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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

REPORT ON THE NON-DELIBERATED AGENDA ITEMS FOR THE FORTY-NINTH ANNUAL SESSION OF AALCO

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CONTENTS

THE LAW OF THE SEA
(Non-Deliberated)

CONTENTS

I. LAW OF THE SEA

I. Introduction

A. Background

1. The United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS or the Convention), described as "constitution for the oceans", since its entry into force more than fifteen years ago,[1] has been serving as a guide for the international community to safeguard the capacity of ocean's to serve the society's many and varied needs. However, the damaging impacts of human activities are putting the diversity of life in the oceans under ever-increasing strain. Over-exploitation of marine living resources, climate change, and pollution from hazardous materials and activities, all pose a grave threat to the fragile marine environment. Likewise, the growth of criminal activities, including piracy, has serious implications for the security of navigation and the safety of seafarers.[2]

2. It is important to underline that the UNCLOS is widely recognized as setting out the legal framework within which all activities in the oceans and seas must be carried out and is considered to be of strategic importance as the basis for national and regional cooperation. However, limitations in capacity hinder States, in particular developing countries, not only from benefitting from oceans and seas and their resources pursuant to the UNCLOS, but also from complying with the range of obligations under that Convention. Therefore, the capacity-building needs of States in marine science and other areas of oceans affairs and the law of the sea remains of vital importance.

3. It may be recalled that the item "Law of the Sea" was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970, since then it has been considered as one of the priority items at successive Annual Sessions of the Organization. The AALCO can take reasonable pride in the fact that new concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States originated and developed in the AALCO's Annual Session and were later codified in the UNCLOS.

4. After the adoption of the Convention in 1982, the AALCO's Work Programme was oriented towards assisting Member States in matters concerning their becoming Parties to the UNCLOS and other related matters. With the entry into force of the UNCLOS in 1994, the process of establishment of institutions envisaged in the UNCLOS began. The AALCO Secretariat prepared studies monitoring these developments and the Secretariat documents for AALCO's Annual Sessions reported on the progress of work in the International Sea Bed Authority (ISA), the International Tribunal for Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS), the Meeting of States Parties to the UNCLOS and other related developments.

[1] The UNCLOS, in accordance with its Article 308 (1) entered into force on 16 November 1994.

[2] "Secretary-General, in Message for World Oceans Day, says Human Activities place ever-increasing Strain on Diversity of Marine Life", *UN Press Release*, SEA/1937, dated 3 June 2010.

B. Deliberations at the Forty-Eighth Annual Session of AALCO (Putrajaya, Malaysia, 2009)

5. A half-day special meeting on the Law of the Sea, in conjunction with the Forty-Eighth Annual Session of AALCO was jointly organized by the Government of Malaysia, the AALCO Secretariat and the International Tribunal for the Law of the Sea (ITLOS). The meeting deliberated upon the themes of "Maritime Security and Piracy" and "Delimitation of Maritime Boundaries". [3]

6. **Judge Jose Luis Jesus, President of the ITLOS**, made a presentation on "The Role of the Tribunal on Piracy and Use of Force at Sea", and in doing so elaborated on the historical background; the international framework on piracy, particularly the piracy regime under the High Seas Convention, 1958;, the UN Convention on the Law of the Sea, 1982; and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988; possible avenues for resolving the situation; and possible solutions and the role of the ITLOS.

7. **First Admiral Zulkifili Bin Abu Bakar**, **of the Malaysian Maritime Enforcement Agency** (MMEA) made a presentation entitled "Piracy in Straits of Malacca". He highlighted the role MMEA was playing in maintaining the security of the straits of Malacca. As regards, the maritime threats in the straits of Malacca, he focussed upon the non-traditional security threats that included smuggling of drugs and weapons, pirates or sea robbers, human smuggling, illegal logging, illegal migration, movements of criminals across borders, accidental spills, illegal dumping and over fishing as well as illegal fishing.

8. **Mr. Masataka Okano, Director for International Legal Affairs, Ministry of Foreign Affairs, Japan**, in his presentation on "Piracy in the Gulf of Aden", elaborated upon the characteristics of piracy activities off the coast of Malaysia; inadequacy of legal tools for crackdowns; legal challenges confronting legal advisers, such as to: What extent pirates could be apprehended? Who could apprehend pirates? What should be done with the apprehended pirates? To which extent can we use weapons against pirates? and issues such as ransom money; self defense measures by ships.

9. **Judge Shuji Yanai of the ITLOS** made a presentation on "The role of Tribunal in maritime delimitation boundaries." He elaborated upon the competence of the Tribunal in such matters, as well as the Special Chambers created by the ITLOS to expeditiously consider maritime boundary disputes.

10. **Mr. Robert Vatkin**, gave a presentation on "A practitioner's perspective in handling maritime delimitation boundaries". He highlighted that boundary disputes were factually, technically and legally complex. He elaborated upon the process management issues for boundary disputes.

11. **Mr. Philippe Gautier, the Registrar of the ITLOS** elaborated upon the jurisdiction of the International Tribunal of the Law of the Sea and highlighted upon the role of the Registry, both prior and after the institution of proceedings.

[3] For details see, AALCO, *Report of the Forty-Eighth Session*, AALCO/48/PUTRAJAYA/2009/REP, pp. 119-178.

12. In the ensuing deliberations, the delegations from **Bangladesh**, **Republic of Indonesia**, **Arab Republic of Egypt**, **Uganda**, **People's Republic of China**, **Kenya**, **Thailand**, **Malaysia**, **Ghana** and the **Observer Delegations** from the **League of Arab States** and the **Division of Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations** participated.

II. Status of the United Nations Convention on the Law of the Sea (UNCLOS) and its Implementing Agreements

13. The United Nations Convention on the Law of the Sea as at 1 June 2010 had 160 Parties, of which 39 States are AALCO Member States.[4] This represents considerable progress towards universality since the entry into force of the Convention on 16 November 1994, one year after the deposit of the sixtieth instrument of ratification, when there were 69 States Parties.

14. The Agreement Relating to the Implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, as at 1 June 2010, there were 138 parties to it, of which 31 States are AALCO Member States.[5]

15. The Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, was adopted on 4 August 1995 and has been signed by 59 States and as at 5 February 2009 ratified by 77 States, of which 13 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.[6]

III. Recent Developments

16. This part of the Report contains an overview of the consideration of the Oceans and the Law of the Sea issues by the UN General Assembly at its Sixty-fourth Session (2009);

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[4] UNCLOS, 1982 has near universal adherence from the AALCO member states. The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Uganda, United Republic of Tanzania and Yemen. Out of forty-seven Member States only eight states, namely, Democratic Peoples' Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, State of Palestine, Syrian Arab Republic, Thailand, Turkey and United Arab Emirates are not Parties to the UNCLOS. For details see: "Table recapitulating the status of the Convention and of the related Agreements, as at 1 June 2010", available on the website: http://www.un.org/Depts/los/reference_files/status2010.pdf.

[5] The AALCO Members who have ratified the Agreement include: Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Uganda and the United Republic of Tanzania. Ibid.

[6] The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Mauritius, Nigeria, Oman, Republic of Korea, Senegal, South Africa and Sri Lanka. AALCO Member States signatories to this Agreement include: Bangladesh, Egypt, Indonesia, Pakistan, and Uganda. Ibid.

developments in the Twenty-fifth Sessions of the Commission on the Limits of Continental Shelf (15 March to 23 April 2010); Sixteenth Session of the International Seabed Authority (26 April to 7 May 2010); Oceans and Law of the Sea: Report of the UN Secretary-General for the Sixty-fifth Session of UN General Assembly; Twentieth Meeting of States Parties to the UNCLOS (14 to 18 June 2010); and the Eleventh Meeting of the UN Informal Consultative Process on the Oceans and the Law of the Sea (21 to 25 June 2010). It also briefly touches upon the settlement of disputes by the ITLOS.

A. Consideration of the Oceans and the Law of the Sea issues by the UN General Assembly at its Sixty-fourth Session (December, 2009)

17. The UN General Assembly at its Sixty-fourth Session on 4 December 2009[7] considered the agenda item on "Oceans and the Law of the Sea" and adopted two resolutions namely; Oceans and the law of the sea;[8] and Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.[9]

18. By the 17-part resolution 64/71[10] on "Oceans and the law of the sea" the General Assembly inter alia expressed its deep concern at the adverse economic, social and environmental impacts of the physical alteration and destruction of marine habitats that might result from land-based and coastal development activities. It reiterated its serious concern at the current and projected adverse effects of climate change on the marine environment and marine biodiversity, and emphasized upon the urgency of addressing that issue. The Assembly also noted with concern the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants and trafficking in persons, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, and noted the deplorable loss of life and adverse impact on international trade, energy security and the global economy resulting from such activities.

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[7] For details see "General Assembly Adopts Two Wide-Ranging Resolutions Aimed at Strengthening World's Legal Regime for Oceans: Protecting Fisheries, Marine Ecosystems", *UN Press Release* GA/10899 dated 4 December 2009. 40 speakers participated in the day-long extensive debate, including the following from AALCO Member States: Arab Republic of Egypt, Kuwait, South Africa, Singapore, Thailand, Japan, People's Republic of China, Republic of Korea, Yemen, United Republic of Tanzania, India, Ghana and Nigeria.

[8] UNGA Res. A/64/71 adopted on 4 December 2009. The resolution was adopted by a recorded vote of 120 in favour to 1 against (Turkey), with 3 abstentions (Colombia, El Salvador, and Venezuela).

[9] UNGA Res. A/64/72 dated 4 December 2009. The resolution was adopted without a vote.

[10] The resolution runs into 34 pages and is divided into following parts: Preamble; Implementation of the Convention and related agreements and instruments; Capacity-building; Meeting of States Parties; Peaceful Settlement of disputes; The Area; Effective functioning of the Authority and the Tribunal; The continental shelf and the work of the Commission; Maritime safety and security and flag State implementation; Marine environment and marine resources; Marine biodiversity; Marine science; Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; Regional cooperation; Open-ended informal consultative process on oceans and the law of the sea; Coordination and cooperation; Activities of the Division for Ocean Affairs and the Law of the Sea; and Sixty-fifth session of the General Assembly.

19. Among other things, the Assembly recognized that realizing the benefits of Convention on the Law of the Sea could be enhanced by international cooperation, technical assistance and advanced scientific knowledge. It emphasized the pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the purposes and principles of the UN Charter as well as for the sustainable development of the oceans and seas. It also called upon all States that have not done so, in order to achieve the goal of universal participation, to become parties to the Convention, and the Agreement relating to the Implementation of Part XI of the UNCLOS of 10 December 1982, and the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.[11] The Assembly also called upon States to harmonize, their national legislation with the provisions of the Convention.

20. It also urged all States to cooperate, directly or through competent international bodies, in taking measures to protect and preserve objects of an archaeological and historical nature found at sea, in conformity with the Convention, and called upon States to work together on such diverse challenges and opportunities as the appropriate relationship between salvage law and scientific management and conservation of underwater cultural heritage, increasing technological abilities to discover and reach underwater sites, looting and growing underwater tourism. The Assembly also noted the entry into force of the 2001 Convention on the Protection of the Underwater Cultural Heritage, on 2 January 2009 and noted in particular the Rules annexed thereto, that addressed the relationship between salvage law and scientific principles of management, conservation and protection of underwater cultural heritage among parties, their nationals and vessels flying their flag.

21. The General Assembly also noted with satisfaction the first Observance by the United Nations of World Oceans Day on 8 June 2009. It called for continued efforts to promote and facilitate international cooperation on law of the sea and the ocean affairs in the context of the future observance of World Oceans Day.

22. By adopting resolution 64/72, on sustainable fisheries the General Assembly deplored the fact that fish stocks were either overfished or subject to sparsely regulated fishing efforts, as a result of illegal, unreported and unregulated fishing and inadequate flag State control. The Assembly recognized that there was an urgent need for action to ensure the long-term and sustainable use and management of fisheries resources through the wide application of the precautionary approach and ecosystem approaches. The 16-part resolution addressed many critical issues, including the control of unregulated fishing and the reduction of fishing capacity. There were provisions to enhance the regulations of bottom fishing activities. The resolution called for urgent action by States and regional fisheries management organizations.[12]

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[11] Ibid., Part I.

[12] The 13-part resolution runs into 26 pages and covers the following issues: achieving sustainable fisheries; implementation of the 1995 Agreement; related fisheries instruments; illegal, unreported and unregulated fishing; monitoring, control and surveillance and compliance and enforcement; fishing overcapacity; large-scale pelagic drift-net fishing; fisheries by-catch and discards; subregional and regional cooperation; responsible fisheries and the marine ecosystem; capacity-building; cooperation within the United Nations system; and the sixty-fifth session of the General Assembly.

B. Twenty-fifth Session of the Commission on the Limits of Continental Shelf (15 March to 23 April 2010, UN Headquarters, New York)

23. The Commission on the Limits of the Continental Shelf (CLCS) held its twenty-fifth Session at United Nations Headquarters from 15 March to 23 April 2010. Apart from the work carried out in plenary meetings, the Commission also proceeded with a technical examination of submissions made by coastal States in accordance with Article 76 of the UNCLOS, 1982.[13]

24. At that session, the Commission received presentations of 10 submissions from the following States: France in respect of the French Antilles and the Kerguelen Islands; Norway in respect of Bouvetøya and Dronning Maud Land; the Federated States of Micronesia, Papua New Guinea and the Solomon Islands in respect of the Ontong Java Plateau; Portugal; the United Kingdom of Great Britain and Northern Ireland "in respect of the Falkland Islands and of South Georgia and the South Sandwich Islands"; Tonga; Spain in respect of the area of Galicia; Trinidad and Tobago; Namibia; and Cuba.

25. The Commission also continued the examination of the submissions made by Barbados; the United Kingdom, in respect of Ascension Island; Indonesia, in respect of North-West of Sumatra Island; and Japan. The subcommissions, which had been established at previous sessions to examine those submissions, continued the examination of the submissions and reported to the Commission on the work that they had carried out. In particular, the subcommissions established to consider the submission made, respectively, by Barbados and by the United Kingdom, in respect of Ascension Island, submitted their recommendations to the Commission. Following a thorough consideration of the recommendations prepared by the two subcommissions and of the presentations about matters related to each submission delivered at the plenary of the twenty-fifth session by the respective submitting States, the Commission adopted, with amendments, the recommendations in regard of each submission by consensus.

26. The Commission established two new subcommissions to consider the joint submission made by Mauritius and Seychelles in respect of the Mascarene Plateau, and the submission made by Suriname.

27. The twenty-sixth session of the Commission will be held from 2 August to 3 September 2010, on the understanding that the period from 16 to 27 August would be for plenary meetings and that the periods from 2 to 13 August and from 30 August to 3 September would be used for the technical examination of submissions at the Geographic Information System (GIS) laboratories and other technical facilities of the Division.

C. Sixteenth Session of the International Seabed Authority (23 April to 7 May 2010, Kingston, Jamaica)

[13] Information mentioned herein is drawn from the "Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission", CLCS/66, 30 April 2010 and *UN Press Releases* "Commission on Limits of Continental Shelf Meeting at Headquarters", SEA/1928, 1 April 2010 and "Commission on Limits of Continental Shelf Concludes Twenty-Fifth Session", SEA/1930, 4 May 2010.

28. The Sixteenth Session of the International Seabed Authority (ISBA) took place from 23 April to 7 May 2010 at its seat in Kingston, Jamaica.[14] Ambassador Jesus Silva-Fernandez of Spain was elected President of Assembly of the Authority's 16th Session while Mr. Syamal Kanti Das of India was elected President of the Council for the 16th Session.

29. *Adoption of Regulations for Prospecting and Exploration of Polymetallic Sulphides*: The highlight of the meeting was the approval of "Regulations for Prospecting and Exploration of Polymetallic Sulphides". Its adoption, after six years of debate and compromise, marks a milestone in the progressive development of the "Mining Code", a comprehensive set of rules, regulations and procedures to govern prospecting, exploration and exploitation of marine minerals in the deep seabed beyond national jurisdiction. The Regulations consist of a preamble and 44 regulations organized into 10 parts and 4 annexes. The regulations deal only with prospecting and exploration phases, and apply only to polymetallic sulphides. The Preamble spells out the principles underlying the Regulations- that the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as its resources are the common heritage of mankind. It is pertinent to mention here that, subsequent to the adoption of the Regulations the China Ocean Mineral Resources Research and Development Association (COMRA) has submitted an application to the ISBA for approval of a plan of work for exploration for polymetallic sulphides. The general location of the application area is on the Southwest Indian Ocean Ridge. In accordance with the Regulations, the members of the Legal and Technical Commission (LTC) will be notified and consideration of the application will be placed on the agenda of the Commission at its next meeting.

30. *Elections of Council Members:* The Assembly elected 17 member countries to fill vacancies on the Council for a four year term from 2011 to 2013. The Council membership is drawn from five groups of States members of the Authority. Four of these have special interests in aspects of seabed mining and the fifth is a group chosen to ensure equitable geographical balance in the Council as a whole. The countries were: *Group A* (4 States from among the largest consumers or net importers of minerals to be derived from seabed mining): Italy, Russian Federation; *Group B* (4 States from those with the largest investment in seabed mining): **Republic of Korea**, France, Germany; *Group C* (States that are major land-based net exporters of minerals found in the seabed): Australia, **Indonesia**; *Group D* (developing States representing special interests, including those with large populations, the land-locked or geographically disadvantaged, islands, major mineral exporters or potential producers, and the least developed): Fiji, Jamaica, **Egypt**; *Group E* (18 States reflecting the principle of geographical representation, as well as balance between developed and developing States): Vietnam, **Qatar**, **Cameroon**, Cote d' Ivoire, **Nigeria**, Chile, Mexico. It may be noted that the agreed allocation of seats on the Council is 10 seats to the African Group, 9 seats to the Asian Group, 8 seats to the Western European and Others Group, 7 seats to the Latin American and Caribbean Group and 3 seats to the Eastern European Group. Since the total number of seats allocates according to that formula is 37, it is understood that, in accordance with the understanding reached in 1996 (ISBA/A/L.8), each regional group will relinquish a seat in rotation. The regional group which relinquishes a seat will have the right to designate a member of that group to participate in the deliberations of the Council without the right to vote during the period the regional group relinquishes the seat.

[14] Information mentioned herein is drawn from: "Seabed Authority concludes Sixteenth Session in Kingston", International Seabed Authority Press Release, SB/16/21, 7 May 2010.

31. *Request for Advisory Opinion from the Seabed Disputes Chamber of ITLOS*: The Assembly of the International Seabed Authority, on the recommendation of the Council (ISBA/16/C/13), decided that the Authority, in accordance with Article 191 of the Convention, would request the Seabed Disputes Chamber of the International Tribunal of the Law of the Sea, pursuant to Article 131 of the Tribunal's Rules, to render an advisory opinion on the following questions:

- What are the legal responsibilities and obligations of States parties to the Convention with respect to the sponsorship of activities in the Area in accordance with Part XI of the Convention?
- What is the extent of liability of a State Party for any failure to comply with the provisions of Part XI of the Convention by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?
- What are the necessary and appropriate measures that a State Party must take in order to fulfill its responsibility under Article 139 and Annex III, article 4, of the Convention?

32. The Government of Nauru, which had sponsored an application by Nauru Ocean Resources Inc. for a plan of work to explore for polymetallic nodules in the Area, had originally requested the advisory opinion by the Seabed Disputes Chamber in a communication to the Authority's Secretary-General last March (ISBA/16/C/6). It considered it as crucial that guidance be provided on the interpretation of the relevant section of Part X of the Convention pertaining to responsibility and liability of Sponsoring States. That would enable developing States to assess whether it was within their capabilities to effectively mitigate such risks and in turn make an informed decision on whether or not to participate in activities in the area. It sought clarification in a number of areas including what the responsibilities and obligations of sponsoring States were under Part XI of the Convention.

D. Oceans and Law of the Sea: Report of the Secretary-General of the United Nations for the Sixty-fifth Session of the UN General Assembly

33. The Annual Comprehensive Report of the UN Secretary-General on Oceans and Law of the Sea examines the relevance and scope of capacity-building, while presenting an overview of the capacity-building needs of States in marine science and other areas of ocean affairs and the law of the sea and reviews current capacity-building activities and initiatives in those areas.[15] The report also addresses the challenges that may constrain the potential of States, particularly least developed countries and small-island developing States, to benefit from the resources of oceans and seas, thwarting their ability to implement the Convention and other legal instruments. It presents an overview of the capacity-building needs of States in marine science and other areas of ocean affairs and the law of the sea. The report contains a review of means of implementation of capacity-building activities and initiatives in marine

[15] *Oceans and law of the sea: Report of the Secretary-General*, UN Doc. A/65/69 dated 29 March 2010. The UN Secretary-General's Report has been prepared pursuant to the request of the General Assembly in paragraph 202 of its resolution 64/71 that the Secretary-General submit to the Assembly at its sixty-fifth session a comprehensive report on oceans and the law of the sea, and make the section of the report relating to the topic of focus of the eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. It was also submitted to States Parties to the United Nations Convention on the Law of the Sea, pursuant to article 319 of the Convention.

science and other areas of ocean affairs and the law of the sea, based mainly on the information provided by intergovernmental organizations. Lastly, it addresses the challenges in implementing capacity-building activities and initiatives and identifies opportunities for ways to move forward.

34. The Report concludes that international cooperation and assistance to strengthen marine science and support technological capacities for the sustainable management of ocean-related activities could enhance scientific understanding of the oceans as a whole and support the sustainable global development and management of marine resources. It concludes further that a comprehensive assessment of States' existing needs and capacities in that regard is essential.

E. Twentieth Meeting of the States Parties to the UN Convention on the Law of the Sea (14 to 18 June 2010, UN Headquarters, New York)

35. The twentieth Meeting of States Parties to the UN Convention on the Law of the Sea took place at the UN Headquarters in New York from 14 to 18 June 2010. The meeting elected **Arif Havas Oegroseno (Republic of Indonesia)** as President while Oana Florescu (Romania); Eden Charles (Trinidad and Tobago); and **Namira Nabil Negam (Egypt)** and Ingo Winkelman (Finland) as Vice-Presidents.[16]

36. The Agenda of the meeting included the consideration of the following items: Report of the International Tribunal for the Law of the Sea to the Meeting of States Parties (2009); Information provided by the Secretary-General of the International Seabed Authority; Commission on the Limits of Continental Shelf: (a) Information provided by the Chair of the Commission (b) Workload of the Commission; Consideration of budgetary matters of the International Tribunal for the Law of the Sea; and Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea.

