

A. SUMMARY REPORT

AALCO Asian-African Legal Consultative Organization

Forty-Third Session

21-25 June 2004

Bali, Indonesia

**SUMMARY REPORT
OF THE FORTY -THIRD SESSION
OF THE ASIAN-AFRICAN
LEGAL CONSULTATIVE ORGANIZATION**

21-25 June 2004

1. Introduction

- 1.1 The following thirty-six Member States participated in the Forty-Third Session of the Asian-African Legal Consultative Organization (hereinafter "the Session"): Arab Republic of Egypt, Bahrain, Brunei Darussalam, Cyprus, People's Republic of China, Ghana, Republic of Indonesia, India, Islamic Republic of Iran, Iraq, Japan, Kenya, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mauritius, Myanmar, Kingdom of Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, Philippines, State of Palestine, State of Qatar, Kingdom of Saudi Arabia, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, Uganda, United Arab Emirates and Yemen Arab Republic.
- 1.2 The following AALCO's Regional Arbitration Centres were also present: Kuala Lumpur Regional Centre for Arbitration and Lagos Regional Centre for Arbitration.
- 1.3 In accordance with the decision taken at the Twenty-Third Session of the Asian African Legal Consultative Organization in Colombo, New Zealand participated in the Session as Permanent Observer.
- 1.4 In accordance with Rule 18 of the present Statutory Rules of the Asian-African Legal Consultative Organization, the following observers were admitted to the Session:
 - (1) representatives of the following non-participating State: Holy See.
 - (2) representatives of the following regional, inter-regional and international organizations, specialized agencies and subsidiary bodies: Commonwealth Secretariat, International Committee of the Red Cross (ICRC), International Law Commission (ILC), International Organization for Migration (IOM), The Saudi Fund for Development, and the World Intellectual Property Organization (WIPO)

2. Inaugural Session

- 2.1. The Session commenced on 21 June 2004 with the welcome address by **His Excellency Dr. Jung Hai-ung**, Director General, Ministry of Foreign Affairs and Trade on behalf of the President of the Forty-Second Session, His Excellency Dr. Choi Young-jin, Vice-Minister of Foreign Affairs and Trade, Republic of Korea.
- 2.2 **His Excellency Ambassador Dr. Wafik Z. Kamil**, Secretary-General of the Asian-African Legal Consultative Organization (AALCO) thanked the Republic of Indonesia for hosting the Session, and welcomed all delegates to the Session.
- 2.3. **His Excellency Mr. Moh Buba Ahmed**, the Ambassador of the Delegation of Federal Republic of Nigeria, the President of the Forty-First Session, on behalf of AALCO, thanked the President of the Republic of Indonesia for her kind approval

to personally grace and inaugurate the Forty-Third Session of AALCO. He also thanked the Republic of Indonesia, Ministers, Ambassadors and Delegates, the Secretary-General and the Secretariat officials for the efforts exerted in the preparation for the Forty-Third Session.

- 2.4. **Her Excellency Madame Megawati Soekarnoputri**, the President of the Republic of Indonesia officially inaugurated the Forty-Third AALCO Annual Session and welcomed Heads and Members of all delegations to the Forty-Third AALCO Annual Session. The President highlighted that the 1955 Asian-African Conference held in Indonesia had imbued the Asian African nations with the Bandung Spirit through which they began voicing their aspiration to actively participate in establishing an order among nations of the world based on justice, equality, mutual respect, and non-interference in the internal affairs of others. In the light of the forthcoming commemoration of the Golden Jubilee of the Conference, the President emphasized that the two Continents need new inspiration to actively participate in reestablishing the Bandung Spirit.
- 2.5 The President reasserted some issues and challenges which reflected a clear picture of the real imbalance and injustice in the lives of nations across the world. The President attached great importance to togetherness and joint efforts to solve the multitude of such issues and challenges, or for the improvement of the quality and dignity of the lives of nations in Asia and Africa.
- 2.6 Within this context, the President expressed her hope that the Forty-Third Annual Session of AALCO would produce legal formulations and recommendations that could be applicable in negotiations to improve the current conditions, resolve over common challenges, and end the imbalances in the various facets of life and cooperative relations among nations.

3. **First Meeting of the Delegations of AALCO Member States**

3.1 **Admission of South Africa:** The Secretary-General informed the delegates of South Africa's request for membership of AALCO, and the admission of South Africa as 47th Member State of AALCO which was accepted unanimously and by acclamation.

3.2 **Agenda:** The following agenda was adopted for the Forty-Third Session:

I. Organizational Matters

1. Consideration and adoption of Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Admission of new Members
5. Report of the Secretary General on the Work of the AALCO
6. Report on the AALCO's Regional Centres for Arbitration
7. Report on the AALCO's Centre for Research and Training
8. Review of the Statutes and Statutory Rules of the Organization
9. Venue of the Forty-Fourth Session.

II. Matters under Article 4 (a) of the Statutes: Matters relating to the

International Law Commission.
Report on matters relating to the work of the International Law Commission at its Fifty-Fifth Session.

III. Matters under Article 4 (c) of the Statutes: Matters Referred to the Organization by Member States.

1. Law of the Sea
2. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949.
3. Jurisdictional Immunities of States and their Property.
4. Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties
5. Human Rights in Islam.

IV. Matters under Article 4(d) of the Statutes: Matters of Common Concern having Legal Implications.

1. The International Criminal Court: Recent Developments
2. An Effective International Legal Instrument Against Corruption
3. Expressions of Folklore and its International Protection

V. International Trade Law Matters

WTO as a Frame work Agreement and Code of Conduct for the World Trade.

VI. Special Meeting on the topic:

Establishing Cooperation against Trafficking in Women and Children

VII. Any Other Matter

3.3 ***Election of President and Vice-President:*** The Leader of delegation of Sudan proposed the nomination of **His Excellency Prof. Dr. Yusril Ihza Mahendra, Minister of Justice and Human Rights, Republic of Indonesia**, as President of the Forty-Third Session. The nomination was seconded by the Leader of the delegation from Malaysia, and was unanimously adopted. The Leader of the delegation from Islamic Republic of Iran proposed the nomination of the **His Excellency Ambrose Patrick Dery, Deputy Attorney-General and Deputy Minister of Justice of Ghana**, as Vice-President of the Forty-Third Session. The nomination was seconded by the Leader of the delegation from United Republic of Tanzania, and was unanimously adopted.

3.4 **The President of the Forty-Third Session, Prof. Dr. Yusril Ihza Mahendra** in his statement after his election, *inter alia*, outlined his vision for the AALCO to explore and develop creative methods to address new and emerging complex issues. In light of the Bandung spirit, he called upon the AALCO Member States

- to forward strategies to enhance cooperation among members in their efforts to attain their objectives in the pursuit of making their contribution to make the world a better place.
- 3.5 **Admission of Observers:** The Admission of observers to the Session, pursuant to Statutory Rule 18(1), was unanimously approved.
 - 3.6 **Report of the Secretary-General on the Work of AALCO:** The Secretary General gave his report on the work of AALCO, and *inter alia*, referred to the implementation of the rationalization of agenda items; the status of the non deliberated items, including the Legal Protection of Migrant Workers, the Status and Treatment of Refugees, International Terrorism, Environment and Sustainable Development, and Report on the work of UNCITRAL and other International Organizations in the field of International Trade Law; as well as other activities and initiatives of AALCO. He mentioned about the various activities of AALCO since the conclusion of Forty-Second Session, and also his efforts to enlarge the membership of the Organization. He also drew attention to the cruel and inhuman treatment meted out by some of the soldiers of occupying forces in Iraq and the escalating tension in Middle East.
 - 3.7 **Budget:** The budget for the year 2004 was adopted. The Secretary-General referred to the amount of the arrears and contributions, and to the need to review the scale of contributions by Member States. The Leader of delegation from Japan said that the Secretary-General in cooperation with the Liaison Officers should continue looking into the existing arrears and workout possible remedy. He also suggested that there was a need to revert to the earlier practice of convening the Annual Sessions in the first part of the year, or to adopt a budget for two consecutive years together.
 - 3.8 **Report on Construction of the AALCO's Permanent Headquarters:** The Secretary-General outlined the progress of the construction of AALCO's Permanent headquarters in India, and pointed out that the construction was fully financed by the Indian government and would likely be completed by the year end or early next year.
 - 3.9 **Report on AALCO's Regional Centres for Arbitration:** The Deputy Secretary--General, Mrs. Toshiko Shimizu drew attention of the Member States to the Secretariat Document AALCO/43/BALI/2004/SD/ORG 3, which contained the Reports of the Directors of Cairo, Kuala Lumpur and Tehran Arbitration Centres. She congratulated the Kuala Lumpur and Cairo Centres on the celebration of the 25th Anniversaries of their establishment. She also congratulated Mr. Dato Syed Ahmad Idid, and Dr. Moshkan Mashkour, the new Directors of Kuala Lumpur and Tehran Centres respectively on their appointment.
 - 3.10 The Report of the Directors shall be taken up for consideration at the fifth General meeting to be held on 24 June 2004.
 - 3.11 **Review of the Statutes and Statutory Rules of the Organization:** The Secretary General referred to the progress on the revision of AALCO's Statute and Statutory Rules, following the proposal by the Republic of Ghana at the Forty-First Session.

