

**AALCO/58/DAR ES SALAAM/2019/VR**

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## **Asian-African Legal Consultative Organization**



# **Verbatim Record of Discussions**

## **Fifty-Eighth Annual Session**

21-25 October 2019

Dar es Salaam, United Republic of Tanzania

**AALCO Secretariat  
29-C, Rizal Marg  
Diplomatic Enclave, Chanakyapuri  
New Delhi – 110021  
INDIA**

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## PREFACE

The Asian-African Legal Consultative Organization (AALCO) claims its lineage to the historic Bandung Conference of 1955, which had given a new impetus to the ideas and principles for regional cooperation. AALCO's *raison d'être* has been to promote the progressive development and codification of international law, based on the special interests and needs of its Member States. The mission of the Organization continues to inspire each one of us as we work daily to fulfil responsibilities bestowed on us. As we conclude the Fifty-Eighth Annual Session held from 21-25 October, 2019 in Dar es Salaam, United Republic of Tanzania, I can say with a sense of pride that AALCO has once again lived up to its goal of facilitating the exchange of views on contemporary subjects of international law of common concern for its Member States in the highest traditions of inter-regional solidarity and friendship.

Several upheavals have been witnessed by the international community in the year 2019, and the idea of multilateralism has attained renewed focus. We at AALCO have been witness to many developments in this regard and the agenda items discussed in the Annual Session attest to this reality. Today Asia and Africa are at the forefront of developments in all areas of human endeavour, international law being no exception. AALCO seeks to channelize the immense potential offered by these two great continents in harnessing the best output for international law for the sustainable growth and development of the world community.

The Fifty-Eighth Annual Session of AALCO, like all previous sessions of AALCO, was instrumental in advancing the deliberative might of international law from the vantage point of our Member States. The Session witnessed participation from 25 Member States, representatives of 2 Regional Arbitration Centres of AALCO, Observers from 5 Non-Member States and representatives from various Intergovernmental/Specialized Agencies/Subsidiary Organs/Inter-Regional Organizations. The Fifty-Eighth Annual Session focussed on deliberations on Organizational and Substantive matters, which included Matters on the Agenda of the International Law Commission, Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties, Law of the Sea, Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine, International Trade and Investment Laws, International Law in Cyberspace and Peaceful Settlement of Disputes.

This comprehensive Verbatim Record is mandated as per the Statutory Rules of AALCO and is presented to the Member States as a full and final record of the proceedings of the Annual Session. It contains the texts of statements of the Inaugural Session, Three Meetings of Delegations of Member States, the Five General Meetings, the Summary Report of the Fifty-Eighth Annual Session and Resolutions on Organizational Matters along with the Message of Thanks on behalf of the AALCO Secretariat. The Verbatim is primarily based on the transcripts submitted for translation by the delegations, as well as the official recordings of the proceedings during the Session.

I wish to extend my deep gratitude to the Government of the United Republic of Tanzania for their warm hospitality and commendable efforts in hosting the Annual Session. I acknowledge the strong support received from the Ministry of Constitutional and Legal Affairs of the United Republic of Tanzania and all others who were involved in making the Annual Session a grand success.

In the end, I would also like to express my heartfelt appreciation to my friends and colleagues, Mr. Yukihiro Takeya, Ms. Wang Liyu, Dr. Ali Garshasbi, the Deputy Secretaries-General for their strong and experienced support in making the Annual Session a success.

I also wish to express my deep appreciation to Mrs. Anuradha Bakshi, Deputy-Director and Ms. Devdatta Mukherjee, Mr. Shujoy Mazumdar, Mr. Abraham Joseph, Legal Officers along with other staff of the Secretariat for their efforts in making the Annual Session successful. We in AALCO, continue to remain, as always, in the service of our Member States.

Prof. Dr. Kennedy Gastorn  
Secretary-General



## **I. AGENDA OF THE SESSION**





## **I. AGENDA OF THE SESSION**

### **I. Organizational Matters**

1. Consideration and Adoption of the Agenda and Tentative Schedule of Meetings and Events
2. Election of the President and the Vice-President
3. Admission of New Members
4. Admission of Observers
5. Opening Speech of the President of AALCO
6. Report of the Secretary-General on the Work of AALCO
7. Release of AALCO Publications
  - Yearbook of AALCO Volume XVI 2018
  - AALCO Journal of International Law 2017 & 2018
  - Newsletters Vol 11 (2) & Vol 12 (1)
  - Special Study on “Special Study on “Violation of International Law in Palestine and Other Occupied Territories by Israel and the Legal Status of Jerusalem”
8. Presentation of Draft Budget for 2020
9. Report on the Work of the AALCO’s Regional Arbitration Centres
10. Report of the Chair on the 4<sup>th</sup> Working Group on International Law in Cyberspace
11. Venue of the Fifty-Ninth Annual Session

### **II. Substantive Matters**

1. Topics on the Agenda of the International Law Commission
2. Law of the Sea
  - (a) BBNJ
  - (b) Issues related to the Freedom of Navigation/sail in the International Waters and Straits
  - (c) Preventing and Combatting Illegal, Unregulated and Unreported (IUU) Fishing
3. Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine
4. International Law in Cyberspace
5. Peaceful Settlement of Disputes
  - (a) The Peaceful Settlement of International Environmental Disputes
6. International Trade and Investment Law
  - (a) WTO Reforms
  - (b) Mediation in Investment Disputes
  - (c) Investment Disputes Mechanisms Reform Initiative
7. Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties

### **III. Any Other Matter**

## **II. BUREAU OF THE SESSION**



## **II. BUREAU OF THE SESSION**

### **PRESIDENT**

**His Excellency, Amb. Dr. Augustine P. Mahiga**, Minister for Constitutional and Legal Affairs, United Republic of Tanzania

### **VICE-PRESIDENT**

**His Excellency, Prof. Mohammed Shalaldeh**, Minister of Justice, State of Palestine

### **SECRETARY-GENERAL**

**His Excellency, Prof. (Dr.) Kennedy Gastorn**

### **DEPUTY SECRETARIES-GENERAL**

**Mr. Yukihiro Takeya**

**Ms. Wang Liyu**

**Dr. Ali Garshasbi**

### **III. VERBATIM RECORD OF THE INAUGURAL SESSION**

**III. VERBATIM RECORD OF THE INAUGURAL SESSION OF THE FIFTY-EIGHTH ANNUAL SESSION HELD ON MONDAY, 21 OCTOBER 2019, AT 10:20 AM AT THE JULIUS NYERERE INTERNATIONAL CONFERENCE CENTRE (JNICC), DAR ES SALAAM, UNITED REPUBLIC OF TANZANIA.**

- (i) **Welcoming Remarks by Hon. Prof. Palamagamba John Kabudi (MP), Minister for Foreign Affairs and East African Cooperation of the United Republic of Tanzania at the occasion of the Fifty-Eighth Annual Session of the Asian-African Legal Consultative Organization (AALCO).**

Her Excellency, Samia Suluhu Hassan, The Vice President of the United Republic of Tanzania, Hon. Dr. Augustine Mahiga (MP), Minister for Constitutional and Legal Affairs, Prof. Kennedy Gastorn, Secretary-General of AALCO, Hon Ministers, Attorney Generals from AALCO Member States, Hon. Judges and Justice of Appeals, Excellences High Commissioners and Ambassadors, Distinguished Guests, Ladies and Gentlemen,

A very Good Morning to You, I, would like to, take this opportunity to thank you, Mama Samia Suluhu Hassan, Vice President of the United Republic of Tanzania, for reserving time out of your busy schedule to grace the Fifty-Eighth Annual Session of Asia-African Legal Consultative Organization, AALCO.

On behalf of the Ministry of Foreign Affairs and East African Cooperation and the organizers of this meeting, I would like to welcome all participants to Tanzania and particularly to this great and historic city of Dar es Salaam. I am aware to the AALCO Member States and some experts who have attended this Session, The City of Dar es Salaam is not new to you; in 2010 you visited this City when we were privileged to host the Forty-Ninth Annual Session. This Session is the third to be held in Tanzania after the City of Arusha hosted the Twenty-Fifth Annual Session in 1986. On several occasions, we were also privileged to host AALCO Seminars and workshops.

It is, therefore, our pleasure to welcome you and host you again in the United Republic of Tanzania. We thank AALCO Secretariat for its continued trust in us to host these sessions, seminars, and workshops. In this Session, however, Your Excellencies, we feel more privileged because, since the establishment of AALCO in 1956, one of our Sons, Prof. Kennedy Gastorn is the Secretary-General of this Organization. We are grateful for his contribution to the work of AALCO which in turn brings credit to this Country.

Your Excellencies, your attendance to this Session is another testimony of how serious and committed Member States are to the work of AALCO in fostering the core values of the Organization in upholding International Law.

We are humbled that this Session has attracted the participation of more than 150 Government officials and experts, these numbers speak volumes of the value you have attached to AALCO. We have no doubt that your participation at this Session will add value to the work of AALCO and its values.

Your Excellencies, The Ministry of Foreign Affairs and East African Cooperation as the Coordinator and overseer of all ratified international instruments in the country will continue to implement its obligation to ensure that the United Republic of Tanzania fulfills its obligation under various international and regional instruments which we have ratified. We

will further coordinate our participation in various international and regional forums that are aimed at developing and improving international law standards.

As far as AALCO is concerned our commitment to its welfare and success is unquestionable, we continue to monitor and follow the work of AALCO through our High Commission in Delhi and we thank the Secretariat for the cooperation we have had so far.

Your Excellencies, on the part of the Ministry, it is gratifying to note and report that we have excellent diplomatic and other relations with countries that are members of this Organization and these relations continue to grow each day. As we continue to forge relations through our membership in this organization, we are open to continuing forging relations between our various Ministries and Organizations. I take this opportunity therefore to open up the door to member countries and organizations in this endeavor.

Distinguished Participants, be assured that your stay in Dar es Salaam will be comfortable; your attendance in this session will be of success because with the assistance of AALCO Secretariat, the Ministry of Constitutional and Legal Affairs and other stakeholders who have put their efforts in organizing this Session, we are ready and set to ensure that this Session becomes of a success. We know this session will keep you busy, but be informed that Dar es Salaam is the best place to be, apart from work, please reserve time to visit some of the attractions available.

Your Excellencies, allow me, once again, and on behalf of the Government to welcome you to Tanzania and to echo Tanzania's assurance to the work of the AALCO and our inclination to work with the other AALCO Member States. Tanzania will continue to render its support to the Secretary-General and the Secretariat as they perform their duties to continue making this organization more effective. I thank you for your kind attention, Asanteni Sana

**(ii) Welcome Address by Prof. Dr. Kennedy Gastorn, Secretary-General of the Asian-African Legal Consultative Organization (AALCO), 58th Annual Session, Dar es Salaam, Tanzania, Monday, 21st October 2019.**

Mr President, Your Excellencies, it gives me immense pleasure to welcome you all at the 58<sup>th</sup> Annual Session of AALCO.

I am also delighted to be here in the United Republic of Tanzania, in my beloved home country, and at the occasion of the Annual Session of AALCO.

Tanzania, is well known throughout the world for her hospitality and all of us are indeed happy to have come together in this beautiful city of Dar es Salaam (means: House of Peace or Heaven – in Arabic). Tanzania is known as a “Cradle of Human Civilization” and a home of the Mount Kilimanjaro, Zanzibar, Olduvai Gorge, and 24 national parks including the Serengeti. In fact, 38% of its land is protected land, also suitable for tourism.

Even here in Dar es Salaam, there are several important touristic destinations and important sites to visit. We have National Museums, Dar es Salaam Zoo with ample flora and fauna, nice beaches in Kigamboni (about 10 minutes from here). In 30 minutes’ drive or so, one may visit the historical town of Bagamoyo.

I hope our delegates will enjoy the warm hospitality extended by our gracious host. I am also confident that our delegations who have come from far and wide would take back the best of

memories of Tanzania and Africa, so ably facilitated by the conscientious and diligent efforts of the organizers.

I would like to extend my heartiest appreciations on behalf of the Afro-Asian community to our wonderful host country for hosting us and making all suitable arrangements to make this Annual Session a grand success. We appreciate the hard work and dedication that has gone into the preparations.

This is the 3<sup>rd</sup> time that Tanzania is hosting the Annual Session of AALCO since it joined the Organization in 1973. The first session was held in 1986 (Arusha, Twenty-Fifth Annual Session.) and second in 2010 (Dar es Salaam, Forty-Ninth Session).

I should also emphasize that Tanzania joined AALCO as an observer way back in 1965 during the 7<sup>th</sup> Annual Session held in Baghdad, Iraq, and was represented by Mr. Felician Mahatane, the then State Attorney, AG's Department. It joined as a full member during the 14<sup>th</sup> Annual Session held in New Delhi, in 1973, and was represented by Mr. M.E.E.E. Mtango.

Over the years, Tanzania has made tremendous contribution, both in substantive and administrative matters of AALCO.

In this regard, let me express my gratitude to the Government and people of the United Republic of Tanzania, under the leadership of H.E Dr. John Pombe Joseph Magufuli, the President of the United Republic of Tanzania, for the continued support to AALCO, on many fronts for the past 54 years.

I also thank the AALCO Member States for their unwavering support to the Secretariat and AALCO, in general, and to myself, in particular. It is this support that has strengthened the Secretariat's resolve and channelized our efforts in making the Organization stronger with every passing year.

Mr President, Your Excellencies. The purposes of AALCO remain unchanged; to serve as an advisory body to Member States in the field of international law and as a forum for Asian-African cooperation in legal matters of common concern.

In general, AALCO remains vested with duality of functions: as a platform for legal consultations and a framework to collaborate with the UN ILC and legal advisers of Member States mainly working with the Sixth (Legal) Committee of the UN, on issues of international law of common concern to Member States.

The Annual Session is one of the key occasions to reflect and refocus the activities of AALCO and examine how much AALCO has, with its Member States, contributed to the progressive development of international law with Afro-Asian values.

Mr President, Your Excellencies. While our region is now becoming an important player in global affairs and contributor to the progressive development of international law and its codification, on the other hand, there are many challenges emanating from the international law facing our region making the Afro-Asian solidarity more needed than ever. If I may be allowed to reiterate some of the challenges include:



- The security environment in the region is facing in severe conditions coupled with the spread of terrorism and violent extremism.
- Within the context of SDG 16+ for Agenda 2030, some studies have indicated an increase in armed and violent conflicts. Globally, over 40 countries are in active conflict, most of them are in Africa and Asia, and 92 countries have become less peaceful over the last 10 years. At the same time, there is an increasing move to accredit military-security spending as a ‘progressive’ contribution to the SDG16+, despite the risks of undermining peace and development efforts. In fact, world military expenditure has increased to \$1,739 billion by 2017.
- The AU Fifth High-Level Retreat on the Promotion of Peace, Security and Stability in Africa, hosted by the Government of the United Republic of Tanzania and held in Arusha, Tanzania, in October 2014 – had adopted a vision of “Silencing Guns by ending All Wars in Africa by 2020” within the ambit of AU Agenda 2063. Since 2020 is almost around the corner, I am hopeful we will achieve this noble goal.
- Unprecedented highest number of people displaced from their homes due to conflict and persecution or otherwise in the United Nations’ history. In 2018, it is estimated that at least 10 million people around the world are stateless; African continent alone hosts over 14.5 million internally displaced persons (IDPs). In 2019, it is estimated that, 70.8 million people have been forcibly displaced.
- There is a backlash to the advance of globalization and multilateralism, as a result protectionism and inward looking tendency is rising.
- The international order based on fundamental values such as freedom, democracy, human rights and the rule of law which have underpinned the peace and prosperity of the world is being challenged.
- There are disagreements on the balance, if any, between economic rights vis-à-vis civil and political rights.
- If scientific predictions pertaining to climate change are anything to trust, then almost all major port cities or coastal states, small or large, rich or poor, from Dar es Salaam to Mumbai, are likely to suffer from a sea-level-rise.
- 72 years after the UN Partition Plan Resolution 181, Palestinian people are still without a sovereign state and not admitted to the UN as a full member.
- 74 years after the establishment of the UN, ‘decolonization’ is still on the agenda of the UN. In fact, the ICJ in its Advisory Opinion delivered on 25 February 2019, the Court concluded that “the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence” and that “the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible”.
- International norms of Cyberspace are far from being settled and agreed. While law is always behind the technologies, the advent of new technologies like Artificial

Intelligence, Internet of Things and Blockchain present challenges on the ability of states to regulate the use of cyberspace and safeguard their sovereignty. Many States are even struggling in regulating online harmful content, where we are told that 56% of all online content are potentially pornographic materials; and 95% of all online transactions are done through mobile phones.

- The unilateral and secondary sanctions are on increase against certain developing states, particularly in Asia and Africa, are being imposed without due respect for fundamental principles of international law, rule of law and humanitarian needs. Sanctions against the Republic of Zimbabwe are best example within the Southern African region.
- In the last two decades we have seen the exponential growth of Bilateral Investment Treaties as well as Free Trade Agreements comprising of Investment Chapters. While great optimism was expressed in the beginning characterizing these treaties as essential to attract foreign capital, many countries are now disappointed when the same BITs resulted into unwarranted restriction of sovereign regulatory space, and never attracted capital and trade, and became a source of conflicts.

Recent reforms in India, South Africa and Tanzania in investment codes are among examples of developing countries addressing the challenges of the BITs.

Mr President, Your Excellencies. I have mentioned some of these challenges facing international community and norms of international law, partly, to demonstrate that these ‘complex and divisive’ issues, cannot be addressed by a single nation, and are best left to multilateral platforms that are more appropriately suited to deal with them. They cannot be addressed by unilateral actions, no matter how tempting and charismatic such attempts, or how rich and powerful those nations, may appear.