37. *Workload of the CLCS*: The question of the increasing workload of the Commission on the Limits of the Continental Shelf has been an area of concern. At the twentieth Meeting of States Parties, the Chairman of the Commission informed the Meeting of the practical difficulties in managing the increasing number of submissions. He noted that it was not possible to complete the 51 submissions and 43 sets of preliminary information received from coastal States until 2030, assuming that four sessions were required for each submission and that no more than three subcommissions could work simultaneously. The large number of submissions, their size and high scientific complexity greatly impacted the Commission's work.

38. By the terms of the decision on the Commission's workload the Meeting requested that the Commission consider adopting, on an urgent and priority basis between the present time and the twenty-second Meeting in 2012, several measures to expedite the processing of submissions and to better manage the Commission's increasing workload. They included

[16] Information mentioned herein is drawn from *UN Press Release*: "Concluding 2010 Session, States Parties to the Convention on Law of the Sea Approve International Tribunal Budget, Pay Rise for Judges", SEA/1943, 18 June 2010 and "States Parties to Convention on Law of the Sea Open Twentieth Session with Call for Universal Accession, Election of Bureau Members", SEA/1939, 14 June 2010.

greater flexibility in the size of the subcommissions, holding more and extended and frequent meetings, tasking the subcommisisons with more than one submission, and enabling Commissioners to work remotely, with the consent of submitting States. The Meeting also decided to continue to consider the possibility of a full-time Commission, and to assess the Commission's workload. The Meeting urged nominating States to fulfil their obligations concerning their nominees for Commission membership, in accordance with Article 2 (5) of Annex II to the Convention. It also called upon States in a position to do so to make voluntary contributions to the trust fund established to pay the expenses of developing country representatives participating in the Commission's meeting.

F. Eleventh Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea (21 to 25 June 2010, UN Headquarters, New York)

39. The Eleventh Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (hereinafter Informal Consultative Process or ICP-11) took place at UN Headquarters in New York from 21 to 25 June 2010. The meeting was co-chaired by **Amb. Paul Badji (Senegal)** and Amb. Don Mackay (New Zealand), and as decided by the UN General Assembly vide its resolution 64/71 focused its discussions on capacity-building in ocean affairs and the law of the sea, including marine science.[17]

40. It may be noted that to confront growing threats and pressures from a wide range of issues facing the world's oceans, necessary capacity-building exercise to address ocean affairs and the law of the sea, including marine science is required. A lack of capacity can limit the ability of States, particularly developing countries, to protect the oceans and their resources from a wide variety of threats and pressures, such as marine pollution, biodiversity loss, climate change, crimes at sea and illegal, unreported and unregulated fishing. The Meeting based its discussions on the report of the Secretary-General (A/65/69) which describes the capacity building needs of States; examines the means for implementing capacity building activities and initiatives; and highlights implementation challenges and opportunities on the way forward. The meeting explored how to improve national and regional capabilities, including institution-building for effective implementation of the Law of the Sea, as well as measures for enhanced cooperation and coordination at all levels. The discussion at the meeting were structured on the following themes: Assessing the Need for Capacity Building in Ocean Affairs and the Law of the Sea, including Marine Science; New Approaches and Best Practices and Opportunities for Improved Capacity Building in Oceans and Law of the Sea; Overview of Capacity-Building Activities and Initiatives in Ocean Affairs and the Law of the Sea, including Marine Science and Transfer of Technology; Challenges for Achieving Effective Capacity Building in Ocean Affairs and the Law of the Sea, including Marine Science and Transfer of Technology. The recommendations made by the Informal Consultative Process would be submitted for the consideration of the Sixty-fifth Session of the UN General Assembly.

[17] Information mention in this part is drawn from "Capacity-Building in Ocean Affairs, Law of the Sea, including Marine Science to be focus of discussions at United Nations Headquarters, 21-25 June", UN Press Release, SEA/1944, 18 June 2010; and "Summary of the eleventh Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: 21-25 June 2010", *Earth Negotiations Bulletin*, vol. 25, no. 60, available online at: http://www.iisd.ca/oceans/icp11/.

G. Dispute Settlement under the UNCLOS

i. Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)

41. At a public sitting held at the ITLOS, on 17 December 2009, the President of the Special Chamber, constituted to deal with the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)* Judge P. C. Rao, read the Order adopted by the Chamber to discontinue the case, as requested by the Parties. The concerned Parties had informed the Tribunal about the "Understanding Concerning the Conservation of Swordfish Stocks in the South- Eastern Pacific Ocean", reached between negotiators for both Parties and their commitment to implement it. This brings to conclusion the decade long case before the Tribunal that was taken up by the Tribunal following an agreement between the Parties on 20 December 2000.[18]

ii. Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)

42. On 14 December 2009, proceedings were instituted before the Tribunal in relation to the delimitation of the maritime boundary in the Bay of Bengal between Bangladesh and Myanmar. It may be recalled that the dispute between the two countries had initially been submitted to an arbitral tribunal to be constituted under annex VII to the Convention, through a notification dated 8 October 2009, made by Bangladesh to Myanmar.

43. In a letter dated 13 December 2009 addressed to the President of the Tribunal, the Minister for Foreign Affairs of Bangladesh referred to the declaration issued by Myanmar on 4 November 2009 by which Myanmar "accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of dispute between the Union of Myanmar and the People's Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal" and transmitted to the Tribunal a declaration by Bangladesh dated 12 December 2009 by which Bangladesh "accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People's Republic of Bangladesh and the Union of Myanmar relating to the delimitation of their maritime boundary in the Bay of Bengal".

44. On the basis of these declarations, the Minister for Foreign Affairs of Bangladesh, in her letter dated 13 December 2009, stated that "[g]iven Bangladesh's and Myanmar's mutual consent to the jurisdiction of the International Tribunal for the Law of the Sea, and in accordance with the provisions of article 287 (4) of the United Nations Convention on the Law of the Sea, Bangladesh considers that your distinguished Tribunal is now the only forum for the resolution of the parties' dispute". In her letter, the Minister for Foreign Affairs of Bangladesh further stated that "Bangladesh respectfully invites the International Tribunal for the Law of the Sea to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar, which is the subject of Bangladesh's 8 October 2009 statement of claim".

[18] Information mentioned herein is drawn from: "Case Removed from Tribunal's List", ITLOS/Press/141, 17 December 2009.

45. In the light of the agreement of the parties, as expressed through their respective declarations, to submit to the Tribunal their dispute relating to the delimitation of their maritime boundary in the Bay of Bengal, and taking into account the invitation addressed to the Tribunal by Bangladesh "to exercise jurisdiction" over said dispute, the case has been entered in the list of cases of the Tribunal as case No. 16. Bangladesh is expected to file its Memorial by 1 July 2010, while the time-limit for the filing of Counter Memorial by Myanmar is set for 1 December 2010. [19]

iii. Appointment of Arbitrators in the Arbitral Proceedings Instituted to settle the Maritime Dispute between Bangladesh and India in the Bay of Bengal

46. The President of the ITLOS, Judge Jose Luis Jesus, on 12 February 2010, appointed three arbitrators to serve as members of the Annex VII arbitral tribunals instituted for the settlement of the maritime delimitation dispute between Bangladesh and India in the Bay of Bengal. The arbitrators are Rudiger Wolfrum (Germany), Tulio Treves (Italy) and Ivan Shearer (Australia). The President also appointed Rudiger Wolfrum as the president of the arbitral tribunal. These appointments were made in consultation with the two parties.

iv. Receiving of request for an Advisory Opinion by the Seabed Disputes Chamber of the ITLOS

47. The Seabed Disputes Chamber of the ITLOS has received its first request to render an Advisory Opinion from the Council of ISBA. The request was filed with the Registry on 14 May 2010. In accordance with Article 191 of the UNCLOS, the Assembly or Council of the ISBA may request the Seabed Disputes to give an advisory opinion on legal questions arising within the scope of their activities. This is the first advisory opinion that the Seabed Disputes Chamber has been called upon to render.[20]

III. Comments and Observations of the AALCO Secretariat

48. The number of States Parties, to the UN Convention on the Law of the Sea, having reached 160 is demonstrative of international community's efforts to benefit from a strong, universally accepted and implemented legal regime applicable to the oceans. It was essential to maintaining international peace and security, to sustainable use of ocean resources, and to the navigation and protection of marine environment. The integrity of the Convention should be safeguarded as it was the cornerstone of maritime order.

49. The focus of discussion at the eleventh meeting of the Informal Consultative Process on capacity-building in the areas of ocean affairs and the law of the sea, including marine science is timely. Such capacity building activities were of particular importance to the

[19] Information mentioned herein is drawn from: "Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal: Fixing of Time Limits", ITLOS/Press 142, 29 January 2010.

[20] The question on which the Seabed Disputes Chamber has been called upon to render Advisory Opinion has been set on p. 8 of this Report. Information mentioned herein is drawn from: "The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea Receives a Request for an Advisory Opinion", ITLOS/Press 147, 14 May 2010.

developing States and developing capacities contributes for their effective participation in economic activities. Such capacity building was necessary for the sustainable development of the oceans and seas nationally, regionally and globally. Priority should be given to strengthening institutions and standards, and providing least developed countries with the necessary human and technical tools to fully benefit from the Convention.

50. In view of the Commission's long-projected timeline and increasing workload, adoption of workable mechanisms to resolve those challenge were necessary. The solutions achieved by the twentieth meeting of States Parties are welcome step in this direction. However, questions remained with regard to the amount of resources required, their source and ways to effectively apply them so as to achieve results. In this regard, suggestion by the United Republic of Tanzania at the Twentieth Meeting of States Parties to consult with neighbouring countries before submitting disputes to the Commission, as a way to minimize disputes and reduce costs merits serious consideration.[21]

51. The adoption by the International Seabed Authority of regulations for the prospecting of polymetallic sulphides is laudable. These regulations provide a critical framework for the future and complement the progressive development of regulatory regimes governing activities in the area.

52. Continued armed piracy off the coast of Somalia remained an area of concern. Piracy was not only a threat to the freedom of seas, maritime trade, or to the security of maritime shipping, but it also endangered the lives of seafarers, affected national security and territorial integrity and hampered the economic development of the countries in the region. Further, it leads to artificial food shortage, thereby posing a security risk. There was a need for comprehensive and sustainable settlement of situation in Somalia. In this regard, the strengthening of national judicial systems and bringing perpetrators to justice was also essential. It also needs to be noted that apprehended pirates were mainly prosecuted in Kenyan courts, which placed a heavy financial and security burden on that country. In view of this the Kenyan call made at the Sixty-fourth Session of the UN General Assembly for other countries to participate in that endeavour needs to be seriously addressed.[22]

53. Recent oil spill in the Gulf of Mexico was a stark reminder to the need for vigil to preserve and protect the fragile marine environment. It also showed that there should be no room for complacency or delay in efforts to protect the marine environment.

54. The expression of concern by the African Group at the Sixty-fourth Session of the UN General Assembly regarding the fishing boats and trollers belonging to big corporations descending "merrily" on the African coastline and overexploiting maritime resources. Such behaviour was wiping out international efforts to protect endangered species. The global community therefore must pay more attention to illegal, unreported and unregulated fishing. Without action, the structures set up under the UNCLOS might well succumb to the "law of jungle".[23]

[21] *UN Press Release* SEA/1942, 17 June 2010.
[22] *UN Press Release* GA/10899, 4 December 2009.
[23] Statement by Benin on behalf of the African Group, Ibid.

V. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 2
8 August 2010

THE LAW OF THE SEA
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 2;

Recognizing the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and its legal framework governing the issues relating to the management of the oceans;

Mindful of the historical contribution made by the Asian-African Legal Consultative Organization in the elaboration of the UNCLOS;

Conscious that the AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements;

Hopeful that in view of the importance of the law of the sea issues, AALCO would maintain its consideration on the agenda item and continue to perform its historical role on the law of the sea matters;

Taking note of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

Welcoming the active role being played by the International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters;

1. **Reaffirms** that in accordance with the UNCLOS, the "Area" and its resources are the common heritage of mankind and should be used for the benefit of the mankind as a whole;

2. **Urges** the full and effective participation of its Member States in the work of the International Seabed Authority, the Commission on the Limits of Continental Shelf and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process so as to ensure and safeguard their legitimate interests;

3. D**ecides** to place this item on the provisional agenda at its Fiftieth Session.

THE STATUS AND TREATMENT OF REFUGEES
(*Non-Deliberated*)

CONTENTS

II. THE STATUS AND TREATMENT OF REFUGEES

I. INTRODUCTION

1. There are more Internally Displaced Persons [IDPs] than there are refugees in the world. But the level of attention given to the former by the international community is far less than that given to refugees, although both groups share a similar fate. The aftermath of the devastating December 2004 Tsunami in Asia and the January 2010 earthquake in Haiti provide a bleak but accurate picture of the plight of IDPs the world over. It is for these reasons that the United Nations (UN) and other humanitarian agencies have made IDPs a major concern on their agenda. This effort has not been very successful, if not inadequate, as the UN lacks a substantive programme for IDPs and depends largely on ad hoc policies informed by individual authorities on the subjects and the convictions of individuals or individual agencies on the ground. Due to this, there has been some cry for a formal UN organization that will assume direct responsibility for IDPs. It may be remembered here that AALCO has also worked in the past in the area of protection of IDPs within the broader context of refugees.

2. Though the United Nations High Commissioner for Refuges [UNHCR] is not mandated as such, to look after the plight of IDPs, there has been an expansion of UNHCR's role over the years to encompass additional responsibilities towards stateless persons and internally displaced persons.

3. There has been a longstanding discussion of the relationship between refugee and IDP protection. In legal terms, much of that discussion has focused on the fact that refugees are to be found outside their country of origin and have a distinct, internationally recognised status while IDPs remain within their own state and are entitled to enjoy the same rights as other citizens. In practical terms, refugees and IDPs are confronted by many of the same threats and problems: lack of adequate shelter, food, water, sanitation and health care; risk of sexual and gender-based violence; vulnerability to human smuggling and trafficking; and inadequate access to justice.

4. The problem of IDPs in the context of Africa is well-known. It is home to close to half of the total IDP population of the world. The African Union is historically committed to resolving the general problem of displacement in Africa. This commitment was originally rooted in the Organisation of African Unity's (OAU) struggle against colonialism and was more apparent towards refugees initially. Thus the Convention Governing the Specific Aspects of Refugee Problems in Africa was concluded in 1969 and a Bureau for Refugees was established as part of the institutional structure of the OAU.

5. Guided by a pan-African spirit, the African Union [AU] has taken a number of initiatives aimed at consolidating peace in the continent related to the prevention of forced displacement and solutions. From 1999, The International Conference on the Great Lakes Region, a joint UN-AU effort to address complex conflicts, displacement and underdevelopment in the Great Lakes region, led to the formulation and signing of

the *2006 Pact on Security, Stability and Development*. This Pact which came into force in 2008, represents the first multilateral instrument in the world to commit member States to adopt and implement the Guiding Principles through its Protocol on the Protection and Assistance of Internally Displaced Persons. This also provides the legal basis for the domestication of the Guiding Principles into national legislation. Even as this process was underway, the AU recognized the need to have an over-arching continent-wide legal framework on IDPs in Africa. This attempt to have a legally binding treaty on the rights and obligations of the IDPs bore fruit at the Special Summit on Refugees, Returnees and IDPs which was convened in October 2009 at Kampala, Uganda.

6. *The African Union Convention on the Protection and Assistance of Internally Displaced Persons* [otherwise known as Kampala Convention] was adopted by African governments in order to address the root causes and challenges of forced displacement on the African continent at a Special Summit in Kampala, Uganda.

7. Based on the United Nations Guiding Principles on Internal Displacement, the Convention seeks to protect the fundamental rights and freedoms of internally displaced persons, facilitate durable solutions to their displacement, and ensure that these individuals have an opportunity to lead dignified and productive lives. It also establishes a legal framework for cooperation among states, international and regional organizations, and civil society and other non-state actors to combat displacement and it consequences.

8. The Convention will enter into force as a legally binding instrument once it has been ratified by fifteen states of the African Union. At the present time, however, none of Convention's seventeen original signatories, including the three states that signed the Convention after the Special Summit in Kampala, have completed ratification in accordance with their national law and procedures.

9. The United Nations High Commissioner for Human Rights Navi Pillay has welcomed the adoption of the Convention saying, "It is very good to see Africa taking a leadership role in creating the first legally binding instrument to protect and assist internally displaced persons across the continent."

II. SALIENT FEATURES OF THE KAMPALA CONVENTION

10. The Kampala Convention, in its **Preamble**, underscores the need to "promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions." It notes the specific protection expertise of UNHCR and asks the organization to continue and reinforce its role in the protection of and assistance to IDPs.

11. The Convention outlines general provisions for the prevention of displacement. It summarizes measures aimed at preventing and mitigating internal displacement by eradicating the root causes, such as persistent and recurrent conflicts and the effects of natural disasters **(Article 3** and **4).**

12. The Convention requires states to modify their national criminal law in order to "declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity" (**Article 4(6))** – a measure that resonates positively with the need to restrict African states and non state actors' tendency to displace populations as a war or counter-insurgency strategy or in order to disenfranchise groups associated with political opposition.

13. Inclusion of civil society in the drafting process provided useful criticism and expertise that helped capture disparate causes of displacement and contextual challenges to effective response. Civil Society Organizations also helped refine the drafts by pointing out factual errors, aligning the Convention's obligations with provisions of the Guiding Principles and making suggestions on the language such as on obligations of armed groups.

14. The Convention also mandates the Parties to provide humanitarian assistance including food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services needed [**Article 9 (2)**]. The Convention recognizes the challenges to durable solutions such as land disputes, disputes relating to property of IDPs and lack of reconciliation. It provides for freedom to choose residence, and calls for "an effective legal framework to provide just and fair compensation" and for states to protect the individual property of IDPs **(Article 12).**

15. The Kampala Convention calls for registration of IDPs [**Article 13 (1)]**. This requirement is designed to address situations where governments minimise or otherwise manipulate numbers of IDPs or make it difficult for them to access assistance or social services.

16. In the Convention, states have also incorporated mechanisms to monitor compliance (**Article 14**), including a regular *Conference of State Parties* and regular reporting under the African Charter on Human and Peoples' Rights and the African Peer Review Mechanism. These internal and external mechanisms aim to provide oversight in the implementation of the Convention, safeguard against diplomatic rhetoric and ensure participation of stakeholders in remedying displacement situations governments may be unable or unwilling to respond to.

III. CHALLENGES AHEAD

17. The African responses to the needs of IDPs has come a long way. By agreeing to the first legally binding Continental treaty on IDPs, the African leaders have taken a bold step in dealing with what former UN Secretary-General Kofi Annan once described as "one of the great tragedies of our time".

18. AU Political Commissioner Julia Dolly Joiner said "the convention that has been adopted, the first of its kind by any regional group or organization in the world, is a unique, comprehensive and unequivocal response to the challenges of forced displacement. This instrument clearly demonstrates that African leaders are conscious of

the difficulties that displaced persons experience and are poised to, as much as possible, put and end to their suffering.".

19. However, to make the convention matter for the millions of African IDPs, political commitment by African leaders will be the most important ingredient. Hence, the need to ratify the Convention and make it a binding legal instrument is of extraordinary importance for the African States, at this stage. The issue of lack of capacity, financial as well as human resources required to implement the Convention is also critical in to addressing the problem of refugees.

20. AALCO would be analyzing the impact of this Kampala Convention as and when it comes into force in future. It also encourages its African Member States to ratify the Kampala Convention as early as possible so as to tackle the problem of IDPs in Africa, in an effective way. It also needs to be mentioned here that, while the countries of Africa are working hard to respond to the needs and vulnerabilities of IDPs, the international community of States must provide new and additional financial resources to them, which will enable them to tackle the problems of IDPs in a meaningful and comprehensive manner.

IV. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 3
8 August 2010

THE STATUS AND TREATMENT OF REFUGEES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 3;

Reaffirming the importance of the 1951 Convention relating to the Status of Refugees together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention of 1969, as the cornerstone of the international system for the protection of refugees;

Welcoming the adoption of the "The African Union Convention on the Protection and Assistance of Internally Displaced Persons" (the Kampala Convention) at Kampala, Uganda in October 2009;

Stressing the importance of international solidarity and burden-sharing in reinforcing the international protection of refugees:

1. **Condemns** all acts that pose a threat to the personal security and well-being of refugees and asylum-seekers, such as refoulement, unlawful expulsion and physical attacks, and calls upon all states of refuge, in cooperation with international organizations where appropriate, to take all necessary measures to ensure respect for the principles of refugee protection, including the humane treatment of asylum seekers;

2. **Calls upon** the international community to provide timely and speedy humanitarian assistance and support to countries affected by internal displacement to help them fulfill their responsibility towards the displaced;

3. **Also Calls upon** all States that have not yet done so to ratify/accede to and to implement fully the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and other relevant regional instrument including the recently adopted Kampala Convention;

4. **Decides** to place this item on the provisional agenda of its Fiftieth Session.

III. LEGAL PROTECTION OF MIGRANT WORKERS
(*Non-Deliberated*)

CONTENTS

III. LEGAL PROTECTION OF MIGRANT WORKERS

I. INTRODUCTION

1. The item entitled "Legal Protection of Migrant Workers" was included on the agenda of AALCO at the reference of the Government of Philippines during AALCO's Thirty-Fifth Annual Session held at Manila in 1996. Even since, it has been a subject of intense deliberations at various Annual Sessions of AALCO and occasionally in special meetings.

2. The resolution adopted at the Thirty-Sixth Session at Tehran in 1997 directed the AALCO Secretariat to study the utility of drafting a Model Legislation on the legal protection of migrant workers within the framework of the *1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* [the ICMW, 1990], international labour Conventions and Recommendations along with the relevant resolutions of the UN General Assembly. This was in accordance with the established practice of AALCO to adopt legal instruments in the nature of principles, guidelines or model legislations to enable Member States to incorporate internationally recognized principles into their national legal systems.