- 3.12 He stated that pursuant to the mandate in the Forty-Second Session, a Drafting Committee was constituted, comprising of 15 Liaison Officers to consider the Revision of Statutes. At the meeting of the Committee convened at the headquarters of AALCO on Monday, 7 June 2004, the Revised Text of the Statutes was discussed and intended to provide a logical and sequential arrangement of articles in the present text. He summarized the crux of the recommendations made by the Committee.
- 3.13 Delegations from Ghana, Arab Republic of Egypt and Malaysia made statements, expressing their support for the recommendations of the Drafting Committee on the Revision of the Statutes. The recommendations of the Committee on the Revision of the Text of the Statutes were unanimously adopted, and the mandate for revision of statutory rules was given to the Secretary-General.

4. **Second Meeting of the Delegations of AALCO Member States**

- 4.1 *Establishment of the Drafting Committee:* The President reported on the establishment of the Drafting Committee at the Session, with the objective of ensuring efficiency and transparency. The composition of this open-ended Drafting Committee would include representatives of the Host Government, the Secretariat and representatives of all interested AALCO Member States. He stated that the Committee would be chaired by a representative of the Host Country, Director for Human Rights Information System, Department of Justice and Human Rights, Mr. Djumantoro Purbo.

5. **First and Second General Meeting**

- 5.1 Delegations from the following Member States made statements during the first and second general meeting: Saudi Arabia, Malaysia, Sudan, South Africa, the Republic of Indonesia, Mauritius, State of Palestine, Ghana, Nepal, United Arab Emirates, Arab Republic of Egypt, People's Republic of China, Islamic Republic of Iran, United Republic of Tanzania, Republic of Korea, Yemen, Syria, Kenya, Kuwait, and Sri Lanka
- 5.2 Delegations from the following Observers also made their statements: Commonwealth Secretariat and Holy See.
- 5.3 Many delegations expressed their sincere gratitude to the President of the Republic of Indonesia Her Excellency Madame Megawati Soekarnoputri for her inspiring address which provided ample guidelines for the Forty-Third Session. They also expressed their appreciation for the excellent arrangements made by the Host Government the Republic of Indonesia and the AALCO Secretariat for the success of the Forty-Third Session. They warmly welcomed the Republic of South Africa into the AALCO family.
- 5.4 Several delegations recalled that the AALCO was a tangible outcome of the historic 1955 Bandung Conference of Asian and African Countries and stressed

- that it was the Bandung Spirit providing for a common vision for countries of Asia and Africa that brought them together in several international fora. It was therefore appropriate that they were meeting on the eve of the Golden Jubilee of Bandung in Indonesia. Dedicated to carry forward the Bandung Spirit, they shared the view that despite the challenges to the contemporary international law, the basic principle of international law, including the Five Principles of Peaceful Co-existence, have been widely accepted by international society, and are playing an increasingly important role in maintaining world peace and promoting common development.
- 5.5 Many delegations expressed satisfaction for the growth of AALCO and highlighted its importance as the only international legal consultative body in the Asian-African region. They emphasized the need to increase efforts to expand the membership of AALCO. They stressed the increasing importance of the role of AALCO as a forum to exchange views on issues of mutual interests, and the need to work closely with the United Nations and other International Organizations.
- 5.6 Many delegations expressed approval of the topics on the agenda for deliberation at the Session, particularly the choice of topic for the Special One-day Meeting on "Establishing Cooperation Against Trafficking in Women and Children", and noted the need for in-depth consideration of these issues.
- 5.7 Many delegations reflected upon the contemporary problems in international law faced by the Member States, particularly mentioning the situation in Iraq and the escalating tension in the Middle East. Other issues that the Member States drew attention to, were corruption, the International Criminal Court, international trade law etc. They also welcomed the inclusion of the topic "Expressions of Folklore and its International Protection" on the agenda.
- 5.8 **Report on AALCO's Centre for Research and Training:** Amb. Dr. Ali Reza Deihim, Deputy Secretary-General of AALCO while introducing the item stated that in accordance with the mandate, the website of the AALCO had been continuously upgraded and new web-links of the Ministries and other official websites of the Member States had been included. As part of the inter-sessional activities, a two-day seminar was organized on "Strengthening Refugee Protection in Migratory Movements", jointly with the United Nations High Commissioner for Refugees from 17-18 September 2003. In pursuance of the key objectives of the Centre to impart training to the officials from the Member States, he said that the Centre is resolved to organize training workshops and fresher courses.
- 5.9 **Revised Gratuity Scheme for the locally recruited Staff:** Amb. Dr. Wafik Z. Kamil, the Secretary-General stated that the then Secretary-General of AALCO, His Excellency Mr. Tang Chengyuan at the Thirty-Ninth Accra Session in 1999, had proposed the revision of Gratuity Scheme for the locally recruited Staff, and his proposals were welcomed by Member States, but no follow-up to the question was taken up. Amb. Dr. Kamil later started reviewing this Scheme and the said proposals. After careful consideration of different angles, such as that the AALCO had no provision for pension for the locally recruited Secretariat Staff and the gratuity of Government of India which has been increased to Rs. 3,50,000 since 1997, he proposed the following revision:

- I. Years of employment and right to gratuity:
 - (i) For services under two years, no gratuity would be paid;
 - (ii) For services under 20 years with the Organization, 85% of the monthly salary for each completed year of service up to a maximum period of sixteen and a half years, or alternatively a monetary ceiling of Rs. 2,50,000/whichever is less
 - (iii) For services rendered for a period of above twenty years 20% above the ceiling i.e. Rs. 2, 50, 000/-; and
 - (iv) The gratuity would be paid to all the Staff Members, provided they fulfill any of the above conditions, as and how their employment comes to an end.
- 5.10 Secretary General stated that the ceiling should be raised from 1 lakh rupees to 2.5 lakh rupees which is in mid way between the actual ceiling and the one enforced by Government of India reconfirming that AALCO normally followed Host Government Schemes.
- 5.11 The Proposals of the Secretary-General were approved unanimously by the Member States.

6. Third General Meeting

Agenda Item II: International Law Commission

- 6.1 Deputy Secretary-General, Ambassador Dr. Ali Reza Deihim introduced the item and Professor Djamchid Momtaz, the Representative of the International Law Commission (ILC), reported and analyzed comprehensively the work of the ILC during the first part of the 56th session of ILC. Professor Momtaz highlighted the progress on the following topics: Diplomatic Protection, Shared Natural Resources, Responsibility of International Organizations and International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law. Professor Chee, Member of the ILC spoke on the topics of 'Unilateral Acts of States' and 'Fragmentation of International Law'.
- 6.2 Delegations from the People's Republic of China, the Republic of Indonesia, Republic of Korea, Malaysia, Islamic Republic of Iran, Sudan and South Africa made statements regarding the work of the ILC, chiefly with respect to the following topics: Reservations to Treaties; Diplomatic Protection; Unilateral Acts of States; Shared Natural Resources and Responsibility of International Organizations. Ambassador Yamada, as a member of the ILC, gave some background on the progress of work on the topics of Diplomatic Protection and Shared Natural Resources. He pointed out that it was important for AALCO Member States to inform the UN Secretariat about the State practice on each topic, in accordance with the request by the General Assembly.