At the same time, I wanted to suggest that Afro-Asian region is facing some ambivalent relationship with international law and international institutions. Yet, there is hardly any aspect of institutional human life untouched by international law and its institutions today. And, more and more areas of state activities are submitted to one or the other form of transnational co-operation, and this comes in a variety of forms, such as the establishment of international organizations like the UN or AALCO.

I therefore salute the Principles of Foreign Policy of our host, the United Republic of Tanzania, under H.E. Dr. John Pombe Joseph Magufuli, which inter alia, “*support the United Nations in its search for international economic development, peace and security*”, as “*Tanzania believes in the UN as framework of consolidating the bonds of humanity which link the world’s peoples and nations in their cooperation for promoting world peace and socio-economic development*’.

Mr President, Your Excellencies. Despite all the above crises, we have no reason to lose hope, after all much progress has been done. And, as some scholars have suggested, “While complacency would be misguided, so is despair”. After all, “international law is resilient as much as vigilance is needed to maintain its legitimacy”.

I am also reminded that the word ‘crisis’ has an apt translation in Chinese characters as it combines two Chinese characters: danger and opportunity. Likewise, there is a similar say in

Kiswahili “*Penye Changamoto, pana fursa*”, which means “*where there are challenges there are opportunities*”.

Let us therefore see the above challenges and insufficiency, if any, in international law as an opportunity to maintain the legitimacy of international law by reaffirming and revitalizing the Afro-Asian bonds in protecting fundamental values of the post war international order and UN Charter legal order necessary to promote peace, prosperity, orderly governance and friendly relations among nations.

Mr President, Your Excellencies. International law is a product of international relations, in terms of customary practices and agreements between states, as there is no single body that can legislate for the world. Therefore, the field of international law is reflective of a vibrancy that is unmatched.

Today international law is the legitimate medium for global friendship and co-operation and its expansion to hitherto unknown areas, is a development that is here to stay.

This belief in the redemptive nature of International Law is the surest test of global harmony, world peace and the sustainable development of our common resources.

As the Afro-Asian region is now having more than half of the total UN Membership, the positive contribution of Asia and Africa in promoting progressive development of international law should increase to match our numbers. This was not the case in 1945 when the UN was established by nearly 51 Member States only. Now the UN has 193 Member States.

This is the time that our numbers and solidarity through AALCO should reverse the claim that most of international law norms of today are influenced by the past practices of the western States, and that practices of African and Asian states practices are always neglected.

Mr. President, Your Excellencies. Last week, on October 14, Tanzania celebrated the Nyerere Day Anniversary. No address would therefore be complete, not least within the Julius Nyerere International Convention Centre, without reference to the iconic Mwalimu Julius Nyerere, the father and first President of the nation, who, together with Sheikh Abeid Amani Karume, laid the foundation of the modern United Republic of Tanzania. Ever since international law has always been relevant to the United Republic of Tanzania.

It was Mwalimu Julius Nyerere’s historic vision that made Tanzania a part of AALCO’s family. His commitment to the vision of international law, African fraternity and third world solidarity made him stand out like a colossus among world leaders committed to the cause of Africa’s unity and Afro-Asian bonhomie.

A Statesman *par excellence*, a charismatic Head of State, a master theoretician among scholars and a unifier of diverse people, Mwalimu Julius Nyerere personified an eclectic brilliance that is rare to find today. His philosophy and worldview lie at the heart of AALCO’s timeless ethos and will continue to guide and inspire us in the progressive development and codification of international law.

- It was Mwalimu Julius Nyerere’s optional doctrine of state succession that became the norm of international law in determining whether a new emerging State inherits the

international obligations that its predecessor had made. Mwalimu Julius Nyerere considered that international agreements dating from colonial times should be renegotiated when a State becomes independent, as the nation should not be bound by something that the nation was not in a sovereign position to agree to at that time. Accordingly, a State upon independence must decide which of the agreements it will accept and which it will repudiate. This was his unilateral declaration to the Acting Secretary General of the UN in 1961.

- In his letter of 9<sup>th</sup> December 1961 to the Secretary General of the United Nations, Mwalimu Julius Nyerere requested principles such as (a) ‘*the most-favoured-nation-clause*’, (b) good faith, and (c) *pacta sunt servanda*, to be analysed and their contents to be spelt out. This cautious approach of Mwalimu Julius Nyerere was partly ignored, and today, the meaning and implications of these concepts in investment laws and policies remain controversial. In fact, the 10<sup>th</sup> Session of AALCO held in Karachi, Pakistan in 1969 recalled this cautious approach of Mwalimu Julius Nyerere.

It is my belief that this Annual Session would give us an opportunity to enliven our experience as an international organization in the true spirit of Mwalimu Julius Nyerere’s vision of harmonious collaboration, sharing and caring opening up new avenues of transnational cooperation on all matters pertaining to international law.

Before I conclude my welcome remarks, allow me to remind the audience that AALCO is the only intergovernmental legal consultative organization comprising of two continents. Its potential is unparalleled and exceptional.

Let us therefore use AALCO to have a more influential role in international law making, which promote the global governance of international order based on UN Charter and fundamental values which have underpinned the peace and prosperity of the world.

As stated by Dag Hammarskjöld, the 2<sup>nd</sup> Secretary General of the UN: “The UN was not created to take mankind to heaven, but to save humanity from hell.”

Also Kofi Annan, the 7<sup>th</sup> Secretary General of the UN said: “the UN is not a perfect organization, but we need it”.

And as recently stated by H.E. Prof. Dr. Palamagamba John Kabudi, Minister for Foreign Affairs and East African Cooperation of the United Republic of Tanzania on 27 September 2019 at the 74<sup>th</sup> Session of the UNGA Debates, we need to “*support UN and its ongoing reforms in making it more relevant and representative of the global community*” and international order based on the UN Charter and fundamental values – to save the humanity from hell, even on a pavement of good intentions.

With these remarks, I wish the Annual Session a grand success and hope that each Member State actively participates in the proceedings enriching us through their deep knowledge, experience and wisdom, which as always will be the greatest learning curve for us, and thereby pave the way for a deeper and substantive engagement with some of the finer aspects of international law, enhancing our solidarity and strengthening our bonds of trust and mutual respect.

It is also my hope that current Annual Session will go down in AALCO's history as one of the most useful and productive deliberative sessions in the history of the Organization. Let us leave no stone unturned in doing our best for the progressive development and codification of international law in the glorious traditions of our great organization.

As we get ready to begin a new Annual Session, let us pledge to commit ourselves further to the cause of international law keeping in view the distinct and diverse nature of our collective needs.

In closing, I wish to reiterate the following:

- (a) This is an opportune moment for us to commit to a rules-based international order.
- (b) All states should benefit from an international world order that is based on the rule of law. It allows for predictability and the management of relations and issues based on agreed principles. This in turn, assures countries, big and small, that their interests will be taken into account.
- (c) A rules-based international order provides a strong foundation for the international community to come together to tackle the many global issues I earlier outlined.
- (d) Finally, an economic growth is indeed the critical foundation for development, as growth allows us to generate the necessary resources for development. International trade is an essential enabler for economic growth. And upholding an open, predictable, rule-based multilateral trading system provides businesses with clarity, and certainty when it comes to cross-border transactions.

Thank you Mr. President.

**(iii) H.E. Amb. Koji Haneda, Member of Japan to AALCO and Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Philippines representing H.E. Masataka Okano, Assistant Minister and Director-General of the International Legal Affairs Bureau of the Ministry of Foreign Affairs of Japan and the President of the Fifty-Seventh Annual Session**

Respected Dignitaries, honorable Ministers, Attorneys General, Excellencies, Secretary-General Distinguished Delegates, Ladies, and Gentlemen, it is indeed a great honor and privilege for me to address you on the occasion of the Fifty-Eighth Annual Session of AALCO. I take this opportunity to welcome each one of you to the beautiful and majestic city of Dar-es-Salaam and thank the Government of the United Republic of Tanzania for hosting us in this beautiful country.

From 1956, why AALCO was formed as a small forum of Asian States to foster the exchange of the ideas of international law, AALCO has emerged as one of the largest forums of States in the world to facilitate the growth and development of international law. Undoubtedly, it is the only organization of its kind bringing together the diversity of the Afro-Asian community in one of the most significant aspects of world diplomacy today namely-the codification and progressive development of international law.

I am greatly honored to inform the distinguished delegates that the Fifty-Seventh Annual The session of AALCO was held in Tokyo, Japan in October 2018. While it is customary that the current president of AALCO addresses the next session of the organization.

Excellencies, I take this occasion to bring warm greetings from the Government of Japan to the Government of the United Republic of Tanzania and each of the Member States present on this occasion. Japan, as always pledges its full commitment to the work and values of AALCO and looks forward to even greater cooperation in the days to come. Strengthening international rule of law is a collective commitment and I am sure with the sustained efforts of each and every nation, AALCO is destined for even greater heights in the days to come.

Excellencies, I take this opportunity to place on record my deep sense of appreciation for Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO for his meticulous and focused efforts in reaching out to the Member States. Under his visionary leadership, AALCO is doing wonderfully well, augmenting its resources in the most efficient manner for the progressive development and codification of international law. A range of new topics have been introduced by the Secretary-General in the work program of AALCO and Request Member States to make full use of the Secretariat's diligence and commitment to their work. During Japan's Presidency, AALCO made great strides in diverse aspects of its functioning.

The United Republic of Tanzania has been a strong pillar of support for AALCO. In both organizational and substantive matters, Tanzania has always endeavored to offer its services for the larger good of the Asian-African community. It is precise with this spirit that the Fifty- Eighth Annual Session is being hosted and the best that all of us can do to complement this commitment is re-affirm our unflinching support to the growth and development of international law.

Japan announced a new program to support the capacity building of AALCO members in the area of international law at the last Annual Session of AALCO and will hold the first program in December this year. Through the program, we will try to address the challenges facing AALCO members concerning important international law issues.

The DJA-AALCO Seminar on the Operational Functioning of the International Criminal Court was held in January 2019. I am extremely happy to know that AALCO took the initiative to organize this program for the benefit of our Member States and its specific focus on the needs of judges and prosecutors of AALCO Member States is well appreciated. It is these kinds of events, which go a long way in sensitizing the world to newly emerging dimensions of the subject.

AALCO's engagement with the International Committee of the Red Cross (ICRC) on matters pertaining to new weapons technology during Japan's presidency needs to be mentioned. As we are all aware, conventional warfare is giving way to new forms of warfare. The rise of new weapons technology and their deployment in combat situations has created a situation where traditional rules of warfare require a creative application to counter the massive threats posed. Rules of proportionality, distinction and military necessity require a renewed interpretation in the light of these developments. I am happy that AALCO and ICRC are committed to furthering their cooperation on this front.

The Fifth Session of the China-AALCO Exchange Programme took place from 29 July- 16 . August 2019 among numerous activities held during this tenure, all of which would be elaborated by the Secretary-General during the presentation of the Secretary-General's report. The Regional Arbitration Centres of AALCO have been doing commendable work over the last many years. We expect them to progress with the same energy in the times to come. A separate session dedicated to the work of the Regional Arbitration Centres will be held in the

coming days. A Special Study prepared by the Secretariat on the Legal Status of Jerusalem, keeping in mind recent attempts to disrupt the status quo will be released during the course of the proceedings' of this Annual Session. I congratulate the Secretariat for the successful completion of the study and hope it will provide much-needed clarity on the complicated legal dimensions of the subject.

Before I close, I would like to appreciate AALCO's close working relationship with the United Nations and the International Law Commission. In addition, numerous MoUs have been signed by AALCO with various international organizations and universities. All these activities go on to establish AALCO's deep commitment to furthering the cause of international law in our fraternity.

I wish to thank all the distinguished delegates who are participating in the Fifty-Eighth Annual Session and hope the deliberations will further strengthen the bonds of Afro-Asian friendship and solidarity. Thank you!

**(iv) Speech by Hon. Yuji Iwasawa, Judge, International Court of Justice at the Fifty-Eighth Annual Session of AALCO**

First of all, I would like to express my respect for the invaluable role of Asian-African Consultative Organization to further strengthen and promote the rule of law in the international community. I would also like to appreciate the leadership of the Government of Tanzania for hosting the Annual Session of AALCO in this beautiful country.

**I. Increasing Importance of Individuals as Subjects of International Law**

In this speech, I would like to share with you my thoughts on one of the most important developments in international law since the end of the Second World War, namely the increasing importance of individuals as subjects of international law. Under traditional international law, it was widely believed that States were the only subjects of international law. The international legal personality of the individual was firmly denied.

This situation has dramatically changed since the end of the Second World War. It is now recognized that individuals have rights and duties under international law. These developments are most evident in the fields of international human rights law, international economic law, and international criminal law.

**II. Development of International Human Rights Law**

I will start with a brief overview of the development of international human rights law. Mechanisms for the international protection of human rights have advanced considerably since 1945, and have become one of the prominent characteristics of modern international law.

The most important development was the introduction of individual complaint procedures in human rights treaties at the universal and regional levels.

**1. UN Human Rights Treaties**

Most core UN human rights treaties have individual communication procedures. The Human Rights Committee under the ICCPR, of which I was a Chairperson twice, receives the largest number of communications of any UN human rights treaty body.

100 to 200 communications are registered each year. Even though the views adopted by the Committee are not legally binding, there are many instances in which a human rights situation has improved as a result of its views.

## 2. Regional Courts

In some regions, the system of human rights protection is more advanced than within the UN. In Europe, Latin America and Africa, regional courts of human rights have been established. These courts are active and have rendered a number of important judgments. Hundreds of thousands of applications are submitted to the European Court of Human Rights by individuals every year.

## III. Development of International Economic Law

I now turn to the development of international economic law.

### 1. World Trade Organization (WTO) Dispute Settlement

The dispute settlement procedures in the WTO have been hailed as one of the Organization's most successful achievements. Over 300 disputes were brought to the dispute settlement procedures in the GATT, the predecessor of the WTO, and over 500 disputes have been brought to the WTO. Even though individuals do not have direct access to the WTO dispute settlement procedures, one may say that they have indirect access to them.

### 2. Investment Arbitration

Another important development is investment arbitration, which has increased dramatically since the end of the 1990s. The total number of arbitration cases amounts now to nearly 1,000. Individuals play an important role in the enforcement of international investment agreements.

## IV. Development of International Criminal Law

Lastly, I draw your attention to the development of international criminal law.

Under the traditional laws of war, war criminals were convicted by a domestic court in accordance with the criminal law of the State. After the Second World War, however, significant developments occurred. First, punishable acts were expanded. Individuals are now punished not only for war crimes but also for genocide and crimes against humanity. Secondly, individuals have come to be tried by international tribunals.

## V. Conclusion

Excellencies, Ladies, and Gentlemen, In this speech, I have demonstrated that one of the most significant developments in international law is the increasing importance of individuals as subjects of international law.

Starting today, a variety of important topics on international law will be discussed. I sincerely hope that my presentation gives an insight into honorable participants to further deepening and enriching the discussions during this Annual Session of AALCO. Thank you very much for your attention.

**(v) Statement by Hon. Dr. Augustine P. Mahiga. Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, at the occasion of the Fifty-**



**Eighth Annual Session of the Asian-African Legal Consultative Organization (AALCO), 21<sup>st</sup> October, 2019 Dar Es Salaam, Tanzania**

Your Excellency, Mama Samia Suluhu Hassan, Vice President of the The United Republic of Tanzania, H.E Koji Haneda, President of the 57th AALCO Annual Session, Prof. Ibrahim Juma, Chief Justice of Tanzania, Ministers, Deputy Ministers present, Prof. Kennedy Gastorn, Secretary General of AALCO, Hon. Yujilwasawa, Judge, International Court of Justice, and other Justices present, Attorney Generals and Solicitor Generals from AALCO MemberStates, Excellences High Commissioners and Ambassadors, Permanent and Deputy Permanent Secretaries, Heads of Delegation from AALCO Member States, Representatives of Non-Member States, Representatives of International Organizations, Representatives of observer states, Senior Government officials from AALCO

Member States, Members of the Media, Distinguished Guests, Ladies and Gentlemen, I am so privileged and honored to address this Fifty-Eighth Annual Session of the Asian-African Legal Consultative Organization (AALCO) as the host Minister and President of the Session.

As Tanzania assumes the Presidency of this reputable organization, on behalf of the Government and people of the United Republic of Tanzania and on my own behalf, I wish to assure the AALCO Member States of Tanzania's commitment to work with all Member States and like-minded partners in fulfilling the vision and mission of our organization.

Distinguished delegates, for the past one year, we have witnessed some tremendous achievements of our Organization in realizing its objectives. May I congratulate His Excellency Ambassador Koji Haneda, the outgoing President, for the accomplishments he has made over the past year for his distinguished stewardship to the Organization.

In the same manner, please allow me to thank His Excellency, Prof. Dr. Kennedy Gastorn, the Secretary-General of our Organization and Ambassador Appointee for serving our Organization with dedication since he assumed the position of the Secretary-General in August 2016. In a special way I also congratulate him for his appointment as Ambassador.

This demonstrates the trustworthy and confidence His Excellency Dr. John Pombe Joseph Magufuli, the President of the United Republic of Tanzania has upon you. I wish you success in your next assignment in the service of the United Republic of Tanzania. May I join other colleagues in commending the Secretariat for the support accorded to Prof. Gastorn in his three years of service to the Secretariat. I have no doubt, the same support shall be rendered during the tenure of the upcoming Secretary-General.

