
AALCO Asian-African Legal Consultative Organization

Forty-Fourth Session

27 June – 1 July 2005

Nairobi, Republic of Kenya

**SUMMARY REPORT
OF THE FORTY-FOURTH SESSION**

**OF THE ASIAN-AFRICAN
LEGAL CONSULTATIVE ORGANIZATION**

27 June – 1 July 2005

1. Introduction

1.1 The following 33 Member States participated in the Forty-Fourth Session of the Asian-African Legal Consultative Organization (AALCO), (hereinafter "the Session"): Arab Republic of Egypt, Bangladesh, Brunei Darussalam, People's Republic of China, Cyprus, Ghana, India, Republic of Indonesia, Islamic Republic of Iran, Japan, Republic of Kenya, Republic of Korea, State of Kuwait, Malaysia, Myanmar, Kingdom of Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, Philippines, State of Qatar, Kingdom of Saudi Arabia, Senegal, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, Uganda, United Arab Emirates and Yemen Arab Republic.

1.2 Directors of 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-Fourth Session of the AALCO 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 AALCO, the following observers were admitted to the Session:

(1) Representatives of the following non-participating State: Spain, Holy See, Germany, Italy and Russian Federation

(2) Representatives of the following regional, inter-regional and international organizations, specialized agencies and subsidiary bodies: Commonwealth Secretariat, Food and Agriculture Organization, International Law Commission (ILC), ICC, League of Arab States, International Tribunal on Law of the Sea (ITLOS), The Saudi Fund for Development, United Nations Environment Programme (UNEP), United Nations Framework Convention on Climate Change (UNFCCC), and International Institute for

the Unification of Private Law (UNIDROIT), East African Community(EAC), The Chartered Institute of Arbitrators(Kenya Chapter)

2. Inaugural Session

- 2.1. The Session commenced on 27 June 2005 with the opening remarks by **His Excellency Wanjuki Muchemi**, Solicitor-General of Republic of Kenya.
- 2.2 **His Excellency Ambassador Dr. Wafik Z. Kamil**, Secretary-General of the Asian-African Legal Consultative Organization (AALCO) thanked the Republic of Kenya for hosting the Session, and welcomed all delegates to the Session. He underlined that the Organization takes pride in the fact that the 44th Session of the Organization was being inaugurated by one of the most outstanding, respected and eminent leaders from the Afro-Asian region. He stated that the Organization was a tangible outcome of the Bandung Conference that would commemorate its Golden Jubilee next year and that Nairobi would provide an opportunity to reflect upon the glorious past of our Organization and what would be done in the future.
- 2.3. **His Excellency Dr. Hamid Awaludin**, the Minister of Law and Human Rights and the President of the Forty-Third Session, on behalf of AALCO, made an opening statement, wherein he outlined the brilliant beginning of the Organization with lofty goals to unify the Asian African countries in the domain of international law. He recalled the celebration of the Golden Jubilee of the Bandung Conference which had called for Asian African solidarity. He stated that AALCO (**was/is**) a unique Organization that could further strengthen Asian African cooperation and through this unique forum, the voice of these two regions could be heard at other international fora.
- 2.4. **His Excellency Ambassador Lee**, on behalf of the President of the Forty-Second Session, made a brief statement, wherein he thanked the host government for the excellent arrangement for the Session and hoped that this session would be a historical one.
- 2.5. **His Excellency, Hon. Amos Wako, E.G.H. M.P., the Attorney-General of the Republic of Kenya** gave a brief remark. He said that it was an honour and privilege that a son of Kenya, Prof. Frank X. Njenja was the first elected Secretary-General of the Organization. In view of the growing importance of the Organization, he urged other States from Africa and Asia to become members of the Organization.
- 2.6. **His Excellency Hon. Kiraitu Murungi, E.G.H., M.P., the Minister of Justice and Constitutional Affairs** said that the Organization had effectively tackled many important issues in the past. It was now time for AALCO to shift its focus to current challenges like tackling corruption, good governance and rule of law. In this regard he said that Kenya was the first country to sign and ratify the UN Convention against Corruption as well as enacted the implementing legislation in the national level. He then invited the Honourable President of Republic of Kenya to present his inaugural address.
- 2.7. **His Excellency Hon. Mwai Kibaki, C.G.H., M.P., President and Commander-in-Chief of Armed Forces of the Republic of Kenya** officially inaugurated the Session and welcomed Heads and Members of all delegations to the Session. The President said that Kenya has been closely associated with AALCO for more than three decades and that Kenya valued the Organization for its role in bringing together experiences and expertise

from Africa and Asia for the development of better understanding and solutions to legal issues arising out of interaction among people and nations.

The President commended the AALCO for the contribution it has made in the development of the Law of the Sea, the international human rights regime, as well as in the international trade law. He noted that the topics for discussion at the 44th Session will make a significant contribution in the development of international law and practice. He commended AALCO for undertaking studies that have led to an informed common position among the Asian and African countries.

Further the President touched upon various issues such as Agriculture, Corruption international terrorism, environment etc., which are of vital importance to Kenya and the countries in the Asian and African region and reflected on the measures taken by the Government of Kenya to address these challenges. He also felt greatly honoured by the award of the Nobel Peace Prize of 2004 to Honourable Professor Wangari Maathai, MP. He said that the topic for the Special Day Meeting on Environment and Sustainable Development was well chosen and timely and would help in talking common positions on this topic of immense importance. Finally, he encouraged all the delegates to visit his beautiful country.

3. First and Second Meeting of the Delegations of AALCO Member States

3.1 Agenda: The following agenda was adopted for the Forty-Fourth Session:

I. Organizational Matters

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

II. Matters under Article 1(d) 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-Sixth Session.

III. Matters under Article 1(a) of the Statutes: Matters Referred to the Organization by Member States.

1. International Terrorism.
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.
2. Jurisdictional Immunities of States and their Property.

3. Human Rights in Islam.
4. Establishing Cooperation Against Trafficking in Women and Children.

IV. Matters under Article 1(b) 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 Framework Agreement and Code of Conduct for the World Trade.

VI. Special Meeting on the topic:

Environmental Law and Sustainable Development.

VII. Any Other Matter

- 3.2 ***Election of President and Vice-President:*** The Head of Delegation of People's Republic of China proposed the nomination of **His Excellency Hon. Amos Wako, E.G.H. M.P., the Attorney-General of the Republic of Kenya**, as President of the Session. The nomination was seconded by the Head of Delegation from Ghana, and was unanimously adopted. The Head of Delegation from the Sudan proposed the nomination of the **His Excellency Hon. Tan Sri Abdul Gani Patail, Attorney General of Malaysia**, as Vice-President of the Forty-Fourth Session. The nomination was seconded by the Head of delegation from Japan, and was unanimously adopted.
- 3.3 **The President of the Forty-Fourth Session, Hon. Amos Wako, E.G.H. M.P., the Attorney-General of the Republic of Kenya** in his statement after his election, *inter alia*, outlined the contribution of the outgoing President of the 43rd Session and thanked him for a job well done. He stated that with guidance from the Secretary-General, he would do his best to live up to the expectations of Member States in the spirit of AALCO. Furthermore, he welcomed all the participants to the meeting.
- 3.4 ***Admission of Observers:*** The Admission of observers to the Session, pursuant to Statutory Rule 18(1), was unanimously approved.
- 3.5 ***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 the agenda items; the status of the non-deliberated items, including Law of the Sea, Status and Treatment of Refugees, the Legal Protection of Migrant Workers, Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties 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 the various activities of AALCO since the conclusion of Forty-Third Session, and also his efforts to enlarge the membership of the organization. He said that the Yearbook of the AALCO has now found a place of pride amongst the publication of International Organizations and the newly introduced monthly Newsletter has received positive feedback from the Member States. He also expressed his pleasure of placing before the Member States the Secretariat publication entitled "Combating Corruption: A Legal Analysis".