3. The Member States of AALCO were urged to transmit to the AALCO Secretariat their national legislations if any, on the situation of migrant workers. Both the Government of Sri Lanka and the Government of Philippines responded by reiterating the immense significance of having a model law on the topic. Be that as it may, the year 2000 saw a fresh impetus being given to the topic when AALCO entered into a Cooperation Agreement with the International Organization for Migration [IOM].

4. Against this backdrop, Resolution SP/1 "Special Meeting on Some Legal Aspects of Migration" adopted on 24th June, 2001 at the Fortieth Annual Session of AALCO *inter alia* directed the Secretariat to explore the feasibility of drafting a "Model Agreement for Cooperation Among Member States on Issues Related to Migrant Workers" and requested the Secretary-General to consider the possibility of convening an open-ended working group for an in-depth consideration of these issues. Pursuant to that mandate, a *draft Model Agreement*[1] was prepared by the Secretariat in collaboration with IOM. Useful input was also received from the Office of the High Commissioner for Human Rights (OHCHR). This agreement, which has a Preamble and twenty articles, is yet to be adopted formally by the Member States.

5. This AALCO Secretariat's Report for the current year focuses on the unfolding issue of the global financial and economic crisis and its impact on international migration. As the current global economic downturn continues to dampen overall demand for labour and opportunities for migration, the extent to which the crisis has affected

[1] The full name of which is : "Draft Regional model Cooperation Agreement Between States of Origin and States of Destination/Employment within AALCO Member States"

migrant workers and their families – in terms of joblessness and deportation, deteriorating working conditions and decline in remittances –merits particular attention. Hence the emphasis on the global economic meltdown and its impact on migratory movements.

6. Given the integration of international migration into the global economy, it is unsurprising that shocks to the economic system such as the current global financial crisis will affect international migration. The global financial and economic crisis has had severe consequences for the world of work. The global economy slowed down and contraction was announced in a number of national economies. It has also exposed weaknesses in the functioning of the global economy and led to calls for the reform of the international financial architecture. Although the crisis was triggered by events in the United States housing market, it has spread to all regions of the world with dire consequences for global trade, investment and growth. The effects of the unfolding global economic meltdown on the Asian-African States can be examined in terms of its direct effects emanating from the Western Countries as well as the indirect effects emanating from slowdown in global economic activity and international trade. However, here the emphasis is on its direct effects.

7. According to the International Labour Organization's (ILO) 2009 ***Global Employment Trends report*** (GET) there could be a dramatic increase in the number of people joining the ranks of the unemployed, working poor and those in vulnerable employment. Depending on the timeliness and effectiveness of recovery efforts, the GET envisages an increase in global unemployment in 2010 compared to 2007 by a range of 18 million to 30 million workers, and more than 50 million if the situation continues to deteriorate. Migrant workers may be especially vulnerable to these economic and labour market turbulences, since they often do not enjoy the same rights and protection as nationals of destination countries. This brief note aims to analyse the actual and potential impact of the global crisis on international migrant workers.

II. THE IMPACT OF THE GLOBAL ECONOMIC MELTDOWN ON INTERNATIONAL MIGRATION

A. Restrictions on New Admissions of Migrant Workers

8. Confronted with the most severe economic crisis in decades the governments in locations across the globe have embraced a range of policies to suppress the inflow of migrants, encourage their departure, and protect labour markets for native-born workers. A number of Countries including some developing countries have sought to restrict access to their labour markets by halting or at least decreasing the numbers of work permits for foreigners. Others such as United Kingdom have tightened their admission requirements. While the policy focus of many of these countries was on reducing the entry of low-skilled workers, the United States placed restrictions on some companies seeking to bring in the highly-skilled migrant workers. The adjustment of visa levels and entry requirements was not the only policy tool deployed by countries responding to the economic crisis. Others sought to make it harder for migrants to live and work illegally

by stepping up enforcement and curbing access to public services. Italy, for example, passed legislation criminalizing unlawful presence and preventing unauthorized migrants from accessing public services such as education and emergency medical care, while authorizing citizen patrols to assist police in combating crime and responding to immigration violations.

9. One of the more interesting policy responses has been the advent of "pay-to-go" schemes that encourage unemployed migrants to return home. According to this scheme, economic incentives such as paid one-way tickets home and lump sum payments typically pegged to unemployment insurance benefits in exchange for migrants' promise to leave the Country for some period or indefinitely, are offered.

B. Reduction of Remittances

10. The current global economic crisis had made a dent on migrant remittances even though they are considered more crisis-resilient than other financial flows. As the economic crisis has spread beyond its origins as a fairly localized real estate and construction bust in the United States, and as migrants have faced rising unemployment, international remittance flows have also slowed. But just as the economic crisis has taken an uneven toll across regions and countries, shifts in remittance flows have varied by region and country. For the first time in at least twenty years, the World Bank has predicted a decline in remittances flow for the year 2009, at best by 0.9 percent and at worst by six percent[2]. Decline in remittances have been reported in a number of developing countries of Asia and Africa including Morocco, Philippines and Sri Lanka. Similarly, across sub-Saharan Africa, the region of the world most dependent on remittances, an average reduction in remittances of 4.4 per cent has been reported during the first six months of 2009[3].

11. In addition, changes in exchange rates affecting currencies in significant destination countries (for example the US dollar, Pound Sterling and the Russian Ruble) are decreasing the value of remittances for families at home even where their volume remains constant. Decline in remittances have been reported in a number of countries. It has also been predicted that migrants may be less willing to send money through formal channels because of a lack of confidence in the stability of the banking systems, raising security concerns about the inability to monitor informal remittance channels.

C. Worsening Conditions of Work and Erosion of Migrant Workers' Rights

12. The global economic meltdown has adversely affected the working and living conditions of millions of workers throughout the world. Migrant workers are among the most vulnerable in periods of recession. Because of their relatively weak bargaining positions, heightened in some cases by the absence of legal documentation, they are often the first to be retrenched.

[2] World Bank, *Migration and Development*, Brief 8, 11 November, 2009.
[3] Khalid Koser, "*The Global Financial Crisis and International Migration: Policy Implications For Australia"*, (Lowy Institute for International Policy Working Paper, July, 2009)

13. Even if there are no job losses, migrant workers have been forced to accept lower wages and suffer poorer working conditions in an attempt to retain their jobs. According to past experience, "migrant workers, especially women workers and those in irregular status are among the hardest hit and most vulnerable during crisis situations". Increasing informalization of work and cutbacks in social protection are likely responses affecting migrants in general.

14. In times of crisis the key principles of equal treatment for migrant workers and a rights-based approach to managing labour migration need reinforcement. Origin and destination countries should craft policies responsive to the needs of all workers that guarantee at least minimum labour standards. Spain's return programme offers a model that both is responsive to the economic crisis and respects migrant rights. Protection of migrant workers is a key policy concern in the aftermath of job losses, consistent with the upholding of their basic human and working rights. While the loss of some migrant worker jobs may be unavoidable, what needs to be ensured is that all migrant workers obtain their wages and other dues. Moreover, arrangements for the portability of their social security contributions need to be promoted. Sporadic instances of discrimination against migrant workers and a rise in xenophobia have also been recorded in a number of Countries.

D. Irregular Migration

15. The impact of the global financial crisis on the situation of irregular migrants is complex. On the one hand there is some evidence of a reduction in the flow of irregular migrants, as potential migrants realize that the economic crisis is rapidly causing unemployment, on the other hand, some are predicting that this will result in increasing irregular migration at least in the medium term if informal labour markets expand as employers seek to make savings. It is also noted that the severe downturn in the world economy will push more migrants into the hands of traffickers as they seek better lives abroad.

16. While the impact of the global financial crisis on irregular migration flows remains unclear, the existing evidence is that stocks of irregular migration are increasing, as unemployed migrants remain in destination countries and seek to work without authorization, rather than return home to unemployment and the risk of not being granted a visa to come back again.

III. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

17. The current global financial and economic crisis underscores the importance of adopting protective policies for migrant workers in times of depression. Effective policies and measures to uphold migrants' rights must be put in place if we are to protect the rights of migrant workers in the current scenario. With this objective in mind, the final part of this Report comes up with some important policy measures or initiatives that could be taken by the States in dealing with this situation.

1. The application of labour laws to migrant workers could be closely monitored so as to ensure that legal conditions of work are respected. Labour laws and labour migration policies could incorporate provisions of international labour standards ratified by the concerned states.

2. In efforts to curb irregular migration the human rights provided for in the international human rights instruments could be observed strictly.

3. Financial resources could be transferred to countries whose economies and standards of living have been especially hit by the drop in worker's remittances.

4. Hostility towards migrant workers and xenophobia undermine social cohesion and stability. Destination countries, their governments, social partners and civil society organizations should step up their efforts to combat them.

5. Countries of origin could step up and expand their support to the protection of their migrant workers in the countries of destination.

18. The International Convention on the Protection of All Migrant Workers and Members of Their Families [ICMW, 1990] protects the human rights of all migrant workers at all stages of the migration process, in the country of origin, transit and employment by clarifying obligations of the State Parties. It recognises the specific vulnerabilities of migrant workers and promotes humane and lawful working and living conditions. It provides guidance on the elaboration of national migration policies based on respect for human rights and the rule of law. It sets out provisions to combat abuse and exploitation of migrant workers and members of their families throughout the migration process. Hence, the ICMW 1990 can provide solutions for the problems of today's international migration.

19. At this critical juncture, the importance of adhering to the ICMW, 1990 can hardly be overstated. On the occasion of the 20th anniversary of the adoption of the ICMW, a global campaign has been launched calling on governments to act immediately to end widespread human rights violations, suffered daily by migrants around the world, by ratifying this Convention. Since its adoption by the United Nations General Assembly on 18 December 1990, the Convention has only been ratified by 42 States[4]. Within the Member States of AALCO, 9 have ratified / acceded to the ICMW, whereas 4 States have only signed it[5]. AALCO urges all its Member States not Party to the ICMW 1990, to ratify it in order to enhance the level of protection accorded to the migrant workers in their societies.

20. It also needs to be reiterated here that the "draft Model Agreement" adopted by AALCO, and which has been referred to earlier in the report, if adopted by its Member States formally, would be an useful reference point for the Member States in framing

[4] See, Annex I , for the list of States Parties to the ICMW, 1990.
[5] See Annex I, for the list of AALCO Member States that are Parties to ICMW, 1990.

bilateral labour agreements between themselves. It could also be used as guidance for framing migration policies in the Member States of AALCO. Even though AALCO has been sending reminders to its Member States requesting them to give their inputs/suggestions on the draft, the response has only been inadequate. Hence, AALCO requests that Member States send their comments as early as possible to the Secretariat so that those can be incorporated and subsequently adopted formally by the Member States in the near future.

IV. ANNEXURES

ANNEX I

Participation of the AALCO Member States in the International Convention on the Rights of All Migrant Workers and Members of Their Families [ICMW, 1990]

Entry into Force: 1st July 2003.
Status: Signatories 31, Parties 42 [as of July 2, 2010]

Ratification Status of African Countries:

Country	Signature	Ratification [R] /Accession [A]
Botswana	--	--
Cameroon	**S**	
Egypt		**A**
Gambia	--	--
Ghana		**R**
Kenya	--	--
Libya		**A**
Mauritius	--	--
Nigeria		**A**
Senegal		**A**
Sierra Leone	**S**	
Somalia	--	--
South Africa	--	--
Sudan	--	--
Tanzania	--	--
Uganda		**A**

Ratification Status of Asian Countries:

Country	Signature	Ratification (R)/ Accession (A)
Bahrain	--	--
Bangladesh	**S**	
Brunei	--	--
China P.R.	--	--
Cyprus	--	--

India	--	--
Indonesia	**S**	
Iran	--	--
Iraq	--	--
Japan	--	--
Jordon	--	--
Korea D.P.R.	--	--
Korea, Rep.of	--	--
Kuwait	--	--
Lebanon	--	--
Malaysia	--	--
Mongolia	--	--
Myanmar	--	--
Nepal	--	--
Oman	--	--
Pakistan	--	--
Palestine	--	--
Qatar	--	--
Saudi Arabia	--	--
Singapore	--	--
Sri Lanka		**A**
Syria	--	**A**
Thailand	--	--
Turkey		**R**
U.A.E	--	--
Yemen	--	--

ANNEX II

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 5
8 August 2010

LEGAL PROTECTION OF MIGRANT WORKERS
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/ 2010/S 5;

Recognizing that international migration requires a holistic and coherent approach based on co-responsibility, which also at the same time addresses the root causes and consequences of migration;

Reaffirming the obligation of all States to promote and protect basic human rights and fundamental freedoms for all migrants and their families regardless of their migratory condition as provided for in various international legal instruments including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990);

Acknowledging that international migration has brought great benefits to migrants and their families, as well as to receiving countries and many communities of origin;

1. **Requests** all Member States, in conformity with their respective constitutional systems, to effectively promote and protect the human rights of all migrants, in conformity with the international legal instruments to which they are party;

2. **Encourages** governments to draw up and implement campaigns to combat the increasing instances of xenophobic acts and violence against migrants in the wake of the recent global financial crisis;

3. **Also encourages** Member States that have not yet done so to consider ratifying/acceding to the relevant international legal instruments on the situation of migrant workers, particularly the ICMW 1990; and

4. **Decides** to place this item on the provisional agenda of its Fiftieth Annual Session.

IV. EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES
(*Non-Deliberated)*

CONTENTS

IV. EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

I. INTRODUCTION

A. Background

1. The agenda item entitled, "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed first on the provisional agenda of the Thirty-Sixth Session at Tehran, 1997, following a reference made by the Government of Islamic Republic of Iran.

2. Thereafter the item had been considered at the successive sessions of the Organization.[1] The Forty-Eighth Annual Session of the Organization (Putrajaya, Malaysia, 2009) vide resolution AALCO/RES/48/S 6[2] directed the Secretariat "to continue to study legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States". The Resolution also urged upon the Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject.

3. The Secretariat in preparation of the study on this agenda item relies largely upon the materials and other relevant information furnished by the AALCO Member States. Such information provides useful inputs and facilitates the Secretariat in examining and drawing appropriate conclusions on the impact and legality of such extraterritorial application of national legislation, with special reference to sanctions imposed against third parties. The Secretariat acknowledges with gratitude the comments and observations in this regard received from the State of Kuwait, Republic of Korea, Republic of Mauritius and Japan.[3] In this regard, the Secretariat reiterates its request to the Member States to provide it with relevant legislation and other related information on this topic.

[1] It was last considered as a deliberated item at the Forty-Seventh Annual Session (HQ, New Delhi, 2008).
[2] For the full text of Resolution see AALCO, Report of the Forty-Eighth Annual Session (17-20 August 2009), Putrajaya, Malaysia, India, p.261a.
[3] The text of the views and comments received from these Member States have been reproduced in the Secretariat doc. AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 6 and Yearbook of AALCO, Vol. III (2005), pp. 802-807.

II. CURRENT DEVELOPMENTS: IMPOSITION OF SANCTIONS AGAINST AALCO MEMBER STATES

4. This section of the report covers the recent sanctions imposed against the AALCO Member States in the period between the Forty-Eighth (2009) and Forty-Ninth (2010) Annual Sessions, i.e., August 2009 and until June 2010.

A. Extension of Sanctions against Myanmar by the United States of America

5. It may be recalled that the United States of America (USA) had first imposed sanctions against Myanmar in September 1996 by issuing an Executive Order 13047 on 20 May 1997, certifying under the authority of the Foreign Operations, Export Financing, and Related Programs Act, 1997 and the International Emergency Economic Powers Act. This Executive Order prohibits "U.S. persons" from making new investments in Myanmar and facilitation of new investment in Myanmar by foreign persons. On 14 May 2009, the Government of the United States had extended the sanctions on Myanmar for one year which would include the prohibition of new investments.[4]

B. Extension of Sanctions against Syrian Arab Republic by the United States of America

6. In May 2004, the President signed Executive Order 13338 implementing the Syria Accountability and Lebanese Sovereignty Restoration Act which imposes a series of sanctions against Syrian Arab Republic for its alleged support for terrorism, involvement in Lebanon, weapons of mass destruction programs, and the destabilizing role it is playing in Iraq. In continuation to it, on 4 May 2010, the Government of U.S. extended its sanctions against Syrian Arab Republic for its alleged role in supporting terrorist organizations and pursuance of weapons of mass destruction and missile programmes.[5] In retaliation, the Syrian Government had strongly rejected all the allegations and criticized the sanctions imposed and stated that the U.S. action lost its credibility.[6]

C. Imposition of Sanctions against the Islamic Republic of Iran by the United States of America

7. It may be recalled that on 29 October 1987, the President of the U.S.A had issued an Executive Order 12613 imposing a new import embargo on Iranian-origin goods and services, on the alleged ground of Islamic Republic of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, pursuant to Section 505 of the International Security and Development Cooperation Act of 1985 ("ISDCA") which gave rise to the Iranian Transactions Regulations, Title 31, Part 560 of the U.S. Code of Federal Regulations (the "ITR").[7]

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[4] http://www.whitehouse.gov/the_press_office/Message-from-the-President-and-Notice-regarding-Burma/
[5] www.guardian.co.uk/world/2010/may/04/barack-obama-extends-sanctions-syria/
[6] http://www.jpost.com/LandedPages/PrintArticle.aspex?id=174756
[7] Details are drawn from: http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml

8. In 1995, the U.S. President issued an Executive Order 12957 prohibiting U.S. involvement with petroleum development in Iran. Further, he signed an Executive Order 12959, pursuant to the International Emergency Economic Powers Act ("IEEPA") as well as the ISDCA, substantially tightening sanctions against Iran. Later in 1997, the President signed Executive Order 13059 by confirming all trade and investment activities with Iran by U.S. persons, wherever located, are prohibited. Further in 2001, the President of the U.S. signed in to law H.R. 1954, the "ILSA Extension Act of 2001". The Act provides for a 5 year extension of the Iran and Libya Sanctions Act with amendments that affect certain of the investment provisions.

9. In June 2010, the Government of the United States of America had imposed fresh sanctions on dozens of Iranian firms and individuals and expanded its list of penalties. According to the White House, Treasury Secretary, Timothy Geithner, the US had designated Iran's Post Bank for its support of proliferation activities, bringing the number of Iranian—owned banks on US sanctions list to 16. Also, it announced adding five front companies and more than 90 ship names that Iran's national maritime carrier has been allegedly using to try to evade sanctions.[8]

10. Replying to the sanctions imposed against Islamic Republic of Iran, the Russian President criticized the US Government for acting unilaterally.[9] Also reacting strongly and disapproving the unilateral sanctions imposed by the US against the Islamic Republic of Iran, the Foreign Secretary of the Government of India observed that: "We are justifiably concerned that the extra-territorial nature of certain unilateral sanctions recently imposed by individual countries, with their restrictions on investment by third countries in Iran's energy sector, can have a direct and adverse impact on Indian companies and more importantly, on our energy security and our attempts to meet the development needs of our people.[10] The Government of the People's Republic of China denounced the new unilateral sanctions on Iran by U.S. and noted that the US and other parties have unilaterally put in place further sanctions on Iran.[11]

III. CONSIDERATION OF THE RESOLUTION ON THE "NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA", AT THE SIXTY-FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

11. On 28 October 2009, the United Nations General Assembly voted overwhelmingly in favour of ending the United States trade embargo, which had created human suffering and wrecked havoc with the economy of the island nation, Cuba. The 192-Member Assembly in its resolution urged the lifting of stiff commercial, financial and economic sanctions that were slapped on Cuba in the aftermath of the cold war. This marked the eighteenth year the world body had adopted a similar resolution on the

[8] http://timesofindia.indiatimes.com//articleshow/6057511.cms?
[9] http://news.bbc.co.uk/2/hi/world/us_and_canada/10348630.stm
[10] The Hindu Newspaper dated 6.07.2010. Also available in http://www.thehindu.com/2010/07/06/stories/2010070661701300.htm
[11] http://www.reuters.com/article/idUSTRE66517420100706

issue.[12] The resolution was adopted by a recorded vote of 187 in favour to 3 against with 2 abstentions.[13]

12. The resolution expressed its concern at the continued promulgation and application by Member States of laws and regulations, such as that promulgated on 12 March 1996 known as the "Helms-Burton Act", the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation.

13. Further, the resolution urged the Member States to put an end to the trade embargo on Cuba, which, among other things, called on all States to refrain from promulgating laws in breach of freedom of trade and navigation, and urged Governments that had such laws and measures to repeal, or invalidate them. It also requested the Secretary-General to report in the light of the purposes and principles of the Charter and international law and to submit it to the General Assembly at its sixty-fifth session.

A. Statements of AALCO Member States

14. The representative of **Sudan**, speaking on behalf of the Group of 77 developing countries and **People's Republic of China**, said his delegation had always been firmly against the embargo and, at the Second South Summit in 2005, had firmly rejected the imposition of laws and regulations with extraterritorial impact and all other coercive measures. At the thirty-third annual meeting on 25 September 2009, the Ministers for Foreign Affairs of the "Group of 77" had also reiterated their firm rejection of the imposition of such laws, emphasizing that such actions not only undermined Charter principles and international law, but severely threatened the freedom of trade and investment. They called on States to neither recognize nor apply such measures.

15. The representative of the **Arab Republic of Egypt**, speaking on behalf of the Non-Aligned Movement, renewed his commitment to defend, preserve and promote the United Nations Charter and international law, as well as to promote, preserve and strengthen multilateralism and its decision-making process. He rejected the adoption of extraterritorial or unilateral measures or laws, including unilateral economic sanctions or other illegal measures contrary to international law that sought to exert pressure on Non-Aligned countries.

16. Such measures aimed to prevent those countries from exercising their right to decide by their own free will, their own political, economic and social systems. In accordance with international law, the Non-Aligned Movement supported the claim of affected States to compensation for damage incurred as a consequence of the implementation of extraterritorial or unilateral coercive measures.

