

**SUMMARY RECORDS OF THE  
SECOND GENERAL MEETING  
HELD ON TUESDAY, 28 JUNE 2005 AT  
9:30 AM**

**H.E. Mr. Amos Wako the President of the  
Forty-Fourth session in the Chair.**

**A. General Statements (continued)**

1. The **Leader of Delegation of the United Republic of Tanzania** appreciated the very welcoming and encouraging words by his Excellency Mwai Kibaki, the President of the Republic of Kenya during his inaugural address. The Delegate congratulated the Republic of Kenya for the very warm hospitality that had been extended to the Delegates. He thanked Amb. Dr. Wafik Z. Kamil, Secretary General, together with his colleagues in the Secretariat, for the excellent preparations for this session and also was glad that they got the documents well in time and requested to do the same in future.

2. The delegate said that sine inception the Organization had been serving the Member States, as an advisory body in the field of International Law. The Organization had been a good avenue for considering and deliberating on issues of international law regarding matters referred to it by Member States and had been making recommendations to governments, as it deemed necessary. The Organization had also played the role of being an avenue for exchanging views, experience and information on matters of common concern having legal implications. Generally, the Organization had been serving as an important forum for the Asian-African cooperation in legal matters of common interest and concern. That way, the Organization was a very important venue for the progressive development and codification of international law. Because of all these, AALCO was known and recognized in the International law circles, for the balanced nature of its items on the agenda as well as for its deliberations. The Delegate urged States within the African and Asian region that have not joined AALCO to do so.

3. In the Delegate's view one of the major achievements of AALCO was the launching of its integrated scheme for settlement of disputes in the economic and commercial transactions with the objective of promoting international commercial arbitration. He urged members of AALCO to utilize these arbitration centers and hoped that the flow of arbitration to arbitral institutions outside the region would be minimized. The Delegate underlined that another important step taken by AALCO concerns preparation of different publications, which, besides reporting on AALCO's activities, also contained information on recent developments in the field of international law. Publications included reports of AALCO's Annual Sessions, seminars and other meetings convened under its auspices from time to time. Other publications include the "Yearbook of the Asian-African Legal Consultative Organization". These publications serve as a very useful tool for wider dissemination of information on the activities of AALCO and the developments in the field of international law.

4. The Delegate pointed out that the items on the agenda of the session were contemporary in nature and of topical interest.

5. The **Leader of the Delegation of United Arab Emirates**<sup>1</sup> expressed appreciation to Kenya for hosting the session. He also congratulated the President and Vice President on their election. He mentioned that discussions held at the regional levels establish and strengthen international legal norms at the international level. He said the U.A.E was one in the forefront in taking active part in the international arena and expressed its commitment to international legal principles. While referring to the agenda items he informed that the Late Sultan of the United Arab Emirates said that U.A.E. was committed to preservation of environment as major goal. He said that U.A.E. has ratified several

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<sup>1</sup> Statement made in Arabic. Unofficial translation from interpreter's version.

international conventions dealing with environment made domestic laws also.

6. He further informed that they left no efforts in combating international terrorism. He informed that they ratified the Arab Convention on Combating Terrorism. While referring to the items on the agenda of the AALCO he said that they have been taking several measures for the protection of folklore, to combat corruption, against trafficking in persons and transnational organized crime. While referring to the topic of Human Rights in Islam he underlined that Islam preaches tolerance and provides for the protection of human rights. The Delegate said that the U.A.E. condemned all atrocities against Palestinian people and urged the Member States to support the cause of Palestinian people.

7. The **Delegate of the Republic of Korea** congratulated the President and Vice-President on their election and said that under their able leadership, the Forty-Fourth AALCO Session would lead to fruitful results. She said that as a host country to the Forty-Second Session of AALCO, she expressed her satisfaction in Korean initiative of establishing a Drafting Committee and classifying the items into two categories namely deliberated and non-deliberated items, to enhance efficiency and transparency that had now become a practice in the Organization.

8. The Delegate also welcomed the initiative of the AALCO Secretariat for adopting the agenda item "Expressions of Folklore and its International Protection". Republic of Korea had the tradition of respecting the not only tangible heritage, but also intangible heritage. Korea had enacted national law and policy to protect intangible cultural heritage, and had also played an important role in making the UNESCO Convention for the protection of Intangible Cultural Heritage. She said the Korea hoped to share all the experiences in this respect and urged the Member States of AALCO to consider ratifying the Convention, which required ratifications from 30 countries.

9. The **Leader of Delegation of Nepal** congratulated the President and the Vice-President of the Forty-Fourth session for their election. He said that the inauguration of the Annual Session by the President of the Republic of Kenya manifested the ample importance attached by the Government of the Republic of Kenya to this Session. He also expressed appreciation on behalf of his delegation to the Government of Kenya for hosting this session and for the warm welcome and hospitality extended to the participants.

10. Further, he appreciated the approved agenda, including items like ICC, Combating Corruption, International Terrorism, Environment and Sustainable Development, Trafficking in Women and Children, as topical and of concern to the Asian and African countries. He said that they were proud of the Organization for having made significant contribution to the progressive development and codification of international law and reiterated Nepal's consistent support to the roles and activities of AALCO.

11. The **Leader of the Delegation of Thailand** congratulated the President and the Vice President on their election and thanked the Government of the Republic of Kenya for hosting the Forty-Fourth session. The Delegate said that it was quite timely and coincidental that there were at least four major events that were taking place, namely, that the UN had launched its reform Project after its 60 years in service to the international community; that the UN Convention on the Law of the Sea had reached the 10<sup>th</sup> anniversary of its entry into force last year; and that the World Trade Organization had just approached its second decade of being in existence. Another important event for AALCO in the year to come was to celebrate the 50<sup>th</sup> anniversary of the consultative body. Needless to say that the Organization had been serving the membership as an effective inter-regional organization of a consultative nature. He observed that it should grasp this opportunity to explore further what concepts and principles were required to meet the needs

and concerns of Afro-Asian countries, which international law per se could not respond properly. Issues related to international law, particularly access to medicine in case of emergency situations, as well as the need to review the 1997 Convention on the Non-Navigational Uses of International Watercourses whether such principles underlying several provisions of the Convention should be revisited. He also urged that it should seriously examine whether the existing principles were sufficient to resolve water shortage and optimal use of water resources in a fair manner. In order to assist Member States of AALCO to participate at different fora, stocktaking of the current threats and challenges in international law should be made on regular basis.

12. He pointed out that as we were proceeding along with the international community in contemporary international law, we should associate ourselves with progressive development of international law by participating actively in the formulation of international norms and practices, which would in effect correspond to the needs and interests of developing countries. The Delegate viewed that international law was not meant only to regulate state conduct, but also to serve common interests of States as a whole. Then only international peace and security would come into being. It was up to States to formulate, strengthen, abide by and secure benefits from international law as long as it felt within the purview of the UN Charter.

13. The **Leader of the Delegation of Oman**<sup>2</sup> congratulated the President and the Vice President on their election. He informed that Oman was a party to several conventions against terrorism including the Arab Convention against Terrorism. He informed about the various measures that were undertaken by Oman against corruption and money laundering. He also underlined the necessity of supporting the Convention against Transnational Organized Crime. While

mentioning that the problem of environment was not confined to any particular geographical or political borders, the Delegate stated that the protection of environment was one of Oman's national priorities.