- 3.6 **Budget:** The Secretary-General introduced the first biennial budget for the years 2005 and 2006. He stated that the deficit in the Budget was mainly due to the fact that the AALCO Secretariat is in the process of shifting to its New Headquarters Building. The Secretary-General also referred to the amount of the arrears and contributions, and urged Member States to consider on an urgent basis, to pay their contributions as soon as possible and emphasized that serious attention should be given to place the AALCO's financial position on a sound footing. Thereafter, the biennial budget for the years 2005 and 2006 was adopted.
- 3.7 **Report on Construction of the AALCO's Permanent Headquarters:** The Secretary-General outlined the progress of the construction of AALCO's Permanent headquarters in New Delhi, India. The Delegation of India informed the Session that the construction was fully financed by the Indian Government and the construction work has reached its completion stage and was expected to be completed within this year.
- 3.8 **Report on AALCO's Centre for Research and Training:** Mr. Chen Meidi, Deputy Secretary-General of AALCO while introducing the item stated the website of the AALCO has been significantly modified and upgraded in order to make it more user-friendly, interactive and informative. Furthermore, the work on establishing a web-link, 'Legal Study Guide', is underway, which intends to provide useful information on the topics on the Work Programme of AALCO. It will compile international and regional legal instruments as well as serve as a portal for research on selected topics. 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. However, he emphasized that the working of the Center has been adversely affected due to shortage of funding.
- 3.9 **Review of the Statutory Rules of the Organization:** The Secretary General referred to the progress made on the revision of AALCO's Statutory Rules, following the proposal by the Republic of Ghana at the Forty-First Session and said that it would be placed before the Member States at the Forty-Fifth Session.
- 3.10 **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, Ms. Roselyn Amadi, Deputy Chief State Counsel, Republic of Kenya.

4. **First and Second General Meetings**

- 4.1 Delegations from the following Member States made statements during the first and second general meetings: Uganda, Sudan, People's Republic of China, Indonesia, Malaysia, Arab Republic of Egypt, Islamic Republic of Iran, Kenya, Tanzania, United Arab Emirates, Republic of Korea, Nepal, Thailand, Oman, Ghana, Syria, Bangladesh and Myanmar.
- 4.2 Delegations from the following Observers also made their statements: New Zealand, UNU, UNHCR and ITLOS.

- 4.3 Many delegations expressed their sincere gratitude to the President of the Republic of Kenya His Excellency Mwai Kibaki. C.G.H., M.P. for his inspiring address which provided ample guidelines for the Forty-Fourth session. They also expressed their appreciation for the excellent arrangements made by the host country, the Republic of Kenya, and the AALCO Secretariat for the success of the Forty-Fourth session.
- 4.4 Several delegations recalled that AALCO was a tangible outcome of the historic Bandung Conference of the Asian and African countries, 1955, and stressed that it was the Bandung spirit providing for a common vision for the countries of Asia and Africa that brought them together in the international fora. This Session was being convened on the eve of the Golden Jubilee of the Organization and they stressed that it be celebrated in a manner commensurate with the growing stature of the Organization which was firmly placed as an important inter-regional organization. They shared the view that despite the challenges to contemporary international law, the basic principles of international law, including the Five Principles of Peaceful Co-existence, have been widely accepted by the international community, and are playing an increasingly important role in maintaining peace and promoting development in the world.
- 4.5 Many delegations expressed satisfaction with the growth of AALCO and highlighted its importance as the only intergovernmental legal consultative body in the Asian African region. They emphasized the need to increase efforts to expand the membership of AALCO. They also stressed the increasing importance of the role of AALCO as a forum to exchange views on issues of mutual interest, and the need to work closely with the United Nations and other International Organizations. In this process AALCO has signed Cooperation Agreements and Memorandum of Understanding with seventeen intergovernmental institutions and is in the process of doing so with other important organizations.
- 4.6 Many delegations expressed satisfaction with the topics for the one-day Special Meeting on “Environmental Law and Sustainable Development”, and noted the need for in-depth consideration of these issues.
- 4.7 Some delegations reflected upon the contemporary problems faced by the Member States, particularly mentioning the situation in certain parts of the Middle East. Other issues that Member States drew attention to were corruption, the International Criminal Court, trafficking in women and children and international trade law etc.
- 4.8 One delegation pointed out the incompatibility that exists between the UN Charter and the High Level Panel Report of the United Nations on issues of use of force, self-defence and pre-emptive attack. The Delegation requested AALCO to consider these issues in order to provide the appropriate guidelines to the Member States. Another delegate observed that the AALCO Member States should continue to make use of the forum provided by AALCO so that their views could be consolidated, interfacing on issues of mutual interest. One delegate suggested that the AALCO should undertake a training programme for officials from the Member States and give incentive to participants for doing so.

5. Third General Meeting

Agenda Item II: International Law Commission

- 5.1 Deputy Secretary-General, Ambassador Dr. Ali Reza Deihim introduced the item and Professor Djamchid Momtaz, the President of the International Law Commission (ILC),

reported and analyzed comprehensively the work of the ILC during the first part of the 57th Session of ILC. Professor Momtaz highlighted the progress made on the following topics: Shared Natural Resources, Responsibility of International Organizations and Effects of Armed Conflicts on Treaties.

- 5.2 Delegations from India, People's Republic of China, Republic of Kenya, Arab Republic of Egypt, Republic of Indonesia, Islamic Republic of Iran and South Africa made statements regarding the work of the ILC, mainly with respect to the following topics: Reservations to Treaties; Diplomatic Protection; Unilateral Acts of States, Shared Natural Resources, Responsibility of International Organizations and International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law. Delegations commended the International Law Commission for having adopted a set of draft articles on Diplomatic Protection and a set of draft principles on the topic of International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law on their first reading.

Agenda Item IV: The International Criminal Court: Recent Developments

- 5.3 Deputy Secretary-General Ambassador Dr. Ali Reza Deihim outlined the developments in relation to the International Criminal Court. He stated that the year 2005 would be considered as a crucial year in the early history of the ICC, as investigations in the two referrals by the State Parties to the Rome Statute, namely in Uganda and Democratic Republic of Congo were in progress. Moreover, two more countries namely the Central African Republic and Republic of Cote d' Ivoire had referred the situation in their countries to the ICC. Another development was the referral by the United Nations Security Council of the situation in the Darfur region of Sudan to the ICC. He stated that in all, the ICC had five cases before it and all these cases, pertained to the continent of Africa which had become the crucible for the nascent ICC to establish its credibility and legitimacy. Amb. Dr. Deihim, Deputy Secretary-General, also stated that regarding the slow progress made in the work of the Special Working Group on the Crime of Aggression and stated that the work was proceeding at a rather slow pace. In this regard, he suggested that an Inter-Sessional Meeting of AALCO Member States should be convened for considering this important issue.
- 5.4 The First Vice-President of the International Criminal Court H. E. Judge Akua Kuenyehia thanked AALCO for the opportunity given to her to speak about the "The International Criminal Court: Independence and Interdependence". She stated that the Court had a strong relationship with both the Asian and African region, as the states from these regions had played an important role in Rome Conference which had drafted the Statute. Moreover, Africa was the most represented continent in the Assembly of States Parties. The ICC, she stated although an independent judicial institution operated within the context of interdependence. She spoke about the Court's judicial nature, and about its unique position at the crossroads of international relations and international law. She elaborated upon first, the need for an international criminal court; second, the features which made the ICC particularly well suited to play those roles; and third, the role of States and inter-governmental organizations in ensuring the success of the ICC. In conclusion, she stated that through the establishment of the ICC the foundation for effective enforcement of international justice had been laid and the effects of this historic event were already being felt throughout the world. However, the Court could not end impunity for horrific crimes by itself. It was but one part of a larger system of

international law and justice. Therefore, she called for cooperation and support of States and other international institutions and stated that the more support the Court had, the more it could aid the cause of international justice.