Agenda Item III: The Law of the Sea

- 6.3 Deputy Secretary-General, Mrs. Toshiko Shimizu outlined developments

pertaining to the implementation of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), through the various institutions, such as the International Sea Bed Authority (ISA), the International Tribunal for Law of the Sea (ITLOS), and the Commission on the Limits of the Continental Shelf (CLCS), as well as the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, established by the General Assembly. The developments in these institutions demonstrated the strengthening of the implementation mechanisms established under the UNCLOS and its Implementing Agreements. She said that a decade had passed since the entry into force of UNCLOS and new problems, such as over-exploitation of fisheries and destructive fishing practices, degradation in the marine environment and increase in ship-related accident and crimes had arisen. In this context, she stated it was the time to reflect upon the achievements of the Convention, as well as also to explore the areas in which the Convention could be strengthened through amendments. In this regard, she referred to Article 312 of the Convention which provided that a State Party to the UNCLOS, ten years after its entry into force could request the UN Secretary-General to convene a Conference to discuss amendments to UNCLOS. She suggested that if any AALCO Member State wished to suggest an amendment, then as in the past, such proposal could be thoroughly deliberated in a focused manner within the AALCO before being taken up in the United Nations.

- 6.4 Delegations from Malaysia, the Republic of Indonesia, Republic of Korea and Myanmar made statements. Some delegations noted that with 145 State Parties the UNCLOS was on the way to achieve universality. It was stressed that the legal structure of the UNCLOS should accommodate the specific need of developing countries and other States that have particular characteristic, such as archipelagic states, land-locked and geographically disadvantaged countries. Delegations expressed their concern over the acts and incidents of armed robbery committed against ships, as well as the illegal use of marine transport and the need for protecting and preserving the marine environment. A delegation drew attention to the delimitation work of Continental Shelf being carried out by the CLCS and the Trust Fund established by the General Assembly for providing assistance to developing countries. Some delegations welcomed the idea of deliberating proposals and studying on how best to address the development on law of the sea as well as to evaluate whether the existing legal regime has so far benefited the developing countries as it was the most appropriate forum.

Agenda Item IV: The International Criminal Court: Recent Developments¹

- 6.5 Deputy Secretary-General Ambassador Dr. Ali Reza Deihim outlined the developments in relation to the International Criminal Court (ICC) since the convening of the Second Session of the Assembly of States Parties to the Rome Statute of the ICC in September 2003. He referred to the election of Deputy Prosecutor and the Members of the Board of Directors of Victims Trust Fund. He

¹In view of the paucity of time, the Chair postponed the deliberations on the item to the Fourth General Meeting scheduled to take place at 9:30 AM on Thursday, 24 June 2004.

- expressed concern over the slow pace of work in the elaboration of the definition of the mother of all crimes i.e, the "crime of aggression" in the Special Working Group. He stated that the two cases, namely the situation in the Ituri province of the Democratic Republic of Congo and the referral by the President of Uganda regarding the atrocities committed by Lord's Resistance Army. He stated that in case the Prosecutor decided to prosecute, he hoped that the ICC would make every effort to conduct the most fair, impartial, effective and efficient trial, to ensure that the ICC gains effective legitimacy and credibility.
- 6.6 The Delegations from Arab Republic of Egypt, People's Republic of China, Malaysia, Republic of Korea, Mauritius, Republic of Indonesia and Kenya made statements.² The delegations noted that with the election of the Judges, Prosecutor, and the appointment of Registrar, the ICC was firmly in place. The functioning of the Court would be tested on whether it would be able to prosecute individuals responsible for the gravest international crimes with its limited resources, to comply strictly with the principle of complementarity, to perform its functions, equitably without political prejudice, and to avoid the duplication of double standards. Several delegations acknowledged the importance of coming up with an acceptable definition on the crime of aggression and that they were closely following the developments in this regard. As regards the practice of the United States of America to enter into bilateral agreements with numerous States, a delegation noted that although it was legally permissible to undertake such arrangements States should not use Article 98 to undermine the integrity of the ICC or to weaken the spirit of the Rome Statute itself.
7. **Special Meeting - "Establishing Cooperation Against Trafficking in Women and Children"**
- 7.1 The **President of the Forty-Third Session of AALCO, Prof. Dr. Yusril Ihza Mahendra**, Minister of Justice and Human Rights chaired the Special Meeting and gave a few opening remarks. He noted that the meeting was of great relevance to the Asian and African regions and gave the Session an invaluable opportunity to discuss the topic of Trafficking in persons, in particular women and children with prominent scholars and experts in the field.
- 7.2 **Ambassador Dr. Wafik Z. Kamil**, Secretary-General of AALCO made the welcoming remarks. He recalled that this item was placed on the agenda of AALCO during 40th session held in New Delhi in 2001 at the initiative of the Government of the Republic of Indonesia and gave a brief background on the global issue of trafficking in human beings and its contemporary relevance and introduced the six panelists.
- 7.3 **Sri Redjeki Sumaryoto**, the Minister of Women Empowerment of the Republic of Indonesia, gave the keynote address on the establishment of cooperation

² The deliberations on the Agenda item resumed in the Fourth General Meeting on Thursday, 24th June 2004 at 9:30 AM with the Statements of Member States.

against trafficking in women and children. She made reference to the background of the inclusion of this item on the agenda of the AALCO. She outlined that the objective of this special meeting is to look deeply into the issue of trafficking in women and children from various perspectives to identify common obstacles in the joint efforts against trafficking in women and children especially in Asia and Africa, and to put together the best means for dealing with those obstacles. She emphasized that the issue of trafficking in women and children is of great significance to her country because it is not only a country of origin, but also of transit and destination of this modern type of slavery. She noted that trafficking in women and children has become a globalised and transnational crime. She also highlighted the question of protection of victims of trafficking and their special needs based on their vulnerabilities. Ms. Sumaryoto went on to outline the extent of national efforts against trafficking in women and children undertaken by Indonesia and equal importance attached to the protection of victims, root causes, development of model law, mutual legal assistance and development of best practices to combat this menace. She concluded with the hope that intensive and wide-ranging discussions represented by various perspectives and expertise would yield very fruitful results.

- 7.4 **Mr. Akira Fujino, Representative**, UNODC, Regional Centre, East Asia and the Pacific, Bangkok, in his presentation entitled "Crime Control and Victim Protection under the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children", highlighted the main provisions in the Convention against Transnational Organized Crime (TOC) and the supplementing Protocols particularly, Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children; relationship between the Convention and the Trafficking Protocol; definition and root causes of human trafficking; and distinction between trafficking in human beings and smuggling of migrants. While making a distinction between trafficking in human beings and smuggling of migrants, he said that smuggling of migrants involved migrants who have consented to be smuggled. Trafficking, on the other hand, victim had either never consented or if they initially consented, that consent had been obtained by coercive, deceptive or abusive actions by the traffickers. Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. Also smuggling is always transnational, whereas trafficking need not be. He also gave an account on the activities of UNODC in the Asian and African regions. UNODC's projects in Africa include, ECOWAS and implementing the ECOWAS Plan of Action; and drafting new legislations for the countries. In the West African countries, namely, Benin, Togo and Nigeria, UNODC was involved in advancing institutional capacity, including specific training to justice officials of national governments; and strengthening regional joint action, including data collection and strengthening regional cooperation. In Asia, particularly in Philippines and Thailand, UNODC had created rehabilitation Centres for victim support; provided vocational training to the victims; conducted

law enforcement and awareness raising programmes; and pilot program for regional CBT Training.