14. The **Leader of Delegation of Ghana** congratulated the Attorney-General of Kenya on his election as President of the Forty-Fourth session. He also expressed the gratitude of his delegation for the invitation and the warm hospitality extended by the Government and people of Kenya. He stated that from the report of the Secretary-General, he was satisfied that the Agenda was on course and must be supported, especially by the discharge of our financial obligations to the Organization.

15. Further, he expressed the condolence of his delegation to the Governments and peoples of Kenya, Indonesia, Thailand, Sri Lanka, and all other countries for the damage to life and property as a result of the tsunami disaster. He also expressed his concern on the arrival of 200 refugees from the Darfur region of Sudan on the territory of Ghana, which brought about an additional financial burden on the economy of Ghana, which was itself under severe strain from the effects of the increasing oil prices and adverse terms of trade. In view of the principle of *non-refoulment*, he noted that Ghana had kept the refugees and provided them with food and shelter. Further, he appealed to the brothers in Sudan to work out an arrangement that would ensure that the fragile peace, which the UN brokered, would hold to ensure that these refugees could return home very soon.

16. He expressed concern about the situation in the Middle East, especially in Iraq and the effect of the constant suicide bombings and gruesome murders, despite the handover to an elected Iraqi administration, on regional peace and security in particular and the world in general.

17. He also expressed concern about the effect of armed conflict on women and children, especially the recruitment and

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<sup>2</sup> Statement made in Arabic. Unofficial translation from interpreter's version

abduction of children and the rape and sexual violence perpetrated against women and children.

18. In conclusion the Leader of Delegation mentioned Ghana's support of the International Criminal Court and the efforts being made to try the perpetrators of crimes against humanity, which are carried out with impunity, to deter them from their nefarious activities.

19. The **Leader of Delegation of the Syrian Arab Republic**<sup>3</sup> thanked the Kenyan Government for hosting the Forty-Fourth Session and extended his cordial congratulations to the President and Vice-President of the Session on their election.

20. He stated that the solidarity of AALCO Member States during typical crises which the world suffers today allows it to assert its important role in exerting efforts to solve the challenges which the world faces today and to establish the principles of justice and equality among its people, and raise living standards in order to reinforce protection and respect of its people. AALCO proved its continuous cooperation to achieve the UN principles and to implement agreements which aim to promote the principles of co-existence among states without interference in internal affairs.

21. He stated that his country was an active member in AALCO since its establishment. It exerted all efforts to follow its principles and was always keen to reinforce cooperation among Member States in AALCO and other states of the world. It followed the recommendations of every Session. It joined numerous bilateral, regional and international agreements, which strengthened international cooperation aiming to provide stability and security for all people of the world and protect human rights and fight corruption and cease

the environment's pollution and combat terrorism besides issuing the national laws in this regard.

22. Syrian Arab Republic believed that people should enjoy peaceful coexistence in general and by the people of AALCO Member States in particular. He reminded that Syria was the first country that called for an international conference to define terrorism, and to differentiate it from the people's legitimate struggle to liberate their occupied lands. Syria also considered just and comprehensive peace as its strategic choice and sought peace according to this basis. It depended upon UN resolutions and international legitimacy for claiming its occupied land, which was under occupation.

23. The delegate recalled the spirit of the Bandung Conference and looked forward to a bigger role of AALCO in supporting the just causes of its Member States and to work for reinforcement of international law principles by moving these principles from theory into practice without double standards.

24. The delegate drew attention to the suffering of Palestinian people from displacement and daily oppression. He called upon the AALCO and all regional and international organizations to support the Palestinians' legitimate struggle and stand firmly with them while they stuck to their land in spite of their daily suffering.

25. He stated that his country had always stood with its Iraqi brothers and it looked forward to a unified and independent Iraq. It exerted all efforts to provide peace and security for the Iraqi people.

26. The **Leader of Delegation of Bangladesh** congratulated the President and Vice-President on their election and thanked the Government of Kenya for hosting the Forty-Fourth Session. He expressed special thanks to the very able Secretary-General Amb. Dr. Wafik Z. Kamil for his excellent

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<sup>3</sup> Statement delivered in Arabic. The Secretariat acknowledges with gratitude the Official translation provided by the delegation of Syrian Arab Republic.

ability for chalking out many important and timely agenda for discussion of this session..

27. He stated that international economy and inter-state trade were currently undergoing a transition. In the present context of globalization, market economy, changes in bio-diversity, rapid pollution in global environment, rampant corruption in both national & international sphere and cross-boundary terrorism selection of above agenda appeared to be very meaningful and timely. These issues deserved special attention and need formulation of adequate and appropriate administrative & legal framework to address those problems.

28. He noted that the role of a forum like AALCO, could not be over emphasized, where experts of international law exchanged views on legal matters relevant to the subject in an objective, professional and constructive manner.

29. He highlighted that AALCO was the only legal consultative body in the combined regions of Asia-Africa. So far it had made outstanding contribution in the field of international law. And through its landmark achievements in the development of international law by this time this organization had attained worldwide reputation as a distinguished regional institution of legal experts.

30. He emphasized that with the speedy development in the technical and economic fields and growing economic cooperation among the nations and inter-dependence, Asian and African states had become closer. Therefore, it had become necessary for Asian-African nations to face and tackle together in close cooperation with the rest of the world the common global problems like environment related problems, human right issues, international terrorism, world wide rampant corruption, child and women trafficking issues, refugees and migrant workers problems. With this end in view, it was also necessary to build a sustainable legal &

administrative framework to combat and solve these global problems.

31. In this context, it was felt that convening of a special session on "Environment Law" and inclusion of 'Corruption Issue' on the agenda along with other common global issues for discussion during this was important and deserved appreciation.

32. He highlighted some of the concerns of his Government. He said that the position of his Government on International terrorism was very clear; it is against all sorts of terrorism. So far it had ratified 11 major International Conventions/ instruments relating to terrorism, and was committed not to encourage or allow any sort of terrorist activities in her soil. It had rather adopted many steps to combat terrorism. It had formulated a new legislation entitled "**Money Laundering Act**" keeping provision for preventing financing to terrorist and terrorism. Bangladesh had also formed an elite force called "Rapid Action Battalion" (in brief RAB)" to combat terrorism and also created special courts for trial of suspected terrorist. It was also a very active member of SAARC convention on prevention of regional terrorism.

33. Turning to the issue of Environment, he was of the view that environment pollution increasing at an alarming rate. Bangladesh Ministry of Environment had taken many steps with the help and assistance of World Bank and other international organizations to address this problem. A good number of projects were being implemented in this regard. New legislations were enacted. An Environment Court was created for trial of offenders committing offences relating to environment. It had also either ratified or acceded to all-important international instruments on environmental aspects.

34. He hailed the UN convention on corruption, which had become a global menace. He said unfortunately, Bangladesh was also not free from this vice. To deal with

the problem very recently Bangladesh had constituted a high powered Independent Anti-Corruption Commission headed by a former Supreme Court Judge. It had started functioning under a new legislation.

35. As a member of the United Nations, Non-Aligned Movement and OIC Bangladesh had consistently supported early termination of the illegal occupation of Palestinian territory as well as the right of the self-determination of the people of Palestine. Bangladesh was one of the few privileged countries which were invited to make submission before the ICJ on the legal consequences of the construction of a wall in the occupied Palestinian territory by Israeli govt. Bangladesh believed that all atrocities being pursued by the Israeli govt. against Palestine people were violations of universally recognized Humanitarian law and Human rights.