- 5.5 The Delegations from Malaysia, People's Republic of China, Arab Republic of Egypt, Republic of Indonesia and Kuwait made statements. The delegations stated that they were carefully observing the work of the International Criminal Court after it had formally started functioning and now had certain cases before it. A delegation stated that his country had adopted a prudent approach and would consider acceding to the Rome Statute only after observing the outcomes of the cases before the ICC. Several delegations emphasized the importance of the principle of complementarity and a delegation in this regard drew attention to the situation in the Darfur region of Sudan by the United Nations Security Council to the Office of the Prosecutor of the International Criminal Court, despite Sudan not being a party to the Rome Statute. The delegations also stated that they were closely following the work of the Special Working Group on the Crime of Aggression and emphasized the importance of coming up with an acceptable definition of crime of aggression. A delegation drew attention to the less representation of the Asian-African States in the recently concluded Inter-Sessional Meeting of the Special Working Group on the Crime of Aggression and that the Organization should now concentrate upon this contentious issue.

Agenda Item IV: An Effective International Legal Instrument Against Corruption

- 6.1 The President of the Forty-Fourth Session, upon the request of the Secretary-General, released the AALCO Secretariat publication "Combating Corruption: A Legal Analysis".
- 6.2 His Excellency Hon. Kiraitu Murungi, E.G.H., M.P., the Minister of Justice and Constitutional Affairs in his statement highlighted the five pillared anti-corruption Strategy adopted by the Government of Kenya which consists of the following: enactment of the necessary legislation to establish a legislative framework; vigorous enforcement of anti-corruption laws through investigation of offences of corruption and economic crimes as well as recovery of corruptly acquired property; identification and sealing of corruption loopholes; national public education aimed at stigmatizing corruption and inducting behavioral change; and implementing macroeconomic and structural reforms to reduce the incidence and demand for corruption by scaling down the role of the public sector and bureaucracy. He was of the view that there was an urgent need to intensify the global solidarity against corruption. In this regard the UN Convention Against Corruption not only makes Corruption an international Crime but also contains elaborate mechanisms for international cooperation in the recovery of stolen assets.
- 6.3 Amb. Dr. Ali Reza Deihim, Deputy Secretary-General of AALCO in his introductory statement said that the study "Combating Corruption: A Legal Analysis" prepared by the AALCO Secretariat Research Team would be a useful reference book for the Member States in understanding and implementing the anti-corruption instruments. He then enumerated the various important provisions of the UN Convention against Corruption and explained briefly some of the shortcomings, when it comes to the illegal funding of political parties, implementation and monitoring mechanism. He noted that 26 countries have ratified the Convention and needs only four more ratification to bring the Convention into force. He hoped that the Convention would come into force by the end of 2005. He felt that the Asian African countries would be in the forefront in the ratification of the Convention.

- 6.4 Delegations from Republic of Kenya, Indonesia, Malaysia, Nigeria, People's Republic of China, Ghana, Islamic Republic of Iran, Nepal, Oman, Kuwait, the United Republic of Tanzania and the Holy See presented their views on the topic. All the Delegates highlighted the urgent necessity for having international anti-corruption instruments and welcomed the adoption of the UN Convention against Corruption. The Member States explained the efforts currently undertaken by them for the ratification of the UN Convention against Corruption. Those States which have already ratified the Convention enumerated the efforts taken by them to incorporate the objectives of the Convention into their domestic laws, in order to effectively combat corruption. Some delegations proposed the establishment of networking amongst relevant national and regional task forces or offices. One delegation noted that the UN Convention is a very important document and its provisions should be implemented at the national level, which his State has done by passing a law to put on trial officials and ministers for bribery and corruption. Another Delegation proposed that AALCO Secretariat should prepare model legislation on combating corruption, so that the objectives of the UN Convention against Corruption could be implemented at the national level.

Special Meeting on “Environmental Law and Sustainable Development”

- 7.1 The Special Day Meeting on “Environmental Law and Sustainable Development” organized during the Forty-Fourth Session of AALCO took place in the following order: Inaugural Session; Sustainable Development, the Rule of Law, Human Rights and Environmental Justice; Compliance with and Enforcement of Environmental Law; and Entry into force of Kyoto Protocol: Problems and Prospects.

Session 1: Inauguration

- 7.2 The Inaugural Session commenced with the Master of Ceremony **Mr. Wanjuki Muchemi Solicitor General of the Republic of Kenya** welcoming the Vice-President and the Home Minister of the Republic of Kenya His Excellency Hon. Dr. Moody Awori, the President of the Forty-Fourth Session of AALCO Hon. S. Amos Wako, the Minister for Environment and Natural Resources Hon. Kalonzo Musyoka, Secretary-General of AALCO Amb. Dr. Wafik Z. Kamil, Deputy Executive Director of UNEP Mr. Shafqat Kakakhel, invited guests, panelists and the delegates of the Session. He thanked the Vice-President for finding time for his busy schedule and personally gracing the occasion.

On the occasion of the Special Day Meeting, a beautiful poem depicting environmental degradation and the need for protecting the natural resource base was rendered by a young Kenyan poetess, Ms. Caroline Nderitu.

- 7.3 **Ambassador Dr. Wafik Z. Kamil Secretary-General AALCO** delivered the welcome statement. He thanked the Kenyan Government and UNEP for the excellent arrangements made for the Special Day meeting as well as the distinguished Panelists. He stated that the theme of the Special Day Meeting was important for all those people who cared for the planet Earth. He traced the journey of the progressive development and codification of international environmental law from Stockholm Conference onwards and stated that international legal instruments were the principal means by which the international community expressed its commitment on measures to address to the global environmental issues in the context of sustainable development. He stated that for AALCO the year 2005 marked the culmination of thirty years of work on environmental law issues. Since 1975 the Organization had been advancing the cause of adequate

implementation and enforcement of multilateral environmental agreements in its Member States. It had also been advocating the strengthening of national legislations and institution for environment protection. The present focus of the work of the Organization was focused on the implementation of the United Nations Framework Convention on Climate Change (hereinafter “UNFCCC”), Convention on Biological Diversity (hereinafter “CBD”), and United Nations Convention to Combat Desertification (hereinafter “UNCCD”), as well as the implementation of Johannesburg Declaration on Sustainable Development and the Plan of Implementation.

The Secretary-General stated that the AALCO would sign an MOU with United Nations Environment Programme (UNEP), on “environment conscience” of the globe, a Memorandum of Understanding, in order to give synergy to their efforts for environment protection and promotion of sustainable development in Asia and Africa. He lauded the first women Nobel Peace Prize awardee from Africa Hon. Prof. Wangari Maathai and said that her thirty years of struggle had led amongst other things to the considerable empowerment of women who often were the first victims of degraded environment. In conclusion, he drew attention to the review of the Millennium Development Goals (MDG) at the forthcoming Sixtieth Session of the United Nations General Assembly in September, 2005. Important to note in this context, was that “ensuring environmental sustainability” was one of the eight MDG adopted by the world leaders in 2000 and the action plan required to meet the environmental challenges posed could be based upon three areas- technology transfer, capacity-building, and financial assistance to developing countries. Finally, he said that environmental degradation could be prevented if the world heeded to what Gandhi said “The Earth provides us enough for our need not for greed”.