Dear Colleagues and friends, the growth and development of AALCO since its inception in 1956 has been outstanding in many areas. In the spirit of Bandung, AALCO and its founding members assisted many emerging nation-states in Africa to navigate the complex legal challenges of negotiating and gaining independence from the colonial powers. Its advisory role to new states was particularly important for independent states, which were faced with challenges relating to boundary issues, succession to treaties, treatment of foreigners and their properties. In the 70s, the role of AALCO became more evident through its contribution in the codification of international law and as a result, it became internationally acknowledged.

Since its establishment in 1956, AALCO has achieved many successes in upholding fundamental norms of international law from the laws governing diplomatic relations, environmental legal regime, state immunities, international boundaries, human rights law, humanitarian law, trade and business, commercial transactions, forced occupation, terrorism, blue economy; to issues of law of the sea, conflict resolution and the like. AALCO has also continued to actively contribute to developing the requisite jurisprudence and legal regime, including the codification of international law and establishing legal regimes to protect and advance newly independent states.

Dear Colleagues, despite the success stories I have just pointed out, let us not be blind-eyed of them. It is important to register and take notes. But, I am of the view that we need and should maximize the spirit of cooperation within our Organization in addressing our common challenges ahead of us and consolidate our common position in a multilateral legal system.

It is imperative that we continue to preserve our consistency and unity and strive to maintain the underlying principles of this Organization. It is also important to keep on reminding ourselves of the core values and ideals of our Organization which are still valid and relevant.

Distinguished Delegates, it is the conviction of the United Republic of Tanzania that, the Member States will continue to work together in advancing the philosophical The foundation of our Organization in upholding the rule of law, The international legal regime and more importantly, in finding solutions to challenges facing the Member States.

Distinguished Delegates, finally, under the Presidency of the United Republic of Tanzania, I wish to re-affirm Tanzania's commitment to the letter and spirit for the establishment of AALCO. Also, I wish to reiterate our readiness to partner with all State Members in realizing the objectives of our organization. Tanzania will continue to render all the necessary support to Secretary-General and his team as they pursue the noble goals of our Organization. I Thank You.

**(vi) Statement by Her Excellency Samia Suluhu Hassan, Vice President of the United Republic of Tanzania, at the occasion of the opening of the Fifty-Eighth Annual Session of the Asian-African Legal Consultative Organization (AALCO), held at Julius Nyerere International Convention Center (JNICC) Dar es Salaam 21<sup>st</sup> October, 2019**

Hon. Ambassador Dr. Philip Mahiga, Minister for Constitutional and Legal Affairs, Excellency Ambassador Koji Haneda, the President of the Fifty-Seventh AALCO Annual Session, Prof. Kennedy Gastorn, Secretary General of AALCO, Hon. Yuji Iwasawa, Judge, International Court of Justice, Hon Ministers, Attorneys General and Solicitors General from AALCO Member States, Excellences High Commissioners and Ambassadors, Permanent and Deputy Permanent Secretaries, Heads of Delegation of AALCO Member States, -Representatives of Non-Member States, Heads of International Organizations, Representatives of observer states, Government officials of AALCO Member States.

Members of the Press; Distinguished Guests, Ladies and Gentlemen, having had our prayers, allow me now to congratulate the Secretary-General of the Organization Prof. Kennedy Gaston for his continued service to the Organization; to which he has played a major role in facilitating cooperation among the Asian and African countries in the development of International Law.

May I also use this opportunity to thank all the Member States for extending unqualified support to Professor Kennedy Gaston, who is also a Tanzanian national, in steering the work of the Secretariat since being elected to office on 15<sup>th</sup> August 2016. It has been a great honor to him personally and to our country Tanzania in particular.

Distinguished Delegates, I encourage and urge the Member States to continue upholding the spirit of cooperation and engagement in a view to sustaining international law in Asia and Africa. It is through this cooperation, AALCO will be playing a significant role in the development of International Law especially in areas related to international trade, investments, intellectual property and regional security.

As we strive to achieve our goals and our interests be achieved at the international level, we need to stand more together and consolidate our solidarity through regular consultations. Over the years, the United Republic of Tanzania has always been committed to supporting the work of AALCO in upholding the development of International law. We have always lived in peace with our neighbors and we have played a great role in it. Steering championing for peace in the Great Lakes Region.

Before that, learning from the experiences of several Asian countries, the Bandung spirit, and the Non-Aligned Movement, Tanzania played a leading role in the political liberation of Southern Africa. In so doing, we strongly believe that where there is rule of law, there is stability, and where there is stability there is growth and development. The rule of law is also a basic tenet for upholding universal norms such as democracy and human rights. We also believe in the words of an Indian Statesman A. P.J. Abdul Kalam that “Where .there is righteousness in the heart, there is beauty in the character, where there is beauty in the character, there is harmony in the home, where there is harmony in the home, there is Order in the Nation, where there is Order in the Nation, there is peace in the World” Let us work hard in building peace at homes, in our Nations, and in the World.

Distinguished Delegates, Tanzania as a developing country plays a big role in the work of AALCO in striving to achieve the maintenance and settlement of international peace and security. We have been at the forefront in peacebuilding in the Great Lakes Region and peacekeeping in different missions in the region and beyond. Today, we have our peacekeeping forces in DR-Congo, Darfur, Sudan, and Lebanon. On the same vein, Tanzania continues to be the home of many refugees. This also illustrates Tanzania's commitment to International Humanitarian Law and Human Rights Law. Further, in supporting the work of the Organization, Tanzania has undertaken various ways in ratifying international treaties against terrorism and international organized crimes such as human trafficking and money laundering. In this regard, we have taken stringent measures and the culprits have been brought to justice. While this meeting is conducted, our Government is engaged in a serious war of combating corruption in all its manifestations and economic sabotage through well-established legal instruments.

Distinguished Delegates, - today, we witness the fueling of civil wars in the developing countries mainly triggered by the selfish interests of other states to exploit resources. It is upon us through this reputable Organization to stand firm in protecting the interests of the developing nations by fair legal mechanisms and international law. We need to strive to ensure that there are well established regional and global institutions that are founded on fairness and respect for national sovereignty to protect our respective national interests.

It is in this context and through this platform, Tanzania calls upon all states which have imposed sanctions against Zimbabwe to lift them. Zimbabwe as a sovereign state has the right to determine and exercise its power and freedom as enshrined under Article 2(4) of the UN Charter. The United Republic of Tanzania believes that the AALCO Member States through this platform will continue to voice together and advancing the principles of non-interference in domestic affairs and respect for sovereignty.

On the development of International Law, more specifically the development of the Law of the Sea, Tanzania supports the ongoing negotiations in New York in order to have the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. Tanzania will continue to support the position of African and Asian countries, G-77 and China to ensure that the proposed Convention is adopted and the use of Marine Biological Diversity Areas Beyond National Jurisdiction are beneficial to all humankind.

Distinguished Delegates, on International Trade and Investments, much as we would love to open up investment and business opportunities in many areas, we are also obliged to ensure we protect our resources and ensure that they are used for the benefit of our people. In that regard, in 2017 the Government of Tanzania made major reforms by enacting two landmark pieces of legislation. One is the *Natural Wealth and Resources (Permanent Sovereignty) Act No. 6 of 2017* which provides measures intended to ensure that the natural wealth and resources of the United Republic of Tanzania are used for the greatest benefit and welfare of the people of this country, by (ensuring) seeing that all arrangements made by the Government protect and secure the interests of the people.

Anna Lindh a Swedish Politician once said and I quote “States have the responsibility to create rules and conditions for growth and development, and to channel the benefits to all citizens by providing education and making people able to participate in the economies, and in decision making”

It is through this spirit and adherence to the rule of law, Tanzania has strived to advance all economic and social sectors development including health, education, infrastructure, agriculture and other key sectors for the betterment of our people.

Distinguished Delegates, before I conclude my remarks, I wish to thank AALCO Secretariat for consistently championing the work of The organization, and for ensuring that the interests of our two regions are strongly articulated and well-defended at the international level. I am confident, that the Secretariat will continue to work for the Organization towards achieving our set of goals and objectives.

It is my expectation that the deliberations of this Meeting will have a significant outcome in sharing experience and generating new ideas on the development of international law and addressing new challenges that we face collectively and individually as Member States.

Distinguished Delegates, allow me, once again, and on behalf of the Government to re-iterate Tanzania's commitment to the work of AALCO and our willingness to work with other State Members. Tanzania will continue to render all the necessary support to Secretary General and his team as they pursue the noble goals of this Organization.

Before I declare this Session opened, I once again welcome you all to Tanzania and I hope after these five days, you will find time to visit various places of interest such as Kilimanjaro Mountain-the towering Africa's roof, Serengeti National Park, the magnificent Ngorongoro Crater, historic towns of Bagamoyo and the Spice Islands of Zanzibar with its pristine and mesmerizing beaches. Rest assured, that your colleagues, Tanzanian brothers, and sisters will be delighted to guide you to those nice places.

With these remarks, I wish you fruitful deliberations, and I now have the honor and pleasure to declare the Fifty Eighth Session of the Asian-African Legal Consultative Organization officially opened. Thank you for your kind attention *Asanteni Sana*.

**(vii) Vote of Thanks by Hon. Prof. Adelardus Kilangi, Attorney-General,  
United Republic of Tanzania**

Distinguished Guest Honourable Madame Vice President, Secretary-General of AALCO Prof. Kennedy Gastorn, Distinguished Guests present here this morning, On behalf of the Distinguished Delegates and on behalf of the Government of the United Republic of Tanzania, I want to thank you so much Madame Vice President for accepting to spare your time to come and officiate this Annual Session.

Madame Vice President this Session will run for five days and during these days, it is expected that delegates will discuss different topics on international law which are important for AALCO member states especially in the contemporary perspective. Topics include inter-alia: the current work of the International Law Commission on development of International Law, current issues on the law of the sea, peaceful settlement of international disputes, International Application of National Legislation and Sanctions Imposed against Third Parties, International Trade and Investment Law and International Law in Cyberspace.

It is my belief that at the end of the Meeting the deliberations will be fruitful and will have a significant contribution to the development of international law and strengthening the cooperation among the member states.

Madame Vice-President, once again I thank you for accepting to join us and inaugurate this important Forum. I thank you and Karibu Sana.

**The Meeting was thereafter adjourned.**

## **IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS**

**IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS OF  
AALCO MEMBER STATES HELD ON MONDAY 21 OCTOBER 2019, AT  
01:40 PM**

**His Excellency, Koji Haneda, Member of AALCO and Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Philippines** representing **Mr. Masataka Okano, Assistant Minister and Director-General of the International Legal Affairs Bureau of the Ministry of Foreign Affairs of Japan** and the **President of the Fifty-Seventh Annual Session**

**President:** Good afternoon everyone. I would like to call the First Meeting of Delegations of AALCO Member States to order. We will be going through some organizational, administrative and financial matters. The first item is the “**Adoption of the Provisional Agenda and Tentative Schedule of Meetings and Events.**” This is placed before all the Heads of Delegations for adoption. It needs to be mentioned that for this Annual Session three new topics have been proposed. The Islamic Republic of Iran proposed the item “Extraterritorial Application of national Legislation: Sanctions Imposed Against Third Parties”. This item was on the agenda of AALCO since 1997 and has been once again taken up for consideration. The UAE proposed the inclusion of the topic “Issues related to the Freedom of Navigation/ Sail in the International Waters and Straits”. More recently, we have received a request from Indonesia to include the topic “Preventing and Combating IUU Fishing” on the agenda of the Fifty-Eighth Annual Session. I place the agenda for adoption and seek your comments in this regard.

Are there any comments with regard to the adoption of the Provisional Agenda and Tentative Schedule of Meetings? If there are none, then we shall consider the Agenda and Schedule of Meetings and Events as adopted. Thank you.

**President:** The next item is “**Admission of New Member States.**” We are pleased that the Republic of Philippines has rejoined us and it has become the Forty-Eighth Member State of AALCO.

**Head of Delegation of the Republic of Philippines:** Thank you Mr. President for giving me the floor. My delegation is happy to become the Forty-Eighth Member State of AALCO. Our engagement with AALCO began a long time ago, and we believe in the policy that we are friends to all and enemy to none. We also believe that Asian-African solidarity in international law needs proactive involvement. Asante Sana to AALCO and its Member States.

**President:** Thank you Mr. J. Eduardo Malaya III, Head of delegation of Philippines.

**President:** The next agenda item is “Admission of Observers”, and I will request the Secretary-General to read out the list of observers.

**Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Mr. President following is the list of Non -Member States: Islamic Republic of Afghanistan, Republic of Belarus, Federal Republic of Germany, Kingdom of Morocco and Russian Federation. Following is the list of international organizations: African Institute of International Law (AIIL), Committee of Legal Advisors on Public International Law (CAHDI), International Court of Justice (ICJ), International Committee of the Red Cross (ICRC), International Criminal Court (ICC), The

Saudi Fund for Development (SFD), and the United Nations Environmental Program (UNEP).

**President:** That was the list of Observers. Any comments? If there are none then we shall consider the Observers as duly admitted. Thank you very much Your Excellencies.

**President:** The next item is the “**Election of the President and the Vice-President**” for the current Session.” I shall give the floor to the Head of delegation of India for the nomination.

**Head of Delegation of India:** Thank you Mr. President. Our delegation is honoured to propose H.E. Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania as the President of the Fifty-Eighth Annual Session of AALCO. The proposal was seconded by the Heads of Delegations of the Republic of Kenya and Arab Republic of Egypt. The President was thereafter unanimously elected.

**The Head of Delegation of the Republic of Ghana:** Mr. President our delegation proposes the nomination of H.E. Mohammed Shalaldeh, Minister of Justice, State of Palestine for the post of Vice-President of the Fifty-Eighth Annual Session. The Head of delegation of the Islamic republic of Iran seconded the nomination.

**The President His Excellency, Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania:** Honnourable Ministers and Attorney Generals, Distinguished delegates and guest speakers, good morning.

Let me begin with my gratitude to all AALCO Member States for your support and confidence in electing me as the President of the Fifty-Eighth Annual Session of AALCO. I am indeed honoured to be given the opportunity to preside over this important meeting.

It shall be my earnest endeavor to follow the footsteps of my predecessors. The Bandung Conference has played a very important part in the history of AALCO since the beginning and this can be aptly noted from the work done over the last one year.

Towards this end, I take this opportunity to congratulate H.E. Prof. Dr. Kennedy Gastorn, Secretary-General for his leadership role in the organization.

I also take this opportunity to welcome the Republic of Philippines to the AALCO family.

I would like to call upon all the Member States of AALCO to whole heartedly support the Organization and the Secretariat.

**Thank you. The Meeting was thereafter adjourned.**



## **V. VERBATIM RECORD OF THE FIRST GENERAL MEETING**

**V. VERBATIM RECORD OF THE FIRST GENERAL MEETING HELD ON  
HELD ON MONDAY, 21 OCTOBER 2019, AT 02:00 PM**

His Excellency, Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, and the President of the Fifty-Eighth Annual Session in the Chair.

**Release of AALCO Publications**

**President:** We will now begin with the “Release of AALCO Publications”, for this I invite Prof. Dr. Kennedy Gastorn, Secretary General to lead us through the proceedings for this event.

H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:  
Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Publications of any organization play a very vital role in disseminating the work of the Organization to a wide audience. In recent years, AALCO has refurbished its publications in terms of substantive content and has striven to make them more reader-friendly. They are periodically widely disseminated and give in detail the various activities undertaken by the AALCO Secretariat.

This year apart from the regular publications including (i) the yearbook of AALCO; (ii) AALCO Journal of International Law and the (iii) half yearly Newsletter, we shall be releasing the special study on Jerusalem.

The mandate for the special study of Jerusalem was received from the Member States of AALCO during the 57th Annual Session of AALCO held in Tokyo, Japan in October 2018. The issue relating to the legal status of Jerusalem in the context of recent attempts to disrupt the *status quo* emerges in the wake of the December 6, 2017 decision of the United States government to shift the Country’s embassy in Israel from Tel Aviv to Jerusalem and recognize the former as the capital of Israel. This move raised numerous questions in international law and the 57th Annual Session was witness to General Statements on this development made by several AALCO Member States questioning the foundational basis of such a move.

The Special Study prepared by AALCO on the subject seeks to ascertain the legal dimensions of the said decision of the United States government. Divided into Four Chapters with an introduction and conclusion, the Study traces the history of the holy city of Jerusalem, followed by the international legal response to the decision to shift the embassy. The state practice of the United States has been elaborated in detail to explain the inconsistency of the decision with the country’s historical position on the issue. The Study concludes with the finding that the decision of the US administration to shift its embassy in Israel from Tel Aviv to Jerusalem is not grounded in international law, stands contrary to US State Practice on the subject and sets no legitimate State Practice under International Law.

It is expected that these measures, will further increase the intellectual foundations of AALCO, facilitating scholarly contributions in newly emerging areas of international law.

Now I present the publications for their release.

Thank you Mr. President.

President: Thank you Prof. Dr. Kennedy Gastorn. Now we will proceed with some of the organizational matters.

**The meeting was thereafter adjourned.**

## **VI. VERBATIM RECORD OF THE SECOND MEETING OF DELEGATIONS**

**VI. VERBATIM RECORD OF THE SECOND MEETING OF DELEGATIONS OF  
AALCO MEMBER STATES HELD ON MONDAY, 21 OCTOBER 2019, AT 2:05  
PM**

**His Excellency, Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, and the President of the Fifty-Eighth Annual Session in the Chair.**

**President:** Good afternoon Excellencies, Ladies and Gentlemen. Before we begin this meeting I would like to inform you that this is a closed meeting. Therefore, I will request the Observers to please leave the hall, and join us in the next plenary meeting. I thank you for your cooperation. The first item on the agenda this afternoon is the **“Report of the Secretary-General on the Work of the Organization and Financial Matters of AALCO”**. I invite the Secretary-General to present his report.

**Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, first of all, allow me to congratulate you Mr. President and the Vice-President, for your election as the President and Vice President, respectively, of the Fifty-Eighth Annual Session. The Secretariat of AALCO looks forward to your guidance and wisdom and promises to extend its full cooperation to your efforts in promoting the aims and objectives of the Organization.

My sincere gratitude is also due to the, outgoing, the President and the Vice-President of the Fifty-Seventh Annual Session of AALCO for their valuable guidance and support in our endeavours to fulfil the mandate entrusted on the Organization.

This occasion gives me another opportunity to thank Member States for their confidence in me to serve as the Secretary General of this noble organization, constant support and participation in all events and programmes related to the agenda of AALCO. It is, and will always remain, a matter of honour for me to serve in this capacity.

Let me also thank Ambassadors/High Commissioners and the Liaison Officers in New Delhi, for their valuable inputs and support in dealing with the substantive and organizational matters.

I would also want to thank the Republic of India for its support, as the host country of the Secretariat, as well as the United Republic of Tanzania, my home country and gracious host of this session, and in particular through the Tanzania High Commission for India in New Delhi, for the continued support to me personally and to the Secretariat.

Special thanks are also due to the Member States who have paid their annual contributions in a timely manner and to those Member States who have started partial payment of their arrears.

It needs no elaboration that a robust financial situation would facilitate the Secretariat in fulfilling the mandate entrusted to it by the Member States. In this context, your co-operation and continued support would be immensely appreciated.

Mr. President, Excellencies, as my current term in the office as the Secretary General ends next year, having assumed the office in August 2016, on a four-year term (2016-2020), allow

me to reiterate my commitments that I will strive to fulfil the mandate entrusted to me by the Member States in enhancing the stature of the Organization among the international fraternity.

As an advocate of Asian-African progress in international law, I plan to work with single-minded focus and dedication to enhance the influence of our Member States in the continuing growth and evolution of international law. This endeavour is in sync with the mission of AALCO and has been fundamental to our operational philosophy.

Mr. President, Excellencies, the present Report on the organizational matter is divided into seven sections. Apart from a brief introduction and concluding remarks, it contains:

- (a) Consideration of Work Programme of AALCO at the Fifty-Eighth Annual Session;
- (b) Activities undertaken since the Fifty-Seventh Annual Session of AALCO;
- (c) Overview of the Secretariat;
- (d) Financial situation of AALCO and 2020 Draft Budget;
- (e) Steps taken to Revitalize and Strengthen the AALCO;
- (f) Future Work Plan; and
- (g) Strengthening the cooperation with the United Nations, its Specialized Agencies and other international organizations.

I will now present each component of my Report as follows:

1. Consideration of the Work Programme of AALCO at the Fifty-Seventh Annual Session

The work programme of AALCO is derived from the references made by Member States, decisions of Annual Sessions, suggestions received from the Member States from time to time and topics placed on the initiative by the Secretary-General.<sup>1</sup>

It may be recalled that since the Forty-Second Annual Session (Seoul, Republic of Korea, 2003), the Organization has adopted a policy of rationalization of agenda items. Mindful of this decision and based on the current relevance of the accumulated topics, references and suggestions of the Member States, the Secretariat prepares the yearly work programme, from which the agenda of annual session is drafted.

The topics that are to be deliberated in this Session are (in no particular order):

- (a) The topics on the agenda of the International Law Commission;
- (b) Law of the Sea;
- (c) Violations of International Law in Palestine and other Occupied territories by Israel and Other International Legal Issues related to the Question of Palestine.
- (d) International Law in Cyberspace;
- (e) Peaceful Settlement of Disputes;
- (f) International Trade and Investment Laws; and
- (g) Extraterritorial Application of National Legislations: Sanctions against Third Parties.

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<sup>1</sup> Currently, there are 16 items in the Work Programme of AALCO. The complete list can be found at <<http://www.aalco.int/scripts/view-posting.asp?recordid=11>>

## 2. Activities and Mandate undertaken since Fifty-Seventh Annual Session

It has been our constant effort to enhance the work and visibility of the Organization through organizing and participating in a number of activities in areas of capacity building and active participation in multiple national and international forums during 2018-2019 keeping in mind the work programme of AALCO and interests of the Member States.

Since the conclusion of the Fifty-Seventh Annual Session in October 2018, the Secretary-General participated in 4 events in 2018 and 13 events in 2019 (as on 29 August 2019). All activities are reflected on our website and included in my written report, which has been circulated to you – in the document AALCO/58/DAR ES SALAAM/2019/ORG1.

## 3. Overview of the Secretariat

I take this opportunity to record my sincere appreciation for the Deputy Secretary General from the Islamic Republic of Iran, Dr. Baharvand, who left the office in October 2018, and is now replaced by Dr. Alli Garshasbi. His dedication and conscientious involvement in supervising the work of the Secretariat during his tenure is very much appreciated. I further laud the diligent efforts of the current Deputy Secretaries General and the locally recruited staff members of the Organization.

I have been striving to ensure a close working relationship between the AALCO Secretariat and the Permanent Observer Missions at the UN Offices in New York and Vienna. Actually, I am keen on exploring the possibility of establishing a Permanent Observer Mission of AALCO at the United Nations Offices at Geneva and Nairobi to strengthen AALCO's presence and activities in these nerve centres of the UN.

I have continued to strengthen the activities of the Centre for Research and Training (CRT) of AALCO. As a result, the CRT has co-organize several capacity building initiatives and undertake special studies.

In order to further strengthen the CRT, I request the Member States to consider providing voluntary contributions, in addition to their regular annual contribution for steering its activities. Such contributions would be earmarked in a separate fund and utilized only for the work of CRT.

## 4. AALCO's Financial Situation and Draft Budget for the Year 2020

In response to the resolution AALCO/RES/57/ORG 2 adopted at the Fifty-Seventh Annual Session, in the period between 1 January 2018 to 31 December 2018, 26 Member States have paid their annual contribution for the year 2018. 6 Member States paid their arrears during the same period. I express my gratitude to these Member States for complying with their financial obligations.

On this note, I wish to register my appreciation for the People's Republic of China, the United Republic of Tanzania, the International Committee of Red Cross (ICRC) and the United Nations High Commissioner for Refugees (UNHCR) for extending financial and technical support in holding seminars and capacity building programmes.

The draft budget approved by the Liaison Officers for the year 2020, for submission and consideration and approval during the Fifty-Eighth Annual Session, is USD 631,540 which is the same as the budget of 2019.

The draft budget reflects the necessary adjustments made under certain heads and sub-heads based on the expenses likely to be incurred. The details of the financial situation in 2018 and the Budget for the year 2020 can be found in document AALCO/58/DAR ES SALAAM/2019/ORG 2.

Please note that continuous efforts are being made on optimizing the use of both the human and material resources available within the Secretariat. All efforts to minimize and curtail operational costs are also being exerted. Financial auditing will be expanded to cover value for money audit and financial management system will be reinforced.

## 5. Steps Taken to Revitalize and Strengthen AALCO

### 5.1 Strengthening the Human Resources in the AALCO Secretariat

To effectively fulfill its mandate as given by the Member States and meaningfully expand its activities in research and capacity building, AALCO needs to recruit more legal professionals to reach the sanctioned strength of ten legal officers and improve infrastructure and research facilities offered to the Secretariat staff.

In this regard, AALCO, as a regional organization representing two continents, should ideally have equal representations from Asia and Africa in the top management. In order to ensure adequate representation of Africa among the top management of the Secretariat, I urge the African States to second at least one senior official to the Secretariat as Deputy/Assistant Secretary-General.

Likewise, I also request the Arab Member States to consider deputing one senior official as Assistant Secretary-General or Director to the Secretariat for primarily managing the affairs of the Arabic Section.

Furthermore, to ensure equitable geographical representation in the Professional Category of the Secretariat Staff, it is felt that there is a need to ensure that the Secretariat should be in a position to attract and retain the best talent from the two regions. Currently, all legal officers are from India.

The Member States may consider providing voluntary financial support to the Secretariat, offering remuneration and other terms and conditions of services to attract international recruitment.

To encourage the assimilation of academic inputs into the work of AALCO, the Secretary-General would like to reiterate his proposal to institute a Visiting Fellowship Programme for senior academics and a Research Assistantship Programme for postgraduate students from AALCO Member States.

### 5.2 Increasing the Membership of AALCO

As on 21 August 2019, 48 States from Asia and Africa are presently Members of AALCO. I am pleased to inform that Philippines re-joined the Organization effectively from 27 July



2019. Building upon the efforts of the distinguished predecessors, we have approached the Heads of Diplomatic Missions of several of countries in New Delhi to join AALCO as within the Asian and African continents, there exists immense scope for widening the membership base of AALCO.

The Secretariat has received positive responses from some of these States that the matter of their joining AALCO is under active consideration of their respective Governments. As and when States become Member States of AALCO, their prospective contributions would strengthen the financial and functional basis of AALCO.

In this regard, I appeal to all of the Member States to encourage the other countries in the region of Asia and Africa to join AALCO.

### 5.3 Measures to Improve the Financial Situation of AALCO

I shall present the updates on the four measures:

- (i) First, AALCO reiterates its requests to the Member States in arrears for more than ten years to expeditiously clear their arrears, and expresses its gratitude to the Republic of Iraq for having cleared all its accumulated arrears according to the Action Plan.

Additionally, it must be borne in mind that accumulation of arrears and involvement in the Organization ought to be unrelated issues and as such, not dependent on each other. It has been noticed that a few Member States that have their arrears accumulated over a considerable period of time tend to participate less in the activities of the Organization. This is a worrying trend.

I propose to discuss this matter in the Liaison Officers Meetings in order to see the viability of devising an inclusive strategy to ensure active participation of all Member States in the activities of AALCO, independent of their financial contributions. The Organization may study mechanisms adopted by other similar intergovernmental organizations to deal with this issue.

- (ii) Second, as regards replenishment of reserve fund, despite the Secretariat's efforts for minimizing costs, due to inflation of Indian Rupee, hike of locally recruited staff's salary, increase of airfare and other reasons, the financial situation is stable but not sustainable.
- (iii) Third, pursuant to the mandate received in 2017 in Nairobi vide Resolution AALCO/RES/56/ORG1, a proposal on the principles to guide the review of the existing assessed scale of contributions has been drafted and presented by the Secretariat to the 350<sup>th</sup> Meeting of Liaison Officers on 29 August 2019.
- (iv) Fourth, given the increase in the activities at the Secretariat, there is a palpable need to increase the annual budget from the year 2021 and onwards. Therefore, a proposal in line with this will be submitted to the Liaison officers for their comments and suggestions before seeking the approval of the Member States.

Pertinently, I would like to thank Arab Member States for agreeing to increase the Arabic budget by 20%. This has enabled the Secretariat to translate all key documents, study and communications from English into Arabic.

#### 5.4 Strengthening the Cooperation with Other International Organizations, in particular the United Nations and Its Specialized Agencies

Vide its Resolution 35/2 of 13 October 1980, the United Nations General Assembly had granted observer status to AALCO and requested the AALCO to participate in its sessions and work. Since then AALCO has been actively participating in the work of the UN General Assembly, and the item pertaining to the Cooperation between AALCO and the United Nations is considered on a biennial basis.

Dr. Roy S. Lee, Permanent Observer of AALCO to the United Nations Offices in New York and Mrs. Christine Nemoto., Permanent Observer of AALCO to the United Nations Offices in Vienna, have represented the Organization in many sessions of the United Nations and updated the United Nations General Assembly on AALCO's activities and work progress.

In fact, since its establishment, AALCO has had close cooperation with the UN specialized agencies and other international organizations. As envisaged in its Statutes, such co-operation began with the International Law Commission. Subsequently, AALCO has a working relationship with other UN Agencies and International Organizations.

More recently, the Organization has concluded MoUs with International Seabed Authority (ISA) and the Energy Charter Secretariat (ECS).

The Secretariat shall continue exploring the possibility of establishing a Permanent Observer Mission of AALCO at the United Nations Offices at Geneva and Nairobi as well as collaboration with other international organizations to strengthen AALCO's interests.

#### 6. Future Work Plan

In order to meet the growing expectations of the Member States, I aspire, and endeavour, to organize and engage in events and activities that are of interest to Member States. Towards this end, I propose the following steps:

- (a) The Secretariat, shall continue working on the action plan regarding substantive projects for AALCO as presented in the Secretary General's Report at the Fifty Seventh Session of AALCO. This includes the Secretariat's efforts to mobilize additional resources to bridge the gap through co-hosting some of the events with national institutions and international organizations having MoUs with AALCO, applying for grants from the funding organizations under the UN and national organizations, or seeking voluntary contributions from Member States for the benefit of all Member States.
- (b) I propose to establish a Fellowship Programme at AALCO Secretariat for postgraduate students, young professionals and early career academics from AALCO Member States who specialized in subjects related to topics in the work programme of AALCO. The fellowship shall aim to also familiarize the fellows with the work of the Organization and its role in the progressive development of international law.

- (c) I shall promote the internship programmes at the Headquarters, by encouraging students and researchers of international law from the Member States to familiarize themselves with the working of an intergovernmental organization.

Between August 2018 to August 2019, 26 students from various universities from Asia and Africa have interned at AALCO.

I appeal to the Member States to support the Programme by nominating young researchers from their jurisdiction.

- (d) The Secretariat has begun revamping the lay-out of the website of AALCO (both in English and Arabic), and shall continue to do so.
- (e) Subject to availability of funds AALCO should be represented at important international meetings where its participation would be useful. This includes the ILC sessions, UN International Law Week, the annual meetings of Committee of Legal Advisers on Public International Law (CAHDI) and AALCO Annual Arbitration Forum.
- (f) AALCO shall expand Capacity Building Programmes for the Member States in collaboration with Members States such as (a) the 'China-AALCO Exchange and Research Programme on International Law' (CAERP) which is now in its 5<sup>th</sup> year, and having trained more than 200 legal and diplomatic officers from our Member States.

I also welcome the launching by the Japan of a new programme, starting this year, to support the capacity building of AALCO Member States in the area of international law.

In addition, in cooperation with AALCO, Japan International Cooperation Agency (JICA) will organize a capacity-building programme in the next year in which one senior level official from the Member States is expected to participate.

In this regard, I urge Member States to optimally utilize these forums to train their legal professionals in international law.

At the same time, I recommend that our trainees in such programme should be titled as "AALCO [*name of the programme*] Fellows". This will give them a brand identity to AALCO as Fellows.

- (g) Through the CRT, AALCO shall continue publications of its Yearbook, Newsletters, AALCO Journal of International Law, Brochures and Special Studies. Furthermore, augmented by additional funds from an increased Arabic budget, the Secretariat has begun publishing Arabic translations of important documents.
- (h) The CRT proposes to undertake a project based on the completed work of the ILC by developing draft instruments as a way to meaningfully follow-up the work of the ILC and contribute to the progressive development of international law and its codifications. The Secretariat shall mobilize additional resources for this project in collaboration with relevant institutions and experts. Efforts shall also be made to leverage existing partnerships to materialize this project.

- (i) While maintaining that contribution from AALCO Member States as the primary source of income for AALCO, project-based funding will be carefully solicited from national and international entities working on similar activities, and in areas of common concern to AALCO Member States. Before implementing any such project from Non-Member-States or international entities, Member States of AALCO shall be appropriately consulted through Liaison Officers.
- (j) The Secretariat shall promote the existing arbitration centres under the auspices of AALCO through, inter alia, the new initiative of AALCO Annual Arbitration Forums.
- (k) The Secretariat shall review all existing MoUs with AALCO so as to revitalize them in terms of the activities and their implementations.
- (l) Consistent with RES/43/ORG 7, 25 June 2004, the Secretariat shall continue with its given mandate to streamline the Statutory Rules and Administrative, Financial and Staff Regulations of AALCO.
- (m) The Secretariat shall negotiate with legal academic and research institutions in the region to offer a limited number of special slots, positions and or fellowships per year to candidates from AALCO Member States.

The candidates should aim at graduating with postgraduate degree in a specified field of international law of interest to AALCO's activities such as the International Trade Investment.

Upon graduation, candidates will contribute in their respective countries towards the progressive development of international law and enhance Afro-Asian solidarity.

## 7. Concluding Remarks

Mr. President, Excellencies, in conclusion, I must assure you that I am fully aware of the responsibilities entrusted by the Member States and I am committed to deliver to the best of my abilities in furtherance of the mission and vision of the Organization.

The initiatives undertaken to further the common cause of Asian and African States in the international law arena are a product of the improved financial status of the Organization as well as the continual encouragement and support of the Member States.

Certain substantive and administrative initiatives have been undertaken to improve the Organization. The membership to AALCO as well as number of Observer States has been enlarged. The administrative initiatives undertaken include improvement in staff welfare, effective management systems to improve transparency, financial discipline, and accountability within the organization such as yearly performance appraisals and weekly staff meetings as well as timely financial audits.

Once again as, as my current term in the office as the Secretary General concludes next year, it is, and will always remain, a matter of honour for me to have served in this capacity.

Before I close, I urge all Member States to actively participate in the activities of the Organization and in its collective pursuit to ensure that Asian-African voices are heard in the making of international laws and norms.