36. He believed that in this world of mutual interdependence and mutual cooperation, it was expected that AALCO would continue to carry out its tireless efforts in contributing towards progressive development and codification in international law with close and active cooperation with United Nations, International Law Commission (ILC) and other international and regional organizations.

37. In conclusion he thanked the Indian authority for making remarkable progress towards construction of AALCO head quarters in Delhi and India Government also deserves special thanks for the valuable contribution it made both in terms of money and land for this purpose. He also lauded AALCO's efforts to establish a center for research and training. He extended his country's full and sincere cooperation towards further development of AALCO.

38. The **Leader of the Delegation of Myanmar** congratulated the President and Vice President of the Forty-Fourth session for their election and also expressed deep

gratitude to the Government of Kenya for hosting the session and for extending the warm welcome and hospitality. In his statement, the leader of the delegation outlined the developments of Myanmar in different areas of international law during the past year from the time of Seoul session till date.

39. He stated that Myanmar acceded to UN Convention against Transnational Organized Crime on 30<sup>th</sup> March 2004, together with the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and Children and the Protocol against Smuggling of Migrants by Land, Sea and Air. The domestic law for this convention and protocols was under drafting, which would add to the existing nine special laws already in force in these areas. Further, Myanmar had acceded to 10 anti-Terrorist Conventions with signature to one. He informed the gathering that new legislation was now being drafted to put into domestic legal effect various conventions relating to different terrorist activities.

40. Another area that he mentioned in which Myanmar was actively taking part was of economic and financial crimes. He informed that the Control of Money Laundering Law, which was drafted in accordance with international standards, was promulgated on 17<sup>th</sup> June 2002 and was in force since then. Also, in practice, the mechanism i.e. the Central Control Body combating money laundering, the financial intelligence unit (FIU) and financial intelligence teams had commenced their operations and their *modus operandi*, which was in accordance with the law.

41. Finally, he expressed his delegation's great interest in the topics on the agenda of the Session and hoped that the results of the discussion on topics within AALCO would be shared by the wider views of Member States.

42. The **Leader of the Observer Delegation from New Zealand** thanked the Secretary-General and the Member States for the opportunity to participate in the Forty-

Fourth session of AALCO. He said that New Zealand had been a permanent observer since 1981 and had been following closely the Organization's work. He said that his own interest went back further, including a study of the work of the Organization at the end of its first ten years and an excellent study of the early 1960s on atmospheric nuclear testing which New Zealand used in the case against France in the ICJ.

43. He noted that New Zealand as a small country with a strong and abiding commitment to the rule of law, welcomed the opportunity to learn the views of AALCO Member States on a number of important topics of international law and to have informal exchanges with them on these issues. As the Attorney General of the host country declared at the opening, it was important to ensure that international law reflected the interests of all countries equally.

44. He thanked the Secretariat for the comprehensive and informative set of documents. A recurring theme of many of the topics on the agenda was the need for increased international cooperation and to strengthen international law in order to combat shared threats such as terrorism and transnational organized crime, matters emphasized by the President of Kenya, His Excellency Mwai Kibaki in his opening address to this conference.

45. He then commented on some of the agenda items. The International Law Commission plays a valuable role in codifying international law and he congratulated it for its work in adopting at first reading last year a set of draft articles on the topic of Diplomatic protection. The set of draft principles on the topic relating to international liability in the case of loss from trans-boundary harm arising out of hazardous activities had longstanding interest to New Zealand since Mr. Quentin Baxter of New Zealand commenced this work in the ILC in the '70s'. The Principles were in New Zealand's view consistent with the evolving shape of international liability instruments and had achieved significant

progress in plugging a gap in the existing international legal superstructure. This would provide an overarching framework to guide the development of new instruments in this area.

46. On behalf of **Mr. Hans van Ginkel, Rector, United Nations University (UNU), Amb. Chusei Yamada, former Member of the UNU Council** conveyed greetings of the United Nations University on the occasion of the Forty-Fourth session of the AALCO and hoped that the discussions in the coming five days would be productive, and would foster creative thinking that contribute to developing innovative approaches and solutions.

47. He noted that the one-day special meeting on "Environmental law and Sustainable Development" is a very important topic, and shared some views on the theme of special meeting.

48. He observed that the governance and management of sustainable development required an instrument called "environmental law". Environmental law would be necessary to achieve an equitable and sustainable use of natural resources. Moreover, environmental law could provide governments with the necessary tools that would enable them to ensure the conservation of the environment.

49. The Millennium Ecosystem Report released in May 2005 highlighted that "better protection of natural assets will require coordinated efforts across all sections of governments, businesses and international institutions. The productivity of ecosystems depends on policy choices on investment, trade, subsidy, taxation, and regulation, among others". Clearly, environmental law has a very important role to play in helping to reduce pressures on ecosystems. Environmental law was a tool that could enable us to "To keep the Earth even for the Needs of Future Generations", which was the definition of Sustainable Development given by the Brundtland report in 1987.

50. It was important to recall that over the past fifty years most of Environmental Law and treaties have been developed at the international level: several hundreds Multilateral Environmental Agreements (MEAs) had been established during that period. These legal texts emanated from the global effort that arose since the end of World War II, to protect and preserve the global environment. However, for these agreements to be implemented at the national level, it was necessary for them to be ratified, and for appropriate national legislation to be adopted. Without such national legislation, the ideas promoted by MEAs would not have binding effects. Nonetheless, national legislation had been adopted for most global MEAs in order to assure their application and compliance. According to UNITAR, the main issue remained in developing countries where environmental legislation had not been properly developed and where there was a lack of qualified and trained personnel to implement the MEAs.

51. Within its programme area of Environment and Development, the United Nations University's *Inter-linkages Initiative* addressed the call for better coordination and harmonization between MEAs, both during negotiation and during the implementation phase. It was recognized that such efforts could promote the elimination of contradictions, avoid overlaps, and boost national capacity. Despite increased awareness surrounding the benefits of such actions, efforts to maximize synergies between agreements are generally not undertaken when plans are implemented.

52. The *Inter-linkages Initiative* was born out of the need to develop more coordination between MEAs, as well as the need to develop an integrated approach for the development of comprehensive synergistic frameworks for national, local, and international MEA stakeholders.

53. In the late nineties, UNU convened a conference with representatives from the MEAs Secretariat and UN agencies. The

conference was aimed at fostering international understanding and awareness of the inter-linkages issue, as well as to identify practical approaches. The conference acted as a catalyst for international efforts to move forward and improve understanding and awareness of inter-linkages issues. UNU assembled the information generated at the conference, and presented it within the 1999 Inter-linkages Report.

54. Since the conference, various inter-linkages related decisions had been taken at a number of MEA MOP/COPs (e.g., CITES, UNFCCC, UNFCCC) and several MEA Secretariat had initiated inter-linkages programmes and planning. However, at present, 'inter-linkages' remains an illusive and abstract concept that was, for the most part, understood only in terms of a broad overarching principle. More work was therefore required to develop a greater level of understanding at the level of practical implementation.

55. He believed that the discussions during the special meeting would contribute to enforcing the role of environmental law as one of the most important tools that support sustainable development and hoped that the same could be shared with them. He reminded his brief talk with the Secretary General of AALCO about the ways to enhance cooperation between AALCO and UNU.