- 7.4 **The Deputy Executive Director of the United Nations Environment Programme Mr. Shafqat Kakakhel** said that it was a great pleasure and honour for him to attend and address the Session and in particular the Special Day Meeting. He said that the idea for holding such meeting was discussed between the Executive Director of UNEP Dr. Klaus Toepfer and Amb. Kamil and their collective wisdom prompted the convening of the meeting. He emphasized in the present day world the problem of sustainable development was no less urgent than that of decolonization and apartheid against which the AALCO had relentlessly fought and therefore it was imperative for the AALCO now to take up the goal of sustainable development. He stated that today no discussion of global issues was complete without a discussion of the challenges of sustainable development. Protection of natural resource base was key challenge in ensuring environmental sustainability one of the MDGs. Referring to the Report of the Secretary-General’s High-Level Panel on Threats and Challenges, he said that although its term of reference did not include environment, it did call for addressing environmental issues, particularly climate change. In this regard, he said that the Millennium Ecosystem Assessment had clearly brought out that two-thirds of all ecosystem was under serious and growing threat and environment protection was one of the most important challenges.

Drawing attention to the struggle of Prof. Wangari Maathai, he said that she went to jail for environmental causes not for apartheid or fight against colonialism. Her heroic and relentless struggle for protecting forest was an indication of the struggle of millions for environment protection. There could be no peace, justice or human right without the right to environment and it was a *sine qua non* for peace.

- 7.5 It was gratifying to note that International Environmental Law, perhaps the youngest stream of international law has proved to be its most dynamic branch. Over the years, the

number of legal instruments had grown in numbers and now there are instruments which address nearly all environmental issues such as marine pollution, conservation of biodiversity, conservation of natural resources, environmentally sound management of hazardous wastes, climate change and so forth. UNEP was involved in almost all environmental negotiations. The challenge before the international community was now how to enforce the Agreements between sovereign nations, which had been willingly negotiated among themselves and were translated into action at global, regional, sub-regional and national levels. Unless the critical balance between nature and human beings is achieved the fate of humankind would be like that of travelling on Titanic.

- 7.6 The **President of the Session, Hon. S. Amos Wako** in his speech highlighted the urgent need to integrate environmental issues into every aspect of the economic life from planning and policy making, to patterns of production and consumption. He said that environment and sustainable development should now be moved from policy and concept to action. The general public including civil society should be involved in the planning stages of policy and decision making in order to help, anticipate and avoid and where necessary mitigate conflicts that might develop later.

He stated that poverty and environmental degradation were the results of bad development choices. He was of the view that Asian and African countries should adopt wholesome development strategies that suits our needs as developing nations and which strategies must take environmental protection fully into account including the involvement of all stakeholders. He was of the opinion that integration and mainstreaming of the concept of sustainable development would go a long way in mitigating the negative effects of these challenges.

The President of the Session gave a brief outline of Kenya's process to integrate the concept of sustainable development. In conclusion, he emphasized that a point had reached where the discussion was no longer simply about what sustainable development meant but rather how sustainable development was to be implemented in practice. An optimal balance must be achieved between environmental protection and development. In addition, environmental protection, social and economic development, gender empowerment and the promotion of human and people's rights were among a range of factors that clearly played a role.

- 7.7 The **Minister for Environment and Natural Resources of Kenya Hon. Kalonzo Musyoka** stated that conservation and protection of the environment was essential to our own survival as a region. Sustainable development depended on complex and fragile ecosystem and required the cooperation and participation of all stakeholders. The environmental problem that threatened sustainable development included urban degradation, deforestation, soil erosion, and alien invasive species. These problems had aggravated the poverty situation in most countries of Asia and Africa, yet, ironically affluence was also creating its own environmental problems as evidenced by ozone depletion due to use of ozone depleting substances. Furthermore, inappropriate legislation was posing potentially serious environmental problems since developmental needs were not always adequately matched to ecological concerns. In his opinion, the major implementation constraints among the developing countries included lack of adequate resources and capacities which included financial, technological and institutional. He upon AALCO Member States to marshal all efforts in ensuring that timely, proper and adequate discharge of obligations under the various Multilateral Environmental Agreements (MEAs) were met.

The Minister elaborated upon the implementation of obligations under the UNFCCC, UNCCD and the CBD and outlined the steps taken in Kenya in particular and the African continent in general.

7.8 The Minister recommended that AALCO:

- Puts in place the necessary legal framework to help resolve the existing intricacies between environment and trade issues. This need for the legal framework arises from the realization that more often than not, our development partners had fallen into the habit of using environmental conditionality as trade barriers to perpetrate unfair trade practices against developing countries;
- Comes up with relevant legal framework to handle and manage legal issues relating to the emerging environmental conventions and protocol to promote harmonization and easier implementation;
- Assists in the building of legal capacity that would help developing countries to effectively negotiate and protect their interests within the current and emerging MEAs; and
- Considers making environment a standing agenda.

7.9 **The Vice President of Kenya and Minister for Home Affairs Republic of Kenya His Excellency Hon. Dr. A. A. Moody Awori** delivered the Keynote Address. He was of the opinion that, by devoting a Special Session on Environmental Law and Sustainable Development, AALCO Member States demonstrated the significance accorded to environmental matters that were of topical and contemporary relevance to the international community now.

The Vice-President highlighted that the Special Meeting offered yet another unique opportunity to advance the environmental agenda for the betterment of our livelihoods and general quality of life. This was well in line with the declaration of the first South-South Summit held in Havana, Cuba, in the year 2002, which recognized the imperative need for a new global human order aimed at reversing the growing disparities between the rich and the poor. He opined that it would be ineffective if developmental initiatives are grounded on policies that do not integrate the nexus between environmental protection and development. This was the ringing call of the World Summit on Sustainable Development held in Johannesburg, in 2002.

The Vice-President said that the Nobel Peace Prize for the year 2004 for Hon. Prof. Wangari Maathai was a solid recognition of the linkage between environmental protection, sustainable development, good governance, democracy and women's rights. He highlighted various issues related with urbanization. He said that the Special Meeting presented a unique platform for AALCO to canvass these challenges, and adopt resolutions to counter the threats urbanization posed.

Regarding the achievement of the Millennium Development Goals, the Vice-President posed the following pertinent question. *What should AALCO do to help its Member States move closer to the realization of the Millennium Development Goals?* He appealed to Member States of AALCO who were not yet State parties to the multilateral instruments relating to environment and sustainable development to seriously and urgently consider acceding thereto. Those Member States that were already States Parties to these international instruments, he emphasized the need to put in place national legislative

frameworks and regulations. The Vice-President gave an account of Kenya's commitment to international environmental law and sustainable development.

He concluded his speech with the hope that the Special Meeting would adopt specific implementable resolutions which would stir the development of clear mechanisms that would ensure compliance with and implementation of environmental standards.

Professor Canute Khamala, Chairman of the National Environment Management Authority of Kenya made a vote of thanks.

Session 2: Sustainable Development, the Role of Law, Human Rights and Environmental Justice

- 8.1 **Amb. Professor Chusei Yamada, Member International Law Commission** outlined the Asian perspective to the Session theme. Elaborating from the Japanese perspective, he explained Japan's basic views on environmental law and environmental justice and addressed the development of legal frameworks. He also discussed the importance of non-legal approach and the Asian perspective to environmental law issues.

He mentioned that Japan experienced grave environmental pollution in the period of its high economic growth in the 1960s and 70s, and if other countries in the region followed the same path in their process of economic growth and development, their precious environment could not be maintained for the future generation. He said that we should realize "sustainable economic and social development" by preserving global environment through effective use of limited resources. Further, he stated that Japan had proposed the idea of "global sharing" in which strategies, responsibilities, experiences and information should be shared at the global level.