Mr. President, I now commend the Member States to deliberate and adopt the Report of the Secretary General on the Work of the AALCO. Thank you.

**President:** Thank you Mr. Secretary-General for the informative and elaborate report. Now I open the floor to Member States for their comments on the Secretary-General's report.

**Head of Delegation of the republic of Indonesia:** Thank you Mr. Secretary-General. Indonesia congratulates the Secretary-General for his report and supports the work programme laid down in his report. We also support the capacity building programmes of AALCO. Thank you.

**President:** In the absence of any other comments we will adopt the report and move on. The next item on the agenda is "AALCO's Draft Budget for the Year 2020." I invite Mr. Yukihiro Takeya, Deputy Secretary-General, AALCO, to make a presentation and thereafter the floor shall be open for discussion.

**Mr. Yukihiro Takeya, Deputy Secretary-General AALCO:** H. E. Mr. President, Mr. Vice-President, Distinguished Delegates, Ladies and Gentlemen,

The proposal of AALCO's budget for the year 2020 is contained in Document No. AALCO/58/Dar es Salaam /2019/ORG 2.

The budget approved by the Liaison Officers for the year 2020, for submission and consideration of the Heads of Delegations during the Fifty-Eighth Annual Session, is USD 631,540, which is the same as the budget of the Year 2019. It reflects the necessary adjustments made under certain heads and sub-heads based on the expenses likely to be incurred. Given that there is no increase in the total estimated budget, the annual contribution of each Member State remains unchanged with reference to Year 2019. The comparative statement of assessed contribution of Member States to the budget of AALCO for the year 2020 is found on pages 15 and 16 of the budget document. It also takes into consideration the financial implications of the 7th Pay Commission recommendations of the Government of India in accordance with the Resolution AALCO/57/RES/ORG2. At the same time, the Secretariat has tried its best to reduce expenses under some heads to observe strict financial discipline.

In accordance with Rule 24 (4) of the AALCO Statutory Rules, the budgetary documents setting out the estimated expenditure likely to be incurred under appropriate heads and sub-heads for the year 2020 were placed in the 346<sup>th</sup> Meeting of Liaison Officers held on 13 December 2018. The draft budget was also discussed at the 347<sup>th</sup> Liaison Officers Meeting held on 7<sup>th</sup> February 2019.

The Draft resolution (AALCO/58/RES/ORG 2) is annexed to the Budget document and is also placed before the Member States for their approval.

In this opportunity, Mr. President, we would like to draw the Member States' attention while the Secretariat has been and is making continuous and utmost efforts to optimize the use of

both human and material resources available within it, and minimize and curtail operational costs, the financial situation of the Organization is becoming tight due to inflation of Indian Rupee, hike of locally recruited staff's salary, increase of airfare fees and maintenance needs. Although I would like to reiterate the Secretariat's continuous commitment for every effort to strengthen its financial basis, we may consider it necessary to increase the annual budget in order to adequately fund the activities from the Year 2021 and onwards.

In this juncture, taking this opportunity, I would like to thank the Member States who punctually made their contribution and those who cleared or tried to clear their arrears. At the same time, I also would like to appeal to the Member States who are in arrears to fulfil their financial obligations. Thank you for a patient hearing.

**President:** Thank you very much for your presentation. The floor is open for discussion Japan you can make your intervention.

**The Head of Delegation of Japan:** Thank you Mr. President since this is the first time for me to take the floor I congratulate you on your election and I am very glad to hand over my Presidency to you. Our congratulations also go to the Vice-President. I assure you of my Government's cooperation. Now for the budget for the year 2020 first of all we have noted that the budget for the year remains the same as the previous year. We continue to ask the Secretariat to use appropriate scale of contribution. While drafting the budget for 2021 the latest UN Scale of Contribution should be taken into consideration. As regards arrears the Secretariat must continue its efforts to encourage the Member States in arrears to fulfill their obligations.

**President:** Thank you Japan for those observations. With that said the Budget for the year 2020 is adopted.

**President:** The next item on our agenda is "Report of the Chairman on the 4<sup>th</sup> Working Group on International Law in Cyberspace". I invite Dr. Abbas Bagherpour Ardekani, the Head of Delegation of the Islamic Republic of Iran and the Chairman to read out his report.

**Dr. Abbas Bagherpour Ardekani, Head of Delegation of the Islamic Republic of Iran and Chairman of the 4<sup>th</sup> Working Group on International Law in Cyberspace:** Excellencies, Distinguished Delegates, Ladies and Gentlemen. Cyberspace presents new opportunities and new challenges, and the legal regime pertaining to the domain has solicited dedicated attention from the international community in recent times. Taking note of this fact, AALCO has, since 2014, been providing its Member States a platform to discuss the topic "International Law in Cyberspace" as an agenda item in the Annual Session. Moreover, an Open-Ended Working Group on International Law in Cyberspace has been established, the Fourth Meeting (4WGM) of which was held in Hangzhou, People's Republic of China on 2-4 September 2019. I take this opportunity to briefly report the proceedings of this meeting.

10 Member States of AALCO participated in the 4WGM, namely, People's Republic of China, Islamic Republic of Iran, Republic of Iraq, Japan, Pakistan, State of Qatar, Kingdom of Saudi Arabia, Kingdom of Thailand, United Arab Emirates (UAE) and the Socialist Republic of Vietnam. Representatives of the International Committee of the Red Cross (ICRC) were also present as observer.

The history and purpose of the WGMs was highlighted by the Secretary-General of AALCO, H.E. Prof. Dr. Kennedy Gastorn, in his opening address. He welcomed all the delegates to the meeting and thanked the Provincial Government of Zhejiang Province and the Ministry of Foreign Affairs of China for hosting the meeting. The agenda and organization of work were thereafter adopted unanimously.

Firstly, the topic “International Cooperation for Combating Cybercrime (issues relating to Member States’ response to the questionnaire)” was taken up for discussion. The session began with the Rapporteur, Prof. Huang Zhixiong, discussing the responses received till then from 11 Member States. The responses to the questionnaire were reflective of the State practices of AALCO Member States on this subject. While there appeared to be broad normative similarities in the replies received from the States, there were some differences on the actual application and practice of the law of cybercrimes.

Mr. Dong Hanfei, Official from Ministry of Public Security, People’s Republic of China explained the approach of China to combating cybercrimes addressing various practical realities of the subject. Mr. Chen Liang, Deputy Director for Political Affairs, Tencent Group highlighted the steps taken by the Tencent Group in cooperating with the Chinese government to fight against cybercrimes.

In the second session pertaining to “Application of the Principle of Non-Interference in Cyberspace” Dr. Pavan Duggal, Advocate, Supreme Court of India and Chairman, International Commission on Cyber Security Law elaborated on the advent of new technologies like Artificial Intelligence, Internet of Things and Blockchain and the new challenges they present on the applicability of the principle of non-interference in cyberspace. Prof. Huang, thereafter, elaborated on the concept of non-intervention from an international law perspective, contextualizing it in the sphere of cyberspace.

The second day saw the topic of “Data Sovereignty, Transborder Data Flow and Data Security” being dealt in detail by Dr. Hong Yanqing, Research Director, International Development Research Institution, Peking University and Mr. Albert Liu, Vice-President, Alibaba Legal Department. The panelists explained the legal, operational and technical nuances of the topic. Thereafter, Dr. Duggal explained the challenges faced by States in regulating online harmful content.

The last session witnessed a discussion on “Peaceful Use of Cyberspace”. Ms. Margherita D’ascanio, Regional Legal Advisor and Head of Legal Department, ICRC East Asia and Mr. Du Yuejin, Vice Chairman of Chairman of Cyber Security Association of China elucidated the application of international humanitarian law to cyber operations in the context of armed conflicts and the challenges being faced by States in dealing with cyberwarfare.

The delegations actively participated in the discussion, referring to their domestic legislations on various aspects dealing with cybercrimes, and were supportive of measures to develop the international law framework on cyberspace. The deliberations during the Working Group meeting indicated towards the continued relevance of the topic “International Law in Cyberspace”. There also seemed to be a clear consensus in the meeting on the continued relevance of the Working Group and its Meetings, and that further in-depth discussions were required to finalize the way forward for the Working Group on this topic.

I had set forth a two-fold proposal in that context. *Firstly*, the Member States ought to be more active in responding to the questionnaire of the Rapporteur, circulated in furtherance of preparation of the Report on the “Special Need of the Member States for International Cooperation against Cybercrime”, as per the mandate received at the Fifty-seventh Annual Session of AALCO in Tokyo in 2018. Pursuant to this, the questionnaire had been recirculated by the Secretariat requesting responses.

Secondly, I had proposed that the Member States seek the guidance and assistance of the Secretary-General to explore the drafting of a non-binding general document, a zero draft, clarifying the consensual basic principles of international law applicable in cyberspace. I had invited the views of the delegates of the Member States on the second proposal. Support was expressed by the delegate of the UAE and Islamic Republic of Iran. The delegate of People’s Republic of China also expressed strong support, and encouraged the Member States to provide guidance and assistance to the Secretary-General and the Secretariat, as needed, in the preparation of the document. The Working Group Meeting had adopted the Summary Report and the Chairman’s Report.

Pursuant to the second proposal of the Chairman, the Secretary-General has drafted the non-binding, non-exhaustive consensual basic principles of international law applicable in cyberspace, based on the existing work of the Rapporteur of AALCO Open-ended Working Group on International Law in Cyberspace and various efforts within the United Nations and other relevant international organizations. The drafted Proposal had been circulated to the Member States. So far, the Secretariat has received comments from four Member States (Qatar, People’s Republic of China, India and Japan) and one observer (ICRC). The comments received are generally supportive and constructive, with suggestions of further elaborations, additions and modifications, so as to make the draft more reflective of the positions and common standing of the AALCO Member States, and consistent with current international practice on the subject. The Secretariat welcomes and appreciates the comments from the Member States, and encourages the Member States who have not yet shared their views on the proposed principles to do so, in order to contribute to the production of a rich and comprehensive text to the benefit of the Asian-African region. The Secretary-General’s proposal and the comments received will be submitted to the next Working Group Meeting on International Law in Cyberspace for further in-depth discussions.

I thank the Government of People’s Republic of China for the warm hospitality of hosting the Fourth Working Group Meeting in Hangzhou, China, and look forward to fruitful deliberations on the topic during the working group meetings afterwards.

Before I conclude, I would like to request the Member States to applaud the work of the Secretary-General in the context of drafting the Proposal and adopt the Chairman’s Report of the Fourth Meeting of the Open-ended Working Group and its work afterwards until now. Thank you.

**President:** Thank you Mr. Chairman. The Report of the Working Group is adopted.

**President:** The next and the last item for this segment is “The Signing of the Memorandum of Understanding (MoU) Between AALCO and UiTM.

**President:** As capacity building of Member States is one of the main functions of AALCO, for a few years consultations were ongoing between the UiTM and AALCO to sign a MoU. It



is important to note that both the institutions have partnered to organize seminars and workshops on various issues ranging from (i) the Law of the Sea; (ii) Customary International Law; (iii) the International Criminal Court and (iv) Reforms in the WTO.

As those seminars were found to be useful, the Secretary-general of AALCO and the Vice-Chancellor and Dean of the UiTM exchanged views to sign a MoU to further strengthen this partnership.

Now I invite Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO and Emeritus Prof. Ir. Dr. Mohd. Azraai Kassim, Vice-Chancellor of the UiTM to officially sign the MoU.

I extend my congratulations to both the Secretary-General of AALCO and the Vice-Chancellor of UiTM and hope that this Mou will help to further strengthen cooperation between the two organizations.

**The Meeting was thereafter adjourned.**

## **VII. VERBATIM RECORD OF THE SECOND GENERAL MEETING**

**VII. VERBATIM RECORD OF THE SECOND GENERAL MEETING HELD ON  
MONDAY, 21 OCTOBER 2019, AT 04:30 PM**

**His Excellency Dr. Augustine Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, the President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**President:** Good afternoon Delegates. I hope that you enjoyed the lunch. We now start with the second General Meeting, which is devoted to General Statements. But before I begin, may I request the Delegates to kindly consider limiting their speech to 10 minutes due to paucity of time, so that the general statements could finish within the stipulated time. In any case, your entire statement will be reflected in the Verbatim Record of the proceedings to be prepared by the AALCO Secretariat in accordance with Rule 13 paragraph 16 of Statutory Rules of AALCO, after the Session. In order to facilitate this work, The member States are recommended to submit a written statement to the Secretariat. If the statement is made in Arabic, it is appreciated if the translation in English is attached. The theme of the general statements is “Multilateralism and the International Legal Order based on International Law”. I would like to encourage the participants to make their statements on the theme in order to ensure focused discussions. Member States willing to make the general statements should register themselves with the AALCO Secretariat. General statements shall be delivered from the podium. Member States would deliver the statements first, followed by Observer States, if any, followed by international organizations. According to the names given to me so far, I have Oman.

**His Excellency Mr. Abdullah Al Saidi, Minister of Legal Affairs and Head of Delegation of the Sultanate of Oman<sup>2</sup>:** In the name of Allah, the Compassionate, the Merciful! Your Excellency Mr. President, your Excellency Secretary-General, Excellencies, Head of Delegations, Distinguished Delegates and Observers, at the outset, allow me to congratulate the President and Vice-President on being elected to run the 58<sup>th</sup> Annual Session of Asian-African Legal Consultative Organization (AALCO), assuring you of our full support and cooperation. I commend the well management of the President of previous session and for the efforts made during his presidency. I am pleased to welcome the Republic of the Philippines on re-joining AALCO, which will undoubtedly be a valuable and enriching addition to the Organization.

The delegation of my country and I are also pleased to extend our sincere greetings and honest appreciation to all participants who have responded to the Organization’s invitation to contribute to the works of this session, enriching it with their wise opinions and sincere visions, which would allow for the exchange of views, as well as benefit from the experiences of the Member States in multiple areas, which will in turn lead to further development and prosperity in our societies.

I would also like to express sincere appreciation to his Excellency, the Secretary-General of AALCO, for his constructive work since presiding over the Secretariat, which we hope will continue and be supported by all Member States. I would also like to thank you, Mr. President, and the Secretariat for giving me this opportunity to share the position of the Sultanate of Oman on some of the issues at hand.

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<sup>2</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Distinguished Guests, as you are aware, due to its great importance to all coastal and non-coastal states, the topic of the Law of the Sea has taken a semi-permanent place on AALCO's agenda of annual session, beside that it has continuous and renewed presence on the international arena. Since eternity, the seas were not a mere means of communication between nations in various ways, but an essential natural resource and a crucial element for the maintenance of the ecological balance of the universe. This is a matter that has to be met with the necessary attention and care, as it is a responsibility shared by all states and all is to benefit without exception.

This is evident by the need for collaborating international efforts to preserve biodiversity and the marine environment in areas beyond national jurisdiction of coastal states, before it is too late, due to the rapid activities and various forms of exploitations in these areas with the absence of a governing legal system.

Notwithstanding, the current international movement under the umbrella of the United Nations to reach a supplementary international instrument to the 1982 Convention on the Law of the Sea to protect biodiversity in areas beyond the national jurisdiction of coastal States, is gratifying. We call upon the Member States of AALCO to have an active role in this regard, and to complement each other's efforts, in order to reach an international instrument that meets their aspirations, and for our esteemed Organization to continue pursuing this subject, and coordinating efforts among Member States to enable them to take appropriate positions with regard to this issue.

Moving on to the next topic on "Issues related to the freedom of Navigation and sail in international waters and straits", which has recently gained momentum, hence has been included in the agenda of this Session. My delegation would like to reiterate the position of Sultanate of Oman – being a country itself overlooking one of the most important international straits in the world and having its waterways laying within the territorial waters of Oman – which calls on all countries to cooperate constructively and respect navigational separation lines in accordance with the United Nations Convention on the Law of the Sea.

Moreover, my country calls on all States to avoid escalation in the international water straits, and to resolve differences through diplomatic means, to avoid consequences that may have dangerous repercussions on the freedom of navigation, and the international trade movement as well as the world's economy as a whole. My country believes that the international community and those states with interest must strive to find peaceful consensus solutions as the ideal means to maintain the stability and safety of maritime navigation considering that they are more effective than any other methods or arrangements, reaffirming – on the basis of its national sovereignty and international responsibilities – its continuous supervision on the Strait of Hormuz to ensure the safety of navigation and guarantying the safe movement of passing vessels in this dynamic strait.

Your Excellency Mr. President, settlement of disputes by peaceful means between states undoubtedly strengthens and reinforces international peace and security, achieves harmony between the people of the world, and prevents the wasting and squandering of energies and resources of states for futile purpose, on the expense of security, development and stability. This approach has been adopted and strongly advocated by my country, Oman who asserted in several forums and occasions its support for the principles of justice, peace tolerance, dialogue and solid cooperation between nations and people, and adherence to the principles of fairness, justice, equality, non-interference in the internal affairs of other States and peaceful settlement of disputes, in accordance with the principles and provisions of the UN

Charter and the rules of international law, consequently, leading to the promotion of rule of law, and building trust based on the reciprocal respect for the sovereignty of states, and good neighborly relations, which in return preserves the security, stability and prosperity of states.

In this regard, we would like to reiterate our position as expressed in the previous session that the parties to a dispute – regardless of its nature, and its occurrence or continuance will jeopardize the maintenance of peace and international security – shall strive to settle it by the peaceful means as provided by international law, especially the UN Charter, or through any other peaceful mean of their choice. The other states should contribute in achieving such peaceful settlement of dispute by refraining from taking any positions that would escalate conflicts, and pour fuel on the fire, because nowadays, no part of the world can be secluded or immune to the consequences of international disputes.

