution

158. KLRCA continues to receive a number of enquiries in relation to potential domain name disputes, after having filed five (5) domain name disputes (as at June 2005). Out of these 5 domain name disputes, 3 resulted in transfers of the domain name to the complainants, one was settled before the appointment of the panel and one resulted in the domain name remaining with the Registrant Respondent.

159. The KLRCA would be organizing a Joint Conference on "Alternative Dispute Resolution in Internet and E-Commerce : Asian Perspective" on 4th October 2005 in Kuala Lumpur. It was a joint venture with the Asian Domain Name Dispute Resolution Centre based in Beijing and Hong Kong. KLRCA look invited all to in Kuala Lumpur. Online registration for the Joint Conference would be made available soon, in www.rcakl.org.my to register online for this exciting and inaugural event.

Visit to KLRCA

160. In line with KLRCA programmes to educate the next generation or the present youth and university students, KLRCA was happy to receive and to speak to several universities and their students, e.g. at the International Islamic University's Forum on Practice of Arbitration in Malaysia. KLRCA was proud to be the National Administrator for the Jessup International Law Moot Court Competition (National Level) held at the University of Malaya which involved the participation of several major universities in Malaysia. We had students who visited the centre from:

a) the National University of Malaysia (UKM)
b) the International Islamic University

161. KLRCA also had visits from the Hangzhou Arbitration Commission from China, Asian Institute of Management Club, several High Commissioners and Ambassadors and their Trade Officers to find out about our services.

162. The KLRCA was also invited to address on arbitration and ADR at the Institute of Diplomacy & Foreign Relations and at the

Judicial & Legal Training Institute of Malaysia.

UNCITRAL

163. KLRCA have written to H.E. Secretary General of UNCITRAL to request for the opportunity for the KLRCA to hold the 30th Anniversary Conference of UNCITRAL Arbitration Rules. If this is accepted, KLRCA hopes to organize the conference in July or August 2006. KLRCA takes keen interest on the work of the Working Group for Arbitration. KLRCA are following attentively on the development and in particular on the question of interim measures. KLRCA being an arbitral body must keep abreast of developments in this field.

The meeting was thereafter adjourned.