With regard to the development of legal frameworks, he noted that before 1970s, environmental issues were generally seen as domestic issue, but after the Stockholm conference, the environmental issues were internationalized. Numerous specific legal instruments had been concluded including at global, regional and bilateral levels. Regarding global warming, he stated that with regard to Kyoto Protocol which came into force in February 2005, seven years after its adoption, Japan, as the host country of Third Conference of the Parties to the UNFCCC in Kyoto, continuously encouraged other countries to join the Protocol for its early entry-into-force.

He added that in addition to legal framework, global environmental issues could not be effectively tackled without changing our way of life and thinking. The key word in this regard was "Think globally, Act locally." However, at the same time, he noted that Asia was a region with vast variety and no culture should impose its standard on others. He also noted Ms. Wangari Maathai, Kenyan Nobel Laureate who was in Japan last February to witness the ceremony of the coming into force of Kyoto Protocol, acknowledged that the Japanese expression "Mottainai" (means "to avoid wasteful use") was playing a key role in Japan for preservation of environment. As an example of such non-legal approach, based on this concept, Amb. Yamada referred to the "3R Initiative" proposed by Prime Minister Koizumi at the G-8 Sea Island Summit in June 2004, which implies 'reduce', 'reuse' and 'recycle' and this approach was supported by the leaders of G-8 states.

Regarding cooperation in Asia, he mentioned that in Asia, environmental issues such as the increase of CO₂ emissions, acid rain, the sea pollution and the depletion of some fish

stocks had been occurring along with the industrialization of countries in the region and that regretfully no necessary measures had been taken yet successfully. He added that Japan had been promoting cooperation for such measures in Asian region, for instance in June 2004, “Asian Cooperation Dialogue – Dialogue on Environmental Education” was held in Tokyo; also “Asia Forest Partnership” was established at the Johannesburg Summit in August 2002. Additionally, he provided that Japan would put further efforts to transfer technologies relating to combating global warming to developing countries.

- 8.2 **Prof. F. X. Njenga, Professor of Law, Moi University, Kenya / Former Secretary-General, AALCO** outlined the African perspective on the Session theme. He began with a brief discussion of the concept of ‘sustainable development’. He recalled that the World Commission on Environment and Development – the Brundtland Commission, stressed that “Sustainable Development is development that meet the needs of the present, without compromising the ability of future generations to meet their own needs”. He also quoted UNEP Governing Council’s decision 15/2 of May 1989 which defined this concept as: “Sustainable development meets the needs of the present without compromising the need of future generations to meet their own needs and does not imply in any way encroachment of material sovereignty”. Thus, the concept of sustainable development was central to realization of the goals of environmental law, which implied the need to ensure that activities and policies adopted in any generation do not compromise the ability of future generations to realize their own developmental ambitions. He also stressed that the concept did not contrast “growth” against “environment” but rather accepted that in some cases environmental protection and conservation could promote growth in the economy and stressed that the real issue was not “growth or no growth” but how growth was to be attained.

He added that sustainable development also embraced anticipatory approach to environmental issues, under which an attempt is made to determine the likely nature and cost of environmental problems in advance of their occurrence, so that timely appropriate measures could be taken to prevent the impoverishment of the future.

- 8.3 He spelt out general principles with regard to the rights and obligations relating to environmental resources and interests as follows;
- human rights to have an environment adequate to support life and well being;
 - principles of intergenerational equity in the use of environment and its natural resources;
 - principle of conservation;
 - those likely to be effected by the activities having significant impact on the environment, to be informed of the issue in good faith and given access to administrative or judicial proceedings;
 - nations to cooperate in promoting the concept of sustainable environment;
 - when nations allow, or themselves undertake, beneficial activities which were dangerous, they should take all reasonable precautionary measures to limit risk and provide compensation;
 - nations to develop contingency plans to deal with situations where transboundary interferences may arise;
 - where persons were affected by transboundary interferences, equal access and treatment should be afforded them in any relevant administrative or judicial proceedings;
 - Nations to cease any activities, which were in breach of international environmental obligations and should provide for compensation for harm caused and should settle environmental disputes by peaceful means.

On African perspective, he stated that as eighty percent of the population of Africa still lived in remote areas, they depended on the numerous rivers and lakes for their drinking waters, and on their livestock in its natural conditions. Consequently, activities, which jeopardized its portable quality, would be catastrophic and hence for Africa, ensuring sustainable development was literally a matter of life and death. Yet, the industrialization and all other forms of development had to be undertaken. It was, therefore, necessary to obtain appropriate technologies and assistance through international cooperation to ensure that any such developmental activities were sustainable.

Due to massive increase in population, the population pressure has led to fragmentation of available agricultural holdings and extending cultivation to marginal lands including forest reserves and riverbeds, resulting in deforestation and soil erosion and degradation. Another result of population explosion was the exodus of people from rural areas to urban centers, where facilities were already over stretched, resulting in mushrooming of slums and unplanned structures. The issue, therefore, was how to maintain sustainable growth in such circumstances.

He emphasized that conducive environment was indeed a matter of human rights and environmental conservation could not be realized without due regard for the human rights involved. Similarly, uncontrolled agricultural activities in forests and water catchment areas could only lead to unsustainable land use and could not be tolerated. Finally, he underlined that in his view, it was not possible to achieve sustainable development for the future generations, through the wholesale suppression of the human rights of the current generation.

- 8.4 Delegations from Ghana, Islamic Republic of Iran, Republic of Indonesia, People's Republic of China, Kenya, Myanmar, Nigeria and Syrian Arab Republic made their remarks on the presentation made and complimented the two panelists for their excellent presentations. They also welcomed the convening of the Special Day Meeting and complimented the three partners in the endeavor, the Kenyan Government, UNEP and AALCO for organizing such a meeting and hoped that in future more such seminars and meetings could be organized. A delegation sought to know the rights of slum dwellers in the context of planned urban development.

Another delegation called upon the AALCO to play a more visible role on environmental law issues. A delegation drew attention to the International Conference on Environment, Peace, and the Dialogue Among Civilizations and Cultures, held in Tehran, Islamic Republic of Iran from 9-10 May 2005. They emphasized the importance of the final communiqué of the Conference. The President recommended that the text of Tehran communiqué be made available to the participants of the Conference.

A delegation stated that Asia and Africa collectively represented the largest part of the world population and most of the countries were in the developing phase. Industrial advancement was an objective for many of these countries and many of them were addressing the environmental challenges arising out of it. It hoped that developing countries learn from the mistakes of industrialization pursued by the developed countries and would not repeat them. In this regard essential was the sharing of experiences at all levels, which was a difficult task amongst these countries. Another delegation pointed out that hostility to environment and exhaustion of the limited natural resources was done mostly because of personal greed, ignorance or miscalculation. The deliberate torture for

the purpose of displacement and occupation of other's land was sometimes manifested by cutting trees of vast areas of land according to a premeditated and organized plan. This was considered a type of hostility to nature and confiscation of the right of the next generations to live on their land and to benefit from its natural resources. The prevention of this kind of hostility over the environment and hindrance of sustainable development lay upon international organizations and AALCO could effectively contribute in that regard.

Session 3: Compliance with and Enforcement of Environmental Law

9.1 **Ms. Elizabeth Mrema of the UNEP** made a presentation on “Compliance with and Enforcement of International Environmental Law”. In her presentation, she outlined the current focus on compliance and enforcement of international environmental law (or the Multilateral Environmental Agreements –MEAs); why MEAs took so long to be effectively implemented; benefits of implementation of environmental standards and norms; commonly identified problems in the implementation and enforcement of treaties; role that UNEP and its partners play to support countries in their efforts to imply and comply with treaties related to environment and the future focus by UNEP, in partnership with the Parties and Secretariats, on implementation of MEAs.