56. **Mr. George Okoth-Obbo, Representative of the United Nations High Commissioner for Refugees (UNHCR)**, on behalf of the new High Commissioner for Refugees, Mr. Antonio Guterres, expressed UNHCR's appreciation to AALCO and in particular to the Secretary General, Dr. Wafik Z. Kamil, for the invitation to UNHCR to attend this meeting. The Representative said that UNHCR and AALCO have had a long record of mutually – beneficial co-operation, now rooted on a Memorandum of Understanding concluded by the two organizations in May 2002. The principal feature of this collaboration today figures in a joint study, which the two organizations have



agreed to undertake on statelessness from the African, Asian and Middle Eastern perspective.

57. The Representative said that Statelessness is a problem that AALCO has been concerned with in its own right for several years now. In the case of UNHCR, refugees are people who find themselves in a situation of de facto statelessness. In addition to its refugee mandate, UNHCR has also been entrusted with the responsibility for the prevention and reduction of statelessness, including promoting accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Today, 57 States have acceded to the 1954 Convention and 29 to that of 1961. Clearly, much remains to be done to universalize the coverage of these international instruments, let alone in actually mitigating actual or potential situations of statelessness.

58. He informed that the joint AALCO-UNHCR study would be supported financially by UNHCR. It would seek to determine the magnitude and scope of the problem of statelessness in the Africa, Asia and Middle Eastern regions. It would also look into linkages between statelessness and migration, displacement or trafficking. It would, in particular, outline vulnerabilities for women and children and identify approaches and best practices adopted by States to address such cases and fill in any gaps. The study would include three case studies covering Central Africa, South East Asia and South Asia.

59. The Representative stated that the expectation was that the study, its findings and recommendations would be discussed at next year's annual AALCO meeting and a basis would be formulated for further work at the country and regional levels to strengthen legal and practical responses to statelessness among AALCO's member States. He said that UNHCR looks forward to an intensive period of work with the Secretariat of AALCO and the Member States in undertaking this study in the coming year. A positive outcome would

further strengthen the cooperation between the two organizations and highlight the particular concerns on statelessness that exist in Africa, Asia and Middle East.

60. The Representative underlined that the challenge of refugees continued in all continents. UNHCR also looked forward to continuing work closely with AALCO and its member states for a world in which all people can be confident of being able to find safety, security and sustainability in their mother countries. Travel across borders would thus become a matter of free choice, and not a forced imperative to find safety from political, religious, ethnic or social persecution, war, strife, intolerance or hatred.

61. The Representative further stated that the questions with which AALCO is concerned in this session— human rights compliance, the fight against terrorism, people smuggling and corruption and ensuring sustainable resource and environmental management – are all vital to both the causes and addressing properly the refugee challenge. In some countries, measures taken to combat terrorism have placed the institution of asylum in a very uncertain and precarious position. UNHCR is also worried about refugees becoming targets of trafficking, especially young girls and boys. Further, refugee policies become hardened because of concerns over the environmental impacts of refugee presence. He mentioned that the discussions, work and outcomes of AALCO in these respects would also continue to command the close interest of UNHCR.

62. **Judge Hugo Caminos, International Tribunal for the Law of the Sea** expressed greetings and best wishes on behalf of the President and his colleagues at the Tribunal for a successful session. He informed that out of the 21 judges in the Tribunal, almost half of them, actually 10 judges, are nationals from Asian and African Countries. The members of the Tribunal are all international lawyers, experts in the law of the sea. For this reason they appreciate the pioneer work of AALCO in the field of the Law of the Sea. This work

contributed to the framing of the 1982 United Nations Convention on the Law of the Sea.

63. While explaining the nature of the Tribunal the Judge informed that the Convention established the International Tribunal for the Law of the Sea as one of the compulsory procedures to be chosen by the States for the settlement of their disputes arising out of the interpretation and application of the Convention. ITLOS became operational on 1st October 1996, almost 9 years ago. As a specialized judicial forum, the jurisdiction of ITLOS is limited to matters related to the law of the sea as, for example, marine delimitation cases. On the other hand it is open to entities other than States, “which contributes to the Tribunal’s comprehensive character. The Tribunal’s decisions are final and are required to be complied with by all the parties to the disputes. Thus, except in relation to its jurisdiction, in other respects the Tribunal enjoys a standing comparable to the ICJ”.

64. The jurisdiction *in personam* of ITLOS is a remarkable innovation. Article 20, paragraph 1, of the Statute provides that “The Tribunal shall be open to States Parties”. But the meaning of “States Parties” is States that have consented to be bound by the Convention and for which the Convention is in force, as well as other entities which under article 305, become parties to the Convention. Paragraph (6) of the latter provision includes international organizations, which, in accordance with annex IX, are entitled to become parties to the Convention.

65. The jurisdiction *in personam* of the Tribunal is also related to the subject matter of the jurisdiction *rationae materiae*.

66. The first phrase of Article 20 paragraph 2 of the Statute refers to the jurisdiction of the Seabed Disputes Chamber, under article 187, in disputes over activities in the Area, such as those between States Parties, the Authority or the Enterprise, State enterprises and natural or juridical persons,

and between the Authority and a prospective contractor.

67. The second phrase of this paragraph allows entities other than States Parties that enter into an agreement under which the Tribunal may also have jurisdiction in disputes where the parties to it can be States, or international organizations and entities not Parties to the Convention, to have access to ITLOS.

68. Out of twelve cases recorded in the List kept by the Registrar in conformity with article 36, para.1 (b) of the Rules, five of them dealt with applications on prompt release of vessels and crews under article 292 of the Convention. This article deals with the detention by a coastal State of a vessel flying the flag of another State Party in certain situations stipulated in the Convention. It applies when it is alleged that the detaining State has not complied with the provisions of the Convention for the prompt release of the vessels or its crew upon the posting of a reasonable bond or other financial security.

69. To which articles of the Convention does 292 apply? Does it apply to all situations of detention of vessels or only to those where the Convention makes provision for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security?

70. In the Judgment in the M/V “**Saiga**” Case the Tribunal found that three provisions of the Convention correspond expressly to the requirement of alleged non-compliance of the provisions on the Convention for the prompt release of vessels: State concerning its sovereign rights over the living resources in the exclusive economic zone:

(b) Article 220, paras.6 and 7 deals with the enforcement by coastal States of its laws and regulations for the prevention, reduction and control of pollution from vessels in its exclusive economic zone or the territorial sea; and (c) article 226, para.1(c), deals with the investigation of foreign vessels that would

present an unreasonable threat or damage to the marine environment.

71. Another part of the judicial work of the Tribunal has been the requests for the adoption of provisional measures. Article 290 of the Convention and article 25 of the Statute of the Tribunal relate to provisional measures, which may be prescribed at the request of any party to a dispute.

72. In its eight years of life the Tribunal has prescribed provisional measures in five cases. Provisional measures may be prescribed in two different situations. One is contemplated in article 290, para.1, stating that if a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction, it may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision. This was the situation prevailing in the first of the cases in which the Tribunal prescribed provisional measures, the M/V “**Saiga**” (no.2) Case, Provisional Measures. It was an incidental proceeding forming part of the same case on the merits.

73. The other situation in which provision measures can be prescribed is regulated in article 290, para.5. It provides that pending the Constitution of an arbitral tribunal to which a dispute is being submitted... any court or tribunal agreed upon by the parties or, failing within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures.

74. The parties are obliged to comply promptly with the provisional measures (article 290,para.6). This interesting provision has been further developed in article 95 of the Rules which states that each party shall inform the Tribunal as soon as possible as to its compliance with any provisional measures prescribed by the Tribunal, and submit an initial report on the steps it has taken to insure prompt compliance with those measures (para.1) The Tribunal may also request further information from the parties on any matter connected with the implementation of any provisional measures it has prescribed (para.2).