[12] UN Press Release, "General Assembly, For Eighteenth Consecutive Year, Overwhelmingly Calls for End to United States Economic, Trade Embargo Against Cuba", GA/10877 dated 28 October 2009.
[13] A/RES/64/6 dated 1 December 2009.

17. The delegation also recalled that during a summit in Sharm el-Sheikh, Egypt adopted an exceptional declaration that reflected the importance the Non-Aligned Movement attached to the issue. In conclusion, he expressed concern over the widening of the extraterritorial nature of the embargo and urged the United States Government to end it.

18. The representative of the **People's Republic of China** regretted that even though for 17 consecutive years, the General Assembly had adopted consecutive resolutions urging all countries to repeal or invalidate all laws and measures that compromised the sovereignty of other States, those resolutions had not been effectively implemented. The result had been that the long-term economic, commercial and financial embargo against Cuba was still in place. Not only did the United States embargo against the Caribbean island nation constitute a serious violation of the purposes and principles of the United Nations Charter, it also immensely undermined the Cuban people's rights to survival and development.

19. The representative of **India** said that for the past 17 consecutive years, the General Assembly had deliberated on this agenda item and had categorically rejected the imposition of laws and regulations with extraterritorial impact. The repeated resolutions remained unimplemented and the nearly 50-year embargo had continued. In the report of the Secretary-General, various United Nations entities detailed the impact of the embargo. In addition, the Resident Coordinator in Havana had noted that humanitarian and development coordination implemented by the United Nations system was significantly affected by the embargo. It also affected the functioning of United Nations offices and travel of staff.

20. India was encouraged by the steps announced by the United States President to ease restrictions on travel and remittances to Cuba, and on United States telecommunications. He looked forward to the full lifting of the embargo and related sanctions against Cuba.

21. The representative of **Indonesia** said relations between States would be constantly tested by "waves of change". Highlighting the spirit of global partnership, laid out in the Millennium Declaration and 2002 Monterrey Consensus, he said that such commitments urged countries to set aside differences and work for the common good of billions of people. One area for cooperation that would be mutually beneficial was in the implementation of the Millennium Development Goals, and the United States could bring much needed assistance by lifting its embargo.

22. As such, he reiterated the call made at the fifteenth Summit of the Non-Aligned Movement to bring an immediate end to the embargo in the name of humanity. Indeed, that would help Cuba, a developing country, continue its efforts to eradicate poverty and hunger, and bring hope of prosperity to millions of Cubans. Dialogue and negotiation were the most viable solution to resolve disagreements and the Charter clearly stipulated its preference for that avenue of peace. Despite that the issue had been on the Assembly's agenda for many years, tangible results had yet to be seen. "This year, we

have reason to be optimistic," he said, as steps were being taken. He expressed hope that the once icy relations between the two neighbours would come to an end and that a new era of cooperation would blossom in coming years.

23. The representative of the **Republic of South Africa** said his Government continued to support the resolution before the Assembly today, as the embargo's relentless actions had caused untold suffering. Last year's vote on the resolution was testimony that the time had come for it to be lifted. Indeed, the time to end the embargo was long overdue and South Africa's position was guided by the norms of international law to help bring about an end to coercive measures. The continued imposition of the embargo violated the sovereign equality of States, and South Africa joined majority of countries in expressing its opposition to the embargo.

24. The embargo was an obstacle to Cuba's economic and social development, and he urged adherence to United Nations Charter principles. Further, it was unacceptable that Cuba had been prevented from integrating into the world trade system, especially as the harsh global financial climate had only worsened Cubans' fate. South Africa welcomed the rapprochement initiated by current United States Administration, and called on Washington to end the embargo and engage in meaningful dialogue. His Government would join majority of States in supporting the draft resolution.

25. The representative of the **Democratic People's Republic of Korea** said that the United State's unilateral sanctions on Cuba gravely violated the principles of sovereignty, territorial integrity and non-interference as enshrined in the United Nations Charter and international law. The United State's cruel embargo, which he described as "a silent economic war against the people of Cuba" was, illegal and inhumane. He said coercive, unilateral measures that served one's own sinister political interests and imposed economic and social systems, could not be justified or tolerated in any shape or form.

26. He recalled that over the last 17 years, the General Assembly had adopted numerous resolutions calling for an immediate end to the unilateral embargo, with overwhelming support from most Member States. He urged the United States to snap out of its cold war mentality and to conform to people's expectations by demonstrating its will to better relations with Cuba. His country systematically opposed all forms of interference, threats of force and sanctions against sovereign States and urged the United States to lift the embargo on Cuba and to pay reparations for decades of economic loss that had crippled the island. In this regard, his country supported the draft resolution before the Assembly, and stood by Cuba in its quest to defend its sovereignty and to attain economic and social growth and prosperity.

27. The representative of the **Islamic Republic of Iran** stated that the embargo seriously undermined the collective force of the Member States to achieve growth. Despite so many calls from the Assembly, the Human Rights Council and several major United Nations conferences, the unilateral measures continued to be imposed with all their negative impacts. Iran repeated its long-standing position that the

embargo ran counter to the principles of international law governing relations among States and contradicted the letter and spirit of the Charter.

28. He said that the blockade against Cuba was in blatant violation of the internationally agreed principles governing relations among States, such as the sovereign equality of States, non-intervention in their internal affairs, and freedom of international trade and navigation. The measures continued to adversely impact the living conditions and human rights of the Cuban people and hampered the Government's efforts to eradicate poverty and hunger and achieve the Millennium Goals, he said.

B. Explanation after Vote on the Resolution

29. The representative of **Ghana** stated that the embargo had created negative impacts on Cubans. Despite the fact that the Assembly had demanded an end to it, such unilateral measures were still being implemented. For its part, Ghana had refrained from applying laws with extraterritorial effects. He welcomed that the United States had reduced travel restrictions to Cuba as such measures would promote good cooperation between the two countries. He also commended Cubans for their resilience in difficult economic and social conditions.

30. The representative of the **Syrian Arab Republic** noted that the United Nations Charter enshrined the right to sovereignty and non-interference in internal affairs, and that the United States contributed to the drafting of the Charter. In light of that, the embargo and the tightening of it ran counter to the Charter and the rules and principles on inter-State relations. The embargo also ran in opposition to the integrity of States and sovereignty. The 49-year-old embargo was "unprecedented and unheard of in multilateral relations", she said, and exposed Cuba to economic problems and placed the United States into direct conflict with the international community.

31. The representative of the **Libyan Arab Jamahiriya** said the blockade reduced Cuba's capacity to import its medical and agricultural needs and hindered its development. The imposition of those unilateral measures violated international law and did not contribute to solving disputes between States. Libya opposed violence in all forms, including blockades. The United States Government's decision to ease unilateral measures was a reason for optimism. His delegation had voted in favour of the text.

32. Speaking on explanation of vote, after the vote, the representative of **Uganda** aligned with the Group of 77 developing countries and China. "The embargo is unjustified. It has had an adverse impact on the people of Cuba for too long," he said, adding that unilateral measures with extraterritorial application were inconsistent with the United Nations Charter, as well as with international and humanitarian law.

33. The representative of the **United Republic of Tanzania,** aligning himself with the Group of 77 developing countries and China, and with the Non-Aligned Movement, said his delegation supported the resolution to end the embargo because economic and political realities between the two countries warranted that. Contact between the two

countries was crucial, notably in the area of trade and people-to-people communication. Welcoming the lifting of travel restrictions, he said that confidence-building measures should be developed on both sides after the embargo's removal.

IV. CONSIDERATION OF THE MINISTERIAL DECLARATION ADOPTED BY THE THIRTY-THIRD ANNUAL MEETING OF THE MINISTERS OF FOREIGN AFFAIRS OF GROUP OF 77 (NEW YORK, 25 SEPTEMBER 2009)

34. The Ministers of Foreign Affairs of the Member States of the Group of 77 and China met at the United Nations Headquarters in New York on 25 September 2009 on the occasion of their 33rd Annual Meeting to review the world economic situation and to address the development challenges facing developing countries. It had adopted a Declaration which *inter alia* stated that:

> The Ministers firmly rejected the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries, and reiterated the urgent need to eliminate them immediately. They emphasized that such actions not only undermine the principles enshrined in the Charter of the United Nations and international law, but also severely threaten the freedom of trade and investment. They, therefore, called on the international community neither to recognize these measures nor apply them.[14]

V. CONSIDERATION OF ASPECTS RELATED TO THE AGENDA ITEM AT THE XV SUMMIT OF THE HEADS AND GOVERNMENT OF NON-ALIGNED MOVEMENT (NAM) (SHARM EL SHEIKH, ARAB REPUBLIC OF EGYPT 11-16 JULY 2009)

35. The XV Summit of the Heads of State and Government of Non-Aligned Movement (NAM), was held in Sharm El Sheikh, Arab Republic of Egypt, from 11 to 16 July 2009. The Summit was held to address the existing, new and emerging global issues of collective concern and interest to the Movement, with a view to generating the necessary responses and initiatives thereof. In this regard, they reaffirmed and underscored the Movement's abiding faith in and strong commitment to its founding principles, ideals and purposes, particularly in establishing a peaceful and prosperous world and a just and equitable world order as well as to the purposes and principles enshrined in the United Nations Charter.

36. The Heads of State and Government of NAM reaffirmed and underscored the continued relevance and validity of the Movement's principled positions concerning international law,[15] as follows:

[14] Para 39 of the Ministerial Declaration, visit http://www.g77.org/doc/Declaration2009.htm

[15] See, Final Document of the XV Summit of Heads and Government of Non-Aligned Meeting, Arab Republic of Egypt, dated 16 July 2009, NAM 2009/FD/DOC.1

> The Heads of State and Government *remained* concern at the unilateral exercise of extra-territorial criminal and civil jurisdiction of national courts not emanating from international treaties and other obligations arising from international law, including international humanitarian law. In this regard, they *condemned* the enactment of politically motivated laws at the national level directed against other States, and *stressed* the negative impact of such measures on the rule of international law as well as on international relations, and *called for* the cessation of all such measures;
>
> The Heads of State and Government *reiterated* the need to eliminate unilateral application of economic and trade measures by one State against another that affect the free flow of international trade. They *urged* States that have and continue to apply such laws and measures to refrain from promulgating and applying them in conformity with their obligations under the Charter of the United Nations and international law, which, inter alia, *reaffirm* the freedom of trade and navigation.[16]

37. Recognising the serious danger and threats posed by the actions and measures which seek to undermine international law and international legal instruments, as well as consistent with and guided by the Movement's principled positions thereof, the Heads of State and Government agreed to undertake the following measures, among others:

> Firmly *oppose* the unilateral evaluation and certification of the conduct of States as a means of exerting pressure on Non-Aligned Countries and other developing countries;
>
> Refrain from recognising, adopting or implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on Non-Aligned Countries – threatening their sovereignty and independence, and their freedom of trade and investment – and prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the UN Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States;[17] and in this regard, *oppose and condemn* these measures or laws and their continued application, persevere with efforts to effectively reverse them and *urge* other States to do likewise, as called for by the General Assembly and other UN organs; *request* States applying these measures or laws to revoke them fully and immediately;
>
> Oppose all attempts to introduce new concepts of international law aimed at internationalising certain elements contained in the so-called extra-territorial laws of certain States through multilateral agreements;[18]
>
> Consistent with and guided by the afore-mentioned principled positions and *affirming* the need to promote, defend and preserve these positions, the Heads of State and Government *agreed* to undertake the following measures, among others:

[16] Ibid, Para 17.1 and 17.2

17 These include the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations" adopted by the General Assembly on 24 October 1970.

[18] Ibid 18, Para 18.1, 18.2, and 18.3

Oppose unilateralism and unilaterally imposed measures by certain States – which can lead to the erosion and violation of the UN Charter and international law, the use and threat of use of force, and pressure and coercive measures – as a means to achieving their national policy objectives;

38. The Heads of State and Government reiterated their strong concern at the growing resort to unilateralism and unilaterally imposed measures that undermine the UN Charter and international law, and further reiterated its commitment to promoting, preserving and strengthening multilateralism and the multilateral decision making process through the UN, by strictly adhering to its Charter and international law, with the aim of creating a just and equitable world order and global democratic governance, and not one based on monopoly by the powerful few.

39. Consistent with and guided by the afore-mentioned principled positions and affirming the need to defend, preserve and promote these positions, the Heads of State and Government agreed to undertake the following measures:

- Continue promoting the rejection of and the adoption of concrete actions against the enforcement of unilateral coercive economic measures at the several multilateral fora where NAM and G-77 are involved.

- Oppose unilateralism and unilaterally imposed measures by certain States – which can lead to the erosion and violation of the UN Charter and international law, the use and threat of use of force, and pressure and coercive measures – as a means to achieving their national policy objectives.

40. The Heads of State and Government reaffirmed that democracy and good governance at the national and international levels, development and respect for all human rights and fundamental freedoms, in particular the right to development, are interdependent and mutually reinforcing. Adoption, for any cause or consideration, of coercive unilateral measures, rules and policies against the developing countries constitute flagrant violations of the basic rights of their populations. It is essential for States to promote efforts to combat extreme poverty and hunger (Millennium Development Goals 1) as well as foster participation by the poorest members of society in decision-making processes.

41. Finally, the Heads of State and Government reaffirmed the objective of making the right to development a reality for everyone as set out in the UN Millennium Declaration, and give due consideration to the negative impact of unilateral economic and financial coercive measures on the realization of the right to development.

VI. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

42. Any legislation of a State to impose unilateral extraterritorial sanctions blatantly negates the principles enshrined in the Charter of the United Nations and the rules of international law. In addition to contravening the relevant provisions of the Charter of the United Nations, that attitude challenges freedom of trade, navigation and movement of capital, which has a considerable impact on the economic and human development of targeted States. It is also to be noted that the imposition of extraterritorial measures is gross violation of the principles of sovereign equality of States and non-intervention in the internal affairs of another State and the right to development.

43. Every State has an inalienable right to define its own model of the development of society. Any unilateral attempts by States to change the internal political system of other States using military, political, economic or other measures of pressure are unacceptable.

44. The unilateral sanctions have a particularly adverse effect on the sovereignty of other nations owing to its extraterritorial nature. Unfortunately, the target of sanctions imposed by the United States of America happens to be developing countries, particularly from Asia and Africa. Many of AALCO Member States have been and are prime targets of such unilateral imposition of sanctions having extraterritorial effects. These practices tend to have a very demoralizing effect on the innocent people of those countries who feel alienated and discriminated against in the fields of trade and economic relations particularly.

45. The States should reject application of such unilateral measures as tools for political or economic pressure against any country, because of the negative effects on the realization of all human rights of vast sector of their populations, *inter alia*, children, women, the elderly, and disabled and ill people; reaffirmed, in the context, the right of peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

46. AALCO has been consistently considering the implications of the "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties", since 1997. The Secretariat studies on the agenda item and the deliberations at successive sessions of the Organization affirm that such legislations apart from being at variance with the various rules and principles of international law and disrupts economic cooperation and commercial relations of the target States with other States. Therefore, it is the duty of free and independent States to continue to oppose the illegal extra-territorial application of national legislations of other States.

VII. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 6
8 AUGUST 2010

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty- Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 6;

Recalling its Resolutions RES/36/6 of 7 May 1997, RES/37/5 of 18 April 1998, RES/38/6 of 23 April 1999, RES/39/5 of 23 February 2000, RES/40/5 of 24 June 2001, RES/41/6 of 19 July 2002, RES/42/6 of 20 June 2003, RES/43/6 of 25 June 2004, RES/44/6 of 1 July 2005, RES/45/S 6 of 8 April 2006, RES/46/S 7 of 6 July 2007, RES/47/S 6 of 4 July 2008, RES/48/S 6 of 20 August 2009 on the subject;

Recognizing the significance and implications of the above subject;

Expressing its concern that the imposition of unilateral sanctions on third parties is not in conformity with the Charter of the United Nations and the general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development;

Also expressing its deepest concern as regards the imposition against the AALCO Member States with additional and new series of sanctions against Union of Myanmar, Syrian Arab Republic and Islamic Republic of Iran by the Government of the United States of America;

Being aware that extraterritorial application of national legislation in an increasingly interdependent world retards the progress of the Sanctioned State and impedes the establishment of an equitable, multilateral, non-discriminatory rule-based trading regime;

Reaffirming the importance of adherence to the rules of international law in international relations;

1. **Directs** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States;

2. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject; and

3. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

V. INTERNATIONAL TERRORISM
(*Non-Deliberated*)

CONTENTS

V. INTERNATIONAL TERRORISM

I. Introduction

A. Background

1. The Charter of the United Nations sets out the purposes of the Organization, which include the maintenance of international peace and security, to take collective measures to prevent threats to peace and suppress aggression and to promote human rights and economic development. As an assault on the principles of law and order, human rights and the peaceful settlement of disputes, terrorism runs counter to the principles and purposes that define the United Nations. The United Nations has been taking concrete steps to address the threat of terrorism, helping Member States to counter this scourge.

2. Several international legal instruments were adopted addressing certain specific acts of terrorism, which are also known as Sectoral Conventions.[1] However, the adoption of the historic Declaration on "Measures to Eliminate International Terrorism" by the General Assembly at its 49th Session on 9th December 1994[2] gave impetus to the active consideration of the issues involved. At its 51st Session, the General Assembly adopted a Supplement to its 1994 Declaration and established an Ad Hoc Committee[3] with the mandate to elaborate an International Convention for the Suppression of Terrorist Bombings and another one on Suppression of Acts of Nuclear Terrorism. Following that

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1 These conventions are: 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft; signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969). 2. Convention for the Suppression of Unlawful Seizure of Aircraft; signed at The Hague on 16 December 1970 (entered into force on 14 October 1971). 3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 23 September 1971 (entered into force on 26 January 1973). 4. Convention on the Prevention and punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977). 5. International Convention against the Taking of Hostages; adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983). 6. Convention on the physical Protection of Nuclear Material; signed at Vienna on 3 march 1980 (entered into force on 8 February 1987). 7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). 8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 10. Convention on the Marking of Plastic Explosives for the Purpose of Detection; signed at Montreal on 1 March 1991 (entered into force on 21 June 1998). 11. International Convention for the Suppression of Terrorist Bombings; adopted by the General Assembly of the United Nations on 15 December 1997 (entered into force on 23 May 2001). 12. International Convention for the Suppression of the Financing of Terrorism; adopted by the General Assembly of the United Nations on 9 December 1999 (entered into force on 10 April 2002). 13. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005.

2 A/RES/49/60.

3 A/RES/51/210.

mandate, the Ad Hoc Committee met twice during the year 1997 and completed its work on the International Convention for the Suppression of Terrorist Bombings, which later was adopted by the General Assembly at its 52nd Session on 15 December 1997.[4] In the meantime, at its 53rd Session, the General Assembly initiated consideration of a draft Convention for the Suppression of Financing of Terrorism taking as a basis for discussion the draft text submitted by the delegation of France to the Sixth Committee. The Convention was adopted by the General Assembly on 9th December 1999[5]. The matters concerning elaboration of an International Convention for the Suppression of Acts of Nuclear Terrorism have been discussed extensively in the subsequent meetings of the Ad Hoc Committee and its Working Group. The UN General Assembly adopted the Convention on 13 April 2005.

3. At the 53rd Session, the General Assembly decided that the negotiations on the draft Comprehensive Convention on International Terrorism based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In addition, it would also take up the question of convening a high level conference under the auspices of the United Nations to address these issues. Pursuant to that mandate, a Working Group of the Sixth Committee in its meeting held from 25th September to 6th October 2000 considered the draft Comprehensive Convention on International Terrorism as proposed by India. Since then the matter has been under active consideration of the Ad Hoc Committee and the Sixth Committee of the UN General Assembly.

4. The item entitled "International Terrorism" was placed on the agenda of the AALCO's Fortieth Session held in New Delhi from 20-24 June 2001, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the comprehensive convention on international terrorism. The successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee of negotiations related to the drafting of a comprehensive international convention to combat terrorism; and requested the Secretariat to carry out, an in-depth study on this topic. The Centre for Research and Training (CRT) has brought *A Preliminary Study on the Concept of International Terrorism* in the Year 2006.

II. Ad Hoc Committee on International Terrorism

A. Background

5. In 1996, the General Assembly, in resolution 51/210 of 17 December, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal

[4] A/RES/52/164.
[5] A/RES/54/109.

framework of conventions dealing with international terrorism. This mandate continues to be renewed and revised on an annual basis by the General Assembly in its resolutions on the topic of measures to eliminate international terrorism.

6. The Ad Hoc Committee's mandate is further framed by the following two declarations adopted by the General Assembly:

- the Declaration on *Measures to Eliminate International Terrorism, Res. 49/60 of 9 December 1994*; and
- the Declaration to Supplement the 1994 Declaration on *Measures to Eliminate International Terrorism, Res. 51/210 of 17 December 1996*.

B. Ad Hoc Committee's work

7. Since its establishment, the Ad Hoc Committee has negotiated several texts resulting in the adoption of three treaties:

- the *International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly in resolution 52/164 of 15 December 1997*;
- the *International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly in resolution 54/109 of 9 December 1999*; and
- the *International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly in resolution 59/290 of 13 April 2005*.

By the end of 2000, work had begun on a draft comprehensive convention on international terrorism.[6]

C. Mandate of the Ad Hoc Committee

8. Under the terms of General Assembly resolution 62/71 adopted on 6 December 2007 (operative paragraph 22), the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and should continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

D. Discussion on the Draft Comprehensive Convention on International Terrorism at the Thirteenth (29 June to 2 July 2009) and Fourteenth Session of the Ad Hoc Committee (12 to 16 April 2010)

9. The Thirteenth Session of the Ad Hoc Committee[7] held two plenary meetings: the 42nd on 29 June and the 43rd on 2 July 2009. At the 42nd meeting, adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the same meeting, the Committee held a general exchange of views

[6] For an indication of subsequent developments concerning the negotiations of the draft comprehensive convention refer the UN Document A/57/37, A/59/894, A/C.6/60/L.6, A/61/37, A/C.6/61/SR.21, A/62/37 and A/C.6/62/SR.16.