9.2 **Prof. Ratemo Michieka, Director General, National Environment Management Agency (NEMA) of Kenya** made a presentation entitled “Enhancing Compliance with and Enforcement of National Environmental Law.” Prof. Michieka elaborated upon the legislative and institutional mechanisms available in Kenya for a “clean and healthy environment”. He stressed that enforcement and compliance were pivotal to the success of any environmental legal regime. He stressed that so many jurisdictions, statutes become dead letters from lack of effective enforcement and compliance procedures. In his presentation he spoke about the structural organization of NEMA; environmental impact assessment (EIA) and environmental audit (EAs); environmental restoration orders, conservation orders and environmental easements; environmental offences; development of subsidiary legislation; conflict resolution; raising of public awareness; and challenges faced by NEMA.

A delegate commended the presentations made on the topic. He also drew attention to the complex nature of ecosystem and called for adoption of the ecosystem approach for promotion of conservation of natural resources. It advocated that the developing countries have a right to demand support from developed countries for realization of environmental objectives. Many of the developed countries during the colonial period completely devastated the environment of their colonies and they were thus the worst polluters. He desired that people should refrain from consuming fish illegally caught or furniture or other goods made from illegal logging. This would in a way promote conservation.

Session 4: Entry into force of Kyoto Protocol: Problems and Prospects

10.1 **Mr. Seth Osafo, Senior Legal Adviser of the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC)** made a presentation entitled “Entry into force of Kyoto Protocol: Prospects and Challenges for Developing Countries”. He stated that the real effects of the climate change were becoming more obvious today than before. Although people in some areas might benefit from climate change, many more would struggle to cope. Developing countries would suffer more than others, as lack of resources made such countries vulnerable to adversity or emergencies. The impact

of global warming is already being felt all over the world, and mostly by the world's poorest. Food production, water supplies, public health, and people's livelihood were being damaged and undermined. Global warming threatened to undermine human progress and efforts by the international community towards bridging the development gap between the North and South.

The Kyoto Protocol, he said supplemented and strengthened the UNFCCC and could enter into force only eight years after its adoption. It provided a framework for remedial and precautionary action to tackle adverse effects of climate change and imposed concrete and legally binding targets on more than 30 industrialized countries. However, the United States of America and Australia were not bound by Kyoto Protocol as they had refused to ratify the Protocol. The Protocol, he emphasized paid special attention to the needs of developing countries, with emphasis on the specific needs of Least Developed Countries and of countries that were particularly vulnerable either to the adverse effects of climate change or the side effects of response measures. The Special Climate Change Fund, the Least Developed Countries Fund and the Adaptation Fund were meant to assist developing countries with the implementation of the Convention and Protocol. He mentioned that of the three innovative and flexible mechanisms created under the Kyoto Protocol the Clean Development Mechanism (hereinafter "CDM") was of particular interest to the developing countries. Citing some independent estimates he said it had an investment potential of US \$ 14 billion in the period upto 2012 – if a post-2012 value could be assured.

In conclusion, he stated that effectively addressing the climate change was a major global task in which both developing and developed countries must be engaged. It required courage and vision from leaders and decision makers. Success was crucial to ensure that climate change impacts did not endanger the achievements of MDGs. The urgency of the challenge and the global nature of its causes and impacts required an aggressive multilateral response. Building on the areas of mutual interest, successful experiences and common understanding, rather than focusing on the existing differences in national circumstances and positions, may lead the way forward. Active engagement of business, civil society and the general public in the process and in implementation was essential. There were challenges, but also many attractive opportunities and benefits that countries would take advantage of presented through the implementation of Kyoto Protocol to enhance national development goals and to advance the quality of life of our peoples, particularly the poor and weak who were the most vulnerable to the adverse impact of climate change.

- 10.2 **Dr. Patricia Kameri-Mbote, Chair Private Law, University of Nairobi** made a presentation on the Kenyan perspective to the Session theme. Dr. Mbote mentioned that although Africa's contribution to the green house gas emissions was small yet there was a need to ensure that growth occurred in context of awareness of climate change phenomenon. Climate change was a reality and developing countries needed to act in order to protect themselves from the adverse effects of climate change. The key sectors in this regard would be the energy, transport and agriculture. Dependence of many African countries on agriculture for economic and livelihood made climate change very important for the continent. The two main aspects of responding to global warming were Mitigation of emissions- to reduce extent of climatic change and Adaptation – for ameliorating the adverse effects that climate change might had. She stressed that climate change mitigation and adaptation in Africa must be addressed within development priorities in the realms of the environment, the economy and societal development. As regards

Kenya's prospects and challenges in participating in the climate change regime, it was the same as for most developing countries that is to ensure balance between economic development and environmental sustainability. Elaborating upon the CDM, she said that it represented a win-win situation as industrial countries benefited from emission credits from projects undertaken in developing countries where costs of reduction might be lower. Developing countries had an opportunity to be part of international efforts to curb GHG emissions and it held opportunity for investment flows; transfer of climate friendly technologies; and help for countries particularly vulnerable to climate change.

She said that the Climate Change instruments established the acceptance of the principle of common but differentiated responsibility (hereinafter "CBDR") as rule of operation. The CBDR was one environmental problem that developed countries took very seriously. In this regard, entry into force of the Kyoto Protocol enabled the African countries to access funding for mitigation, adaptation, capacity-building and technology acquisition. In conclusion, she stated that there were opportunities to engender sustainable development through mechanisms provided for in the Kyoto Protocol. Ratification and domestication of the Protocol was an important first step towards accessing the opportunities offered by the CDM.

- 10.3 The **Head of Delegation of the People's Republic of China** thanked the two presenters for excellent and comprehensive presentations. Elaborating upon the commitments of developing countries he stated that under Article 4 (1) of the UNFCCC the developing countries that are Member States were obliged to implement the Convention according to their national policies. Further, the CDM also provided an opportunity for the developing countries for their own sustainable development. The recent Indian Ocean Tsunami disaster demonstrated the vulnerability of developing countries to natural disasters and in this regard important was to understand the linkages between natural disasters and climate change. Asian-African countries were now much more vulnerable to the adverse effects of climate change and much could be done on the basis of the principle of CBDR which should remain the cardinal principle of climate change regime.
- 10.4 A Delegate referred to the refusal of USA to ratify the Kyoto Protocol and in this regard sought to know how it could be brought on board. Mr. Seth Osafo stated that USA was firmly entrenched in its position. However, the multi-national corporations were pushing for some action on this front. There was also pressure from civil society organizations on the US government to act on the issue. US Industry was also undertaking Joint Implementation and CDM projects.

Signing Ceremony of the UNEP/AALCO Memorandum of Understanding

- 11.1 The highly successful Special Day Meeting on Environmental Law and Sustainable Development concluded with the signing of a Memorandum of Understanding between the UNEP and AALCO. The two bodies have joined hands to further enhance their efforts for the promotion of sustainable development in Asia and Africa.