Your Excellency Mr. President, while speaking on peace and peaceful settlement of disputes, Palestine comes straight to our mind which remains under the Israeli occupation to this day, an occupation that rejects all means of peaceful settlement, thus locking doors to any prospect of peace. This occupation continues to disregard the principles of international law and the resolutions of the United Nations to the extent that rocks, trees and environment were not spared, let alone human. The latest evidence of that is the repots, which was published on March 15, 2019, by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. We call on the Member States to make greater efforts to reject unilateral positions that support the occupation and aim to impose a de facto situation. Doing so is indeed a victory for fairness and justice, and will uphold the rule of law in the face of injustice, aggression and violation of equity.

Distinguished Guests, the topics of international trade and investment have come recently to the surface together. Although they are subject to different systems and rules, they meet in purpose, and both are witnessing developments and challenges at the international level. As you know, our Organization had previously discussed these two topics jointly at its previous session. Since then, however, the international status of both topics have remained intact, thus putting the global economic system at stake, which will, in turn, require doubling the efforts to reach consensus solutions as soon as possible, to maintain it.

In this regard, we would like to express our appreciation to the Secretariat for its efforts in following the most recent developments in international forums, confirming to it our full support, noting that my country – desiring to create a suitable environment for trade and investment – has recently enacted a number of relevant laws such as the Foreign Capital Investment Law, the Privatization Law, the Public-Private Partnership Law, the Bankruptcy Law, and the Commercial Companies Law, in addition to establishing a Public Authority for Privatization and Partnership and promulgating its systems.

Mr. President, to conclude, it is a pleasure for me and my delegation to express our sincere gratitude and deep appreciation to the Secretariat's staff for their constructive efforts and continues work in the planning, preparation, and follow-up of decision and recommendations, in particular, the Secretary-General and his deputies. We would also like to extend our sincere appreciation and thanks to the Government of United Republic of Tanzania for hosting this session, and the warm welcome we have received, and for their generous hospitality. I wish everyone and our esteemed Organization success, prosperity and global peace.

Thank you for your kind attention. May Peace, Mercy and Blessings of Allah be upon you.

**President:** I thank the delegation of Oman. Now I call upon the delegation of the People's Republic of China.

**Mr. Haiwen WU, Counsellor, Ministry of Foreign Affairs and Head of Delegation of People's Republic of China:** Mr. President, on behalf of the Chinese delegation, I congratulate you on your election as the President of the Fifty-Eighth Annual Session of AALCO and H.E. Mr. Mohammed Shalalkeh on his election as the Vice-President. The Chinese Delegation is confident that under your able leadership, this session will achieve fruitful results. Our thanks also go to H.E. Amb. Koji Haneda, the President of the Fifty-Seventh Session of AALCO for his contribution to this Organization. I would also like to thank the Government of Tanzania for hosting this annual session, and for their warm hospitality and thoughtful arrangements. I would also like to take this opportunity, to express my deep appreciation to the excellent work of the AALCO Secretary-General, Professor Kennedy Gastorn and his wonderful team.

Mr. President, more than 60 years ago, guided by the spirit of the historic Bandung Conference held in 1955, Asian and African countries together decided to establish AALCO, with a view to strengthening our cooperation and exchanges in international legal affairs. Against the backdrop of the changing world we are facing today, the roles of AALCO could not be more important.

Today, the international order based on international law and with the United Nations at its core is facing grave challenges posed by unilateralism, protectionism, and acts of certain countries that are in blatant violation and denial of international law, such as bullying, interference in other countries' internal affairs, unilateral sanctions and disruptive trade wars and tech-wars. Once again, the world is at a crossroads after some 70 years since the end of World War II. Whether we choose the right path today will have profound and lasting impact on our common future.

China is of the view that the right path we should follow is multilateralism and an international order based on international law. Since the end of World War II, although there are twists and turns from time to time, this path in general leads to peace and prosperity in the world. This is also a path that is widely supported by the international community. At the UN General Assembly this past September, there were notably wide spread condemnations of unilateralism and protectionism.

Where the world would go lies in the joint efforts of international community as a whole. Today, Asian and African countries together account for 2/3 of the total number of UN Member States, and 40% of world economy, we should no longer be the "silent majority", rather we should shoulder our share of responsibility in steering the world to a bright future. In this respect, AALCO, as a manifestation of the Bandung Spirit, and with a rich heritage of Asian-African cooperation in international law, should play a more robust and important role in upholding the international order based on international law.

We should promote multilateralism and democracy in international rules-making processes, support the increase of the representation and voice of developing countries, to ensure the rules are fair, balanced and inclusive. No single country or block of countries shall make rules for the world.

We should promote the adherence to international law, uphold the basic principles of the UN Charter and the rules-based multilateral trading system based on the World Trade

Organization. We should fulfill our obligations in good faith and oppose the practice of double standard and selective implementation of international law.

We should advocate the core values of international law in safeguarding fairness, justice, and in promoting peace, development and cooperation, categorically oppose to the distortion or abuse of international law. We should say no to the practice of “the strong do whatever they like, and the weak suffer whatever they must”, or using international law as a pretext to instigate or exacerbate disputes.

We should work together to make AALCO stronger, more resilient, active, and visible. To this end, we should try our best to seek common ground and not let differences divide us. AALCO should keep pace with evolving trend of international law development, invest more on cutting-edge issues like the cyberspace, and participate more actively in the international rules-making processes. It is also important to ensure AALCO acquire adequate, sustainable and predictable resources to fully discharge its duties.

Mr. President, three weeks ago, the People’s Republic of China celebrated its 70<sup>th</sup> anniversary. Over the past 70 years, China has always been a promoter of world peace, a contributor to global development and upholder of international order based on international law. Against the headwind of various challenges the world is facing, China stands firmly for multilateralism and international law. As China's State Councilor and Minister of Foreign Affairs Wang Yi stressed at the UN General Assembly weeks before, “the international order needs to go by laws and rules, and acts in violation of international norms can only plunge the world into chaos.” China is committed to the formation of a new type of international relations and a community of a shared future for mankind. At the core of these two important initiatives are justice, fairness, mutual respect and mutual benefit, and adherence to international law.

China has always stood side by side with Asian and African countries in preserving international law and international order, and supported the work of AALCO. In 2015, China launched the “China-AALCO International Law Exchange and Research Program”. We have organized five international law training sessions, and received around 200 legal officers from AALCO Member States. We will celebrate the 5th Anniversary of the Program on Tuesday at the reception hosted by the Chinese Embassy here in Tanzania, and we welcome all AALCO Member States to continue to participate in this Program in the years to come.

Lastly, the delegation of China looks forward to in-depth and constructive discussions on the topics of the session, and we wish this session every success. Thank you, Mr. President.

**President:** I thank the delegation of People’s Republic of China for this very insightful statement. I now call upon the delegate of Japan to make their statement.

**His Excellency Koji Haneda, Ambassador Extraordinary and Plenipotentiary to Philippines, Member of Japan to AALCO, Ministry of Foreign Affairs and Head of Delegation of Japan:** Hon. Amb. Dr. Augustine Mahiga, Minister of Constitutional and legal Affairs and President of the Fifty-Eighth Annual Session Hon. Amb. Prof. Kennedy Gastorn, Secretary-General of AALCO, Honorable Ministers and Attorney Generals, Distinguished delegates, let me begin with my heartfelt congratulations to you, Mr. President, upon your election. We are very glad to hand over the matters to a New President. My congratulations also go to the Vice- President. I will assure you of my Government’s continued cooperation and contribution to AALCO during your Presidency.

First of all, allow me to express our thanks to all members of AALCO for their cooperation in the 57<sup>th</sup> Annual Session of AALCO held on 08-12 October, 2018 in Japan. And allow me to express my deep appreciation to the Government of the United Republic of Tanzania for hosting this year's Annual Session. I am glad to be back in Africa for the Annual Session. I am also grateful for the dedicated work by Secretary-General Gastorn and his staff to prepare for this Session.

Let me extend our warm welcome to the Philippines, which officially rejoined AALCO in July this year. It gives me great pleasure to have our Asian neighbor with us today, and I am looking forward to discussing issues relating to development and promotion of international law in Asia and Africa. Having more members is important, so that discussions in AALCO reflect diverse views and ideas, thereby contributing to balanced deliberations and further promotion of rule of law in Asia and Africa.

Mr. President, 2019 has been an important year for Japan and Africa, as Japan hosted the Seventh Tokyo International Conference on African Development (TICAD7). At TICAD7, in-depth discussions were held on the three pillars of the meeting: economy, society, and peace and stability. I would like to express our deep appreciation to the representatives of African countries including 42 African leaders, Asian partner countries and everyone else who contributed to the success of the meeting.

Under the theme of "Advancing Africa's development through people, technology and innovation", promotion of rule of law was one of the main issues under the pillar of peace and stability. The Yokohama Declaration 2019, which was adopted by the delegates, acknowledges importance of the rule of law, and the Yokohama Plan of Actions 2019, which was introduced as an accompanying document mentions AALCO as a promoter of the rule of law.

Mr. President, let me take this opportunity to share a few highlights over the past year in Japan's activities in the area of promoting and strengthening rule of law.

First, in keeping with our commitment made at the last Annual Session in Tokyo, Japan launched a new program to support the capacity building of AALCO Members in the area of international law. It will consist of training programs for working-level officials to address challenges concerning important international law issues for AALCO Members. We will hold the first program in December this year. Second, Japan has continued to play an active role in concluding multilateral and bilateral treaties.

Since the last year's Annual Session of AALCO, the Government submitted three (3) multilateral treaties and ten (10) bi-lateral treaties to the legislature, the National Diet, and approved (197<sup>th</sup> Session: 24 October – 10 December 2018; 198<sup>th</sup> Session: 28 January – 26 June 2019).

Important multilateral treaties approved by the Diet include two IMO related treaties, namely the Nairobi International Convention on the Removal of Wrecks and International Convention on Civil Liability for Bunker Oil Pollution and Damage. By acceding to these treaties, Japan intends to further enhance cooperation with international community to ensure safety of navigation and protection of marine environment. As for bilateral treaties, those approved by the Diet in the past year include the Agreement on Social Security between Japan and China, which has come into force as of 1 September 2019.



Looking towards the future, Japan will continue to make proactive efforts to promote and enhance rule of law in the international community. In April 2020, on the same year that Japan will host the Tokyo Olympic and Paralympic Games, Japan will host the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice in Kyoto, to be held in Kyoto from April 20 to 27, 2020. The Congress is the United Nations' largest international conference in the field of crime prevention and criminal justice. The overall theme of Kyoto Congress is "Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030". Agenda items of the Kyoto Congress relate to pertinent issues for AALCO Members, such as "comprehensive strategies for crime prevention towards social and economic development" and "international cooperation and technical assistance to prevent and address all forms of crime" and we look forward to welcoming representatives from AALCO Members.

Mr. President, there is no doubt that AALCO has served as an important forum for strengthening and promoting the rule of law in Asia and Africa, the two growing regions of the world. As our Foreign Minister said when he addressed last year's Annual Session of AALCO, "where there is rule of law, there is stability, and where there is stability, there is growth. The rule of law is also an important principle for upholding universal values such as democracy and respect for basic human rights." As one of the founding Members, Japan remains committed to working with the Organization to achieve its goal. At the same time, I would like to invite all other Members to renew their commitment to strengthening AALCO.

As regards its membership, AALCO still possesses greater potential to expand itself beyond the current level. To that end, I have great respect for the efforts made thus far by Secretary-General Gastorn in reaching out to Observer States and other interested non-Member States, and encouraging them to join the Organization. We as Members also need to fulfill our responsibilities in following-up on the Secretary-General's efforts. I myself have been reaching out to non-Members mostly in Asia to talk to my counterparts and share with them the benefit of joining AALCO.

At the same time, a stable financial foundation should be ensured so that AALCO can fully play its expected role in promoting the rule of law in Asia and Africa. We have much to do in this regard including fulfilling our financial obligations. In this regards I would humbly ask all Member States to take this issue very seriously.

Mr. President, the rule of law is not just about development of international law. AALCO should pay attention also to the importance of settling disputes peacefully in accordance with international law. In this respect, Japan welcomes the continuation of discussion on the topic "Peaceful Settlement of Disputes" at this year's Annual Session. Japan believes in the role of international judicial organizations in peaceful settlement of disputes, and that is why Japan has continued to cooperate with the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), and the International Criminal Court (ICC), to strengthen their functions via contributions both in terms of personnel and financial needs. Japan would like to take this opportunity to appeal for the Member States' support for the re-election of Judge Yuji Iwasawa in the election of ICJ Judges to be held next year, in 2010.

In closing, Mr. President, my delegation would like to assure you a constructive contribution during the current session. There are many important international legal issues for deliberation over the next few days, and I very much look forward to engaging in discussions with the distinguished delegates. Thank you.

**President:** I thank the delegate of Japan for his pro-AALCO statement. I now call upon the delegate of Syria.

**Dr. Sawsan Al Ani, Head of Mission, Embassy of Syrian Arab Republic in Dar es Salaam, the United Republic of Tanzania and Head of Delegation of Syrian Arab Republic<sup>3</sup>:** To begin with, I would like to thank you for your efforts in conducting this session. I would also like to thank the Executive Director of the Organization for his comprehensive statement.

We are meeting today at the 58<sup>th</sup> Session of this Organization at a time when many nations of the world are still paying heavy prices in terms of blood, security, stability and livelihood of their people. It is because of the forces that seek to impose their authority and domination on the peoples and their destinies by turning the world backward, trying to establish the norm of unipolarity once again, triggering chaos, wars and violating international and humanitarian laws. On the opposite side there are forces which strive for a more balanced, more secure and more just world; one that respects the sovereignty of nations and the right of peoples to self-determination and to shape their future.

We have to realize that the world has changed and the unipolar system is in decline after its failure has been proved, given the increasing tensions and conflicts, escalation in terrorism in all its forms, especially its economic aspect. We should also realize that the establishment of a new world order based on multi polarity and cooperation among States alone would be the guarantee for international stability and security as well as well-being of all peoples.

The foreign ambitions towards the countries of our region have never ceased throughout history. The Turkish criminal aggression waged by the Erdogan regime against our country now falls under such ambitions. Whatever false slogans it raises is nothing but a blatant invasion and naked aggression. Syria has responded to it in more than one place by hitting its agents and terrorists and will confront it in all its forms and in any area of the Syrian territory through all available legitimate means. Despite the spate of worldwide condemnation the Erdogan regime remains intransigent in its blatant aggression against Syria, causing death and destruction in flagrant violation of all international laws and norms and UN Security Council resolutions which emphasize respect for the unity, integrity and sovereignty of Syria.

The Syrian Arab Republic, while reiterating its absolute rejection and strong condemnation of the blatant Turkish aggression and interference in Syrian internal affairs, affirms the cohesion of all Syrians and their unity more than ever before under the banner of its national flag in confronting the treacherous Turkish aggression, preserving the unity of its land and people, protecting its sovereignty and independent national decision and not allowing anyone to interfere in its national affairs.

The entire international community is called upon to shoulder its responsibilities in pressurizing the Erdogan regime to end its aggression against Syria, to hold it fully responsible for the consequences and forcing it to abandon its subversive policies that pose a threat to security, peace and stability in the region and the world as a whole.

Some countries are under illusion that terrorism can be used as a tool to achieve their ambitions and long term objectives. Terrorism has become a grave threat to the entire world and it is the biggest threat to international peace and security. Violation of international conventions and treaties and the use of illegitimate means in international law, such as

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<sup>3</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

support to terrorism and economic embargo against independent peoples, are commonplace nowadays. It will aggravate global chaos and endanger the future of our countries.

For more than eight years, our people have suffered the scourge of this terrorism, which has brutally killed innocent people, caused a humanitarian crisis, destroyed infrastructure, stole and destroyed the country's resources. My country Syria knows by virtue of its experience in dealing with the plight it has gone through that one of the most serious reasons for the failure to achieve international peace and security is the spread of the phenomenon of trafficking in terrorism both at regional and international levels. It could not have escalated without the financial and logistical support by some countries in addition to worldwide radicalization. The unfortunate incidents the world is witnessing today, especially the terrorist operations perpetrated by ISIS, Jabhat al-Nusra and all other affiliated organizations in Syria and in many parts of our Arab countries and the world, are clear evidence of the exacerbation, not decline, of the phenomenon of terrorism as it has reached unprecedented levels of criminality, brutality and barbarism.

In the same context come the practices of the Israeli entity which has been occupying part of our land in the Syrian Golan Heights since June 4, 1967. Our Syrian people in that area continue to suffer from its repressive and aggressive practices and violation of international humanitarian law and human rights law against them by Israel as well as the repeated Israeli aggression against the sovereignty of the Syrian Arab Republic. They also suffer due to various forms of support being provided to terrorist organizations by the regimes of some known countries in flagrant violation of international law. These Israeli aggressions did not and will not succeed in intimidating the Syrian people; rather they have increased their determination and confidence in their inevitable victory over terrorism and regaining the occupied Syrian Golan Heights up to the line of June 4, 1967, despite the futile attempts of the US President to undermine this right. His declaration on the Golan, is a flagrant violation of international law and disregard for relevant Security Council and General Assembly resolutions. We affirm that the crisis in Syria will never make us forget our legitimate and inalienable right to restore the occupied Syrian Golan Heights, to demand and to work towards stopping the aggressive actions of Israel and its violation of international law and international humanitarian law as well as to bind Israel to the resolutions of international legitimacy, especially the Security Council resolutions 242, 338 and 497, which stress that the decision of the occupation authorities to impose their jurisdiction on the Golan is null and void and has no legal effect whatsoever.