[7] A/64/37

on the draft comprehensive convention and on the question of convening a high-level conference. The informal consultations regarding the draft comprehensive convention on international terrorism were held on 29 June and informal contacts were held on 29 and 30 June. On 29 June and on 2 July, the Coordinator of the draft convention, Maria Telalian (Greece), made statements briefing delegations on the informal contacts held intersessionally on 23 June 2009 and during the current session, respectively. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 30 June. At the same meeting, the Ad Hoc Committee adopted the report on its thirteenth session.

10. At its 43rd meeting, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the sixty-fourth session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

11. During the general exchange of views at the 42nd meeting and informal consultations on 29 June 2009, delegations reiterated the importance of an early conclusion to the draft comprehensive convention on international terrorism. It was mentioned that time was propitious to reach a solution reflecting the common expectations and interests of all delegations and that the momentum had to be seized. It was further mentioned that the adoption of a comprehensive convention would strengthen the moral authority of the United Nations. While some delegations highlighted the law enforcement character of the instrument, several delegations expressed the view that the draft convention would complete and strengthen the current legal regime by creating an effective additional tool and fostering coordination among States in the struggle against terrorism. With regard to the outstanding issues surrounding the draft convention, several delegations underlined that the deliberations should focus on the scope of application of the convention, notably on draft article 18. Several delegations also emphasized the need for the comprehensive convention to include a clear legal definition of terrorism. In this regard, some delegations pointed out the necessity to distinguish between acts of terrorism and the legitimate struggle of people in the exercise of their right to self-determination by people under foreign occupation and colonial or alien domination.

12. The Fourteenth Session of the Ad Hoc Committee[8] held three plenary meetings: the 44th and 45th on 12 April and the 46th on 16 April 2010. 8. At the 44th meeting, the Ad Hoc Committee adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the 44th and 45th meetings, the Committee held a general exchange of views on the draft comprehensive convention and on the question of convening a high-level conference. The informal consultations regarding the draft comprehensive convention on international terrorism were held on 12 and 13 April and informal discussions were held on 12, 13 and 14 April.

[8] A/65/37

On 12 and 16 April, the Coordinator of the draft convention, Maria Telalian, made statements briefing delegations on the informal contacts held intersessionally on 9 April 2010 and during the current session, respectively. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 13 April discussions. At the 46th meeting, on 16 April, the Ad Hoc Committee adopted the report on its fourteenth session.

13. At its 46th meeting, on 16 April, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the sixty-fifth session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high level conference under the auspices of the United Nations.

III. Developments in Counter Terrorism Committee (CTC)

A. Background

14. The Counter-Terrorism Committee (CTC) derives its mandate from Security Council resolution 1373 (2001), which was adopted unanimously on 28 September 2001. The Committee is monitoring the implementation of its anti-terrorism mandates and it is made up of all 15 members of the Security Council. The Committee monitors the implementation of resolution 1373 (2001) by all States and tries to increase the capability of States to fight terrorism. The CTC is charged with ensuring every State's compliance with Council requirements to halt terrorist activity, and with identifying weakness in state's capabilities to do so. For States with deficiencies in legislation, funds, or personnel, the CTC is supposed to help them remedy their deficiencies and upgrade their capacity. However, where the Committee concludes that the deficiencies are in political will, it will leave it to the Security Council to decide what measures to take to bring such determinedly non-compliant States into compliance with the 1373 mandates.

15. Seeking to revitalize the Committee's work, in 2004 the Security Council adopted resolution 1535, creating the Counter-Terrorism Committee Executive Directorate (CTED) to provide the CTC with expert advice on all areas covered by resolution 1373. CTED was established also with the aim of facilitating technical assistance to countries, as well as promoting closer cooperation and coordination both within the UN system of organizations and among regional and intergovernmental bodies. During the September 2005 World Summit at the United Nations, the Security Council – meeting at the level of Heads of States or Government for just the third time in its history – adopted resolution 1624 concerning incitement to commit acts of terrorism. The resolution also stressed the obligations of countries to comply with international human rights laws.

B. Technical Guide to the Implementation of the Security Council Resolution 1373 (2001)

16. In accordance with Security Council resolution 1535 (2004), the Counter-Terrorism Committee Executive Directorate (CTED) is required to assist the Counter-Terrorism Committee in its efforts to monitor the implementation by Member States of Security Council resolution 1373 (2001). In this connection, the Committee requested CTED to prepare the technical guide to serve as a reference tool and to help ensure consistent analysis of States' implementation efforts. The following areas are covered in the guide.

- Terrorist financing
- Border security, arms trafficking and law enforcement
  -Border security
- The principle sources of international norms and standards are as follows:
  -Customs and cargo security
  -Aviation security
  -Maritime security
  -Immigration
  -Refugee procedures
  -Arms trafficking
  -Law enforcement
- General legal issues, including legislation, extradition, and mutual legal assistance
- Human rights aspects of counter-terrorism in the context of resolution 1373 (2001)

IV. Deliberations on the Comprehensive Convention on International Terrorism at the Sixth Committee of UN General Assembly at its 64th Session (2009)

A. Background

17. The item "Measures to Eliminate International Terrorism" was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General (A/8791 and Add.1 and Add.1/Corr.1). At that session, the Assembly decided to establish the Ad Hoc Committee on International Terrorism, consisting of 35 members (resolution 3034 (XXVII)). At its fifty-first session, the General Assembly established an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism (resolution 51/210).

B. Consideration at the Sixty-Fourth Session

18. **Mr. Rohan Perera** (Sri Lanka) (Chairman of the Working Group on measures to eliminate international terrorism), reporting on the outcome of the Working Group's meetings, stated that in keeping with its established practice, the Working Group had decided that members of the Bureau of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 would continue to act as friends of the Chairman during the meetings of the Working Group. Accordingly, Ms. Telalian (Greece), Ms. Rodriguez Piñeda (Guatemala), Ms. Negm (Egypt) and Mr. Xhoi (Albania) had served as friends of the Chairman.

19. The Working Group had held two meetings, on 9 and 15 October 2009, as well as three informal consultations, on 9, 12 and 22 October 2009. At its first meeting, the Working Group had adopted its work programme and had decided to proceed with its discussion of outstanding issues relating to the draft comprehensive convention and then consider the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

20. At its second meeting, summarizing the results of the informal consultations on the draft comprehensive convention, he informed that the Coordinator had recalled that she had already had an opportunity in the past to offer the background context and rationale for the elements of a possible package that had been presented in 2007. The Coordinator had also drawn attention to the elements of the package proposal made in 2007 and had invited delegations to make specific comments on those elements, bearing in mind the points she had raised regarding the way forward, which were intended to facilitate the attainment of common ground and were based on a number of considerations raised in discussions on the draft convention over the years.

21. Secondly, in addressing the material scope of the convention, the approach taken in the negotiating process had been patterned on an approach that sought to (a) proscribe, as comprehensively as possible, through inclusionary clauses, the particular conduct; and then (b) provide particular exclusionary "safeguards" in respect of certain activities. Instead of having the exclusions as part of the material scope proscribing particular conduct, as was done in some regional regimes, the approach in the current negotiations was that such exclusions formed the essence of "applicable or choice of law" and "without prejudice" clauses. That approach had been agreed upon following intense debates and delicate negotiations.

22. Thirdly, the interpretation and application of the convention were the primary responsibility of the parties to the convention. The Coordinator had indicated that achievements of the Ad Hoc Committee and the Working Group had advanced processes elsewhere, for example, developments that had led to amendments to some sectoral instruments negotiated by the International Maritime Organization and the International Atomic Energy Agency. The Coordinator had then made suggestions on the way forward for consideration of the negotiating process. Firstly, it had been recalled that in the

negotiations the inclusionary elements of draft article 2 had been considered to be closely linked to the exclusionary elements, by way of the applicable law and "without prejudice" clauses of draft article 18. Accordingly, in moving forward, it would be useful to consider the placement of article 18 closer to article 2, as was the case with the International Convention for the Suppression of Acts of Nuclear Terrorism. It had also been recalled that in the negotiations, the notion that a "comprehensive convention" was being elaborated had heightened certain expectations.

23. As to the outstanding issues surrounding the draft convention, some delegations had expressed support for the exclusionary approach currently taken in draft article 18 and had stressed that any text must respect the integrity of international humanitarian law. While some delegations had expressed their willingness to continue considering the 2007 proposal made by the Coordinator, they had also reiterated their preference for earlier proposals made with regard to draft articles 18 and 2.

24. In response to the suggestion to remove the word "comprehensive" from the title of the draft convention to attenuate some of the concerns raised during the negotiations, some delegations had expressed a preference for resolving the outstanding issues in a manner which would leave the title intact. The point had been made that renumbering the draft articles could assist States in better contextualizing the issues at hand.

25. Several delegations had expressed concern over the circulation of the texts, which they had considered might entail substantive and procedural implications for the negotiations. It had also been pointed out that the new texts could add an element of confusion to the negotiation process and contained changes that had not yet been agreed upon. On the other hand, some other delegations had welcomed the circulation of the texts and had expressed the view that they would facilitate discussions and, in particular, assist new delegations in better understanding the outstanding issues. The view had also been expressed that placing the 2007 proposal of the Coordinator together with other proposals detracted attention from the focus the Coordinator's proposal required.

26. Several delegations had stressed that the draft convention should be considered as a law enforcement instrument for enhanced cooperation and coordination among States in the fight against terrorism and had reiterated their willingness to continue considering the 2007 proposal as the basis for negotiations. Some delegations had reiterated that they accepted the 2007 proposal because they considered that it constituted a package.

27. With regard to the question of impunity, the Coordinator had emphasized that activities of military forces of a State in peacetime should not remain unpunished and that States should prosecute perpetrators on the basis of other laws. She had further stated that the draft convention was a law enforcement instrument and that it could not address State terrorism. Several delegations had stressed the need to take decisive steps forward on the draft convention and bring the long-standing negotiation process to a closure.

28. Turning to the question of the convening of a high-level conference, the Chairman said that at the second meeting of the Working Group, on 15 October 2009, the sponsor delegation of Egypt had recalled the reasons behind its proposal to convene a high-level conference and had emphasized in particular the serious nature of the threat of terrorism

to individuals and societies. Several delegations had reiterated their support for the proposal made by the Egyptian delegation and had emphasized that the convening of the conference should not be linked to the completion of work on the draft comprehensive convention.

V. Comments and Observations of AALCO Secretariat

29. International terrorism poses a threat to international peace and security, as well as to human life and dignity. Terrorist activities by any individual, groups, non-State entities or States have to be checked by all possible means. Furthermore, any attempt to link terrorism with any religion, race, culture or ethnic origin should be rejected.

30. The fight against international terrorism should be conducted in conformity with international law, including the Charter of the United Nations, as well as relevant instruments concerning international human rights law, international humanitarian law and international refugee law. It is a positive step that a draft Comprehensive Convention on International Terrorism is being discussed by Member States of the United Nations which may reflect the views of the whole international community. However, it should be pointed out that counter-terrorism initiatives should not be used as a pretext for interfering in the domestic affairs of other countries. Each country's sovereignty and territorial integrity should be respected and should not be violated under any circumstances. The United Nations has an indispensable role to play in any action against terrorism. Cooperation of the international community is vital to win the fight against terrorism.

31. Defining terrorism itself is a major task. Although it has diverse versions, there is a growing demand that it needs a universally acceptable definition to solve the problem. The definition may be drafted in such a manner that the root causes and underlying factors of terrorism should be taken into account, as well as protection of human rights and fundamental freedoms. The definition of terrorism may be possible on the basis of experts' views and with the support of various countries. In addition, AALCO Member States can contribute more usefully by working together in the on-going negotiations on the "Draft Comprehensive Convention on International Terrorism", particularly as regards finding an acceptable definition of "terrorism".

32. International terrorism is a vital issue in the global scenario. Greater cooperation and coordination amongst all the UN Member States is highly essential to combat the threat posed by international terrorism. In this direction, Member States of AALCO may consider ratifying/acceding to the existing international counter terrorism conventions, including the 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism; and 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. National implementation and enforcement mechanisms, including legislations are crucial in the fight against terrorism. Further, mutual legal assistance in counter-terrorism and criminal matters are of much significance.

VI. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 7
8 AUGUST 2010

INTERNATIONAL TERRORISM
(Non-deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 7;

Recalling the relevant international instruments, where applicable, and resolutions of the United Nations General Assembly and the Security Council relating to measures to eliminate international terrorism and the efforts to prevent, combat and eliminate terrorism;

Taking note of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly of the United Nations by its resolution 51/210 of 17 December 1996 to elaborate a Comprehensive Convention on International Terrorism based on the proposal made by the Republic of India;

Expressing grave concern about the worldwide increase in acts of terrorism, which threaten the life and security of innocent people and impede the economic development of the concerned States;

Recognizing the need for the international community to collectively combat terrorism in all its forms and manifestations;

Reaffirming that international effort to eliminate terrorism must be strengthened in accordance with the Charter of the United Nations and taking into account international human rights law, international humanitarian law, and refugee law;

Calling for an early conclusion and the adoption of a comprehensive convention on international terrorism by expediting the elaboration of a universally acceptable definition of terrorism:

1. **Encourages** Member States to consider ratifying/acceding to the relevant conventions on terrorism;

2. **Also encourages** Member States to participate in the work of the above mentioned Ad Hoc Committee on International Terrorism;

3. **Directs** the Secretariat to follow and report on the progress of work in the Ad Hoc Committee on International Terrorism;

4. **Also directs** the Secretariat to collect national legislation on combating terrorism to facilitate exchange of information among Member States;

5. **Requests** the Secretary-General to hold seminars and joint activities in cooperation with other international organizations, especially UNODC, on dealing with the legal aspects of combating terrorism; and

6. **Decides** to place the item on the provisional agenda of its Fiftieth Annual Session.

VI. ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

(*Non-Deliberated*)

CONTENTS

VI. ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

I. INTRODUCTION

A. Background

1. The Government of Republic of Indonesia proposed the topic "Establishing Cooperation against Trafficking in Women and Children" on the agenda of the AALCO at its Fortieth Annual Session held in New Delhi, in June 2001. Considering the relevance of this topic and impact of this problem on the countries in the Asian and African region, this topic was included in the agenda item of AALCO's Work Programme. At global level, the legal regime that embodies on combating this crime is United Nations Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which were adopted in the year 2000. The Convention entered into force on 29 September 2003. The Convention has 155 State Parties and 42 AALCO Member States are either parties or signatories to it. The Trafficking in Persons Protocol came into force on 25 December 2003 and as of 30 June 2010 has 139 countries as State Parties and 34 Member States of AALCO are either parties or signatories to it.

2. At the Forty-Third Annual Session of AALCO, held in June 2004 in Bali, Republic of Indonesia, a resolution (RES/43/SP 1) adopted after in-depth and thought provoking presentations and discussions at the Special Meeting on the topic, reiterated *inter alia*, the request for Member States, who are not a party to the Convention and its Protocol, to consider becoming parties to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It further requested Member States to transmit to the AALCO Secretariat their national legislations, if any, on this subject.[1] Also, the resolution directed the Secretary-General to develop, in cooperation with Member States, a Model Law for the criminalization of trafficking in persons as well as protection of victims of trafficking, before, during and after criminal proceedings, based on human rights approach with a view to developing a concrete action plan for a joint effort against trafficking in persons, specially women and children.[2]

3. As a preliminary initiative of fulfilling the mandate entrusted via the said resolution towards drafting a Model Law, the Secretariat studied the national legislations received from the Member States of AALCO in the light of the Protocol to Suppress, Punish and Prevent Trafficking in Persons, prepared an outline with a view to developing

[1] So far the Secretariat has received responses from the following Member States relating to their respective national legislations on the topic: **Tanzania, Sultanate of Oman, Singapore, People's Republic of China, Republic of Korea, Republic of Indonesia, Republic of Uganda, Philippines, Japan, Mauritius, Cyprus, Ghana, Qatar, United Arab Emirates, Sudan, Nepal, Lebanon, Myanmar, Syrian Arab Republic, Arab Republic of Egypt, Malaysia, Thailand and Kuwait.**

[2] Operative Para 9 of the Resolution (RES/43/SP1).

a concrete action plan for a joint effort against trafficking in persons, especially women and children. Accordingly an outline of the model law in the form of addendum was presented at the Forty-Forth Session, for consideration of the Member States.

4. During the Forty-Fourth Annual Session of the AALCO in Nairobi, Kenya, in June-July 2005, delegations reiterated and emphasized on the urgent need for cooperation within the framework of the Convention and the Protocol. Most of the delegations affirmed the need for the model legislation on this issue. Thereafter, at the Forty-Fifth Annual Session of the AALCO at Headquarters, New Delhi, India in April 2006, the Secretariat presented a draft model legislation consisting of Preamble and five draft articles. The delegates from various Member States had an in-depth discussion on this topic. Further, at the Forty-Sixth Annual Session of AALCO at Cape Town, Republic of South Africa, in July 2007, the Secretariat, revised the draft model legislation and presented the a set of Preamble and five draft articles. At the Forty-Seventh Annual Session, the Secretariat report had briefly traced the nexus between trafficking and international migration issues, and had requested its Member States for having safe migration laws and rules in its territory. The Secretariat report for the Forty-Eighth Annual Session highlighted Women's rights that are affected while being trafficked; the International legal instruments that cover their rights and the legal obligations of the States in ensuring their rights.

5. For the present Annual Session, the Secretariat report covers the important developments that have occurred since the conclusion of the Forty-Eighth Annual Session of AALCO. These include summation of Nineteenth Session of the Commission on Crime Prevention and Criminal Justice, Twelfth Crime Congress, Forty-Fourth Session of the Commission on Status of Women, and overview of the half-day Special Meeting on "Transnational Migration: Trafficking in Persons and Smuggling of Migrants" held in conjunction with the Forty-Eighth Annual Session of AALCO in Putrajaya, Malaysia in 2009.

B. Deliberations at the Forty-Eighth Annual Session of AALCO (Putrajaya, Malaysia, 2009)

6. During the Forty-Eighth Annual Session of AALCO, held in Putrajaya, Malaysia, from 17-20 August 2009, a half-day Special Meeting was jointly organized by AALCO and the Government of Malaysia on "Transnational Migration: Trafficking in Persons and Smuggling of Migrants" on 19 August 2009[3]. His Excellency Tan Sri Abdul Gani Patail, President of the Forty-Eighth Annual Session of AALCO gave a brief outline of the topic. The President while enumerating the importance of the topic said that it is an undeniable fact that no AALCO Member State could claim to be untouched by the problems associated with transnational migration of their peoples. It was explained that the key differences between the trafficking and smuggling was exploitation. It was observed that in order to resolve the challenges arising from the transnational nature of these offences was coordination and cooperation between and among the law

[3] See Report of the Forty-Eighth Session: 17-20 August 2009, Putrajaya, Malaysia, document no. AALCO/48/PUTRAJAYA/2009/REP, available at AALCO website www.aalco.int.

enforcement agencies of the affected countries, be they source, transit or destination countries.

7. The Secretary-General of AALCO in his introductory statement stated that AALCO had been constantly making efforts to legally enable its Member States about the issues involved in those crimes. The Panelists from three countries namely, Malaysia, Ghana and Indonesia dealt with the issue in detail. Mr. Tun Abd. Majid Bin Tun Hamzah, Head of the Prosecution Division, Attorney-General's Chambers, Malaysia elaborated the measures taken by the Government of Malaysia in order to combat trafficking in persons and smuggling of migrants in his country. He also gave factual evidences of various criminal cases that were charged against the perpetrators of the crime. Mr. Ebo Barton Ordo**,** the Vice-President of the Forty-Eighth Annual Session of AALCO in his capacity as Deputy Attorney General of Ghana, reviewed the issues related to trafficking and smuggling of people, with great emphasis on irregular migrant and victims of trafficking being considered as another commodity in a larger realm of criminal commerce that often involved other commodities such as narcotics, weapons and money-laundering. He expressed concern that trafficking had become a global organized crime like, linking groups and forming complex networks.

8. The third panelists, Mr. Adam Mulawarman Tugio, Deputy Director, International Treaties for Political, Security and Territorial Affairs, Department of Foreign Affairs, Republic of Indonesia, discussed about Indonesia's initiatives to combat trafficking in persons. On those lines, he stated that Indonesia had been cooperating at both international levels by establishing the Joint border committees and at regional level through the Bali Process. In his opinion trafficking in human beings was a severe violation of human security and dignity of the person.

9. The following Member States made brief remarks at the half-day Special Meeting, namely; People's Republic of China, Sultanate of Oman, Thailand, Sri Lanka, Myanmar, Japan, Republic of South Africa, Arab Republic of Egypt, Nepal, Islamic Republic of Iran, India, Qatar, Malaysia and Kingdom of Bahrain. There was a proposal to constitute a committee of experts under the auspices of AALCO, on mutual legal assistance in criminal matters. At this juncture, it was pointed out that AALCO should work in cooperation with ASEAN and SSARC Convention. The following observers also made the statements, namely, Algeria and the UNHCR**.**

II. RECENT DEVELOPMENTS

A. 19th Session of the Commission on Crime Prevention and Criminal Justice (4 December 2009 and 17-21 May 2010, Vienna, Austria)

10. The United Nations General Assembly (via its resolution 64/180) requested the Commission on Crime Prevention and Criminal Justice[4] to give high priority at its nineteenth session to considering the conclusions and recommendations of the Twelfth

[4] See United Nations Commission on Crime Prevention and Criminal Justice: Report on the nineteenth session (4 December 2009 and 17-21 May 2010) document no. E/2010/30, E/CN.15/2010/20.

United Nations Crime Prevention and Criminal Justice Congress (Twelfth Congress) in order to recommend through the Economic and Social Council, appropriate follow-up by the General Assembly at its sixty-fifth session in 2010.

11. The main areas of focus were (i) Thematic discussion on protection against illicit trafficking in cultural property, (ii) Integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice, (iii) World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, (iv) Consideration of the conclusions and recommendations of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice; and (v) Use and application of United Nations standards and norms in crime prevention and criminal justice.