12. **Fourth General Meeting**

Agenda Item III: International Terrorism

- 12.1 Mr. Chen Meidi, Deputy Secretary General of AALCO introduced the item on ‘International Terrorism’ and said that international terrorism had become a global issue with its existence posing a grave threat to the life and property of the humankind. He stated that the issue has been on the agenda of the United Nations and various other international organizations for over three decades. The Deputy Secretary General further elaborated that at the 53rd session, the General Assembly decided that the negotiations on the draft comprehensive convention on international terrorism based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In accordance with this mandate discussions were in progress on the draft comprehensive convention on international terrorism and during the deliberations consensus had emerged on certain issues notwithstanding differences of opinion on some crucial matters.
- 12.2 Delegates from Kenya, Malaysia, Myanmar, Islamic Republic of Iran, Republic of Indonesia, People’s Republic of China, Qatar, Kuwait, Arab Republic of Egypt, Oman, Sri Lanka, India, Thailand, Kingdom of Saudi Arabia and Tanzania made statements on the topic. There was a general condemnation of terrorist acts by all the delegations. Some delegations, while referring that there were efforts to link terrorist acts with Islam, stressed that Islam and Holy Quran do not support any acts of terrorism. Some Delegates stressed that the rights of national liberation movements should be recognized while defining terrorism. Many Delegates urged for the early adoption of the comprehensive convention against terrorism. Many of them also pointed out the need for the definition of terrorism for addressing the problem at the international level. At the outset, one delegation proposed for the Secretary-General to hold an Expert Meeting to draft a comprehensive and acceptable definition on “terrorism” which could, once adopted by all Member States, be presented to the UN Ad Hoc Working Group in charge to finalize a draft Agreement on International Cooperation for Combating Terrorism.¹

Agenda Item III: Establishing Cooperation against Trafficking in Women and Children

- 12.3 **Mr. Motokatsu Watanabe, Deputy Secretary-General** introduced the item and stated that the report explored conceptual aspects and socio-economic reasons for trafficking as well as nature and scope of international obligations to prevent trafficking, protect victims of trafficking and prosecute perpetrators. Further, he emphasized that a coordinated approach at international level was required in order to devise an effective strategy to combat this growing menace and therefore, as a first step it was imperative for the Member States to consider becoming parties to the international legal instruments. He also recalled that towards fulfilling the mandate entrusted to the Secretary-General, the Secretariat intended to proceed with the preparation of Model Law in two stages: (i) an outline of the model law to be prepared and presented at the 44th session, and (ii) a set of draft articles to be presented for the consideration of Member States at the 45th Session. With a view to completing the first stage of the work, the Secretariat conducted a

¹ This Agreement is now known as the Comprehensive Convention on International Terrorism (“CCIT”)

preliminary study of the national legislations received from the Member States of AALCO and prepared the outline contained in document NAIROBI/2005/SD/S 9/Add 1.

- 12.4 Interventions were made by the following Member States, namely Malaysia, Republic of Indonesia, People's Republic of China, Sri Lanka, Bangladesh, Brunei Darussalam, Sultanate of Oman, Federal Republic of Nigeria, Islamic Republic of Iran, Myanmar, State of Qatar, Japan, Republic of Kenya and United Republic of Tanzania. Also, a written statement by India was submitted, to be included as part of the record of the meeting was deemed to be read. They primarily spoke regarding the following aspects: recognized that trafficking in persons, especially women and children, was a serious problem in the Asian-African region; the imperative need for an internationally coordinated effort to develop an effective strategy to combat this grave crime; highlighting the domestic endeavors undertaken in their respective countries; and reiterating the importance of becoming parties to the international legal instruments relating to trafficking in persons.

Agenda Item III: Jurisdictional Immunities of States and their Property

- 12.5 Amb. Dr. Ali Reza Deihim, Deputy Secretary General of AALCO introduced the item on 'Jurisdictional Immunities of States and Their Property'. He recalled that in accordance with the General Assembly resolution 32/151 of December 1977, the topic 'Jurisdictional Immunities of States and Their Property' was included in the programme of the work of the International Law Commission (ILC) in 1978. Since then the ILC and the UN General Assembly worked on the topic which finally resulted in the adoption of the Convention on Jurisdictional Immunities of States and Their Property on 2 December 2004.
- 12.6 Delegates from Republic of Indonesia, India, Islamic Republic of Iran, Arab Republic of Egypt, Japan, Kenya, Nigeria, Pakistan and Thailand delivered statements on the topic. Many Delegates welcomed the adoption of the Convention and urged for its ratification by AALCO Member States. They were of the view that the Convention reflected the existing customary international law on the jurisdictional immunity of States and their property. One Delegate felt that the Convention would enhance the rule of law and legal certainty, particularly in dealings of States with natural or juridical persons, and would contribute to the codification and development of international law and the harmonization of State practice. Another Delegate urged that States should be encouraged to sign and ratify this Convention without recourse to reservations.

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.

- 12.7 Amb. Dr. Wafik Z. Kamil, Secretary General in his introductory statement highlighted Israel's violation of international law including United Nations Security Council and General Assembly Resolutions. He focused on the Advisory Opinion rendered by the

International Court of Justice on *Legal Consequences of a Wall in the Occupied Palestinian Territory*; UN General Assembly Resolution calling Israel to comply with ICJ Advisory Opinion; Palestinian election; Sharm-el Sheikh Summit; and other major developments. He also emphasized that the need of the hour was to end all forms of violence and initiate a constructive process that would hasten the creation of an independent Palestinian State. Full and honest implementation of the Road Map would accelerate the peace process. To achieve this goal, Israel, the occupying power, should undo the illegal occupation of the Palestine land; stop constructing Jewish colonial settlements and violations of the Fourth Geneva Conventions in the Occupied Palestinian Territory. Israel should also abide by the relevant United Nations Security Council and General Assembly Resolutions. He said that it could never be overemphasized that lasting peace in the Middle East required respect of international law principles and norms and impartial implementation of Security Council Resolutions 194 (1949), 242 (1967), 338 (1973), 425 (1978) and 1397 (2002).

- 12.8 Delegations from Cyprus, Republic of Indonesia, Bangladesh, Arab Republic of Egypt, Kenya, Kuwait and Syria presented their views on the topic. All the delegations were of the view that Israel, by the illegal occupation of Palestinian land; continuing with the construction of a wall in the Occupied Palestinian Territory; killing innocent civilians and demolishing houses and villages, was committing grave breaches of international law, particularly international humanitarian law. Some delegations were of the view that obligations of the Road Map have to be implemented for the creation of an independent Palestinian State. All delegations called for the implementation of the United Nations General Assembly and Security Council resolutions as that was the only way to bring about lasting peace and security in the region.

Agenda Item III: Human Rights in Islam

- 12.9 Ambassador Dr. Ali Reza Deihim, Deputy Secretary-General in his introductory statement recalled that the Secretariat report of the previous year focused on Human Rights in Islam from civil law point. The Secretariat report under consideration primarily focused on the human rights dimensions of the Islamic Criminal Law. He stated that the objective was to clear the misunderstandings related to Islamic criminal law and to highlight the key objective of Islamic criminal law inter alia to strike balance between the rights of the victims and respect for the rights of the accused to protect human rights and fundamental freedoms. Amb. Dr. Deihim pointed out that Islam had laid down some universal fundamental rights for humanity as a whole, which were to be observed and respected under all circumstances whether such a person was resident within the territory of the Islamic state or outside it, whether in peace or war situation. Islamic law governs each and every aspect of human life. It limits the power of the State and governs the relationship between the State and citizens. Prevention of crime, ensuring justice, maintenance of peace and security and protection of human rights and fundamental freedoms were the main objectives of Islamic criminal law. It intended to create a peaceful society where religion, life, intellect, property and lineage (honor) are preserved and protected.

- 12.10 Delegations from Pakistan, Kingdom of Saudi Arabia, Oman, Kenya, Republic of Indonesia, Malaysia, Kuwait, Qatar and Nigeria presented their views on the topic. All the delegates highlighted the human rights principles enshrined in the Islamic Law. Delegations were of the view that a series of human rights had been envisaged in Islam. One Delegation proposed that an expert group meeting comprising Member States of AALCO be convened to achieve a concrete study in respect of the issue of human rights in Islam. To this end, this delegation declared the readiness to host the first meeting of the expert group in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia, the initiator of the subject matter. The same delegation also proposed that the Secretariat of AALCO submits and presents the findings and recommendations of the study of the expert group to the Member States in the 45th Session of the AALCO. One delegation proposed that as other international organizations like the OIC, League of Arab States, the AALCO should also adopt a Declaration for the Protection of Human Rights.