We also reaffirm Syria's principled position in support of the Palestinian people's right to self-determination and establishment of an independent state on their entire national territory, with Jerusalem as its capital, and guaranteeing the right to return for refugees in accordance with resolution 194 of 1948, despite the terrorist war in Syria and the conspiracies, calls and attempts to endorse the so-called "deal of the century" aimed at liquidating the issue of Palestine and the rights of their people.

The coercive economic measures imposed unilaterally by some States and regional entities against the Syrian Arab Republic since 2011 are used by them as a tool of economic terrorism after they failed in their military and political terrorism. It continues till date illegally and in contravention of the UN Charter and the documents adopted by UN conferences on sustainable development. It is an impediment for achieving the Sustainable Development Goals 2030, apart from causing enormous losses to the economic infrastructure of Syria and the potentials of the Syrian state, civil society and private sector to achieve the Development Goals. The continuation of these measures is posing the biggest challenge to

the national efforts of the Government of the Syrian Arab Republic. Nevertheless, the Syrian State is making tremendous efforts to improve the humanitarian situation on the ground and to reconstruct what has been destroyed by terrorism. This requires the serious and urgent engagement of the international community and other relevant international organizations to take stock of the negative effects of the coercive economic sanctions imposed on the Syrian people and other independent nations and to take effective measures to remove and abolish those effects immediately.

Lastly, we, along with our fight against terrorism are keen to push the political process forward, as we continue to participate in the meetings of Astana considering it a framework which has achieved tangible results on the ground. We have also dealt positively with the outcomes of the Syrian National Dialogue Conference in Sochi which include the formation of a committee to discuss the constitution. We got engaged in a serious and constructive dialogue with the UN special envoy to Syria to form the committee. In fact, it was the determination of Syria to form the committee through closely following of the minute details by President Bashar al-Assad, that led to this important national achievement of the Syrian people and thwarted all obstructive attempts of other parties which continue to bet on terrorism and foreign interference or those who have been imposing preconditions and do not want a return to normalcy in Syria. Thank you for your kind attention.

**President:** I thank the delegate of Syria for this very emotional speech. I now call upon the delegate of United Arab Emirates to make their statement.

**Mr. Ahmed Abdul Alrahman Al Jerman, Assistant Minister for Human Rights and International Law, Ministry of Foreign Affairs & International Cooperation and Head of Delegation of United Arab Emirates<sup>4</sup>:** Your Excellencies, Ladies and Gentlemen, at first, I am pleased to share with everyone our congratulations on your presidency for the 58<sup>th</sup> Session of Asian-African Legal Consultative Organization (AALCO). We are confident that your expertise and experience will contribute to the success of this session work and we are willing to provide all support to the success of your work. I would like to also seize this opportunity to thank His Excellency Mr. Tarō Kōno, Minister of Foreign Affairs, Japan, and President of the 57<sup>th</sup> Session. Our thanks go also to Prof. Dr. Kennedy Gastorn, Secretary-General of the Organization, for the steps he is taking to strengthen the work of this Organization, and we commend the comprehensive report he has prepared, which outlines important milestones of the Organization's work.

Mr. President, the UAE affirms its commitment to the rules of International Law and customary rules for the achievement of common interests. In this context, it is worth noting the importance of navigation at sea in all its regions, and the need to emphasize and facilitate the rules established by custom, and formulated by the relevant international treaties, related to international trade, for the interest of the countries and their peoples. It is our duty to address the challenges that arise from time to time that may threaten the freedom of international navigation at sea and its various regions according to the fundamentals of international law, and to emphasize the freedom of navigation in the international straits as defined by the custom and treaties for this region, given the recent events of the resulting increase tension and even collision. Therefore, it is the duty of all of us to work to avoid these challenges' harmful effects, by reaffirming once again the principle of freedom of navigation in the international straits of all states and for all ships, and ensuring the safety and security of

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<sup>4</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

international trade routes away from threats that contradict the higher interest of the international community.

Mr. President, many international disputes continue to threaten friendly relations and cooperation among States, casting dark shadows on the course of international relations, they may even undermine international peace and security. These dangers must be addressed through the commitment to peaceful settlement of international disputes, laid down in the United Nations Charter and General Assembly Declarations of Principles on Relations between all States and Cooperation among them.

The principle of good-neighborliness is one of the well-established principles of international law, which requires all states within a single geographical area to commit themselves not to interfere in each other's internal affairs and to maintain stability for the benefit of all.

Mr. President, the UAE reaffirms its continued commitment to its role as active partner in the Arab Coalition led by the Kingdom of Saudi Arabia to restore legitimacy in Yemen and end the Houthi coup. We refer here to the statement issued by Saudi Arabia and the United Arab Emirates on 8 September 2019, welcoming the response of the legitimate Government of Yemen, and the Southern Transitional Council to call the Saudi Kingdom for dialogue, to stress the need to the sustainability of this positive atmosphere, to show the spirit of brotherhood, renounce division and collision, deal responsibly to overcome this crisis and its efforts, and to prioritize the Yemeni people's interest above any other considerations.

We also emphasize the pivotal role of the UAE in the liberation of Aden and most of the territories that were under the control of the Coup plotters, the reconstruction of liberated areas, to face the threat of terrorist organizations, and support the coalition's efforts to protect freedom of navigation in the Strait of Bab al-Mandab and the Red Sea. At the same time, we reaffirm that the UAE continue to fully support the efforts of the UN envoy to Yemen, and remains deeply concerned by the deliberate and systematic Houthi violations of Security Council Resolution 2216 and the Stockholm Agreement.

Mr. President, the Palestine people have suffered for so long, and it is no longer acceptable for the international community to remain silent vis-à-vis this tragedy, since no more people nowadays are under the occupation.

We call on the international community to find a just and lasting solution to the Palestinian cause based on the right to self-determination, and the establishment of an independent state on the borders of 4 June, 1967, and recognition of East Jerusalem as the capital of a Palestinian state.

It is time for the Palestinian people to obtain their legitimate right to establish their independent state based on the principles of international legitimacy and the Arab initiative for peace, so that the region can enjoy the stability and prosperity it deserves.

In conclusion, I wish all the works of this session to be culminated by success, and looking forward to achieving serious and positive results on all the items of its agenda. May Peace and God's mercy and blessings be upon you.

**President:** Thank you very much, the delegate of United Arab Emirates for this time-conscious presentation. I now call upon the delegation of the Kingdom of Saudi Arabia.

**Dr. Yasir bin Hamed Al Asim, Secretary of the Ministry of Justice for International Cooperation and Systems, Ministry of Justice and Head of Delegation of Kingdom of**

**Saudi Arabia<sup>5</sup>:** His Excellency the President of the Fifty-eighth session of the Organization, H.E. the Secretary-General of the Asian-African Legal Consultative Organization, Excellencies, Heads and Members of delegations, Ladies and gentlemen, peace, mercy and blessings of Allah be upon you.

At the outset, I extend my congratulations to the President and Vice-President of the session on the confidence they have received from the members of the participating delegations, and wish them success, and this Session should contribute with outputs equal to the pivotal role played by the Organization. Ladies and gentlemen, the agenda of this Session includes a number of topics of great importance, which reflects the growing legal role played by AALCO. The Kingdom of Saudi Arabia attaches importance and appreciation for the efforts made by the Organization, particular in the field of International Law.

Ladies and gentlemen, the Palestinian issue is a very important element of the agenda of this conference. The Kingdom of Saudi Arabia reiterates its firm position in supporting the brotherly Palestinian people and all their rights, and rejects all Israeli practices against the Palestinian people that violate international laws, customs and conventions. The Kingdom's consistent position reflects the statement of the distinguished Saudi Council of Ministers at its meeting held on 17<sup>th</sup> September where the Kingdom condemned and categorically rejected the Israeli Prime Minister's announcement of his intention to annex lands in the West Bank occupied in 1967, and considered this measure null and void in all its forms and a very serious escalation against the Palestinian people and a blatant violation of the United Nations and the principles of international law and international norms, treaties and charters.

The kingdom of Saudi Arabia, recognizing the leading role played by the AALCO, appreciates the Organization's efforts in exposing Israeli practices and its violation of international law, and calls on the international community to address those practices and violations.

Ladies and gentlemen, the agenda of the Fifty-eighth session of the conference of the AALCO full of a number of topics that became the talk of the hour at the international level. The kingdom of Saudi Arabia supports the efforts to enforce international treaties and agreements that are consistent with the principle of the sovereignty and immunity of States, a principle stipulated in the Charter of the United Nations. The kingdom of Saudi Arabia reiterates that ensuring international peace and security is subject to adherence to the principles enshrined in the Charter of the United Nations. The world is increasingly converging with the growing technological and digital revolutions, which leave nations with no choice but to coexist, accept and respect each other, and the relations of the States should be governed by international law and norms which ensure international peace and security.

Ladies and gentlemen, the Kingdom of Saudi Arabia attaches great importance to the investment sector and endeavors to promote and exchange international trade and to overcome avenues for international investment. We congratulate the efforts of AALCO on the peaceful settlement of disputes, especially in investment matters. In this context, the Saudi Council of Ministers has issued its decision to establish the Saudi Center for Commercial Arbitration as an independent non-profit establishment, to contribute procedurally and systematically to the peaceful settlement between investors. The Kingdom is also an active member of a number of international organizations and treaties on international trade and investment. Saudi Arabia reiterates that the exchange of trade and the development of international investment are subject to adherence to international treaties and

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<sup>5</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

the principles of the Charter of the United Nations. International law and respect for the sovereignty of States are the fundamental guarantee of international investment.

Ladies and gentlemen, in conclusion, I extend my sincere thanks to the Government and people of the United Republic of Tanzania for hosting the 58<sup>th</sup> Session of the AALCO, and for their warm hospitality and good order. I would also like to thank the Secretary-General of the Organization and his team for their efforts to prepare the work of the session and the accompanying events. I hope that these efforts will be way out for the works of this global demonstration. Thank you delegates. May peace, mercy and blessings of Allah be upon you.

**President:** I thank the delegate of the Kingdom of Saudi Arabia for his really reassuring statement. I now call upon the delegation of Philippines, and while the Philippines is taking the podium, let me take this opportunity to welcome you and congratulate you as the newest member of our Organization. You are most welcome.

**Mr. Jose Eduardo Malaya III, Undersecretary for Administration, Philippine Department of Foreign Affairs and Head of Delegation of Republic of Philippines:** Thank you Mr. President for your warm words of welcome. The President of this 58<sup>th</sup> session of the Asian-African Legal Consultative Organization, Secretary-General of AALCO Professor Dr. Kennedy Gastorn, Excellencies, colleagues, and ladies and gentlemen,

At the 57<sup>th</sup> Annual Session in Tokyo last year, the Philippines re-engaged with the AALCO as an observer after having been absent for a number of years. I said then that as a country that was considering rejoining AALCO, the Philippines was much eager to know once again and learn more about AALCO, its priorities and its roadmap.

It is therefore with pride that last July, with the assent of the Members of this august Organization, my country, the Philippines, rejoined the AALCO as a regular Member. We are indeed happy to be back. We see our reengagement as in line with the Philippine Government's pursuit of a truly independent foreign policy, where we are friends to all and enemy to none. We also value our affinity with and find strength from with our friends in Asia and Africa. We likewise believe that for international law to reflect the values of and serve our Asian and Africa regions, we need to be proactively involved in its formulation and development.

It is therefore a matter of pride for the Philippines that at the 7<sup>th</sup> Biennial Conference of the Asian Society of International Law, which we hosted for the first time in the Manila last August, we welcomed Dr. Gastorn as one of our esteemed guests. I am glad that today I have been able to reciprocate his visit.

Excellencies, ladies and gentlemen, it is auspicious that we meet in this venue named after the Mwalimu Julius Nyerere, the father of Tanzania. Last week, 14 October, Tanzania and the world commemorated the 20<sup>th</sup> anniversary of the Mwalimu's passing. As an elder statesman, the Mwalimu traveled far to the Philippines 25 years ago, in 1994, to share with us lessons from Tanzania's unique experience in governance. He also received an honorary doctor of laws degree from my alma mater, the University of the Philippines. When power and other earthly riches were hardest to let go, the Mwalimu showed us the way. Filipinos remember him with the grace and dignity of knowing when to let go, in 1985, after a long time in public service. If other leaders in Africa and Asia - including my own country at a point in our history - only took a page from him, then there would have been less suffering in our shared histories.

Even in retirement, Nyerere worked tirelessly for greater democracy in Tanzania, for peace in neighboring countries, and for progress for the developing world, co-founding the South Centre to mainstream South-South cooperation. His work, together with the work of his generation of our founding fathers and mothers, gave us the confidence to take on the North in the development and progressive codification of international law, not only through the International Law Commission (ILC), but also in other regional organizations like the Organization of African Unity and the Association of Southeast Asian Nations or ASEAN, of which the Philippines is a founding member.

#### Role of AALCO in International Law

Our organization, AALCO, is a key legacy of the Bandung Conference in 1955. Created to advise many of our then newly independent members - finally unshackled from the yoke of colonialism - on the nuances of international law or the white man's language, AALCO today has become a bridge for South North dialogue on international law. It works closely with the ILC and others on a wide range of our favorite topics, including customary international law. It has also pioneered work in commercial dispute settlement, creating regional arbitration centers and enhancing capacities of Member States in the training of arbitrators.

The Philippines supports the vision of AALCO to become a pre-eminent voice in international law discourse, to render the international law-making process progressive and equitable, as well as build a strong working relationship with the United Nations and other intergovernmental and regional organizations.

#### Towards a Rules-Based Global Order

Excellencies, ladies and gentlemen, the Philippines is a firm believer in international law. Anchored by the multilateral treaty system, international law binds the community of nations to act within the bounds of mutually acceptable behaviors and thereby prevent anarchy in the global order. The vision of the UN Charter remains as relevant as it is eloquent since the conclusion of the San Francisco conference in 1945, where the Philippines was present - that is, the rule of law at the international level is the great equalizer among States, giving voice to all nations regardless of their political, economic or military stature.

During the drafting of the UN Charter, the Philippine delegation took common causes with many countries in this region, and authored progressive ideas on "trusteeship" and the proper disposition of former colonial territories. As the first country in Asia to have declared independence and deeply keen on the issue of self-governance, the Philippines urged the Assembly to add the term "independence" in what is now Article 76 in the chapter on international trusteeship system. Many trust territories benefited from this strong advocacy of the Philippines and others for eventual independence, and my understanding is that it likewise benefited our host country Tanzania.

The rule of law, internationally as well as nationally, is necessary in building and sustaining peace, in national development, in preventing conflict, and in achieving national development goals as well as the 2030 Agenda for Sustainable Development. We support a UN that promotes the rule of law by, among others, supporting capacity building and the exchange of best practices at the national level, especially among judges and police and security officials in, for example, the law of counterterrorism.

In 2012, the Philippines supported the landmark Declaration on the Rule of Law at the National and International Levels adopted by the UN General Assembly particularly its



priority elements on the peaceful settlement of disputes and sovereign equality. The Declaration recognizes that across the UN system, we already have the institutions, the working methods, and the relationships to make the rule of law relevant to peace and security, to human rights, and to development.

Thirty years before that, in 1982, the Philippines led several Asian and Africa partners in having the UN General Assembly adopt the 1982 Manila Declaration on the Peaceful Settlement of International Disputes. Heralded as arguably the single most important UN General Assembly resolution on the subject, the Manila Declaration is the authoritative articulation of our collective duty under the UN Charter to peacefully resolve disputes.

[....]

It is with this outlook that we find as crucially relevant many of the items in this session's agenda, and look forward to sharing knowledge, experiences and recommendations on these items, notably on international trade and investment law, the law of the sea, and the peaceful settlement of disputes. As a country surrounded by waters or more precisely, as an archipelagic State - the second largest at that - we support the proposal of the United Arab Emirates to introduce the sub-topic "issues related to the freedom of navigation/sail in the international waters and straits." It is important to have greater clarity on this matter, not only to ensure freedom of unimpeded navigation but also to safeguard the rights of coastal states, including to their maritime zones. In the ongoing negotiations for a Code of Conduct in the South China Sea, we find also as indispensable the concerned Parties' adherence to the Manila Declaration that States parties to an international dispute shall continually seek a peaceful solution and to "refrain from any action whatsoever which may aggravate the situation ... and make more difficult the peaceful settlement of dispute."

#### Recent International Law in the Philippines

Excellencies, ladies and gentlemen, we all recognize the need to grow international law at the domestic level. There is not enough time for any of us to exhaust the inventory of national action to support, promote, even defend international law in our respective countries. We are thankful for key information colleagues have shared. For my part, allow me to tell you about the resurgence of international law discourse in the Philippines.

As mentioned earlier, the Philippines, for the first time, hosted the biennial conference of the Asian Society of International Law last August. Its theme was "Rethinking International Law: Finding Common Solutions to Contemporary Civilizational Issues from an Asian Perspective". Dr. Gastorn joined Judge Yuji Iwasawa of the International Court of Justice, President Jin-hyun Paik of the International Tribunal for the Law of the Sea, and Secretary-General Dr. Christophe Bernasconi of the Hague Conference on Private International Law. There were some 500 international law luminaries and participants, ranging from diplomats and professors on international law in Asia and beyond, to private legal practitioners and, just as important, law students. Together, they discussed the role of Asian governments and civil society in a gamut of topics, from the theory to the application of human rights, humanitarian law, economic law, environmental law, regional integration, counterterrorism, criminal law, the rights of the child, and the law of the sea.