## **B. Report on the work of the International Law Commission at its Fifty-Sixth Session**

75. **Amb. Dr. Ali Reza Deihim** Deputy Secretary General of AALCO introduced the item on the topic contained in the Document No. AALCO/44/NAIROBI/2004/SD/S 1.

76. He welcomed Professor Djamchid Momtaz, Chairman of the International Law Commission and Amb. Yamada, an eminent member of the ILC. He said that their presence and participation would be of valuable guidance for the deliberations. He informed that the Secretary General of AALCO and the ILC held a joint meeting in conjunction with the meeting of the Legal Advisers of AALCO Member States in New York on 10<sup>th</sup> November 2004. Chairman and eminent members of the ILC took part in this meeting and views were exchanged on the topics: ‘International Liability for Injurious Consequences Arising out of acts not Prohibited by International Law’; ‘Shared Natural Resources’; and ‘Diplomatic Protection’.

77. He informed that the fifty-sixth session of the Commission had on its agenda seven topics. While appraising the progress of the work at the ILC at its fifty-sixth session he informed that concerning the topic “Reservations to treaties”, the Commission considered the Special Rapporteur’s ninth

report relating to the object and definition of objections. The Commission further considered and provisionally adopted draft guidelines 2.3.5, 2.4.9, 2.4.10, 2.5.12 and 2.5.13 and commentaries thereto.

78. On the topic of “Diplomatic protection” the Commission had before it the fifth report of the Special Rapporteur. The Commission referred draft article 26, together with the alternative formulation for draft article 21 as proposed by the Special Rapporteur to the Drafting Committee along with a decision asking the Drafting Committee to consider elaborating a provision on the connection between the protection of ships’ crew and diplomatic protection. The Commission considered the report of the Drafting Committee and adopted on first reading a set of 19 draft articles. He commended the work of the Special Rapporteur and the Commission on having adopted a set of 19 articles on first reading.

79. He said that on the topic of Unilateral acts of states the Commission, considered the seventh report of the Special Rapporteur, which contained a survey of State Practice in respect of unilateral Acts. The Commission further established an open-ended Working Group on unilateral Acts of States, which focused on the detailed consideration of specific example of unilateral acts.

80. With regard to the topic “International liability for injurious consequences arising out of acts not prohibited by international law (International liability in case of loss from transboundary harm arising out of hazardous activities)”, the Deputy Secretary General informed that the Commission had before it the second report containing a set of 12 draft principles. The working group established by the Commission reviewed and revised the 12 draft principles and recommended that eight draft principles be referred to the Drafting Committee. The Commission referred the eight draft principles to the Drafting Committee along with a request to prepare a text of a preamble. Based on the report of the Drafting Committee the Commission adopted

on first-reading a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.

81. On behalf of AALCO Secretariat he extended compliments to the Special Rapporteur and the Commission for adopting a set of 8 draft principles on first reading during the present session.

82. The Deputy Secretary General said that on the topic of “Responsibility of international organizations”, the Commission had before it the second report of the Special Rapporteur dealing with attribution of conduct to international organizations. The report proposed four draft articles, which were considered by the Commission and referred to the Drafting Committee. The Commission considered and adopted the report of the Drafting Committee on draft articles 4 to 7 and commentaries thereto.

83. In relation to the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law”, the Commission reconstituted the Study Group which held eight meetings. The Study Group discussed the preliminary reports prepared by the Study Group members on different topics.

84. Turning to the topic “Shared natural resources”, the Deputy Secretary General informed that the Commission considered the second report of the special Rapporteur which contained seven draft articles. The Commission established an open-ended Working Group on Transboundary Ground Waters chaired by the Special Rapporteur. Further the Commission held two informal briefings by experts on ground waters.

85. Before concluding he drew the attention of the delegates to the information requested by the ILC on many of its agenda items and requested delegates to submit specific comments and observations on the ongoing agenda items of the ILC to enable the

Commission to take into consideration the views of different legal systems.

86. **Prof. Djamchid Momtaz, President of the ILC** presented the Report of the ILC on the work done by it during the first part of its 57<sup>th</sup> session from 2<sup>nd</sup> May to 3<sup>rd</sup> June 2005 in Geneva.

87. There were as many as 3 substantive topics on the agenda of the aforementioned session of the Commission. These included: Shared Natural Resources, Responsibility of International Organizations and Effects of Armed Conflicts on Treaties.

88. Regarding the topic of Shared Natural Resources, the Special Rapporteur, H.E. Ambassador Chusei Yamada, introduced his third report on the subject and proposed a complete set of draft articles for a Convention on the law of transboundary aquifers. He stated that the draft Convention was deemed to be a framework Convention. Nevertheless, the Special Rapporteur asked the members of the Commission to focus on the substance of the draft rather than on its form.

89. Groundwater represents 97 % of the freshwater resources available on the planet and the global estimated dependency on groundwater had greatly increased.

90. While the question of surface water had been settled with the adoption of the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, international law with regard to groundwaters, regardless of whether or not they were connected to surface waters, had yet to be codified by the ILC. It went without saying that the draft articles on groundwaters should not be regarded as a mere extension of the 1997 Convention. In the event of conflict between these two texts, draft article 4, as proposed by the Special Rapporteur, gives automatic precedence to the draft article, although some doubt had been expressed about the usefulness to establish an explicit link between the 1997 Convention and the draft under consideration.

91. The principle of equitable and reasonable utilization, which was the subject of draft article 5, has already been enshrined in the 1997 Watercourses Convention and other international instruments. Article 6 of the draft provides a very useful explanation of the factors to be taken into account for reasonable and equitable utilization of an aquifer.

92. Draft article 7 refers to the typical case of international liability arising out of acts not prohibited by international law. Paragraph 1 of the draft article deals with the obligation to prevent the causing of significant harm and Paragraph 3 deals with the eventuality of significant harm being caused in spite of the fulfillment of the obligation of prevention contained in paragraph 2. Even where all appropriate measures and due diligence would be observed, transboundary harm could nevertheless occur because the risks attendant of such activities could not be entirely eliminated. Nevertheless, no internationally wrongful act would have been committed.

93. With regard to the sovereignty that States claimed over ground waters within their territory, the Special Rapporteur concedes that although the territorial States are under a number of obligations they have sovereign rights over the natural resources located within their jurisdiction. Several members of the Commission pointed out that the principle of permanent sovereignty of States over natural resources should be stated elsewhere rather than in the preamble as it stands now. It has been said that it would be wise to make that point in the draft articles themselves in order to dispel criticism that the Commission was seeking to establish a regime whereby States had only limited sovereignty over the waters in their territory because they had to share that sovereignty with other aquifer States.

94. In conclusion of this part of my expose, I have to say that the Special Rapporteur has devoted a huge amount of time and energy to consult hydro geologists and other experts to ensure that the

Commission holds the most up-to-date scientific informations.

95. On the topic of the Responsibility of International Organizations, like the two previous reports, the third report on the subject presented by the Special Rapporteur Georgia Gaja during the first part of the 57<sup>th</sup> session of the Commission follows the general pattern of the articles on responsibility of States for international wrongful acts adopted by the Commission in 2001.

96. The third report discusses first the existence of a breach of an international obligation on the part of an international Organization and further the responsibility of an international Organization in connection with the act of a State or another Organization.