13. **Fifth General Meeting**

Agenda Item IV: Expressions of Folklore and its International Protection

- 13.1 **Mr. Motokatsu Watanabe**, Deputy Secretary-General of AALCO while introducing the item said that realizing that the protection of expressions of folklore was of paramount importance to the Asian and African countries which were home to majority of world's expressions of folklore, he had proposed this item on the agenda of AALCO at the 43rd Session held in Bali which was well appreciated by the Member States. The IGC had so far convened seven sessions and had already led to great understanding of the concept and issues involved in the protection of the expressions of folklore. At these sessions discussions were focused on different options available for the States to effectively protect folklore. At the Eighth Session of the IGC, he pointed out that a clear disagreement between developing countries and some developed countries in drafting substantive provisions for a possible international treaty. He suggested that the Asian-African countries could consolidate the position on the substantive aspects of the future international instrument for the protection of folklore.
- 13.2 Delegations from Republic of Indonesia, People's Republic of China, Republic of Kenya and Nigeria 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. All the delegates highlighted their national experiences and actions taken by them at the national level, apart from the provisions in the national copyright law, for the protection of folklore. The delegates also appreciated the efforts of WIPO and UNESCO in developing a legal framework for the protection of folklore. All the countries felt that the forum provided by AALCO should be utilized to converge the experience of both Asian and African regions. They also called upon the AALCO Secretariat to participate in the WIPO IGC and 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

- 13.3 **Mr. Chen Meidi**, Deputy Secretary-General of AALCO introduced the topic and said that the Secretariat document provided an update with the developments in the negotiation under the Doha Development Round, with special emphasis on the 'July 2004 Decisions' of the WTO General Council. He pointed out that since the adoption of the 'July Package', no encouraging sign to find compromise solutions among the Member States was visible. Only in the case of negotiation in the area of Agriculture there was slight progress. At the 'mini-ministerial' meetings held in May 2005 at Paris, a deal was struck facilitated by the 'five interested parties' by reaching a compromise on how to convert 'specific agriculture tariffs based on quantities imported into 'ad valorem' equivalents (AVEs), i.e, tariffs based on the price of the product. Apart from this positive development the entire Doha Development Agenda was moving at snail pace. He said that efforts were needed by both developed and developing countries to redefine their priorities and focus their attention on developing countries concerns before taking further action on each negotiating item. No effort should be spared to settle differences in Agriculture issues, which is crucial for the success of the Doha Development Round.
- 13.4 Delegates from People's Republic of China, Thailand, Republic of Kenya, Republic of Indonesia, India and State of Qatar made their statements. Most of the delegates, while noting that WTO had grown into a very important organization, were disappointed in the progress of the Doha Development Round of Negotiations. Most delegates agreed that the July Decision of the WTO General Council was a positive development and hoped that the Doha Round would come to a successful conclusion. 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 subsidies and the gradual reduction or elimination of tariffs.

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

- 13.5 **Ms. Eunice R. Odirri, Director, Regional Centre for International Commercial Arbitration, Lagos**, presented her report on activities of the Centre in 2004. She said that during the year 2003, a total of 39 disputes were handled at the Lagos Centre. Of the disputes, six were international and 33 were domestic. Of the six international disputes five were for settling under institutional Arbitration rules and one under non-institutional rules. RCICAL also conducted awareness programmes in the form of seminars, conference, workshops. She said that the Lagos Centre had also started quarterly mock arbitration sessions. To encourage the role of the RCICAL, she requested AALCO Member States to settle their commercial disputes under the auspicious and arbitration rules of the centre. She also gave an outline of the seminars and workshops conducted; and papers delivered by the Director in the year 2003.
- 13.6 **Mr. Dato' Syed Ahmad Idid, Director, Kuala Lumpur Regional Arbitration Centre**, presented his report for the year 2004. He said that during the year 2004, KLRCA had been positive. He said that KLRCA had signed an MOU with Dubai International Arbitration Centre (DIAC), Institute Kelautan Malaysia (Malaysian Maritime Institute) and Multimedia Development Corporation respectively. In the case of Domain Name Dispute Resolution he stated that KLRCA continues to receive a number of enquiries in relation to potential domain name disputes, after having filed five (5) domain name disputes (as at June 2005). Out of these 5 domain name disputes, 3 resulted in transfers of

the domain name to the complainants, one was settled before the appointment of the panel and one resulted in the domain name remaining with the Registrant Respondent. Finally he said that he looked forward to some assistance and support from at least some AALCO members so that the KLRCA and all other AALCO Arbitration Centres could be improved by way of serving more people and by way of improvement in KLRCA services.

14. **Third Meeting of the Delegations of AALCO Member States**

Adoption of the Resolutions

14.1 The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 1 July 2005:

RES/44/ORG 1	Report of the Secretary-General on Organizational, Administrative and Financial Matters
RES/44/ORG2	AALCO's Biennial Budget for the year 2005- 2006
RES/44/ORG3	Report on AALCO Regional Centres for Arbitration
RES/44/ORG4	AALCO's Centre for Research and Training
RES/44/ORG5	Establishment of the Permanent Headquarters of the Asian African Legal Consultative Organization
RES/44/ORG6	Review of AALCO's Statutory Rules
RES/44/ORG7	Venue of the Forty-Fifth Session
RES/44/S 1	Matters Relating to the Work of the International Law Commission at its Fifty-Sixth Session
RES/44/S 2	Law of the Sea
RES/44/S 3	The Status and Treatment of Refugees
RES/44/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/44/S 5	Legal Protection of Migrant Workers
RES/44/S 6	Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties
RES/44/S 7	Jurisdictional Immunities of States and Their Property
RES/44/S 8	International Terrorism
RES/44/S 10	The International Criminal Court: Recent Developments
RES/44/S 11	Environment and Sustainable Development
RES/44/S12	An Effective International Legal Instrument against Corruption
RES/44/S 13	Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
RES/44/S14	WTO as a Framework Agreement and Code of Conduct for World Trade
RES/44/S 15	Expressions of Folklore and its International Protection
RES/44/S 16	Human Rights in Islam
RES/44/SP1	The Special Meeting on Nairobi Resolution on "Environmental Law and Sustainable Development" held in Nairobi on 29 June

Venue of the Forty-Fifth Session

- 14.2 It was decided after consultation with Minister of Justice of Sudan that the Forty-Fourth Session of AALCO would be held in the Headquarters of AALCO, in New Delhi, India, in accordance with Resolution RES/44/ORG 7.

Adoption of Summary Report

- 14.3 The Summary Report of the Forty-Fourth Session of the Asian-African Legal Consultative Organization was adopted.
- 14.4 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.

15. Sixth General Meeting

- 15.1 The Sixth General Meeting was opened by the President, His Excellency Hon. Amos Wako, Attorney General, Republic of Kenya who summarized the accomplishments of AALCO and its Forty-Fourth Session and thanked all those who made the Session a success.

Closing Statements

- 15.2 Several delegations, on behalf of the Member States, Observer States and International Organizations, expressed their appreciation to all the delegates, the President and Vice-President, the Secretary-General, the AALCO Secretariat and the Government of the Republic of Kenya for hosting the Session.
- 15.3 Ambassador Dr. Wafik Z. Kamil, Secretary-General of AALCO, delivered a "Message of Thanks" addressed to His Excellency Hon. Mwai Kibaki, C.G.H., M.P., President and Commander-in-Chief of Armed Forces of the Republic of Kenya, which had been 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.
- 15.4 The President, His Excellency Hon. Amos Wako, Attorney General, Republic of Kenya closed the Forty-Fourth Session.