- 7.5 **Prof. Dr. Romly Atmasasmita**, Department of Justice and Human Rights, Republic of Indonesia, made a presentation on the topic entitled, "International Cooperation on Combating Human Trafficking Especially Women and Children: A view from Indonesia". In his presentation he gave an outline on the root causes and commonly contributing factors to human trafficking. Human Trafficking is clearly, a modern form of slavery. He highlighted the five obligations of the State Parties under the Protocol of trafficking in persons. These include, to give information to the victim about the relevant court which victim had to approach and ensure victim's rights; to give housing, education and care to the child victims in governmental custody; enable victims to seek compensation for damages suffered; to consider victim's request for residences; and to accept and to aid victims without delay. He dealt comprehensively with Indonesia's efforts in the prevention and combating human trafficking. There are three levels of procedures on combating transnational crime in Indonesia. These are the National policy; legislations; and the law enforcement process. Law enforcement processes were at two levels, namely, one at the national level and second at the bilateral/international level. The panelist made some recommendations. These include, the need to harmonize different national law on combating human trafficking; the need to establish regional/sub regional levels of legal cooperation on combating human trafficking; and the need to revise the procedure of extradition and mutual legal assistance in criminal matters between Asian-African countries, and the possibility of establishing working groups in Asia-Africa to study and implement the above mentioned recommendations.
- 7.6 The **Delegate of Qatar** emphasized that trafficking in persons, especially in women and children from developing countries, to be exploited in such an unethical manner was a flagrant violation of human rights and a violation to humanity. He noted that one of the root causes behind this menace was economic conditions in these countries exacerbated by poverty, need and deprivation and also the growing tourism and globalization facilitated the trafficking process. He underlined the importance of developing and adopting scientific and modern ways to monitor this organized crime.

He pointed out that as there is no definition for 'organized crime' of trafficking in women and children, it is incumbent upon the international community to draw an international strategy to define the trafficking process. This would assist in making informed and effective plans to combat this crime and to provide adequate protection to women and children susceptible to this crime. He further emphasized the need to work on a model legislation, to have an international convention and to promulgate national rules to combat this phenomenon. Thereafter, he cited the provisions under the Constitution of Qatar which provided complete protection for women and children against trafficking and thus rendered it a crime, *viz.* Article 29 (which stipulates family is a basis of any society), Article 22 which provided for care and protection of youth against any exploitation and abuses. He informed the meeting that Qatar had acceded to the

Convention on the Rights of Child in 1998 in New York considering the importance of this convention in protection of child against any harm and exploitation.

- 7.7 **Ms. Rosa Sierra**, Protection Officer, Jakarta, United Nations High Commissioner for Refugees (UNHCR) spoke on "Refugee Protection and Victims of Trafficking," in particular women and children. She provided the refugee dimension to this problem and her presentation was concerned with the victims of trafficking and their entitlement to international protection in the context of the 1951 International Convention on the Status and Treatment of Refugees and/or its 1967 Protocol. At the outset she outlined some basic facts of practices of trafficking in persons particularly in women and children, describing them as violations of the most basic human rights. She outlined the definition of refugees as provided under the 1951 Refugee Convention and specified that nothing in the Trafficking Protocol shall affect the provisions under international law, in particular the 1951 Convention and its Protocol, where applicable. She explained the requirement of well-founded fear of persecution in availing the protection under the 1951 Convention which is additional to and distinct from the protection contemplated by Part II of the Trafficking Protocol. Thereafter, she outlined the three possible durable solutions to the refugee problems and identified the principles of international refugee protection and minimum standards of treatment which complements and are complemented by recommended protection principles on human rights and human trafficking and need to be built into anti-trafficking national legislation. She provided the gender dimension and child perspectives to this problem and enumerated their vulnerabilities and need for special protection. She outlined the measures to prevent and combat trafficking in women and children, in particular the principles of best interest and non-discrimination.
- 7.8 **Ms. Julie Lebegue**, Child Protection Officer and focal point for CSEC & Trafficking, UNICEF, spoke on "On going UNICEF supported initiatives in Indonesia" which focused on cooperation with law apparatus and child participation. She started by providing a brief background regarding why UNICEF started looking into the issues of trafficking and said that initially UNICEF focused only on the needs of children, however later realized the necessity to adopt a holistic approach and thus started considering protection to children which included trafficking issues. She outlined the definition of human trafficking and state of child trafficking worldwide. She discussed the complexity of trafficking routes in Indonesia which were quite varied and could not be identified even at national level. Further, she explained the purposes of child trafficking on 'demand side' as well as the causes of child trafficking on the 'supply side' and acknowledged that though poverty is one of the causes of the child trafficking but could not be the only reason. According to her, unemployment and lack of earning opportunities was one of the main reasons that perpetuated child trafficking, especially the young children. She explained child trafficking as a gross human rights violation and outlined the international instruments against trafficking of children, in particular the Convention of the

Rights of the Child and the Optional Protocol thereto on the Sale of Children, Child Prostitution and Child Pornography. Under the need for cooperation, she suggested eight steps for building a protective environment for children, both at national and international level. She highlighted the UNICEF's cooperation with the Governments and added that although the problem of human trafficking is not new however the international community started to address it very recently and therefore it required to retain some flexibility to adopt a comprehensive approach. Thereafter, she explained the situation in Indonesia, which was a source, transit and destination country for trafficking and noted the progress and challenges in Indonesia with respect to prevention, protection against child trafficking as well as recovery and reintegration and child participation in combating child trafficking. Finally, she recommended selected good practices to prevent and combat the crime of child trafficking.

- 7.9 **Mr. Aryanto Sutadi**, Indonesia National Police Headquarters spoke on "Cooperation of law enforcement Apparatus in combating Trafficking in Persons, especially women and children". He stated that trafficking in persons is illegal in Indonesia. However, the huge profit earned from trafficking in persons, accompanied by the current conditions in Indonesia, had resulted in a chance for the proliferation of trafficking in persons, and transnational organized crime had a chance to develop secret networks with Indonesian trafficking. Poverty and unemployment in rural areas had encouraged men, women and children to migrate to other countries for jobs. However, because of lack of information and education they were prone to being trapped in trafficking in persons. However it was difficult to obtain qualitative and quantitative data. The modus operandi of trafficking in persons (TIP) is related to counterfeiting of identity, passport and visa documents. Some of the provinces are suspected to be source transit and receiving regions.
- 7.10 He further stated that TIP in Indonesia involved a workforce recruiting companies with agents. Government apparatus involved in exploitative conditions, prostitution houses is which forced women/children, marriage agents, parents and relatives sold their children and employment of under age boys in off-shore fishing platforms.
- 7.11 He highlighted that the Indonesian government had constituted a task force to eliminate trafficking in women and children at the national level to coordinate implementation endeavours to eliminate trafficking in persons. He stressed upon the need for cooperation of the law enforcement apparatus at the national, regional and international levels. He enumerated that since 2003 Indonesian police had been deployed in five countries, such as Malaysia, Australia, Thailand, Saudi Arabia and Philippines. In addition, good cooperation had been deployed between the Indonesian Police and International NGO's such as UNICEF, IOM including donor countries like USA, New Zealand and Australia.
- 7.12 In conclusion he said that Indonesia has made serious efforts to eliminate trafficking in persons especially women and children mainly by the implementation of the national action plan for the elimination of trafficking of women and children which was launched in 2002, however he said results were

far from perfect. He suggested a close-knit network between government institutions, taskforce, NGO's community organizations and individuals with a view to combating trafficking. Relationship between law enforcement apparatus from different countries needed to be enhanced and periodical meetings should be maintained to intensify communication contact between law enforcement apparatus from different countries.