12. On the world crime trends, it was noted that challenges in the area of crime and criminal justice statistics included the limited capacity of some Member States to collect and disseminate crime-related data, the need to increase the rate of response to surveys and the need to improve the coherence of the data provided by Member States. It was noted that international efforts to fight crime needed to evolve as dynamically as the corresponding crime threats and that the United Nations was the platform from which the international community could develop legal responses to those challenges. During deliberations, delegates highlighted the importance of national capacities for the collection and analysis of crime-related data and provided examples of the use of centralized databases and the Web to store and disseminate national-level crime statistics. Such advanced measures, availability and accessibility of information are of particular importance to all the nations.

B. Twelfth United Nations Congress on Crime Prevention and Criminal Justice (12-19 April 2010, Salvador, Brazil)

13. The Twelfth United Nations Congress on Crime Prevention and Criminal Justice was held in Salvador, Brazil, from 12 to 19 April 2010.The United Nations General Assembly (via its resolution 64/180) requested the Commission on Crime Prevention and Criminal Justice to give high priority at its nineteenth session to considering the conclusions and recommendations of the Twelfth Congress, with a view to recommending, through the Economic and Social Council, appropriate follow-up by the General Assembly at its sixty-fifth session.

14. The Twelfth Congress adopted a report, containing the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*,[5] alongwith the conclusions and recommendations of the Congress on the various substantive items of its agenda and the outcome of the workshops and so on. The Declaration reflects international

[5] The text of the Salvador Declaration is annexed as part of the Report of the 19th Session of the Commission on Crime Prevention and Criminal Justice, Item 6 of the Provisional Agenda on Consideration of the conclusions and recommendations of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice: Note by the Secretariat, document no. E/CN.15/2010/11.

community's political will to define common strategies in addressing sensitive aspects and emerging challenges in the field of crime prevention and criminal justice. Briefly, the significant portions of the Salvador Declaration are as following: (a) the feasibility of negotiating a new international instrument against cybercrime; (b) need to address better on the protection of rights of prisoners; (c) highlighting the negative impacts of organized crime on human rights, the rule of law, security and development, and its link with other criminal activities and in some cases terrorist activities; (d) need to adopt measures on the challenge posed by emerging forms of crime that have a significant impact on the environment; (e) the need to respond effectively to cases of violence against migrants, migrant workers and their families; and (f) to ensure respect for human rights, protection of victims of crime and enhance international cooperation for combating emerging world crimes.

15. One of the items for deliberation for the Congress was on "*Criminal Justice responses to the Smuggling of Migrants and Trafficking in Persons: Links to Transnational organized Crime*".[6] Recognizing that smuggling of migrants and trafficking in persons are serious manifestations of transnational and other forms of organized crime, it was essential to deal with this issue.

16. The nexus between both in terms of capturing the complexity of them is to think of each of them as a transactional network. Though there are common elements yet there are differences between these criminal activities. The driving economic force behind trafficking in persons is the proceeds derived from the exploitation of the victims while in smuggling, the smuggling fee paid by the migrant is the major source of revenue, and there is usually no continuing relationship between the offender and the migrant once the latter has arrived at his or her destination. Therefore, when using the network approach, it is important to understand that one or more agents can fulfil each of the roles and there is a need to break the same channel.

17. The measures for (i) investigation, prosecution and adjudication of trafficking in persons and smuggling of migrants, (ii) protection of victims, and (iii) prevention were also listed out. While analysing from a criminal justice perspective, it was stated that the challenge was to dismantle the smuggling networks and address the conditions in which they can flourish while protecting the rights of smuggled migrants. Further, without organized criminal groups that smuggle migrants are dismantled, they would continue to operate more quickly and adapt to any contemporary developments introduced by the States in terms of methods and routes to changing circumstances.

C. Fifty-Fourth session of the Commission on Status of Women (1-12 March 2010, UN Headquarters, New York)

18. The Fifty-Fourth session of the Commission on Status of Women (CSW) was held at UN Headquarters, during March 2010. The main area of focus for this session was on the gender perspectives on global public health: implementing the internationally

[6] See Criminal Justice responses to the Smuggling of Migrants and Trafficking in Persons: Links to Transnational organized Crime, document no. A/CONF.213/7.

agreed development goals, including the Millennium Development Goals. The issue for focussed deliberation was on the "Follow-up to the Fourth World Conference on Women and to the twenty-third special session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century". Under this topic, Joint work plan of the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights[7] was discussed.

19. The Joint work plan for the year 2010 considered of: (i) promotion of the human rights of women and mainstreaming of gender perspectives in the field of human rights, (ii) technical cooperation, advisory services and meetings, (iii) awareness – raising and outreach, and (iv) inter-agency cooperation. Under Follow-up to the Fourth World Conference on Women and to the Twenty-third special session of the General Assembly, another interesting agenda item was on the *Women's economic empowerment in the context of the global economic and financial crisis.*[8] The report highlights that women's economic empowerment is necessary for equitable and sustainable economic growth and development. This could be attained through education, employment so that deeply entrenched gender inequality could be wiped out. Promotion of gender quality in education and health, does not necessarily lead to equitable outcomes for women and men in labour market. Therefore, women's participation in labour market is essential for their economic empowerment. Such empowerment though increased still raises concerns in terms of low wages, vulnerable employment, underlining limited job stability and lack of social protection. The current global financial and economic crisis poses a challenge to progress made in gender equality in many ways, like increasing unemployment particularly that affects certain groups as migrant workers, domestic workers etc. the financial and economic crisis presents an opportunity to implement and strengthen gender-sensitive policies, programmes and strategies.

20. In the closing remarks H. E. Garen Nazarian, Chair of the Commission on the Status of Women stated that celebrating 15-year anniversary of the Beijing Declaration and Platform for Action, the Commission has played a very vital and vibrant role in terms of gender equality and empowerment of women. Also, it is a strong political signal of Commissions unwavering commitment to the full and effective implementation of the Platform for Action.

III. COMMENTS AND OBSERVATION OF THE AALCO SECRETARIAT

21. The recent developments drawn from different International Organizations, especially the United Nations Congress on Crime Prevention and Criminal Justice shows efforts taken by the international community in combating this crime in all its manifestations. The emphasis *inter alia*, on the overlapping issues between trafficking in persons and smuggling of migrants which poses serious threat to security as well as human rights issues, fulfills the need to address this issue from a networks approach. It is

[7] See Joint workplan of the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights, document no. A/HRC/13/70-E/CN.6/2010/7.

[8] See Women's economic empowerment in the context of the global economic and financial crisis, document no. E/CN.6/2010/CRP.8.

a matter of appreciation that AALCO Member States have been making all efforts to combat this crime. It is essential to pay serious attention to the need to accord protection to the victim's human rights while addressing the means to deal with trafficking in persons and smuggling of migrants. Cooperation at international, regional and bilateral level is essential to deal with these problems. The Model Law against Trafficking in Persons finalized and launched by the United Nations Office on Drugs and Crime (UNODC) is an important document that could be studied as a guideline while adopting national legislations on this issue.

IV. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 8
8 AUGUST 2010

ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 8,

Being mindful of the increasing number of individuals being exploited through trafficking in persons and smuggling of migrants, including from the Asian-African region;

Convinced of the need to eliminate all forms of trafficking in persons and smuggling of migrants and bearing in mind the overlapping nature between trafficking in persons and smugglings of migrants, which are flagrant violations of human rights;

Taking note of the continuing efforts of Member States in combating trafficking in persons and smuggling of migrants, and encouraging them to inform and update the AALCO Secretariat of pertinent developments in their respective States, in order to share experience amongst Member States;

Being aware of the on-going work on a model legislation as mandated by the Forty-Third Annual Session of AALCO held in Bali, Republic of Indonesia in 2004 by the AALCO Secretariat;

Acknowledging with appreciation that some Member States have submitted to the AALCO Secretariat their national legislations and other relevant information related to the topic, and urges other Member States to do the same;

1. **Encourages** the Member States which are not yet party to consider ratifying/acceding to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000;

2. **Directs** the Secretariat to monitor and report on the developments in this regard, including the work undertaken by other fora;

3. **Mandates** the Secretary-General to constitute an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States for their further consideration; and

4. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

VII. REPORT ON THE WORK OF THE UNCITRAL AND OTHER INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW
(Non-Deliberated)

CONTENTS

VII. REPORT ON THE WORK OF UNCITRAL AND OTHER INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW

I. INTRODUCTION

1. The issues concerning International Trade Law were first included in the agenda of the Asian-African Legal Consultative Organization (AALCO) at the Third (Colombo) Session in 1960, pursuant to a reference made by the Government of India. At the Fourth Session, 1961 (Tokyo), the topic "Conflict of Laws relating to Sales and Purchases in Commercial Transactions between States or their Nationals" was considered by the Member States.

2. The United Nations Commission on International Trade Law (UNCITRAL), which was constituted by the United Nations General Assembly resolution No. 2205 (XXI), held it's First Session in New York in 1968 and the major items which were selected for study and consideration by the UNCITRAL included the topic of "International Sale of Goods". At the Second Session of the UNCITRAL in 1969, the representatives of Ghana and India suggested that the then Asian-African Legal Consultative Committee (AALCC) should revive its consideration of the subject of the International Sale of Goods so as to reflect the Asian-African view point in the work of the UNCITAL.[1] Upon that request, the then AALCC considered it as priority item at the Eleventh Session held in Accra (Ghana) in 1970.

3. At its Eleventh Session (1970), the Organization also decided upon the establishment of a Standing Sub-Committee to deal with economic and trade law matters as a regular feature of its activities and official relations were established with the UNCITRAL in the year 1971, which have since resulted in fruitful and effective collaboration between the two Organizations in several areas of trade law. From then onwards, AALCO started considering the issues pertaining to international trade law and the international organizations dealing with such matters, viz., United Nations Conference on Trade and Development (UNCTAD), International Institute for the Unification of Private Law (UNIDROIT) and Hague Conference on Private International Law (HCCH).

4. Until 2003, the Organization considered the agenda entitled, "Progress Report concerning the Legislative Activities of the United Nations and other Organizations in the field of International Trade Law". At the Forty-Third (Bali) Session, 2004, the title had been changed to the "Report on the Work of UNCITRAL and other International Organizations in the Field of International Trade Law" so as to focus more upon the work of UNCITRAL.[2]

5. This report prepared by the AALCO Secretariat is intended to provide an overview of the work of UNCITRAL and other International Organizations engaged in the field of international trade law. The Organizations covered in the report are:

(A) UNCITRAL (United Nations Commission on International Trade Law)

[1] AALCC Report of the Eleventh Session held in Accra (Ghana), 19-29 January 1970, p. 259.

[2] For the other agenda items on this topic, See, Table-III- Substantive Matters Considered at the AALCO Annual Sessions, in *Fifty Years of AALCO: Commemorative Essays in International Law* (New Delhi, 2007).

(B) UNCTAD (United Nations Conference on Trade and Development)

(C) UNIDROIT (International Institute for the Unification of Private Law)

(D) HCCH (Hague Conference on Private International Law)

II. REPORT ON THE WORK OF UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) AT ITS FORTY-SECOND SESSION IN THE YEAR 2009

A. Introduction

6. The General Assembly of the United Nations, in the year 1966, by its Resolution 2205 (XXI) established the United Nations Commission on International Trade Law (hereinafter referred to as 'UNCITRAL' or 'Commission') as the primary organ of the United Nations system to harmonize and develop progressive rules in the area of international trade law. A substantial part of the Commission's work is carried out in meetings of the Working Groups, while the Commission meets annually to review and adopt recommendations towards guiding the progress of work on the various topics on its agenda. The Commission is also mandated to submit an annual report to the General Assembly, as to the tasks accomplished at its sessions.[3]

7. The forty-second session of the UNCITRAL was held in New York from 29 June to 17 July 2009. The Commission had on its agenda, *inter alia*, the following topics for consideration:

(i) Finalization and adoption of UNCITRAL Notes on Cooperation, Communication and Coordination in Cross-border Insolvency Proceedings,

(ii) Draft UNCITRAL Model Law on Public Procurement,

(iii) Arbitration and Conciliation,

(iv) Insolvency Law, and

(v) Security Interests.

8. This brief report is primarily focused on examining the UNCITRAL's deliberations at its forty-second session on the above topics. Some of the notable achievements of this session, *inter alia*, were the finalization and adoption of UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation and Consideration of the Revised Model Law on Public Procurement of Goods.[4]

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[3] As on 21 June 2010, the UNCITRAL is composed of 60 Member States: Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belarus, Benin, Bolivia, **Botswana**, Brazil, Bulgaria, **Cameroon**, Canada, Chile, **People's Republic of China**, Colombia, Czech Republic, **Arab Republic of Egypt**, El Salvador, Fiji, France, Gabon, Germany, Greece, Honduras, **India**, **Islamic Republic of Iran**, Israel, Italy, **Japan, Jordan, Kenya**, Latvia, **Malaysia**, Malta, **Mauritius**, Mexico, Morocco, Namibia, **Nigeria**, Norway, **Pakistan**, Paraguay, Philippines, Poland, **Republic of Korea**, Russian Federation, **Senegal, Singapore, South Africa**, Spain, **Sri Lanka, Thailand, Turkey, Uganda**, Ukraine, United Kingdom, United States and Venezuela. See Press Release, UNIS/L/135rev, 28 April 2010.

[4] UN Press Release, UNIS/L/130, 17 July 2009.

B. Finalization and Adoption of UNCITRAL Notes on Cooperation, Communication and Coordination in Cross-Border Insolvency Proceedings

1. Background

9. The Commission recalled that, at its thirty-ninth session, in 2006, that it had agreed initial work to compile practical experience with respect to negotiating and using cross-border insolvency agreements should be facilitated informally through consultation with judges and insolvency practitioners and that a preliminary progress report on that work should be presented to the Commission for further consideration at its fortieth session, in 2007. The Commission also recalled that, during the first part of its fortieth session, in 2007, the Commission had considered that preliminary report[5] and had expressed its satisfaction with respect to the progress made on the work of compiling practical experience with negotiating and using cross-border insolvency protocols; the Commission had reaffirmed that work should continue to be developed informally by the Secretariat in consultation with judges, practitioners and other experts.

10. The Commission also recalled that, at its forty-first session, in 2008, it had a note submitted by the Secretariat reporting on further progress with respect to that work.[6] At that session, the Commission had expressed its satisfaction with respect to the progress made on the work of compiling practical experience and had decided that the compilation should be presented as a working paper to Working Group on Insolvency Law ('hereinafter Working Group') at its thirty-fifth session[7] for initial discussion. The Working Group could then decide to continue discussing the compilation at its thirty-sixth session[8] and make its recommendations to the forty-second session of the Commission, in 2009, bearing in mind that coordination and cooperation based on cross-border insolvency agreements were likely to be of considerable importance in finding solutions for the international treatment of enterprise groups in insolvency.

11. It was noted that the Working Group considered the draft notes on cooperation, communication and coordination in cross-border insolvency proceedings[9] at its thirty-fifth session, when it agreed that the notes should be circulated to Governments for comment prior to its thirty-sixth session.[10] That version of the draft notes was circulated in November 2008.

2. Consideration at the Forty-Second Session (2009) of the Commission

12. At the forty-second session, the Commission had before it the revised version of the draft notes,[11] the comments of States on the draft notes[12] and the report of the thirty-sixth session of the Working Group at which the draft notes were further considered.[13] The Commission heard an oral presentation on the draft notes and noted

[5] A/CN.9/629.
[6] A/CN.9/654.
[7] Vienna, 17-21 November 2008.
[8] New York, 18-22 May 2009.
[9] A/CN.9/WG.V/WP.83.
[10] A/CN.9/666, para. 22.
[11] A/CN.9/WG.V/WP.86.
[12] A/CN.9/WG.V/WP.86/Add.1-3.
[13] A/CN.9/671, paras. 12-15.

that some minor updating was required to take account of important cross- border insolvency agreements entered into since the consideration by the Working Group at its thirty-sixth session.

13. The Commission expressed its appreciation for the draft notes and emphasized their usefulness for practitioners and judges, as well as creditors and other stakeholders in insolvency proceedings, particularly in the context of the current financial crisis. In that regard, the notes were viewed as very timely, having application in a large number of complex cases and being the first document dealing with cross-border insolvency agreements to be prepared by an international organization. The Commission also expressed its appreciation for the incorporation of the suggestions made by Governments following circulation of the draft notes[14] and agreed that the document should be entitled "Practice Guide on Cross-Border Insolvency Cooperation".

C. Draft UNCITRAL Model Law on Public Procurement of Goods

1. Background

14. It may be recalled that the Commission, at its thirty-sixth and thirty-seventh sessions, in 2003 and 2004, respectively, considered a possible updating of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to enactment on the basis of the notes by the Secretariat.[15] At its thirty-seventh session (2004), the Commission agreed that the Model Law would benefit from being updated to reflect new practices, in particular those resulting from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform. It decided to entrust the drafting of proposals for the revision of the Model Law to its Working Group on Procurement (hereinafter 'Working Group'). The Working Group was given a flexible mandate to identify the issues to be addressed in its considerations. At its thirty-eighth session, in 2005, the Commission reaffirmed its support for the review being undertaken and for the inclusion of novel procurement practices in the Model Law.

15. At its thirty-eighth and thirty-ninth sessions, in 2005 and 2006, respectively, the Commission took note of the reports of the sixth, seventh, eighth and ninth sessions of the Working Group.[16]

16. At the forty-first session (2008), the Commission took note of the reports of the twelfth and thirteenth sessions of the Working Group.[17] At that session, the Working Group also discussed the issue of suppliers' lists, the consideration of which was based on a summary of the prior deliberations of the Working Group on the subject and decided that the topic would not be addressed in the Model Law, for reasons that would be set out in the Guide to Enactment.

17. The Commission commended the Working Group and the Secretariat for the progress made in its work and reaffirmed its support for the review being undertaken and

[14] A/CN.9/WG.V/WP.83.
[15] A/CN.9/539 and Add.1, and A/CN.9/553.
[16] A/CN.9/568, A/CN.9/575, A/CN.9/590 and A/CN.9/595.
[17] Vienna, 3-7 September 2007, A/CN.9/640 and New York, 7-11 April 2008, A/CN.9/648

for the inclusion of novel procurement practices and techniques in the Model Law. The Working Group was invited to proceed expeditiously with the completion of the project, with a view to permitting the finalization and adoption of the revised Model Law, together with its Guide to Enactment, within a reasonable time.

2. Report on the progress made by Working Group on Procurement

18. The Commission noted that the focus of the early sessions of the Working Group was primarily on the following key subjects, for which the Working Group was recommending entirely new provisions or substantial amendments: (i) the use of electronic communications in public procurement; (ii) electronic reverse auctions; (iii) abnormally low submissions; and (iv) framework agreements. It was reported that the principles for most of those provisions had been agreed upon, but that some drafting issues remained outstanding.

19. It was noted that later sessions had focused on procurement of services, alternative procurement methods, simplification and standardization of the 1994 Model Procurement Law and conflicts of interest, and that new provisions and substantial amendments on those subjects were being considered.

20. The Commission heard a report on the progress achieved in separate areas of work. As regards the general aspects of electronic procurement, it was noted that provisions of the revised model law would allow for the use of electronic communications in the procurement process, in a new article 8, which would address form and means of communications together and would replace article 9 of the 1994 Model Procurement Law.

21. As regards electronic reverse auctions, it was explained that the term referred to an online, real-time auction, during which bidders submitted successively improved bids. Recognizing their potential benefits (price savings), the Working Group was recommending provisions for them, but not for auctions in a non- electronic form because of the risks of collusion in the latter. Provisions on electronic reverse auctions would set out: (a) conditions for the use of electronic reverse auctions, and (b) procedural rules for two types of such auctions: those used as a phase in other procurement methods and those used as a stand-alone procurement method. The revised model law would provide for the type of auction where the best bid according to the award criteria was identified automatically at the end of the auction process.

22. As regards framework agreements, it was explained that the term described two-stage procurements in which a framework agreement between suppliers and the procuring entity was made at the first stage and procurement contracts were issued in the form of orders at the second stage. It was noted that framework agreements were not addressed in the 1994 Model Procurement Law, partly because they were used infrequently at that time. In the light of their increasing use and advantages (mainly reductions in administrative and transactional costs and time and assuring the security of supply), the Working Group provided for them in the draft revised text.

23. As regards suppliers' lists, the Working Group had acknowledged that such lists existed and were in use, and that such use in practice should be subject to minimum standards. At its thirteenth session, the Working Group concluded that the topic would not

be addressed in the revised model law because the flexible provisions on framework agreements would be sufficient and would avoid some of the risks of lists. The reasons for that conclusion would be set out in the guide to enactment, which would also address concerns related to the use of lists, such as lack of transparency and restrictions on market access, which might arise even where controls such as permanently open and simple registration procedures had been put in place, and even where lists were intended to be optional.

24. As regards abnormally low submissions, which might entail a performance risk, the Working Group had decided that the risk could arise in any procurement procedure. It therefore recommended provisions in the revised model law to require the procuring entity to investigate a potentially abnormally low submission. Only after such an investigation, and where the procuring entity concluded that the submission was abnormally low and a performance risk existed, could the procuring entity reject the submission. The limitation on this ability was noted to be important for ensuring fair and equal treatment of suppliers.

25. The Commission noted that other methods from the 1994 Model Procurement Law (including competitive negotiations, two-stage tendering, and perhaps consecutive negotiations) might be retained in specific circumstances (such as competitive negotiations in the case of urgent procurement) and that the need for such methods would be assessed based on the extent to which they differed and the extent to which they addressed circumstances that were distinct from that proposed in the new procurement method.

26. As regards remedies in procurement, the Working Group had decided to strengthen the provisions to ensure that they were consistent with the United Nations Convention against Corruption, providing for a mandatory system of independent review and deleting the exemptions from review contained in the 1994 Model Procurement Law. The Working Group had also recommended the introduction of a standstill period between the identification of the successful submission and entry into force of a procurement contract in order to ensure an effective review procedure. The extent of relief that may be granted in administrative proceedings, it was noted, had not yet been finalized.

27. The Commission endorsed the suggestion made as regards the establishment of a committee of the whole to consider the draft revised model law at the forty-second session. It also decided that the committee in its work should address the issues of defence sector procurement and consider socio-economic factors in public procurement. It heard statements about the importance of the guidance provided by UNCITRAL, in particular the guidance on how to protect domestic interests and treat sensitive procurement without undermining the objectives of the 1994 Model Procurement Law.