97. Draft articles 8 to 15 proposed by the Special Rapporteur correspond to draft articles 12 to 19 in Chapter III and IV of State responsibility. The Special Rapporteur explained in his third report and in the Plenary that the issues involved in the breach of an international obligation on the part of an international Organization in response of an international Organization in connection with an act of a State or another international Organization are the most identical to those in State responsibility and therefore there is no reason to take a different approach. This approach is necessary to avoid any future conflicting interpretation.

98. Draft article 15 deals with incidents in which an international Organization uses decisions, recommendations and authorizations directed at its members to evade its own obligation. The draft article 15 was extensively debated in the Plenary. The majority of ILC members agreed with the spirit of draft article 15 which enunciates two points of principles, namely that international Organizations would incur international responsibility if it obliged a member State to commit, by an action or omission, an internationally wrongful act and that it might incur responsibility if it recommended or authorized the commission of such an act. The

Commission provisionally adopted articles 8 to 16 as proposed by the drafting Committee.

99. As indicated in draft article 3, the wrongful act of an international Organization may consist in an action or in an omission. Clearly, omissions are wrongful when an international Organization is required to take some positive action and fails to do so. Compliance with this type of obligations may prove difficult for an international Organization when action presupposes that a certain majority is reached within a political organ of the Organization. Would an Organization be responsible for not taking action if this non-action is the result of the lawful exercise of their power by its member States?

100. Regarding the Effects of Armed Conflicts on Treaties, the Special Rapporteur Ian Browlie produced in his first report a full set of draft articles. Introducing the report, he said that the first goal of the draft was to clarify the legal position. The second was to promote and enhance the security of legal relations between States and the draft articles were intended to be compatible with the Vienna Convention on the Law of Treaties.

101. The Special Rapporteur regards the intention of the Parties to an armed conflict as the key to the question of which treaties were to survive an armed conflict. Sometimes, this intention must be presumed from the nature of the treaty. In other words, the object and purpose of the treaty must be taken into account. Draft article 4 proposed by the Special Rapporteur makes the intention of the Parties to a treaty at the time it was concluded the prime criterion for terminating or suspending the treaty in case of armed conflict. Although it will be extremely difficult to determine the intention of the Parties, there seems to be near unanimity that the intention is the most important criterion.

102. Draft article 7 proposes a list of eleven treaties, which would continue in operation during an armed conflict. The list was not exhaustive and the Memorandum by

secretariat entitled “The effect of armed conflict on treaties: an examination of practice and doctrine” had reference to a number of additional types of treaties, for example extradition treaty and treaty establishing international Organizations, in both cases, the test being the object and purpose of the treaty. In the final analyses, however these two approaches seemed to highlight the notion of intention.

103. The Special Rapporteur indicates in his report that the legality of the use or threat of force was not directly addressed. During the debate, it has been said that it was necessary to distinguish between Party that engaged in armed conflict in breach of international law and one that did so in self-defense in accordance with the provisions of the Charter of the United Nations. It has been said that the Commission should consider including in the draft provisions similar to article 7 and 9 of the Resolution on the effects of armed conflicts on treaties adopted in 1985 by the *Institut de droit international*.

104. The Resolution takes as its starting point the objective fact that the aggressor State should not be placed on an equal footing with a State exercising its right of individual or collective self-defense. According to article 7 of the Resolution such a State is entitled to suspend in whole or in part the operation of a treaty incompatible with the exercise of that right subject to any consequences resulting from a later determination of a State as an aggressor by the Security Council. Article 9 of the Resolution denies to the aggressor State the right to terminate or suspend the operation of treaty if the effect would be to benefit that State.

105. The Special Rapporteur proposes to use his first Report as a way of collecting views of Governments and filling lacunae on recent State practice, which would enable the Commission to pursue its mission of clarifying the law.

106. The Commission will start the second part of its 57<sup>th</sup> session on 11<sup>th</sup> July 2005 for

four weeks duration. The Commission expects to discuss the 10<sup>th</sup> Report of the Special Rapporteur Alain Pellet on Reservations to Treaties, the 8<sup>th</sup> Report of the Special Rapporteur Victor Rodriguez Cedeño on Unilateral acts of States and the first report of the Special Rapporteur Maurice Kamptu on Mass Expulsion of Aliens.

107. The **Delegate of India**, on the topic of Diplomatic Protection observed that the 19 draft articles on diplomatic protection, adopted by the Commission on the first reading during its 56<sup>th</sup> session represent a significant advancement in the development of international law, as they cover the entire gamut of the institution of diplomatic protection, which has undergone vast changes over the years. The Delegate further observed that they have expressed reservation to extension of diplomatic protection to stateless persons and refugees as it departs from the traditional rule that only nationals may benefit from the exercise of diplomatic protection. This reservation also flows from their reluctance to accept any definition of refugee, which expands the universally accepted definition under the 1951 Convention, irrespective of the purpose sought to be achieved by the introduction of a new definition.

108. The Delegate congratulated the Special Rapporteur on the topic of International Liability for formulating a text of draft principles on the subject of the allocation of loss in the case of trans-boundary harm arising out of hazardous activities, adopted by the Commission on the first reading during its 56<sup>th</sup> Session. He said that the report provided an in-depth analysis of the need for the protection of interest of the innocent victims of trans-boundary harm caused by hazardous activities. In the Delegate’s view, the scope of the topic and the triggering mechanism should be the same as that provided for prevention of allocation of loss. The primary liability should be that of the operator, as he is the person in command and control of the activity and therefore has a duty to redress the harm caused.

109. The draft presented by the Rapporteur is not only innovative but also flexible and propounds a scheme without prejudice to the claims that may arise and the applicable law and procedures. The flexibility is further strengthened by the Rapporteur's formulation of 'principles' instead of stipulating 'rules'. This approach is welcome as some of the draft principles have gained only sectoral acceptance and have not found acceptance in general state practice. The major portions of the draft principles are thus seen to be in the nature of progressive development of international law.

110. The proposal advocating compensation for trans-boundary damage caused to environment *per se*, is not supported by sufficient state practice from which general principles can be derived and issues of quantification in monetary terms, *locus standi* etc for claiming the damage are difficult to establish.

111. The Delegate further commented that the need for the transfer of technology and capacity building in the developing countries has been well recognized in international instruments. Several international multilateral legal instruments also recognize the application of differential standards to developing countries from those accepted by the developed countries, in matters of environmental protection. This balancing factor, he believed, ensures those environmental consensuses are viewed as an essential part of the right to developmental needs of a country. The Report underscores the importance of this view and acknowledges that the choices and approaches for the draft principles and their implementation may also be influenced by different stages of economic development of the countries concerned.

112. On the topic of the "Responsibility of International Organizations", the delegate pointed out the enormous complexity surrounding the question of responsibility of international organizations. Unlike States, which share certain basic qualities,

international organizations vary considerably in their structure, functions and competence. This diversity makes it difficult to develop and apply any set of common norms, articles or rules that would cover the multifarious and diverse entities under the term "international organization". The delegate advised the Commission to be cautious in developing rules for international organizations that mirror the rules set out with respect to States in the draft articles on State responsibility.

113. The delegate further said that in draft article 5, the Commission proposes that where agents or organs of States or other international Organizations are placed at the disposal of an international Organization, their conduct can be attributed to the latter Organization on the basis of 'effective control' it exercises over the conduct. The commentary to draft article 5 suggests that the test of 'effective control' envisaged in this draft article is largely based on practice relating to peacekeeping forces. It is not clear whether the test of 'effective control' would be adequate to deal with all situations where article 5 would be applicable.