- 7.13 **Mr. Shahidul Haque**, IOM Regional Representative for South Asia made his presentation on "Ambiguities and Confusions in Migration-Trafficking Nexus: A Policy Challenge". He highlighted the link between trafficking and migration which presents another complexity presenting both political and substantive obstacles to resolving the problem of trafficking. He stressed that migration, globalization and development are inextricably linked and interdependent phenomena. There are basically two generic types of migratory people, first "involuntary or forced migrants" encompassing refugees, internally displaced persons and perhaps trafficked person and "voluntary migrants" who were immigrants and labour. Trafficking in persons he said was the "dark side" of migration that placed people in harmful or exploitative situations. Rapid rise in trafficking in persons was challenging the existing migration system. He further said that nexus between traffickers and migration added further complexities to management of migration. He explained at length the interfaces between migration, trafficking in persons and smuggling in migrants. He also pointed out the basic differences between trafficked persons and migrants, and differences between smuggled and trafficked persons.
- 7.14 He enumerated the implications of migration trafficking ambiguities on policy programmes. Over emphasis on trafficking and on mixing it with legal migration was counter productive as efforts in combating trafficking sometimes could limit freedom of movement and livelihood options. He also outlined some fundamentals for addressing trafficking in persons and IOM's strategy to address trafficking in persons which is based on a comprehensive and integrated strategy, addressing the root causes for trafficking and addressing facilitating factors. IOM addresses the issues in origin, transit and destination countries simultaneously. He also highlighted IOM's programmes in Asia and Africa which dealt with all aspects of the trafficking problems. In this context, he shared the IOM comprehensive approach (4 box chart) to management of migration.
- 7.15 In conclusion, he said that globalization would face difficulties and development would suffer, if facilities for safe migration were not made available in an orderly manner and trafficking in persons is not stopped. Ultimately a choice had to be made between either managing migration and harnessing its positive potentials or code control to the so called "market" forces and face more irregular migration.
- 7.16 During the Q's and A's, interventions were made by the Secretary-General of AALCO, delegates from Oman, Kuwait, Malaysia, Philippines and Yemen. Statements were made by the following delegations Qatar, Malaysia, Kenya, United Arab Emirates, Ghana, Indonesia, Nigeria, India, Sudan, Saudi Arabia, the People's Republic of China, Philippines, and Myanmar.

- 7.17 The Secretary-General of AALCO referring to the element of consent and the factor of age, said that as a legal body we have to discuss what are the conditions of consent and when it becomes a crime. Is it not necessary to have international cooperation to be able to reach a common position on this very important component of the crime of human trafficking? **Mr. Fujino** in response to the intervention questioned the practitioners of different legal systems to be able to develop a common binding definition taking into account the common denominators of the crime and the existing provisions (if any) regarding consent to determine crime.
- 7.18 The **Leader of Delegation of Oman** in his intervention directed to the panelist from Department of Justice and Human Rights, Indonesia pointed out the strong linkage between poverty and human trafficking. According to him, poverty was a root cause of the crime of human trafficking. In this regard, he asked would it not be desirable that the rich countries should assist the poor countries in eradicating poverty which in turn would help in combating the crime of human trafficking. In his view, this practical approach would have far reaching results which could not be achieved by merely signing international conventions and agreements. He also proposed that prohibiting prostitution internationally would be an effective means of curbing the crime of trafficking. He sought the views of the panelist in this regard.
- 7.19 **Prof. Romly Atmasasmita** concurred with the views of the Honorable Minister that there was a strong linkage between poverty and human trafficking, however, combating trafficking in context of rich and poor countries would have unending solutions. Therefore, we need to have a common view to point out to the common denominators of this important issue of human trafficking. He suggested that AALCO as a legal body should focus on legal cooperation in order to reach a common position.
- 7.20 **The Leader of Delegation of Oman** was not satisfied by this answer and stated that the question was regarding the duties of rich countries towards poor countries in eradicating poverty which is the main reason behind this problem of trafficking. He also reiterated the significance of prohibition of prostitution globally in this fight against trafficking.
- 7.21 **Prof. Romly** while agreeing with his suggestions said that trying to solve the root causes, namely poverty, would take longer time to achieve the aim of the Protocol and it was more desirable to have a common position either bilaterally or multilaterally which could deal with the crime of human trafficking.
- 7.22 The **Delegate of Oman** in his question directed to Ms. Rosa Sierra, UNHCR referred to the continuing wars and conflict situations in the third world countries and the number of refugees, and said that despite efforts of the UN to give support to refugees it was still a problem. In your opinion what is the role of big countries in such situations and whether they can interfere in conflict situations without a biased view.
- 7.23 **Ms. Rosa Sierra**, Protection Officer, UNHCR referring to the continuing wars

- and conflict situations in the third world countries and the number of refugees, she said that despite efforts of the UN to give support to refugees it was still a problem. She agreed that the causes of trafficking had to be addressed and required broader efforts relating to trade, employment, law enforcement and prevention management. She felt that soft credits had to some extent been able to provide protection to the victims of trafficking but there was great need to take up international responsibilities and burden sharing.
- 7.24 **The Leader of the Delegation of Oman** in his question to the panelist from UNODC said that the countries had concluded numerous international conventions and agreements but most of them were not successful in overcoming crimes which were ever increasing due to poverty and unawareness. What was the assessment of the Panelist on these international agreements and the reasons for their failures and how could they be made more effective.
- 7.25 **Mr. Akira Fujino**, Representative, UNODC, referring to the effectiveness of international treaties recounted that the drug control treaties had been very effective and was cautiously optimistic that the Transnational Organized Crime Convention would also be successful.
- 7.26 **The Leader of the Delegation of Oman** in his question to Ms. Julie Lebegue, Child Protection Officer, UNICEF asked whether the employment of children under the age of 18, with very low wages could be considered as trafficking, when there was no financial assistance to family by government or international organizations. Some in the developing countries believed that rich industrialized countries place their principles, to serve their own interests. These principles were imposed on the developing countries. **Ms. Julie Lebegue, Child Protection Officer**, UNICEF, expressed the view that as regards the children from poor countries going for work, family should not be blamed. ILO Convention 138, dealt with child workers in the age group of 15 - 18, which were not exploitative in nature. ILO Convention 182, dealt with worst form of child labour under the age of 18. However, it should not have any impact on the child's right to education. After attending the school, he/she could go for work. Governments were totally free to decide whether to ratify conventions or not. But once they ratify the convention then it was their duty to enforce it. **The Leader of the Delegation of Oman** stated that the governments of poor countries could not impose compulsory education. Even if it is imposed on parents, they could not provide education to their children, due to poverty and other economic reasons. He felt that how could the family be forced to send their children to school.
- 7.27 **The Delegate from Kuwait** was of the view that AALCO should have a role in drafting definition for the crime of human trafficking. He also suggested that countries exporting labour should take responsibility particularly in giving work license; it should be precise, especially for women and children.
- 7.28 **The Delegate from Yemen**, supported the views of the Sultanate of Oman and Kingdom of Saudi Arabia. In Yemen, punishment for crime of human trafficking is 10 years imprisonment. National legislations should be very severe and punishment, including capital punishment has to be given, since human life and

dignity is affected. Suggestion for international cooperation in unifying punishment was also mooted.

7.29 **The Head of the Delegation of Kingdom of Saudi Arabia** strongly supported the three questions raised by the honorable delegate of Oman. He said that the Islamic Law applied by the Kingdom provided a solution to the problem, through prohibiting prostitution; legally binding on males to take full responsibility towards their families and provide the essential necessities for the women and children; and alleviating poverty through various policies and programmes such as (Takaful). He also suggested a recommendation for the revision of national legislation that legalize prostitution in order to conform with the ethical and religious traditions in the Asian and African communities.

7.30 **Amb. Dr. Ali Reza Deihim**, Deputy Secretary General, AALCO, also made an intervention regarding the element of consent in the process of human trafficking. The commission of crime could be ascertained only if two elements were present namely, *actus reus* and *mens rea*. As regards the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and in light of its Article 3, three elements should be present. Firstly, *actus reus* and its related actions; secondly, means, which include fraud, deception, abuse of power, etc. and thirdly, purpose of exploitation which include, prostitution or other forms of sexual forced labor and related exploitation. The consent of victim is important, and with regard to a child due to the lack of such genuine consent, it has been considered a crime. In the absence of the consent in the trafficking of the women and children, the victims are entitled to receive compensation. However, the existence of the consent in the smuggling does not change the character of the criminal commission of smuggling.