3. Future Work on Model Law on Public Procurement

28. The understanding in the Committee was that the Secretariat should be requested to prepare new draft provisions of the revised model law to reflect deliberations at the forty-second session. The idea of holding inter-sessional informal consultations was supported. The importance of ensuring inclusiveness and as wide a geographical representation of participants as possible in such consultations was highlighted. The Secretariat was requested to make all efforts within available resources to provide the relevant documents in the six official languages of the United Nations.

D. Arbitration and Conciliation

1. Background

29. The Commission, it may be recalled at its thirty-second session (1999), had a note entitled "Possible future work in the area of international commercial arbitration," which discussed the desirability and feasibility of further development of the law of international commercial arbitration. The Commission had entrusted this task to its Working Group on Arbitration and Conciliation (hereinafter 'Working Group') and had decided that the priority items for the Working Group should be requirement of written form of the arbitration agreement, enforcement of interim measures of protection and possible enforcement of an award that had been set-aside in the State of origin. The Working Group on Arbitration and Conciliation commenced its work at its thirty-third session in March 2000.

30. At its thirty-seventh session, in 2004, the Commission noted that the Working Group had continued its discussions on a draft text for a revision of article 17 of the 1985 UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") on the power of an arbitral tribunal to grant interim measures of protection, and on a draft provision on the recognition and enforcement of interim measures of protection issued by an arbitral tribunal (for insertion as a new article of the Model Law, tentatively numbered 17 bis), including on how to deal with ex parte interim measures in the Model Law.

31. At the forty-first session, the Commission had before it the reports of the forty-seventh and forty-eighth sessions of the Working Group.[18] The Commission commended the Working Group for the progress made regarding the revision of the UNCITRAL Arbitration Rules and the Secretariat for the quality of the documentation prepared for the Working Group.

32. The Commission noted that the Working Group had discussed at its forty-eighth session the extent to which the revised UNCITRAL Arbitration Rules should include more detailed provisions concerning investor-State dispute settlement or administered arbitration. Further, the Commission noted that the Working Group had decided to proceed with its work on the revision of the UNCITRAL Arbitration Rules in their generic form and to seek guidance from the Commission on whether, after completion of its current work on the Rules, the Working Group should consider in depth the specificity of treaty-based arbitration and, if so, which form that work should take. After discussion, the Commission agreed that it would not be desirable to include specific provisions on treaty-based arbitration in the UNCITRAL Arbitration Rules themselves and that any work on investor-State disputes that the Working Group might have to undertake in the future should not delay the completion of the revision of the UNCITRAL Arbitration Rules in their generic form. As to timing, the Commission agreed that the topic of transparency in treaty based investor-State arbitration was worthy of future consideration and should be dealt with as a matter of priority immediately after completion of the current revision of the UNCITRAL Arbitration Rules.

[18] Vienna, 10-14 September 2007-A/CN.9/641 and New York, 4-8 February 2008-A/CN.9/646.

2. Consideration at the Forty-Second Session (2009) of the Commission

33. At the forty-second session, the Commission had before it the reports of the forty-ninth and fiftieth sessions of the Working Group.[19] The Commission commended the Working Group for the progress made regarding the revision of the UNCITRAL Arbitration Rules and the Secretariat for the quality of the documentation prepared for the Working Group.

34. The Commission noted that the Working Group had discussed at its forty-ninth session a proposal aimed at expanding the role of the Secretary-General of the Permanent Court of Arbitration at The Hague under the UNCITRAL Arbitration Rules. The 1976 version of the Rules included a mechanism whereby the Secretary-General of the Permanent Court of Arbitration should, if so requested by a party, designate an appointing authority to provide certain services in support of arbitral proceedings. The appointing authority would appoint members of an arbitral tribunal under articles 6 and 7 of the Rules and might also be called upon, under article 12 of the Rules, to decide on challenges to arbitrators. Under articles 39 and 41 of the Rules, the appointing authority might also assist the parties in fixing the arbitrators' fees and the arbitral tribunal in fixing the deposit for costs. The Secretary-General of the Permanent Court of Arbitration, despite the Court being neither a United Nations body, nor a body created to deal with commercial, non-governmental disputes, agreed to act as the designating authority under the Rules and thus to play a role that was clearly more limited than, and qualitatively different from, that of an appointing authority.

35. As a latest development, the Commission adopted the Revised UNCITRAL Arbitration Rules.[20] The UNCITRAL Arbitration Rules, as revised, would be effective as of 15 August 2010. They include more provisions dealing with, amongst others, multiple parties' arbitration and joinder, liability, and a procedure to object to experts appointed by the arbitral tribunal. A number of innovative features contained in the Rules aim to enhance procedural efficiency, including revised procedures for the replacement of an arbitrator, the requirement for reasonableness of costs and a review mechanism regarding the costs of arbitration. They also include more detailed provisions on interim measures. It is expected that the Rules, as revised, will continue to contribute to the development of harmonious international economic relations.

E. Insolvency Law

1. Background

36. The Commission recalled that, at its thirty-ninth session, in 2006, it had agreed that: (i) the topic of the treatment of corporate groups in insolvency was sufficiently developed for referral to Working Group of Insolvency Law (hereinafter 'Working Group') for consideration in 2006 and that the Working Group should be given the flexibility to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take, depending upon the substance of the proposed solutions to the problems that the Working Group would identify under that topic; and (ii) post-commencement finance should initially be considered as a component

[19] Vienna, 15-19 September 2008 and New York, 9-13 February 2009 - A/CN.9/665 and A/CN.9/669 respectively.
[20] UN Press Release, UNIS/L/139 dated 29 June 2010.

of work to be undertaken on insolvency of corporate groups, with the Working Group being given sufficient flexibility to consider any proposals for work on additional aspects of the topic.

37. At the forty-first session, the Commission had before it a progress report made on the work of compiling practical experience with negotiating and using cross border insolvency agreements. It decided that the compilation should be presented as a working paper to Working Group at its thirty-fifth session for an initial discussion. The Working Group could then decide to continue discussing the compilation at its thirty-sixth session in April and May of 2009 and make its recommendations to the forty-second session of the Commission, in 2009, bearing in mind that coordination and cooperation based on cross-border insolvency agreements were likely to be of considerable importance in searching for solutions in the international treatment of enterprise groups in insolvency.

2. Consideration at the Forty-Second Session (2009) of the Commission

38. At the forty-second session, the Commission expressed its appreciation for the substantial progress made by the Working Group in considering the treatment of enterprise groups in insolvency as reflected in the reports on its thirty-fifth and thirty-sixth sessions[21] and commended the Secretariat for the working papers and reports prepared for those sessions.

39. The Commission noted that the Working Group had adopted in substance a number of recommendations with respect to the domestic treatment of enterprise groups and had reached agreement on its approach to the international treatment of such groups as reflected in the set of 15 recommendations discussed at its thirty- sixth session, a number of which had been adopted in substance. The Commission took note of the close connection between the work on the international treatment of enterprise groups and both the UNCITRAL Model Insolvency Law and the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation and emphasized the need to ensure consistency with those two texts.

40. The Commission also noted that the Working Group had agreed that the text resulting from the work on enterprise groups should form part III of the UNCITRAL Legislative Guide on Insolvency Law and adopt the same format, i.e. recommendations and commentary. To that end, the commentary to accompany both the domestic and international recommendations would be prepared for consideration by the Working Group at its thirty-seventh session, in 2009, and, if necessary, at its thirty-eighth session, in 2010.

F Possible Future Work in Security Interests

1. Background

41. The Commission recalled that, during the first part of its fortieth session,[22] it had decided to entrust Working Group on Security Interests (hereinafter 'Working Group') with the preparation of an annex to the draft Guide on Secured Transactions

[21] Vienna, 17-21 November 2008, New York, 18-22 May 2009 - A/CN.9/666 and A/CN.9/671, respectively.
[22] Vienna, 25 June-12 July 2007.

specific to security rights in intellectual property. At that session, the Commission had emphasized the need to complete that work within a reasonable period of time.

42. The Commission also recalled that, at its resumed fortieth session,[23] it had finalized and adopted the UNCITRAL Legislative Guide on Secured Transactions (the Legislative Guide) on the understanding that the annex to the Legislative Guide would be prepared as soon as possible thereafter so as to ensure that comprehensive and consistent guidance would be provided to States in a timely manner.

2. Consideration at the Forty-Second Session (2009) of the Commission

43. At the forty-second session, the Commission had before it the reports of Working Group on the work of its fourteenth and fifteenth sessions.[24] The Commission noted with satisfaction that the Working Group had completed the reading of two versions of the annex to the Legislative Guide[25] and made significant progress.[26] The Commission also noted with appreciation that Working Group on Insolvency Law, at its thirty-sixth session, had discussed, on the basis of documents,[27] certain insolvency-related issues referred to it by Working Group, and approved the text referred to it by Working Group[28] for inclusion in the annex to the Legislative Guide.[29]

44. With respect to the annex to the Legislative Guide, the Commission expressed its appreciation to the Working Group and the Secretariat for the progress achieved thus far and emphasized the importance of that supplement. It was stated that economic development involved innovation which was in turn connected with intellectual property assets. It was also pointed out that the main assets of many small or medium-sized businesses were intellectual property assets. Thus, it was observed that it was important for economic development to facilitate secured transactions in which the encumbered asset was an intellectual property asset.

45. After discussion, the Commission, noting the interest of the international intellectual property community, requested the Working Group to expedite its work so as to finalize the supplement to the Legislative Guide in one or two sessions and submit it to the Commission for finalization and adoption at its forty- third session, in 2010, so that the Supplement to the Guide may be offered to States for adoption as soon as possible. The Commission agreed that, if two sessions were not sufficient for the preparation of a generally acceptable and balanced text, the Working Group should be given the time necessary to achieve that result, even if that meant that the supplement to the Legislative Guide would be ready for submission to the Commission at its forty-fourth session in 2011.

46. At the conclusion of its deliberations on security interests, the Commission recalled the mandate given to the Secretariat for the publication of the commentary to the United Nations Convention on the Assignment of Receivables in International Trade. In

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[23] Vienna, 10-14 December 2007.
[24] Vienna, 20-24 October 2008 and New York, 27 April -1 May 2009 - A/CN.9/667 and A/CN.9/670, respectively.
[25] A/CN.9/WG.VI/WP.35 and Add.1 and A/CN.9/WG.VI/WP.37 and Add.1-4.
[26] A/CN.9/667, para. 15, and A/CN.9/670, para. 16.
[27] A/CN.9/WG.VI/WP.37/Add.4 and A/CN.9/WG.V/WP.87.
[28] A/CN.9/WG.VI/WP.37/Add.4, paragraphs 22-40
[29] A/CN.9/671, paras. 125-127.

that connection, it was suggested that the Secretariat could hold an expert group meeting with the participation of experts who were involved in the preparation of the Convention. The Commission also recalled its mandate for the publication of a text discussing the interrelationship of various texts on security interests prepared by the Commission, UNIDROIT and the Hague Conference on Private International Law.

G. Possible Future Work in Electronic Commerce

1. Background

47. The Commission recalled that the Working Group on Electronic Commerce (hereinafter 'Working Group'), after it had completed its work on the draft Convention on the Use of Electronic Communications in International Contracts, in 2004, requested the Secretariat to continue monitoring various issues related to electronic commerce, including issues related to cross-border recognition of electronic signatures, and to publish the results of its research with a view to making recommendations to the Commission as to whether future work in those areas would be possible.[30]

48. At the forty-first session, the Commission had before it a note by the Secretariat setting out policy considerations and legal issues in the implementation and operation of single windows and submitting proposals for possible future work in cooperation with other international organizations. The note also summarized the proposal by World Customs Organization (WCO) for joint work.

2. Consideration at the Forty-Second Session (2009) of the Commission

49. At the forty-second session, the Commission had before it a note by the Secretariat[31] providing an update on the work relating to policy considerations and legal issues in the implementation and operation of single window facilities. In particular, the note reported on the activities of the WCO-UNCITRAL Joint Legal Task Force on Coordinated Border Management incorporating the International Single Window (the Joint Legal Task Force) as well as on other regional initiatives in this field. Moreover, the note referred to a proposal for the compilation of a comprehensive reference document aimed at facilitating the task of legislators and policymakers, in particular in developing countries, when dealing with issues relating to electronic commerce.

50. The Commission agreed on the importance of the proposals relating to future work in the fields of electronic transferable records and of online dispute resolution to promote electronic commerce, for the reasons expressed in the proposals submitted to the Commission. With respect to electronic transferable records, it was recalled that, as already noted at the Commission's forty-first session, limited elements of commonality in the different records and rights transferred would not support immediate work at the working group level. Thus, it was indicated that further information was needed in order to fully assess the scope and mandate of possible future work on those issues by the Working Group.

[30] A/CN.9/571, para. 12.
[31] A/CN.9/678.

51. With respect to the proposal on online dispute resolution, it was suggested that further studies should identify the different groups interested by possible future standards, including consumers. It was noted in this respect that the variety of rules on consumer protection made it particularly difficult to achieve harmonization in this field. Divergent views were expressed on the desirability of a discussion of the issue of enforcement of awards rendered in online arbitral proceedings. It was explained that practical difficulties arose from the fact that the disputes settled by such awards generally involved small monetary amounts, especially in consumer- related disputes, and from the costs of cross-border enforcement under existing instruments.

H. Possible Future Work in the Area of Commercial Fraud

1. Background

52. The Commission considered this subject at its thirty-fifth to thirty-eighth sessions, in 2002 to 2005. At its thirty-seventh session, in 2004, with a view towards education, training and prevention, the Commission had agreed that the preparation of lists of common features present in typical fraudulent schemes could be useful as education material for participants in international trade and other potential targets of perpetrators of fraud to the extent that such lists would help potential targets protect themselves and avoid becoming victims of fraudulent schemes.

53. At its forty-first session, the Commission had before it the comments of States and Organizations on the indicators of commercial fraud submitted to the Secretariat[32] and the text of the indicators that had been circulated. Following its consideration of the comments of Governments and international organizations, the Commission reiterated its support for the preparation and dissemination of the indicators of commercial fraud, which were said to represent an extremely useful approach to a difficult problem. The indicators, it was said, would be an important and credible addition to the arsenal of weapons available in the battle against fraudulent practices, which were so detrimental to the commercial world.

54. The Commission considered how best to proceed with respect to completing the work on the indicators of commercial fraud. Given the technical nature of the comments received and bearing in mind that such treatment should keep separate any criminal law aspects of commercial fraud, the Secretariat was requested to make such adjustments and additions as were advisable to improve the materials and then to publish the materials as a Secretariat informational note for educational purposes and fraud prevention. The Commission was of the view that the materials could be incorporated by the Secretariat as a component of its broader technical assistance work, which could include dissemination and explanation to Governments and international organizations intended to enhance the educational and preventive advantages of the materials.

2. Consideration at the Forty-Second Session (2009) of the Commission

55. At the forty-second session of the Commission, the Secretariat reported that several examples of fraudulent schemes that had come to light since the beginning of the global economic crisis were being added to the indicators, which were being updated and prepared for publication and dissemination. The Commission expressed its

[32] A/CN.9/659 and Add.1 and 2.

approval and its continued support for the publication and dissemination of indicators of commercial fraud.

56. The Secretariat further reported that it had participated in all meetings of United Nations Office on Drugs and Crime (UNODC) core group of experts on identity-related crime, which had been created to examine issues of economic fraud and identity fraud. Three meetings of the core group of experts had been held in November 2007, June 2008 and January 2009, the results of which had been considered by the Commission on Crime Prevention and Criminal Justice at its eighteenth session,[33] under the agenda item entitled "Economic fraud and identity-related crime".

57. The Commission was informed that at its eighteenth session, the Commission on Crime Prevention and Criminal Justice had considered a number of texts on the issue of economic fraud, including: the reports of the first three meetings of the core group of experts;[34] a report of the Secretary-General on international cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime;[35] a note by the Secretariat, section II of which was on economic fraud and identity-related crime;[36] a conference room paper on essential elements of criminal laws to address identity-related crime;[37] a conference room paper on legal approaches to criminalize identity theft;[38] and a discussion paper on identity-related crime victim issues.[39]

58. The Commission took note that certain of the actions requested of UNODC by the Commission on Crime Prevention and Criminal Justice in its draft resolution would allow ample scope for integrating the work of UNCITRAL on the indicators of commercial fraud as an important tool for prevention and education and as a possible component of any broader efforts by UNODC in that regard. In response to a question regarding the possibility of future work for UNCITRAL in that area, for example, the development of a code of conduct, the Commission was advised that, following the approval of the draft resolution by the Economic and Social Council, the Secretariat would consult with the UNODC secretariat regarding the possibilities for future work and collaboration, and would report on that issue to UNCITRAL at a future session of the Commission.

59. The Commission expressed its gratitude to the Secretariat for its work in the area of commercial fraud and expressed the desire that the Secretariat would continue its efforts at cooperation and collaboration with the UNODC secretariat in its work on economic fraud and identity-related crime, including by reporting to the Commission on developments at its future sessions.

I. Date and Venue of the Forty-Third Session of the Commission

60. The forty-third session of the Commission is presently being convened in New York from 21 June to 9 July 2010.

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[33] 18 April 2008 and 16-24 April 2009.
[34] E/CN.15/2009/CRP.10, E/CN.15/2009/CRP.11 and E/CN.15/2009/CRP.12.
[35] E/CN.15/2009/2 and Corr.1.
[36] E/CN.15/2009/15.
[37] E/CN.15/2009/CRP.9.
[38] E/CN.15/2009/CRP.13.
[39] E/CN.15/2009/CRP.14.

III. REPORT ON THE WORK OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

61. This part of the Secretariat's report takes note of two major developments of the United Nations Conference on Trade and Development (UNCTAD). Firstly, the fifty-sixth annual session of the Trade and Development Board held in Palais des Nations, Geneva from 14 to 25 September 2009 and 12 October 2009; and secondly, the second session of the Trade and Development Commission held in Geneva from 3 to 7 May 2010.

A. Fifty-Sixth Annual Session of Trade and Development Board (14-25 September 2009 and 12 October 2009, Palais des Nations, Geneva)

62. The fifty-sixth annual session of the Trade and Development Board[40] focused at their high-level segment on the global economic crisis and the necessary policy response. The other areas that were of importance to the countries from Asian and African regions were: (i) Economic development in Africa: Strengthening regional economic integration for Africa's development, (ii) Evolution of the international trading system and of international trade from a development perspective: Impact of the crisis, (iii) Development strategies in a globalized world: Meeting the development challenge of climate change; and (iv) Investment for development: Transnational corporations, agricultural production and development.

63. The high-level segment dealt with global economic crisis and stressed that it has profound consequences for economic growth in developing countries, and it was impairing their development and poverty-reduction objectives. Culling out the origin of crisis that stemmed out of developed countries, but was transmitted to the developing countries and least developed countries, it was observed that affected countries witnessed growth reduced sharply, as a result of declining global demand, shrinking trade volumes and falling commodity prices, lower levels of remittances from migrants, decreased flows of foreign direct investment (FDI), capital outflows, higher yield spreads and declining aid. The least developed countries (LDCs) had been the most negatively affected, as their structural weaknesses and lower resilience impaired their ability to tackle the crisis. The session also emphasized that deregulation in financial markets was the major cause of the crisis, as it led to excessive speculation and the detachment of financial activities from the fundamentals of the real economy. The crisis had revealed that self-regulation of financial markets did not lead to optimal outcomes, and it highlighted the dangers of financial innovation in securitization and of uncontrolled remuneration for financial agents.

64. The coordinated efforts to balance the financial crisis by the United Nations, the Bretton Woods institutions and the different "G" groups that had great role to play, reaffirmed that there was a dire need for reform of the multilateral system that should not only be in terms of voice and representation, but also in terms of purpose, responsiveness and effectiveness. However, the need to have transparency, stability and predictability as the aim of the reform was reiterated. Reform of the International Monetary Fund (IMF) should be in terms of its governance and of aspects related to the role and allocation of special drawing rights. The issue of an international reserve currency and the proposal for a multilaterally agreed framework for the management of flexible exchange rates also

[40] See Report of the Fifty-sixth session of the Trade and Development Board of the United Nations Conference on Trade and Development held at the Palais des Nations, Geneva, from 14 to 25 September 2009, and on 12 October 2009, document no. TD/B/56/11.

were considered, and mainly absenteeism of the strong political will would nullify any efforts to deal with the ongoing financial crisis.

B. Second Session of the Trade and Development Commission (3-7 May 2010, Geneva)

65. The Trade and Development Commission was established in 2008 at the UNCTAD-XII and during its second session[41] the following issues were deliberated, namely: (i) Reports of expert meetings, (ii) Successful trade and development strategies for mitigating the impact of the global economic and financial crisis, (iii) The contribution of tourism to trade and development; and (iv) Promoting and strengthening synergies among the three pillars (in terms of implementation of the Accra Accord). The report stressed on the need for continued work by the international community to address the causes of the crises and the global imbalances through, *inter alia*, enhancing coherence between the international monetary financial and trading systems, thereby strengthening the enabling environment for international trade and expediting progress towards inclusive and sustainable development.

66. The agreed conclusions highlighted the importance of social safety nets; structural transformation; upgrading infrastructure; productive capacity development linked with trade; commodity sector development, especially in agriculture; support for small and medium-sized enterprises (SMEs); human capital and technological development; climate-friendly trade and investment measures; South–South trade; and market-opening trade policies which create growth and jobs and alleviate poverty. In this regard, the role of the State is important, taking into account an appropriate balance between national policy space and international disciplines and commitments.

[41] See Report of the Second session of the Trade and Development Commission of the United Nations Conference on Trade and Development held at Geneva, from 3 to 7 May 2010, document no. TD/B/C.1/13.