114. The Delegate said that the topic of 'Shared Natural Resources' is a complex one. There is a need to learn much more about transboundary aquifers in general, and be cognizant of the wide variation in specific aquifer conditions and State practice. He said that India has consistently maintained that context specific agreements and arrangements are the best way to address questions relating to transboundary ground waters or aquifer systems. This will enable States concerned to take appropriate account of the various relevant factors in any specific negotiation. On the question of the final form, he said they would echo the views of those delegates that have supported a form that gives States appropriate flexibility to tailor agreements or arrangements to suit individual circumstances. Thus they support adoption of guidelines that could be used for negotiation of bilateral or regional arrangements. He recalled the situation with regard to the 1997 Convention on the Law of Non-Navigational Uses of



Trans-boundary Watercourses, which failed to garner broad support or to have a significant impact on State practice, with the result that the Convention is yet to enter into force.

115. The Delegate was of the view that Fragmentation of International law is one of the realities of present day international relations. The conflict that arises when a special law deviates from the general law and the differences between and within specialized fields of law has been the subject matter of study. The topic at hand is still at a formative stage. The Delegate pointed out that the Study Group has produced a non-exhaustive list of four broad areas of functional specialization where fragmentation occurs, including human rights and humanitarian law, international trade law and international environmental law and they look forward to the evolution of the work in this area in the future.

116. **The Delegate of the People's Republic of China** thanked Professor Momtaz, Chairman of ILC, for his briefing on the first half of the 57<sup>th</sup> session of the ILC.

117. With regard to the topic of Diplomatic Protection, the delegate observed that the Commission has completed the work on first reading of 19 draft articles on diplomatic protection, which basically reflects relevant rules of customary international law. Generally speaking, they were satisfied with it. He hoped that the ILC would continue its efforts to improve the draft articles, taking into account comments offered by States, so as to ensure that this topic could be completed on schedule in 2006.

118. Regarding the topic of Responsibility of International Organizations, on the three questions put forward by the Special Rapporteur in his third report, the Delegate was of the view that: 1. The study of this topic should be based, as far as possible, on an in-depth research of relevant practices of various international Organizations, but be confined to inter-governmental Organizations; 2. In dealing with this topic, the ILC should give more weight on codification rather than

progressive development of international law; 3. The "effective control" criterion is an evolving rule that needs to be further fleshed out through practice; 4. The issue of "Necessity" should not be invoked by an international Organization to preclude its wrongfulness.

119. With regard to the topic of Shared Natural Resources, the delegate observed that the Special Rapporteur has proposed a general framework for the law of transboundary aquifer systems, and has formulated draft articles for the Introduction and Use of Terms. He said that they were of the view that in furthering the work on this topic, the following elements might be borne in mind: 1. sovereignty of States over their natural resources should not be overlooked; 2. As the ILC is formulating the Draft Principles on the Allocation of Loss in Case of Transboundary Harm Arising out of Hazardous Activities, and has already adopted Draft Articles on Responsibility of States for Internationally Wrongful Acts, there seems no need for this topic to cover the issue of liability or responsibility for compensation; 3. The final form of the outcome of this topic can be decided after progress is achieved on substantive matters.

120. With regard to the topic of Unilateral Acts of States, he hoped that the Commission would make every effort to ensure that achievement can be reached at an early date.

121. With regard to the topic of Reservations to Treaties, he believed that, on the question of kind of treaty relationship exists between the reserving State and the objecting State; the intention of both parties should be taken into account.

122. With regard to the topic of Fragmentation of International Law, he believed that the study would have a positive effect on the application of international law, and could help clarify the relationship among the rules of different sections of international law without weakening the roles and status of basic principles of international law.

123. As to the future work of the Commission and new topics, he endorsed that two new topics as have been proposed, i.e., effect of armed conflict on treaties and expulsion of aliens, could be included in its agenda.

124. On the work of the ILC, the Delegate wanted to bring the issue of legal literature that is being relied upon by the ILC to the attention of the Member States of AALCO. Since not all of Member countries possess the literature in English or French on national practices which could be provided to the ILC, he expressed the view that one way to influence or to contribute to the deliberations of relevant topics by the ILC is to offer comments as far as possible. He observed that AALCO could make its unique contribution in this regard.

125. The **Delegate of Republic of Kenya** welcomed the new developments as clearly articulated by Prof Djamchid Momtaz of the International Law Commission.

126. On Diplomatic Protection, the Delegate observed that they agree with the general thrust of the articles on diplomatic protection. However, the application of the nationality principle raises a number of difficulties due to problems arising from multiple or dual nationality. He said that they support the retention of the traditional continuous nationality rule.

127. On the topic of Unilateral Acts of States, the Delegate observed that the ILC seeks to receive comments from states on their practice on this topic. He proposed that more details and guidance were required from the ILC on the direction they would expect the comments to take, as this is a very wide area.

128. On Responsibility of International Organizations the Delegate noted that the draft articles were being drafted in an area that has limited legislative guidance. Some phrases that run through the articles such as “other acts” and “other entities” should be clarified.

He supported the consideration of this topic in the programme of work of the ILC in elaborating a legal framework governing the conduct of international organizations in international relations.

129. On the topic of Shared Natural Resources the Delegate pointed out the need for the elaboration of an international legal instrument to guide the use, allocation, preservation and management of Transboundary Ground Waters/Acquifers. Critical consideration should be given to the management and sharing of confined aquifers. The ILC’s approach should be informed by the non-renewable nature of such aquifers. It is useful to examine whether the principles of the 1997 Convention on Non-Navigational Uses of International Watercourses are suited to non-renewable underground water resources or whether transboundary aquifers should be governed by a regime akin to other depletable shared natural resources such as oil or natural gas. In view of the delicate nature of the subject, a comprehensive study of state practice might be a useful point of reference in future work. The outcome of the work of the ILC on the topic of “Shared Natural Resources” could take the form of a framework document or guiding principles that would enable states to elaborate more specific national and regional arrangements.

130. The Delegate also supported the consideration of matters relating to the work of the International Law Commission in AALCO and also the presence of a representative of the ILC during the AALCO Annual Sessions because this offers a unique opportunity for AALCO Member States to engage in a discourse with the ILC and have their concerns taken on board during the progressive development and codification of international law.

131. The **Delegate of Arab Republic of Egypt:** Statement deemed to be read and copy available with the Secretariat in Arabic and would be translated and included in the Report of the Session.

132. The **Delegate of the Republic of Indonesia** conveyed profound gratitude to the International Law Commission (ILC) for the progress of the work at its 56<sup>th</sup> Session and observed that for years, AALCO and the ILC have maintained close and fruitful cooperation in the efforts of progressive development and codification of International Law.

133. The Delegate noted that the Commission has achieved several developments on the issue of Reservation of Treaties. The Commission had before it the Special Rapporteur's ninth report relating to the object and definition of objections. This report constituted a complementary section to the 8<sup>th</sup> Report on the formulation of objection to reservations and interpretative declarations. Moreover, the Commission has adopted 5 draft guidelines and commentaries thereto, namely, the draft guidelines 2.3.5 ("Widening of the scope of a Reservation"), 2.4.9. ("Modification of an Interpretative Declaration"), 2.4.10 ("Limitation and Widening of the Scope of a Conditional Interpretative Declaration"), 2.5.12 ("Withdrawal of an Interpretative Declaration"), and 2.5.13 ("Withdrawal of a Conditional Interpretative Declaration").