7.31 **Mr. Shahidul Haque**, summed up the proceeding of the day. He highlighted some of the important points. These are:

- Human Trafficking is a global problem and global approach is necessary to tackle it.
- Human trafficking is fundamentally a human rights problem.
- Persons who are involved in human trafficking are criminals and they should be punished.
- Women and Children are more vulnerable to trafficking; hence they should be given special consideration.
- The victims of trafficking especially women and children should be treated keeping in view the established human rights standards than as criminals.
- Increasing victim's participation in program design.
- Human Trafficking is linked with migration and refugees as all these take place in a same migratory space.
- National legislation has to be in consonance with international legal instruments and initiatives.
- Concept of burden sharing is relevant. Developing countries needed

assistance from developed countries to tackle this problem. Some developed countries members of AALCO have already helped the developing countries in this regard.

- Collaborative endeavors have to be encouraged.
- Malaysia supports the proposal for a study by the Secretariat on the possibility of formulating model legislation which reflects the relevant international instruments.
- Trafficking in persons has to be addressed in an integrated and comprehensive manner and within the broader migration framework.
- Protection of trafficking victims should be given due priority in developing interventions to tackle the problem.
- Women and children overwhelmingly get trafficked/smuggled. But men also can be trafficked/ or smuggled.

7.32 **H.E. Mr. Ambrose Patrick Dery**, Vice President of the Session, thanked all the panelists, delegation and the Secretary General of AALCO for their contributions and cooperation. He was confident that AALCO had a bright future.

7.33 **Amb. Dr. Wafik Z. Kamil**, Secretary General, AALCO, suggested that we need to have more in-depth study on this topic at international and regional level. He also reiterated the need for keeping the item on the agenda for the coming session as well, so as to be able to study the multifaceted problems of trafficking in persons, especially women and children. He expressed his sincere gratitude to all Panelists, delegates, UNHCR, UNICEF, UNODC and IOM. He further stated that the cooperation agreements with these organizations were very fruitful and the Organizations were very cooperative in this regard.

8. Fourth General Meeting

8.1 **His Excellency Amb. Mr. Chusei Yamada**, the Observer from the United Nations University delivered the statement on behalf of Prof. Hans van Ginkel, Rector United Nations University, Tokyo. He noted the signing of the cooperation agreement between the UNU and AALCO, which envisages forms of cooperation such as mutual research, exchanges of experts and joint organization of seminars. He hoped that Amb. Dr. Wafik Z. Kamil could meet him and his senior colleagues at a convenient time to identify some concrete areas of cooperation that could be further developed in 2005 and implemented in the 2006-07 biennium and beyond. He complimented AALCO on the choice of the topic for the special meeting of the Forty-Third Session.

Agenda Item III: Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties

8.2 **Amb. Dr. Ali Reza Deihim** Deputy Secretary-General of AALCO in his introductory statement noted that some of the important conclusions reached on the basis of the discussions at the annual sessions of the AALCO were extra-

territorial measures or the promulgation of domestic laws having extra-territorial effects with the imposition of unilateral attributions and objectives or secondary boycotts that are violative of the sovereign rights and economic interests of a State; they also violate the core principles of territorial sovereignty and political integrity of other states and non-interference in internal affairs of other countries which had been enshrined in the Charter of the United Nations; and thus they made a major constraint in the way of trade and economic cooperation between States. These conclusions of AALCO deliberations found affirmation in the debate of the United Nations General Assembly also. He also informed the meeting about the lifting of the US sanctions against Libya, as well as imposition of sanctions against Syria and Myanmar.

- 8.3 Statements were delivered by delegations from Syria, Sudan, Republic of Indonesia, Islamic Republic of Iran and Myanmar. The delegations condemned the imposition of coercive economic measures as a means of political and economic compulsion, in particular through enactment of legislation having extraterritorial effect and were of the view that such legislations were not only against the well recognized principles of international law and the Charter of United Nations, but also threatened the basic fabric of international peace and security and stability and violated the sovereignty of States. Delegations also expressed their concern over the imposition of sanctions against Syria.

Agenda Item IV: An Effective International Legal Instrument Against Corruption

- 8.4 Amb. Dr. Ali Reza Deihim, Deputy Secretary-General of AALCO in his introductory statement noted that 107 countries had so far signed the UN Convention against Corruption and as the requisite 30 ratifications is not large, the Convention will come into place very soon. He noted that Kenya and Sri Lanka, two of AALCO Member States, were the first countries to ratify the Convention. He then highlighted some of the salient features of the Convention, which according to him commits States parties to take a number of measures and standards, domestically and internationally, to implement the provisions of the Convention. He said that the Convention breaks new ground with its provisions on prevention and asset recovery. However, he felt that without effective and good faith implementation of these provisions, the real root causes of corruption and its devastating consequences could not be fought. He hoped that the Asian African countries would be in the forefront in the ratification of the Convention and suggested that the AALCO Secretariat could organize a workshop/seminar for the benefit of AALCO Member States.
- 8.5 Delegations from United Republic of Tanzania, Sri Lanka, Mauritius, Thailand, Nigeria, Malaysia, Republic of Indonesia, Kenya, South Africa, Kuwait, Pakistan, Nepal and People's Republic of China expressed the need to prevent and suppress corruption and said that the adoption of the UN Convention against Corruption was timely. Many Delegations felt that corruption is a problem to economic development and that global effort was needed to fight it. Many delegations outlined the measures being undertaken in their own countries to combat

corruption through legislative means. Delegations from Kenya and Sri Lanka, the only countries to sign and ratify the Convention, informed about their attempts to incorporate the Convention into their domestic laws. Some delegations requested that AALCO should actively follow this item and the need to establish close cooperation among relevant institutions and to organize a seminar for the purpose of exchanging of views and experiences in this matter with all Member States of AALCO.

Agenda Item III: Jurisdictional Immunities of States and their Property

- 8.6 Mrs. Toshiko Shimizu, Deputy Secretary-General of AALCO, introduced the item on Jurisdictional Immunities of States and their Property, and outlined the progress of the work on the draft convention at the Ad Hoc Committee. She noted that the Ad Hoc Committee met from 1 to 5 March 2004 and adopted the preamble and final clauses which provisionally brought the work on the topic to an end so far as its drafting process is concerned. She pointed out that the Ad Hoc Committee decided to recommend to the UN General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and their Property. She hoped that the deliberations at this gathering would help the Member States to formulate common views that could be put forward during the proposed adoption of the convention.
- 8.7 Delegations from Japan, Republic of Indonesia, India, People's Republic of China, Arab Republic of Egypt, Kenya, Malaysia, and Sudan expressed satisfaction and welcomed the adoption of the draft articles. On the form of the future instrument, some delegations stated that the articles should take the form of a legally-binding convention. The delegations were of the general view that the draft articles should take the form of a convention during the forthcoming General Assembly session. Delegations hoped that the proposed convention would bring in uniformity in the application of laws on the issue.

Agenda Item III: Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949

- 8.8 Ambassador Dr. Wafik Z. Kamil, Secretary-General of AALCO, introduced the item concerning the Deportation of Palestinians and other Israeli practices in the Occupied Territories, noting that this was a very important item that has been dealt with continuously by AALCO for the past 16 years. He expressed deep concern about the recent extra judicial killings of Palestinian religious leaders and the construction of wall in violation of international law. Amb. Kamil discussed some of the peace efforts that have been made in the past, as well as to the "Road Map" for peace, which envisages a permanent two States resolution to the problem. He noted that the broad support enjoyed by the "Road Map", and the important actors involved, means that it should be given serious consideration. He stressed that implementation of such a plan requires sincere, well-intentioned

dialogue and immediate tangible steps to be taken by Israel.

- 8.9 Delegations from Palestine, Arab Republic of Egypt, Malaysia, Republic of Indonesia, Pakistan and Islamic Republic of Iran shared the view that Israel is in flagrant violation of international law, particularly the Fourth Geneva Convention of 1949 and various UN Resolutions, in its practices with respect to Palestinians and the Occupied Territory. These practices include coercive deportation of Palestinians, settlement of Israelis in the Occupied Territory, collective punishment, destruction of homes, the indiscriminate use of force and recent extra judicial killings. They expressed their support for Palestinian self-determination and their right to live in their homeland. They called for the cessation of settlements and Israel's immediate withdrawal from the Occupied Territory, as well as for steps to be taken by the international community to ensure Israel's compliance with international law.