IV. REPORT ON THE WORK OF THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

67. The General Council at its 88th session held in Rome from 21 to 23 April 2008, adopted the following Work Programme for the 2009-2011 triennium on legislative activities: (i) finalisation of the additional chapters of the UNIDROIT Principles of International Commercial Contracts; (ii) finalisation of the Space Protocol to the Cape Town Convention; (iii) work on an instrument on netting in financial services, a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets and, resources permitting and possibly included in that guide, rules facilitating convergence of national investor classification systems. However, importance was attached to finalisation of the works already undertaken by the UNIDROIT Secretariat. Hence, the following four areas are considered.

A. Principles of International Commercial Contracts

68. The Working Group for the preparation of a third edition of the UNIDROIT Principles of International Commercial Contracts after the fourth session in Rome, May 2009, seized of the revised draft Chapters on: Unwinding of Failed Contracts; Illegality; Plurality of Obligors and/or Obligees; Conditional Obligations. The Working Group after in-depth examination of these draft Chapters had requested the Rapporteurs to revise them in the light of the discussion. The revised drafts were to be submitted to UNIDROIT Governing Council at its 89th session held in Rome from 10 to 12 May 2010. The revised drafts on rules on restitution, Article 1.4 (Mandatory Rules) Revised Comments, Chapter/Section on Illegality, Chapter on Plurality of Obligors and/or Obligees, Chapter on Conditions, were placed before the 89th Governing Council's meeting[42] for their consideration.

B. Progress made on the Model Law on Leasing

69. The Model Law on Leasing was finalised and adopted at the Joint Session of the UNIDROIT General Assembly and the UNIDROIT Committee of Governmental Eexperts held in Rome, November 2008. The Secretariat was mandated to prepare Official Commentary to the Model Law and place it during the 89th session held in Rome from 10 to 12 May 2010. In this regard, two sets of draft official commentaries (March and May 2010)[43] inclusive of Historical Background, Preamble and Article 1 - 24, have been prepared and placed by the UNIDROIT Secretariat at the recent Governing Council Meeting.

C. International Interests in Mobile Equipment

70. The work in progress in relation to legislative activity of the UNIDROIT are the following:

[42] See report of the Working Group for the preparation of Principles of International Commercial Contracts (3rd) Fifth session held at Rome, 24 – 28 May 2010, document no. UNIDROIT 2010 - Study L – Doc. 114 to UNIDROIT 2010 - Study L – Doc. 119.

[43] See Official Commentary as prepared by the UNIDROIT Secretariat on Model Law on Leasing, document no. UNIDROIT 2010 – Study LIXA – Doc. 23 and UNIDROIT 2010 – Study LIXA – Doc. 24.

(i) Preliminary Draft Space Protocol. The Committee of Governmental Experts for the preparation of a Draft Protocol to the Cape Town Convention on Matters specific to Space Assets and authorised the convening by the Secretariat of a fifth session of that Committee to resolve the outstanding issues. The Council would expect to be able to authorise the holding of a Diplomatic Conference for adoption of the resultant draft Protocol, at its 90th session, in 2011.[44]

(ii) a future Protocol to the Cape Town Convention on agricultural, construction and mining equipment was proposed, which the Council recommended for inclusion in the Work Programme for the Triennium 2011-2013; and

(iii) Promotion of the work relating to international interests in mobile equipment.

D. Transactions on International and Connected Capital Markets

71. The UNIDROIT Convention on Substantive Rules regarding Intermediated Securities was adopted by the Diplomatic Conference and the draft official commentary on that Convention is under progress. One of the important achievements of the UNIDROIT was the adoption of the Convention on Substantive Rules regarding Intermediated Securities at the final session of the Diplomatic Conference held in Geneva from 5 to 9 October 2009. The draft was prepared by four sessions of a Committee of Governmental Experts of the UNIDROIT and a first session of the diplomatic Conference held in Geneva in September 2008. Promotion of the work on capital markets remains.

72. The triennial work programme for the year 2009 - 2011 of the UNIDROIT as traced by the Governing Council at its Eighty-Eighth Session held in Rome, from 20 to 23 April 2009 are as follows: (i) Proposal for a Convention on the Netting of Financial Instruments; (ii) Study for an International Legislative Project on (Contractual) Counterparty Classification, (iii) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets, (iv) Possible Future Work on Civil Liability for Satellite-based Services; (v) Proposal for a Model Law on the Protection of Cultural Property; and (vi) Possible Future Work in the Area of Private Law and Development. However, the Governing Council at its 89th session held in Rome from 10 to 12 May 2010, examined various topics proposed for inclusion in the UNIDROIT's Work Programme but recommended the General Assembly of the UNIDROIT to give priority to finalising the three outstanding legislative topics and defer any discussion of other items to its sixty-sixth session to be held in 2010.

[44] See report of the UNIDROIT Committee of Governmental Experts for the preparation of a Draft Protocol to the Convention on International Interests in Mobile equipment on matters specific to Space Assets, Fourth Session, Rome, 3 - 7 May 2010, document no. UNIDROIT 2010 - C.G.E./Space Pr./4/W.P. 3 rev.

V. REPORT ON THE WORK OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH)

73. The Council on General Affairs and Policy that met from 31 March to 2 April 2009 discussed the future work programme for the year 2009-2010. The Permanent Bureau emphasised that the Conference should venture into drafting new instruments in order to maintain its global leadership in the field of private international law.[45] In future works, the Permanent Bureau discussed on the following issues: Cross border mediation in family matters, Choice of law in international contracts, Treatment of foreign law, Protocol to the 1980 Child Abduction Convention, Protocol to the 2007 Child Support Convention regarding international recovery of maintenance of vulnerable persons; and legal issues relating to economic migrants. The present report would highlight the developments in the following three areas (i) Maintenance Obligations, (ii) Inter-country adoption, and (iii) Choice of Law in International Contracts.

A. Special Commission on Maintenance Obligations

74. The Special Commission on Maintenance Obligations adopted the conclusions and recommendations on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the law applicable to Maintenance Obligations which during its meeting from 10-17 November 2009. The Commission recognised the importance of ensuring that vulnerable persons are in a position to benefit from the provisions of the Convention. Hence, it was suggested that the Hague Conference should consider the feasibility of developing a Protocol on international recovery of maintenance in respect of vulnerable persons.[46]

B. Intercountry Adoption

75. From 17 to 25 June 2010, a Special Commission meeting was held in The Hague, wherein the objective of the Commission was to review the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption and to achieve consensus on the main elements of a Guide to Good Practice on Accreditation and Adoption.

C. Choice of Law in International Contracts

76. The Council on General Affairs 2010 welcomed the setting up of a Working Group on Choice of Law in International Contracts. It expressed its appreciation to the experts for the progress made and invited the Working Group to continue its work for the progressive development of a draft instrument of a non-binding nature. The Council noted that there was support in the Working Group for a comprehensive draft instrument, also including rules applicable in the absence of choice. The Council confirmed that priority should be given to the development of rules for cases where a choice of law has been made. The Permanent Bureau is invited to submit a report on the state of progress for the consideration of the Council scheduled in 2011.

[45] See Annual Report 2009 of the Hague Conference on Private International Law.
[46] Final Act of Twenty-First session, Part C, Recommendation No. 9.

VI. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

77. The United Nations Commission on International Trade Law (UNCITRAL) at its forty-second session was able to finalize and adopt the Practice Guide on the Cross-border Insolvency Cooperation. The adoption of the Practice Guide was a key and timely achievement of the session. It provides information for insolvency practitioners and judges on practical aspects of cooperation and communication in cross-border insolvency cases. The information is based upon a description of collected experience and practice, focusing on the use and negotiation of cross-border agreements. It provides an analysis of more than 39 agreements, ranging from written agreements approved by courts to oral agreement between parties to the proceedings that have been entered into over the last decade or so.

78. It is encouraging that all other Working Groups established by the Commission have made considerable progress in the forty-second session. AALCO hopes that the Member States would continue to support and actively participate in the work of the UNCITRAL and its Working Groups. Further, AALCO also urges the Member States to consider adopting, ratifying or acceding to the instruments adopted by the UNCITRAL and to implement them, in order to promote uniformity and consistency in the international trading system.

79. The fifty-sixth session of the UNCTAD's Trade and Development Board and the second session of the Trade and Development Commission mainly focused among other things on dealing with global economic and financial crisis. The discussion during the sessions also witnessed the concerns on how to deal with this crisis that has been affecting the developing countries but stemmed out of developed countries. Recalling a half-day Special meeting at the Forty-Eighth Annual Session of AALCO, Managing Global Financial Crisis: Sharing of Experiences wherein AALCO Member States had recognized that disruption in the financial market, loss of confidence, inadequate surveillance of the financial sector and lack of early warning led to the global financial crisis. Hence, it is essential to share experiences among Member States of AALCO and also consider the platform of AALCO to strengthen and exchange information, strategies and regulatory mechanisms that would be useful for nations as well for dealing with such financial crises in future.

80. UNIDROIT's current legislative activities mark significant progress in their works in the field of international trade law and nexus with other financial matters, especially the Model laws adopted at the Diplomatic Conferences. Therefore, the Member States of AALCO needs to actively participate in order to facilitate functional and efficient model laws and principles that the Organization is preparing. Alongside this, the research works carried out by the Hague Conference on Private International Law (HCCH) also should be closely monitored and efficiently participate to address the issues faced by AALCO Member States which would add strength to furnishing consolidated view from the Asian-African perspective. The role played by HCCH is significant in the field of private international law. In the contemporary world, international law-making witnesses thin-line of distinction between public and private international law and therefore, requires the translation of law into practice.

VII. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 12
8 AUGUST 2010

REPORT ON THE WORK OF UNCITRAL AND OTHER INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW
(*Non-deliberated)*

The Asian-African Legal Consultative Organization at its Forty- Ninth Session,

Having considered the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 12,

Taking note, with appreciation, of the comments included in the Report of the Secretary-General,

Being aware of the completion and the adoption of the Practice Guide on Cross-Border Insolvency Cooperation by the United Nations Commission on International Trade Law at its forty-second session;

1. **Encourages** the Member States to give due consideration to the Practice Guide on Cross-Border Insolvency Cooperation in cross-border insolvency proceedings;

2. **Expresses** its satisfaction for AALCO's continued cooperation with the various international organizations competent in the field of international trade law and hopes that this cooperation will be further enhanced in the future;

3. **Urges** Member States to consider adopting, ratifying or acceding to the instruments prepared by the UNCITRAL; and

4. **Decides** to place this item on the [provisional agenda of the Fiftieth Session].

VIII. MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE
(Non-Deliberated)

CONTENTS

VIII. MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE

I. Introduction

1. Presently, the world is more interconnected than ever before thus events happening in one country tend to affect other countries as well. The financial crisis originated in a few developed countries and soon became a global crisis affecting many of the Developing and Least Developed Countries. Many analysts believe that the world is going through the worst crisis since the Great Depression. This financial crisis has emerged due to varied reasons. *The Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* headed by Mr. Joseph Stiglitz, in its report has identified the failure of the prevailing regulatory philosophy based on free market as one of the reasons for the financial crisis. The collapse in confidence in the financial system is widely recognized as central issue in the economic crisis. The Commission noted that the current crisis reflects problems that go beyond the conduct of monetary policy and regulation of the financial sector. It also involves deeper inadequacies in areas such as corporate governance and competition policies. The ongoing global financial crisis has given an opportunity to the international community to conduct an analysis of the financial system at the international and national level.

2. However, an effective global response will require the participation of the entire international community. Convening of the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* by the United Nations from 24th to 26th June 2009 in New York to assess the global financial crisis and to address the major issues, including the role of Member States in the ongoing international discussions on reforming and strengthening the international financial and economic system and architecture would definitely give wider participation of the international community in the ongoing efforts to regulate the financial sector. This would further strengthen the Monterrey Consensus adopted at the International Conference on Financing for Development (18-22 March 2002) and the Doha Declaration on Financing for Development, Follow-up of the International Conference on Financing for Development held in Doha, Qatar from 29 November to 02 December 2008.

3. The G-20 Toronto Summit[1] held from 26-27 June 2010 had recognized that the financial crisis had imposed them huge costs. The recent financial volatility had strengthened their resolve to work together to complete financial repair and reform. They highlighted the need to build a more resilient financial system that serves the needs of their economies, reduces moral hazard, limits the build-up of systemic risk and supports strong and stable economic growth. G-20 Summit have recognized that collectively they have made considerable progress toward strengthening the global financial system by fortifying prudential oversight, improving risk management, promoting transparency and continuously reinforcing international cooperation.

[1] G-20 Toronto Summit (26-27 June 2010) Declaration, Annex-II

II. Explanatory Note by the Secretary-General of AALCO for Inclusion as a New Item on the Provisional Agenda of the Forty-Eighth Annual Session, Putrajaya, Malaysia (2009)

4. The following are the excerpts of the explanatory note by the Secretary-General of AALCO:

A. Legal Dimensions of the Financial Crisis

5. One of the reasons for the current fragile state of the world economy are the shortcomings in the system of global economic governance, in particular a lack of coherence between the international trading system, which is governed by a set of internationally agreed rules and regulations, and the international monetary and financial system, which is not. There is a need for substantial improvement in the coordination of global economic policy. Global economic integration has outpaced the development of the appropriate political and legal institutions and arrangements for governance of the global economic system.

6. While many concede that financial liberalization and deregulation have created many opportunities for economic growth, at the same time, both liberalization and non- regulatory measures have also burdened the global economy with a great many financial crises over the past three decades. International response to the growing number of financial crises is normally in the form of a number of international public and private sector bodies setting standards and rules to govern financial markets.

7. The current crisis has made it apparent that there are large gaps and deficiencies in the regulatory structures of many countries. It is also necessary that while effective regulatory system must be national, there must be some global regulatory framework to establish minimum national standards and to govern the global operations of relevant global financial institutions. It is also imperative that the regulatory reforms be real and substantive, and go beyond the financial sector to address underlying problems in corporate governance and competition policy.

8. In this regard, *Declaration on Strengthening the Financial System* adopted by the Leaders of the G 20 on 2nd April 2009 in London had emphasized on action to strengthen regulation and supervision to reform the regulation of the financial sector. The core principles identified are strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation.

9. In addition, to the efforts at the international level, governments and central banks at the national level, have a major role to play in diffusing the crisis. They have come up with new monetary policies and regulatory schemes, which include rescue packages to bail out their financial systems. Major central banks have shown considerable coherence and coordination in their response to the sub-prime crises by providing liquidity to affected banks and financial institutions. However, to ensure that domestic regulatory systems are strong, greater consistency and systematic cooperation between countries is required.

B. Relevance of AALCO

10. AALCO is an intergovernmental organization with 47 Member States from Asia and Africa, which are at different stages of their economic development. The impact of the financial crisis and the responses are varied in each State. Legal aspects of the international and national monetary and financial system, was never within the purview of AALCO. Since AALCO comprises of Member States from diverse economic background, it could be a suitable forum to discuss the legal aspects of the international and national monetary and financial system, in the light of the financial crisis. Moreover, the financial crisis has had serious implications on the population of many of the AALCO Member States. If mandated, AALCO could play an important role in the ongoing international efforts to regulate financial and banking sector. These efforts would be complementary and supportive to the ongoing international efforts and would lead to progressive development of financial and banking regulations.

C. Proposal of the Secretary-General

11. Keeping in view, the impact that the global financial crisis has had on the Member States of AALCO, the Secretary-General would like to propose to the AALCO Member States to include "Managing Global Financial Crisis: Sharing of Experience" as an item on the agenda for the forthcoming Forty-Eighth Annual Session of AALCO. This proposal is in line with Article 1 (b) of the AALCO's Statutes which provides for exchange of views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary. Accordingly, at the Forty-Eighth Session, AALCO Member States can share their experience on how they have dealt with the financial crisis. These would include policy and regulatory (Legal) framework initiated in the respective countries so as to find the common basis for handling such a crisis. In this regard, the AALCO Secretariat proposes to convene a panel of experts from Asia and Africa who could share their country experiences with regard to the financial and banking regulations. The Secretariat would do the necessary follow up based on the outcome/mandate of the Session.

III. Deliberation at the Forty-Eighth Session of AALCO, Putrajaya, Malaysia (2009)

12. The **President of the Forty-Eighth Session of AALCO, Tan Sri Abdul Gani Patail,** in his introductory remark on the topic "Managing Global Financial Crisis: Sharing of Experiences" stated that the Asian financial crisis of 1998 was one of the most dramatic events of recent times which raised many questions regarding the appropriate policy response to the financial crisis. The current financial crisis which had affected the ASEAN region the most, emanated from three factors like inadequate risk management practices at banks, increased complexity of financial instruments and speculation of financial markets.

13. The **Secretary-General of AALCO** introduced the agenda item and highlighted that financial liberalization and deregulation had created many opportunities for economic development. But at the same time, both measures had also burdened the global economy with many financial crises over the last three

decades. He briefly explained about outcome of *The Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* and the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* convened by the United Nations from 24th to 30th June 2009 in New York. He emphasized that AALCO as an intergovernmental Organization was a suitable forum to discuss the legal dimensions of the financial crisis. The impact of the financial crisis and the responses were varied in each State. If mandated by the Member States, AALCO could play an important role in the ongoing international efforts to regulate the financial and banking sector. Those efforts would be complementary and supportive to the ongoing international efforts and would lead to progressive development of financial and banking regulations.

14. H.E Tan Sri Zeti Akhtar Aziz, Governor, Central Bank of Malaysia in her presentation on the topic elaborated that even after witnessing 100 financial crises, "we must share the lessons learnt from such instances since our regions were still vulnerable and fundamental to financial crisis". The dynamics of these issues affecting Asia was that the crisis starts in the financial markets and then extends to the foreign exchange. She explained that many of the Asian countries survived the financial crisis due to resilience. She informed that States needed to anticipate these crises and must take all preventive measures to overcome them. The government through the Central Bank must restore the stability of financial markets, ensure credit flows to private sector and should ensure resumption of growth. Henceforth, the Government should be able to ensure restoring the confidence which could happen through surveillance, ensuring access to financing, and block erosion of capital. She reiterated the significance of regulation and control by the central banks so that other financial institutions should not suffer due to the financial crisis, that would ensure that even when the economy is adversely affected due to financial crisis it could recover from its reminiscences at the earliest.

15. Mr. Kenji Aramaki, Graduate School of Arts and Science, University of Tokyo in his presentation "Global Financial Crisis-Japan's Experiences in the 1990s and Challenges for the Global Regulatory Reform" explained Japan's experiences in the 1990s, which included formation of an Asset Bubble and its collapse, the evolution of a financial crisis and policy responses to it. He also explained the current crisis and challenges for strengthening global financial system. He stated that de-leveraging by financial institutions has been under way and would continue for the years to come. He suggested that the most important was to make this process proceed as orderly as possible. At the same time, an overhaul of the regulatory and supervisory framework of the financial sector is being worked out so as to prevent another formation of financial excesses and accumulation of risk in the financial system. He concluded that stable and well-functioning financial system was a common concern for all countries and coordinated efforts for this were strongly needed.

16. The following Member States of AALCO made comments and observations on this topic, namely, the **Republic of South Africa, State of Kuwait, People's Republic of China, Saudi Arabia, Indonesia, Thailand** and **Arab Republic of Egypt.** There was a general consensus and opinion that Member States of the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental

authorities so that the States could take preventive measures to overcome financial crisis. The role of the government financial institutions in taking control of collapsing financial institutions and thereby restoring the confidence of the creditors through proper surveillance and intervention was also emphasized.

IV. Mandate of the Forty-Eighth Session of AALCO

17. The Resolution adopted at the Forty-Eighth Session (AALCO/RES/48/S 16, 20 AUGUST 2009), appreciated the timely initiative of the Secretary-General to place the item on the agenda of the Forty-Eighth Annual Session of AALCO and emphasized the need for strengthening the foundation for a fair, inclusive and sustainable global financial system. The resolution also affirmed the need by Member States to review their respective legal framework to address the financial crisis including regulatory and supervisory mechanisms and called upon the Member States to forward to the Secretariat their views and suggestions on this item, so as to guide the Secretariat on the future course of action; and decided to place this item on the provisional agenda of its annual sessions, **as and when required.**

V. Proposal for Compilation of National Regulatory Mechanism of AALCO Member States

18. In view of the observation by the Member States that the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental authorities so that the States could take preventive measures to overcome financial crisis and recognising the fact that some of the AALCO Member States are yet overcome the financial crisis, the AALCO Secretariat proposes to bring out a compilation of the national regulatory mechanism (Legal framework) of its Member States. This would give an opportunity to the Member States to share their regulatory framework and could be used in addressing the present and future financial crisis. Hence, the Member States of AALCO are requested to forward their national regulatory framework developed by the concerned Ministries and the Central Bank to the AALCO Secretariat **latest by 15 November 2010.**

VI. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 16
8 AUGUST 2010

MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat Document No: AALCO/49/DAR ES SALAAM/2010/S16;

Recognizing the significance of the topic, especially the legal aspects, for the Asian-African countries in the context of the ongoing global financial crisis and its impact on development;

Being aware of the adverse consequences of the global financial crisis on the economic growth and development of Member States of AALCO, and their efforts to resolve it;

Noting the efforts of the international community to address the global financial crisis, particularly, convening of the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* by the United Nations from 24th to 30th June 2009 in New York to assess the global financial crisis;

Taking note of the Resolution (A/RES/63/303) adopted by the United Nations General Assembly on 9th July 2009 on the *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*:

1. **Emphasizes** the need for strengthening the foundation for a fair, inclusive and sustainable global financial system;

2. **Recognizes** that disruption in the financial market, loss of confidence, inadequate surveillance of the financial sector and lack of early warning led to the global financial crisis;

3. **Affirms** the need by Member States to review their respective legal framework to address the financial crisis including regulatory and supervisory mechanisms;

4. **Also recognizes** the need to reform and strengthen the international financial and economic system, as appropriate, to adapt to the current global financial realities;

5. **Calls upon** Member States to forward to the Secretariat their views and suggestions on this item, so as to guide the Secretariat on the future course of action;

6. **Request**s Member States of AALCO to forward their national regulatory framework/legal framework developed by the concerned Ministries and the Central Bank to the AALCO Secretariat **latest by 15 November 2010** so as to enable the Secretariat to bring out a compilation of the national regulatory framework of its Member States.**;** and

7. **Decides** to place this item on the provisional agenda of its annual sessions, as and when required.