134. Indonesia welcomed the 5 draft guidelines and commentaries thereto. In respect of the draft guidelines 2.6.1, the Delegate supported the wording prepared by the Commission. However, he preferred to delete two words in the bracket, i.e., the word "which opposes" and "formulated". Concerning the draft guidelines 2.6.2, the Delegate was delighted that the commission had unanimously approved the said draft guideline.

135. On the topic of Diplomatic Protection the Delegate expressed profound gratitude to the Commission for adopting a set of 19 draft articles on its first reading. The Delegation was of the view that a State is responsible for injury to an alien caused by its wrongful act or commission. Therefore, diplomatic protection is the procedure employed by the State of nationality of the injured persons to secure

protection of that person and to obtain reparation for the internationally wrongful act inflicted. The 19 draft articles have established several legal principles on the diplomatic protection.

136. While commenting on the application of diplomatic protection for legal person and Ship's Crews the Delegate observed that the application of diplomatic protection over legal persons has been governed in article 9 – 13 of the draft article. Those articles have set a standard principle of which a corporation is protected by the State of Nationality of the Corporation, not by the State of Nationality of the Shareholders in the Corporation. Even though the state of nationality of the corporation has the right to exercise diplomatic protection, the state of nationality of the shareholders has the same rights but in a specific conditionality as set forth in article 11. The Delegate was of the view that this draft article provides sufficient balance between the interest of States and the Investors.

137. With regard to the application of diplomatic protection on Ships' Crews, as stated in the article 19, the Delegate seconded the view of the Commission that both diplomatic protections by the State of nationality and the right of the flag State to seek redress for the crew should be recognized, without priority being accorded to either. The Delegate was of the view that the Ship's Crews should have the rights to enjoy the maximum protection that international law can offer, especially when the threat of the use of unilateral coercive acts at sea, known as Proliferation Security Initiatives and Regional Maritime Security Initiative is looming over head and that create dangerous situation against global stability.

138. The Delegate expressed appreciation to the Working Group on Unilateral Acts of States for the comprehensive data it has collected and described in the seventh report submitted to the Commission. Nevertheless, the Delegation was of the view that the concept of a unilateral act has not been

analyzed rigorously and suggested that particular aspects of the issue should be thoroughly examined in order to get the picture of State practices and to seek for the applicable law.

139. The Delegate said that his country considers that it is important to give a clear definition on the term of “Unilateral Acts”. He observed that the said term covers a wide range of legal norms or procedures used by States in their conduct in exercising relationship towards each other. Moreover, it is of importance as well to distinguish political acts from legal acts in the absence of objective criteria to define “Unilateral Acts of States”.

140. He recommended the Working Group to take an in-depth study of the definition and classification of the “Unilateral Acts of State”. Therefore, the Working Group should be provided with samples of unilateral acts sufficiently documented to allow an in-depth analysis using the establish grid which would permit to use uniform analytical tool.

141. On the issue of “International Liability for Injurious Consequences Arising Out of Acts not prohibited by International Law (International Liability in Case of Loss from Trans-boundary Harm Arising Out of Hazardous Activities)” the Delegate would focused on the Prompt and Adequate Compensation as set forth in Article 4 and International and Domestic Remedies as set forth in Article 6 of the Draft Principles on the Allocation of Loss in the Case of Trans-boundary Harm Arising Out of Hazardous Activities.

142. The Delegate supported the formula of article 4. The article has sufficiently articulated four interrelated elements on the efforts of establishing a prompt and adequate compensation, which are: first, the establishment of a liability regime; second, the liability regime should not require proof of fault; third, any conditions or limitations that may be placed on such liability should not erode the requirement of prompt and adequate compensation; and fourth, the creation of any

kinds of securities, insurances and funding industry that provide a financial guarantees for compensation.

143. With regard of Article 6 of the said draft principles, the Delegate was of the view that Article 4 and 6 are deeply linked with one another. While article 4 establishes the obligation of State to give a prompt and adequate compensation, Article 6 indicates measures necessary to operationalize and implement the objective set forth in article 4. Thus the Delegate emphasized that the access to national procedures to be made available in the case of trans-boundary damage should be similar or applicable to those that a State provides under national law to its own nationals.

144. The **Delegate of the Islamic Republic of Iran** thanked Prof. Momtaz, the President of the International Law Commission for his excellent presentation of the report of the 57<sup>th</sup> Session of the ILC. The Delegate confined his intervention on reservations to multilateral treaties and particularly to two points, i.e. the definition of objection and the question of which State or international organization is entitled to formulate objection to a reservation.

145. On the definition of objection, he observed that they shared the view of the Special Rapporteur that objection needs to be defined, before the Commission deliberates on its legal effects. Nevertheless, as already mentioned in the Commission, the definition could be revised, if necessary, when the effects of objections are appropriately formulated.

146. It was the view of the Delegate that the term objection should be defined in the light of established principles of international law, including the principle of sovereignty of States. Needless to underline that, this principle, which is the true basis of the consensual framework of the 1969, 1978 and 1986 Vienna Conventions, ensures that States are only bound to a treaty obligation once they express their consent and no State can be

bound by the other against its will. Accordingly, he was of the view that objection to a reservation should be formulated in conformity with the principles of international law, including the principle of sovereignty of States.

147. He believed that objections with so-called super maximum effect have no place in international law. Assuming such an effect for objections as to create binding relationship between the author of reservation and the objecting State in entirety of the treaty, including the provisions to which the reservation is made, is in fact imposition of the treaty obligations to a State without its prior consent. Such an effect changes the Vienna regime for reservations to treaties and is not in conformity with the general practice of States. As it is pointed out in the Commission's report, the guidelines are intended to be of assistance for the practice of States. It, therefore, should not take any approach, which is considered as alteration in the relevant provisions of the Vienna Conventions.

148. On the question of which State or international organization is entitled to formulate objection, the Delegate was of the view that reservation and objection thereto create bilateral legal relations between the reserving state and objecting State, in respect to their treaty relationship. Accordingly, only parties to a treaty are entitled to formulate objection to reservations made to that treaty.

149. This argument is also based on the principle that there should be a balance between rights and obligations of the parties to a treaty. Signatory state does not have the right to make objections because they do not have full obligation to that treaty either. In other words, a signatory is only "obliged to refrain from acts which would defeat the object and purpose of a treaty", thus, it is not legally bound with all the treaty obligations.

150. Moreover, reservations and objections thereto may vary in a wide range, from substantive issues to purely procedural aspects of the treaty. Therefore, it does not seem

legally appropriate to give a signatory the right to make objection to reservations once its overall obligation towards the parties to the treaty is limited to refraining from acts, which would defeat the object and purpose of the treaty. At most the signatory state can be entitled to object reservations, which it deems as contrary to the object and purpose of the treaty.

151. The **Delegate of South Africa** was of the view that the right to diplomatic protection was a right, which accrues to the State as a subject of international law and not to individuals or corporations. The Delegate said that they supported the wording of Article 10 which provided that it was the State which was entitled to exercise diplomatic protection on behalf of its nationals. This article conferred an entitlement upon the State to take certain action on behalf of its nationals. This entitlement was therefore conferred without necessarily imposing any obligation upon the State. In terms of this article the right to exercise diplomatic protection is a right which accrues only to the State and it is therefore the State which has a discretion to decide on how and when it will exercise that right on behalf of its nationals.

**The meeting was thereafter adjourned.**