9. Fifth General Meeting

Agenda Item III: Human Rights in Islam

- 9.1 **Amb. Dr. Ali Reza Deihim**, Deputy Secretary-General of AALCO presented the report on 'Human Rights in Islam'. At the outset he recalled the proposal and effort of the Kingdom of Saudi Arabia for inclusion of this item on the agenda of the Organization. He emphasized the relevance of this topic in the emerging state-of-affairs across the globe, particularly post September-11 terrorist attacks. In this regard he referred to the concern expressed by the Commission on Human Rights at its 60th session at the negative stereotyping of religions and also made a brief reference to the report of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance. He said that the Secretariat report had made an attempt to dispel some of the misunderstandings as regards Human Rights in Islam. He outlined the content of the report and said that the first part of the report brings out the deliberations of the Forty-Second Session and the second and substantial part is focused on a comprehensive study on the quality and content of Human Rights in Islam wherein the report analyses the role of philosophical appraisal, the sources of human rights in Islam, position of humankind in Islam, the definition of rights in Islam and the specific human rights in Islam. He concluded by proposing to explore the feasibility of holding a seminar or workshop on this subject in order to provide an opportunity to deliberate on this subject in detail.
- 9.2 Delegations from Oman, Saudi Arabia, Qatar, Republic of Indonesia, Malaysia, Islamic Republic of Iran, Sudan, Palestine and Kuwait expressed their views. The delegate of Oman highlighted the various rights enshrined under the Islamic law largely under the four heads, namely rights between parent and child, rights of children, women's rights and some other rights. Most delegations highlighted the relevance and importance of this topic in the given situation and explained that these rights under Islamic law are not endowed by any leader or rules but these are rights brought straight from heaven and thus cannot be subject to any

limitations or changes. The delegation from the Republic of Indonesia also touched upon the issue of terrorism and underlined that Islam strongly condemned terrorism since it was against the basic tenet of Islamic conviction on humanity, tolerance, and mutual peaceful co-existence. The delegation of Malaysia proposed formulation of intergovernmental expert group consisting of eminent jurists in Islamic law from Member States of the AALCO, which was endorsed by the delegations of Sudan, Palestine and Kuwait. Many delegates supported a seminar to study the subject in detail.

Agenda Item IV: Expressions of Folklore and its International Protection

9.3 **Amb. Dr. Wafik Z. Kamil**, Secretary-General of AALCO introduced the new item and expressed his gratitude to the Member States for supporting his initiatives. He informed that his participation at the Sixth Session of the WIPO Intergovernmental Committee (WIPO IGC) in March 2004 and the intensive consultations he had there inspired him to propose active involvement of AALCO in formulating an international legal framework for the protection of 'expressions of folklore'. He said that Asian and African countries are home to majority of world's expressions of folklore and the protection of folklore is of paramount importance to the countries in this region. However, there is widespread illicit and improper exploitation of expressions of folklore for commercial and business interests. To check this there is no uniform international legal protection of folklore. He said that specific steps should be taken to strengthen protection of folklore, including the development of specific new international instrument. He felt that AALCO could be a forum for further discussion and deliberation on the protection of folklore which could help in consolidating the position of the Asian African countries on the substantive aspect of the future international instrument for the protection of folklore. The deliberations at this Session could pave the way to hold a joint AALCO/WIPO Expert Meeting and the outcome of the deliberations could be reported at the Committee's Seventh Session to be held in November 2004, with the hope that this exercise could be considered as a concrete step forward in the work of the IGC in general and for the benefit of Asian and African Member States in particular.

9.4 **Mr. Wend Wendland**, Representative from WIPO gave a brief highlight about the development of international protection of folklore and said that this was one of the long standing demands from many States and communities. Touching on the work of the WIPO Intergovernmental Committee, he said that the main concern was to develop international legal and policy framework and a possible international instrument or instruments. He informed that the WIPO had conducted many fact-finding missions and consultations and compilation of national legislations on folklore protection. The main objective of folklore protection is to prevent misappropriation, distortion and imitation ('defensive protection'), enable communities to protect expressions of folklore developed, used and maintained by them ('positive'), contribute to sustainable economic, cultural and social development, regulate use of folklore on equitable terms,

promote certainty and transparency, promote continued development of folklore, promote respect and preservation of cultural heritage, promote cultural diversity and distinctiveness etc. He said that the future international legal instrument for the protection of folklore should be sufficient flexibility for national and local policy development, because of the diverse national legislative approaches and should be responsive to aspirations of relevant communities. There should be a balance and proportionality the holder of the folklore, users and public/protection and creativity/protection and preservation/maintenance and development/ individuals and communities. For this there should be coordination with other international and regional instruments and processes. He felt there is a need to combine and adapt the existing Intellectual Property regime for the protection of folklore or develop and *sui generis* methods of protection. Most importantly there is need for effective, appropriate and accessible mechanisms for the management and enforcement of rights. He then drew attention to some of the possible specific principles in the protection of the folklore such as subject matter and criteria for protection, Rights holders and beneficiaries, period of protection, rights (content and nature), exceptions and limitations, formalities for acquisition and maintenance of rights, management and enforcement of rights, application in time, relationship with IP protection and International protection.

- 9.5 **H.E. Mr. Ambrose Patrick Dery**, the Vice President of the Forty-Third Session, who was presiding the meeting, because of the constraints in time, requested the Member States to be brief in their interventions and send their written comments to the AALCO Secretariat for compilation and presentation to the WIPO IGC.
- 9.6 Delegations from Republic of Indonesia, Nigeria and Kenya welcomed the initiative of the Secretary-General in the introduction of this very important topic. They informed the meeting about the national and cultural importance of folklore and expressed their concern over the emergence of various types of exploitation of expressions of folklore protection. The Delegate from Indonesia said that Indonesia, apart from the provisions in the national copyright law, had also established a National Working Group on the Empowerment of Genetic Resources, traditional Knowledge and Folklore with the aim to study and prepare a national system for their protection. All the countries felt that the forum provided by AALCO should be utilized to converge the experiences of both Asian and African regions. They also called upon the AALCO Secretariat to explore cooperative mechanism with WIPO for a fuller study of this item and organize workshop/ seminars.

Agenda Item V: WTO as a Framework Agreement and Code of Conduct for World Trade

- 9.7 **Amb. Dr. Ali Reza Deihim**, Deputy Secretary-General of AALCO introduced the topic and said that the Secretariat document highlighted the progress report on the review of the Dispute Settlement Understanding (DSU), with focused attention on the Chairman's Text of proposal submitted to the Special Session of

the Dispute Settlement Body, in addition to an update of the developments at the Fifth WTO Ministerial Conference, Cancun. While explaining the reasons for the failure of the Ministerial Conference, he said, differences cropped up, when developed and developing nations stuck to their positions on many important issues, especially on agriculture and Singapore issues. As regards the review of the DSU, he informed that the Special Session could not achieve any further progress in the negotiations even after the circulation of a negotiating text of proposals. Though the Chairman's text had attempted to make some of the Special and Differential Treatment provisions mandatory, no explanations as to how these provisions would be implemented and operationalised had been brought out by the text. He concluded by saying that in the view of the AALCO Secretariat, efforts were needed by both developed and developing country Members to redefine their priorities and focus their attention on developing country Members concerns before taking further action on each negotiating item.

- 9.8 Delegates from Republic of Indonesia, Ghana, Kenya, Malaysia and Nepal made their statements. Some delegates emphasized on the rule based multilateral trading system which would result in securing a fair share in the growth in international trade, commensurate with the needs of our economic development. Most of the delegates gave their countries view on Special Differential Treatment for developing countries; agricultural negotiations; market access for non-agricultural products; trade related intellectual property rights; and WTO dispute settlement mechanism. Some were of the view that negotiations should be with a view to enhancing market access for their exports, removal of export of subsidies and the gradual reduction or elimination of tariffs. One delegate called upon all AALCO Members to support and join them in their efforts to introduce Preventive Measures into the WTO DSU, which would accord fairness and justice to everybody. One delegate was of the view that the AALCO Secretariat in the common interests of the AALCO members should consider developing a model legislative guide on compulsory licensing, common position for utilization of the Doha flexibilities, as well as special and differential treatment provisions; develop some alternative *sui generis* models for protection of plant varieties; and provide technical assistance to its member which intends to join the WTO.

Agenda Item I: Report on AALCO's Regional Centres for Arbitration

- 9.9 **Ms. Eunice R. Odirri, Director, Regional Centre for International Commercial Arbitration, Lagos**, presented her report on activities of the Centre in 2003. She said that during the year 2003, a total of forty-one cases were handled at the Lagos Centre. The RCICAL acted as appointing authority in two international cases and eleven domestic disputes. Additional facilities which were made in the Centre in the year 2003 include video conferencing facility and modem high speed transcript facility. Promotional activities include introduction of curriculum on arbitration and other Alternative Dispute Resolution (ADR) methods in educational institutions. She said that the Lagos Centre had also started quarterly mock arbitration sessions. To encourage the role of the RCICAL, she informed, that the Host Government of Nigeria had, as from February 2004,

made it mandatory for all contracts to which the government is a party to incorporate the model arbitration clause of the RCICAL. Another milestone in the year 2003 was a reciprocal agreement on the use of the seat of the Regional Centre Lagos for International Centre for Investment Disputes (ICSID) arbitrations was executed between ICSID and the Centre. She also gave an outline of the seminars and workshops conducted; and papers delivered by the Director in the year 2003.

- 9.10 Mr. Dato' Syed Ahmad Idid, Director, Kuala Lumpur Regional Arbitration Centre, presented his report for the year 2003. He said that during the year 2003, KLRCA successfully organized the Silver Jubilee Conference attended by local and foreign participants. He congratulated his predecessor, Dr. Zakaria M Yatim, for the success of that Anniversary Conference. He informed the gathering that KLRCA is now a Domain Name Dispute Resolution Service Provider for ".my". The Malaysian Institute of Microelectronic Systems (MIMOS) through their division MYNIC or Malaysian Network Information Centre developed the Policy for dispute resolution and is responsible for the registration, maintenance and operation of the domain name registry. He said that the Islamic Banking and Takaful Department of Bank Negara Malaysia (or Central Bank) had written to him recently with a view of utilizing the KLRCA in administering arbitrations for Islamic Banking Transactions. He informed that the KLRCA continued to progress with new partners; in 2003, KLCRA signed an Agreement with VIAC or Vietnam International Arbitration Centre. The Democratic People's Republic of Korea's Lawyers Committee (KLC); Director of the Dubai International Arbitration Centre (DIAC) had expressed their desire to establish cooperation with KLRCA.

- 9.11 **Follow up on the implementation of Seoul Resolution on International Humanitarian Law: Amb. Dr. Wafik Z. Kamil**, the Secretary-General recalled the Special Meeting on the "The Relevance of International Humanitarian Law in Today's Armed Conflict" held during the Forty-Second Session (Seoul, 2003). The hallmark of the meeting was the adoption of "Seoul Resolution on International Humanitarian Law". To brief the Member States on the implementation of this resolution he invited the Representative of the International Committee of the Red Cross.
- 9.12 **Mr. Stephane J. Hankins**, Regional Legal Adviser for East and South-east Asia delivered the "ICRC statement covering continued challenges to international humanitarian law and recent developments in the study and implementation of international humanitarian law." He said that the ICRC greatly appreciated the role of AALCO as a forum for Asian-African cooperation in legal matters. The signing of Cooperation Agreement between the Secretary-General of AALCO and the President of ICRC Mr. Jacob Kellenberger in July 2003 was a decisive landmark in relations and dialogue between the two Organizations. He stressed upon the importance of Seoul Resolution and said that it "constitutes a valuable guideline and program of action in Asian African region." He elaborated upon the key developments in the field of international humanitarian law in the period from 1 June 2003 until 1 June 2004, in particular in the Asian-African region with a view to strengthening adherence and compliance with international humanitarian law. In conclusion, he hoped that this Session held as a follow-up to the Seoul Resolution would further contribute to the national implementation of IHL within the legal orders of Member States of the AALCO. The ICRC, he stated would be pleased to pursue its dialogue with AALCO and its Member States in this important field.

10. Third Meeting of the Delegations of AALCO Member States

Adoption of the Resolutions

- 10.1 The following Resolutions were adopted at the Second Meeting of the Delegations of AALCO Member States on 25 June 2004:

RES/43/ORG 1	Report of the Secretary-General on Organizational, Administrative and Financial Matters
RES/43/ORG2	AALCO's Budget for the year 2004
RES/43/ORG3	Report on AALCO Regional Centres for Arbitration
RES/43/ORG4	AALCO's Centre for Research and Training
RES/43/ORG5	Establishment of the Permanent Headquarters of the Asian African Legal Consultative Organization
RES/43/ORG6	Admission of South Africa as a Member State
RES/43/ORG7	Review of AALCO's Statutes and Statutory Rules
RES/43/ORG8	Venue of the Forty-Fourth Session

RES/43/ORG9	AALCO's Documentation Policy
RES/43/ORG 10	Revision of AALCO's Gratuity Scheme for Locally Recruited Staff
RES/43/S 1	Matters Relating to the Work of the International Law Commission at its Fifty-Fifth Session
RES/43/S 2	Law of the Sea
RES/43/S 3	The Status and Treatment of Refugees
RES/43/S 4	The Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949
RES/43/S 5	Legal Protection of Migrant Workers
RES/43/S 6	Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties
RES/43/S 7	Jurisdictional Immunities of States and Their Property
RES/43/S 8	International Terrorism
RES/43/S 10	The International Criminal Court: Recent Developments
RES/43/S 11	Environment and Sustainable Development
RES/43/S12	An Effective International Legal Instrument against Corruption
RES/43/S 13	Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
RES/43/S14	WTO as a Framework Agreement and Code of Conduct for World Trade
RES/43/S 15	Expressions of Folklore and its International Protection
RES/43/S 16	Human Rights in Islam
RES/43/SP1	The Special Meeting on "Establishing Co-operation Against Trafficking in Persons, Especially Women and Children" held in Bali on 23 June 2004.

Venue of the Forty-Fourth Session

- 10.2 It was decided that the Forty-Fourth Session of AALCO would be held in Kenya, in accordance with Resolution RES/43/ORG 8.

Adoption of Summary Report

- 10.3 The Summary Report of the Forty-Third Session of the Asian-African Legal Consultative Organization was adopted.
- 10.4 The provisional Summary Records of the First and Second Meeting of the Delegations of AALCO Member States and the First to Fifth General Meetings were distributed. Member States were asked to review the Summary Records and submit their views and/or corrections to the Secretariat within the following two

months.

11. Sixth General Meeting

- 11.1 The Sixth General Meeting was opened by the President, His Excellency Prof. Dr. Yusril Ihza Mahendra, who summarized the accomplishments of AALCO and its Forty-Third Session and thanked all those who made the Session a success.

Closing Statements

- 11.2 Several delegations, on behalf of the Member States, Observer States and International Organizations, expressed their appreciation to their fellow delegates, the President and Vice-President, the Secretary-General, the AALCO Secretariat and the Government of the Republic of Indonesia for hosting the Session.
- 11.3 Ambassador Dr. Wafik Z. Kamil, Secretary-General of AALCO, delivered a "Message of Thanks" addressed to Her Excellency Madame Megawati Soekarnoputri, President of the Republic of Indonesia, which was reviewed by the Drafting Committee. He also made a statement expressing his gratitude to all the delegates, the President and Vice-President, the Secretariat and all those involved with organizing and hosting the Session.
- 11.4 The President, His Excellency Prof. Dr. Yusril Ihza Mahendra, closed the Forty-Third Session.