This important year for international law in the Philippines also witnessed the relaunch of the Philippine Yearbook of International Law, after a 30-year absence from the academic literature. This yearbook is the work of the newly revitalized Philippine Society of International Law. Historically, the Society has contributed to enriching national debate on

the benefits to and the contributions of the country on international law. Yours truly is the current vice president.

Beyond academia, the Philippines continues to bring the practical, everyday benefits of international law, including private international law, to ordinary Filipinos, and even foreigners doing business with the Philippines. Earlier this year, in May, the Philippines became a party to the HCCH Apostille Convention. As Dr. Bernasconi can tell you, this streamlines the authentication procedure for documents used in other Apostille countries, resulting in less cost, less processing time, and more convenience for the transacting public and businesses. Before, a Philippine document to be used abroad required certification by the relevant government agency, authentication by the foreign ministry, and legalization by the embassy in the country of destination. Last October 08, the Supreme Court amended the Rules on Evidence to reflect Apostille, and we can now develop our competence at par with international standards and best practices.

Next on our plate is the Philippines' accession to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, or its shorthand, the Hague Service Convention. This would serve the public by simplifying the process of serving court documents on parties living in another country, and therefore speed up the delivery of justice.

### Conclusion

Excellencies, ladies and gentlemen, as I conclude my contribution, let me urge everyone to make the most of international law and international cooperation. It may not have the solutions to all problems, but it provides the best opportunity "to promote social progress and better standards of life in larger freedom," for the benefit of the present and future generations.

As once expressed by the Filipino statesman and former UN General Assembly President Carlos P. Romulo,

*... our words and actions here can outline a future pattern that can serve all the small nations of the world - a pattern that can be the working basis for world communal living - a pattern which will set peace. In this plan, the terms under which the individual nations have set their manner of living must adjust themselves to the needs of peace. Power must become pliable. Each nation must be prepared to contribute its share of effort and its share of yielding. In this civilized family first one member and then another gives in or yields a little and by these small submissions they gain everything in pride and protection.*

I again thank other delegations for their contributions to this very rich debate, and to the government and people of Tanzania for the warm hospitality and the excellent arrangements for our sessions.

Maraming salamat. Thank you. Asante.

**President:** Thank you very much, delegate of Philippines, for your discourse on international law and the rule of law. Thank you very much, very educative. I now call upon the delegation of Sri Lanka to take the floor.

**Mrs. Viveka Sarthini Pramoda Siriwardena, Deputy Solicitor General, Attorney General's Department and Head of Delegation of Democratic Socialist Republic of Sri Lanka:** Your excellency the President of the 58<sup>th</sup> Annual Session, Your Excellency the Vice

President, Your Excellency Prof. Dr. Kennedy Gastorn Secretary-General of AALCO, Honourable Ministers, Heads of Delegations of Member and non-Member States, representatives of regional, inter-regional and international organizations and specialized agencies, invitees, ladies and gentlemen,

It gives me great pleasure to address you as the Leader of Delegation of the Democratic Socialist Republic of Sri Lanka on this momentous occasion in this beautiful city of Dar es Salaam. I would like to start off by expressing, on behalf of all whom I represent, our wholehearted appreciation to the AALCO for its untiring efforts in making invaluable contributions to the field of international law and bringing the global village even closer.

I would also like to take this opportunity to extend our congratulations and good wishes to incumbent members of the Secretariat in carrying forward the work of the AALCO which has been in existence for 63 years and counting. I believe I speak for everyone in this esteemed gathering when I say that we are proud to observe the growth of the AALCO and the increasing reception of recognition that this Organization so rightly deserves.

At the last annual session conducted in Tokyo, Japan, attention was drawn to global governance and international rule of law. The meeting today in this 58<sup>th</sup> Annual Session seeking to focus on multilateralism and the international legal order based on international law, follows the same vein. The United Nations Economic Commission for Africa identifies that challenges that range from widespread poverty and undernourishment, financial and economic crisis, climate change impact, human insecurity, organized crime, drug trafficking and many others are linked in extricable ways.

It is pertinent to note that different nations may hold different views and approaches to these issues in principle and these views may change the times due to surrounding circumstances. It is necessary to take these factors into consideration while formulating multilateral treaties following a social engineering approach with the aim of reducing tensions between conflicting interests. There is therefore a need to formulate collective and harmonious goals for the future. If I may quote former Honourable Deputy Minister of Justice (2017) Hon. H.R. Sarathi Dushmantha, “In the modern world, only regional harmony can create a conducive environment for countries to further their national interest.”

At this juncture, permit me, ladies and gentlemen, to also emphasize the importance of upholding the sovereign interests of each of the 47 member nations. This number is only expected to rise in the coming years, which makes the topic of multilateralism of escalating importance. The continents of Asia and Africa house a variety of cultures and ethnicities. Sri Lanka, being a multi-ethnic country, is well aware of the precarious course that must be steered in balancing diverging sensitivities of the stakeholders involved.

On behalf of my delegation, I would like to avail myself of this opportunity to state that I have the utmost confidence that this esteemed forum will reach holistic and congruent resolutions in promoting multilateralism and international legal order and I affirm Sri Lanka’s continuous support, as has been provided since the inception of this esteemed organization, to the AALCO in achieving this end.

Ladies and gentlemen, we have ahead of us a week of deliberation to look forward to, and as we share our experiences and come together to overcome common challenges in subjects of mutual interest, I implore the distinguished participants here today to remain aware that while our approaches to pressing issues may be different, we pursue a common goal – to facilitate

the advancement of the regions of Asia and Africa through the holistic development of its individual constituent states.

I would like to conclude by extending my heartiest gratitude on behalf of my delegation to the people of the United Republic of Tanzania for their warmth and hospitality and to the organizers of the 58<sup>th</sup> Annual Session of the AALCO for their exceptional arrangements.

Thank you and hope you all have a wonderful evening.

**President:** I thank the delegation of Sri Lanka for the kind words on a very promising and optimistic future of AALCO. I now call upon the delegation of the Islamic Republic of Iran.

**Dr. Abbas Bagherpour Ardekani, Director General, Ministry of Foreign Affairs and Head of Delegation of Islamic Republic of Iran:** “In the name of God, the Compassionate, the Merciful!” Mr. President, at the outset, I would like to extend our sincere appreciation to the people and Government of Tanzania for the excellent arrangements and their warm welcome and hospitality. I also thank Secretary-General of AALCO Prof. Kennedy Gastorn and his capable team in the Secretariat for their admirable work and preparation.

We are gathered here to exhibit, once again, our spirit of amity in pursuit of a prosperous, functional and inclusive multilateral framework. The Asian and African culture is imbued with noble values such as moderation, wisdom, inclusiveness, and peaceful co-existence. Our cooperation for the promotion of human prosperity and dignity contributes to the global policies through various multilateral arrangements. We can pride ourselves in a world of peace, cooperation and development.

To that end, multilateralism - with the United Nations at its heart - has become indispensable in enabling States to establish common approaches to all aspects of global governance while also generating ideas to address security challenges and improve the quality of life.

Increasingly serious threats to global security and the planet's future are, however, a direct consequence of weakening multilateralism. Recent global political developments have put the future of development and multilateralism at risk.

Narrowly interpreted national interests, short-sighted politics, coercion, competition and confrontation are overtaking cooperation, dialogue and respect for international law. But, protectionism and self-isolation will lead nowhere. No single country, no matter how powerful or wealthy, can seek to assume for itself the global unilateral monopoly on seeking solutions to all the world's problems.

As an alarming situation, some powerful States are prone to exploit unilateral Sanctions, unlawfully, as an economic warfare against other countries. In the same vein, weaponizing economy and currency could lead to “Economic Terrorism” and targeting the most vulnerable people and the life of the civilians.

Mr. President, I don't need to list the extensive, unlawful unilateralist policies of the U.S. Administration towards several countries or our region, but here is just a glimpse: extraterritorial imposition of domestic legislations; flouting of international accords and ICJ provisional order; breeding radicalization through reckless and pointless forever wars; shielding of terror-sponsoring clients from their war crimes; and recognition of illegal and racist annexations. As if this lawlessness is not enough, the U.S. also punishes those who seek to fulfill their obligations under Security Council Resolution 2231.

To defend multilateralism, it is imperative to deny the U.S. perceived benefit from its unlawful actions, and to forcefully reject any pressure it brings to bear on others to violate international law and Security Council resolutions.

Let us not forget that the imposition of the will of a single power over other nations is an existential threat-sooner or later-for everyone. Unless we align our capabilities to secure multilateralism, a rising and aggressive unilateralist wave can cover the entire world, quickly replacing the rule of law with the rule of the power if not jungle. We all should be concerned about this trend. Keeping silence on the consistent violations of international law may even mislead the international community in defining the applicable rules of customary international law in terms of state practice and *opinio juris*.

Mr. President, grave violations of international law in the occupied Palestinian territories continue persistently. Now after years of blockade on Gaza strip, we observe new violations of international law by Israel regime and its proponents. The expansion of settlement by mass destruction of Palestinian homes was a catastrophe that happened during last year. This event accompanied by the Relocation of US embassy in mid-October 2018 in occupied territories which itself was a blatant violation of international law. in this connection, it is also worthy to refer to the recognition of sovereignty of Israel regime over Golan Heights by the United States which was a recognition of a wrongful act by this State and even contradicts the UN Security Council Resolution 497 of 1981 which the US itself was voted for emphasizing that “Decides that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Height is null and void”. These heinous and irritating violations gradually will erode the trust to international law and undermine the international legal order based on international law.

The international community should fulfill its responsibility in rejecting aforesaid decision and action as its aim is to legalize the occupation and to restore the right of the people of Palestine to establish their own independent Palestinian State with Al-Quds Al-Sharif as its capital.

Mr. President, on the issue of freedom of navigation in international waters and Straits, the Islamic Republic of Iran recognized the right to innocent passage from International Straits, in particular Hormuz Strait as it enshrined in 1958 convention on the territorial sea and the contiguous Zone which determined this right. We also reiterated this position in number of occasions, especially in framework of an interpretative declaration in third conference on law of the sea.

In light of recent developments in the region and based upon the historical responsibility of my country in maintaining security, peace, stability and progress in the Persian Gulf region and Strait of Hormuz, President Hassan Rouhani outlined Hormuz peace Endeavor or Hope in United Nations General Assembly during 74<sup>th</sup> session, as an initiative for promoting dialogue, freedom of navigation, energy security, non-aggression and non-intervention, confidence building measures, military contacts, and the conclusion of a non-aggression pact. Additionally, HOPE seeks to establish a joint taskforce, on various issues regarding practical measures to gradually expand cooperation including in early warning, prevention and resolution of conflicts, combatting drug and human trafficking, joint investments and ventures in energy, transit and transportation, and cooperation in cyber security. We have proposed Hormuz Peace Endeavour (HOPE) to all littoral states of the Persian Gulf in a bid to reduce tensions in the strategic waterway.

Mr. President, with these, let me conclude my Statement and hope that we will experience another fruitful and successful Session. I wish all the best for AALCO and Member States during the deliberations on the agenda items for which we have gathered here. I thank you Mr. President.

**President:** I thank the statement by the delegation of the Islamic Republic of Iran, which was very integrated and composite in many aspects regarding unilateralism versus multilateralism. I now call upon the delegation of Qatar.

**H.E. Mr. Salem Rashid Almeraikhi, Assistant Under Secretary, Legal Affairs, Ministry of Justice State of Qatar<sup>6</sup>:** H. E. The Secretary-General of the Asian-African Legal Consultative Organization, Members of the Organization, Ladies and Gentlemen, Peace, mercy and blessings of Allah be upon you!

At the outset, I would like to convey to you the sincere greetings of HE Dr. Issa bin Saad Al Jafali Al Nuaimi, Minister of Justice of the State of Qatar, and the sincere greetings of the Qatari Delegation participating in the 58<sup>th</sup> Session of the Asian-African Legal Consultative Organization (AALCO), of which the State of Qatar is keen to participate in all its activities and fulfill its financial obligations believing in its leading role.

Allow me to thank the United Republic of Tanzania for hosting the 58<sup>th</sup> Session of the Organization and for the warm welcome and hospitality extended to the Qatari Delegation.

I would also like to welcome the Republic of the Philippines, which re-joined the Organization, on 27 July 2019 as the 48th Member State.

Ladies and Gentlemen, the Organization has contributed to finding just international legal systems that provide the international community with a basis for cooperation and peaceful settlement of disputes, and means to ensure that wars do not return. I therefore hope that the rule of law will prevail, enabling all Member States of the international community to ensure fair justice on the national level, with full adherence to the principles of international law abroad. I also called on Heads of State and Governments to uphold the highest standards of rule of law in decision-making at all times, so that the rule of law is the foundation of any action that Governments may take and we should unite towards common values that ensure the well-being to peoples, the stability to States and cooperation to the international community, and there is no legitimacy for any action inconsistent with the law.

The international dimension of the concept of the rule of law was clearly expressed in the draft declaration on the rights and duties of states prepared by the International Law Commission in 1949 and its Article XIV states that “Each State has the duty to conduct its relations with other States in accordance with international law and under the principle that the sovereignty of each State is subject to the supremacy of international law.”

The State of Qatar is always shown its keenness to be a positive and active player with a constructive role at the international level through its balanced and distinguished political and economic relations at the bilateral and multilateral levels. This is evident in all the speeches of His Highness the Emir of the State of Qatar. His Highness stresses on the further development of this approach for the State of Qatar to fulfill its responsibilities and commitments at various levels, nationally, regionally and internationally.

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<sup>6</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Ladies and Gentlemen, the real challenge lies in the application of international legal rules and the implementation of international legal obligations in all disputes among the States and at the time of disagreement, one has to resort to peaceful means and to settle disputes on the basis of it. The principle of “the settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration or judicial settlement and all other peaceful means chosen by the parties in accordance with the Charter of the United Nations, has been at the center of all relevant international instruments and declarations.” The Charter of the United Nations also calls upon all Members of the Organization to settle their international disputes by peaceful means in a manner that does not endanger international peace and security.

Concerning the support of the international system in all that would uphold the rule of law and provide the appropriate environment for security, peace and social justice, the State of Qatar signed the instrument of accession to the United Nations Convention on International Settlement Agreements Resulting from Mediation (known as the Singapore Agreement on Mediation) at a signing ceremony in Singapore. Thus, the State of Qatar is at the forefront of the signatories to this model convention aimed at facilitating litigation procedures and providing alternative means for resolving disputes and ensuring and consolidating speedy justice.

Ladies and Gentlemen, the position of the state of Qatar in supporting the Palestinian cause in all international forums is consistent. Palestine has the right to liberate its homeland and right to self-determination, to establish an independent state, the right of return, and sovereignty over natural resources, and illegitimacy of the settlement. Any decision of the unilateral annexation of Jerusalem complicates things and does not solve it and it is null and void and illegal under the Security Council Resolution (No. 478) issued in 20/8/1980.

The State of Qatar, through its network of relations with all international parties and United Nations organizations, endeavors to improve the lives of the people of the Gaza Strip, spare them the scourge of war and prevent the collapse of official institutions, and all that would be reflected negatively on the lives of the population, and this is confirmation that Qatar will not abandon the people of Gaza.

Ladies and Gentlemen, the accelerated progress in cyberspace calls on all of us to continue efforts that address the sovereignty of States in cyberspace and cybercrime. We appreciate what has been achieved in international law in this field, both by the United Nations and our Organization (AALCO). It is no secret that the State of Qatar has been subjected to piracy and hacking attacks on the website of the Qatar News Agency and fabrication of media statements on the grounds that they are issued by them. This has exasperated the international community and demonstrated the concern of a wide range of official and popular circles in the world about the lack of clear international institutions and legislation that regulate digital security, escape from cyber-piracy and punishing the perpetrators of transnational crimes.

Ladies and Gentlemen, at the end of my speech, allow me to thank the United Republic of Tanzania once again for hosting. I also take this opportunity to pay tribute to all participants in the work of this session and wish everyone success.

I thank you for your kind attention. May peace, mercy and blessings of Allah be upon you.

**President:** I thank you very much, the delegation of the State of Qatar. With that statement, we have come to the end of this afternoon’s presentations, and we will continue with the remaining statements tomorrow, at 9 o’clock. We will start with India tomorrow, and proceed

with Nepal, South Korea and Viet Nam. If there are any more additions for people wishing to speak tomorrow, just contact the Secretariat. Let me remind you about the invitation for dinner tonight. The Secretariat will give you the directions about where the dinner is being offered by your host, and welcome all of you.



**VIII. VERBATIM RECORD OF THE SECOND  
GENERAL MEETING (CONTD.)**

**VIII. THE VERBATIM RECORD OF THE SECOND GENERAL MEETING (CONTD.) HELD ON TUESDAY, 22 OCTOBER 2019, AT 09:30 AM**

**His Excellency Dr. Augustine Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, the President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**Secretary-General:** Member States, observers and experts are therefore expected to refrain from acting bilaterally, contrary to the spirit of our common goals. All interventions must seek to share experiences and expand the norms of international law. Therefore, we would appreciate it if references to national, unilateral or internal matters of a particular State can be avoided. Accordingly, based on the past practices at AALCO, any statement of contentious or bilateral nature by the member States may be expunged from the record of the proceedings at the initiative or request of any concerned Member State, as communicated to the Secretary-General, in consultation with the President of the Session. This also applies to the statements by invited experts who may assist in the deliberations but acting in their individual capacity under paragraph 4 Article 10 of AALCO's statutory rules.

Mr. President, allow me to recall and remind our distinguished delegates that the reception dinner hosted by H.E. M'me Wang Ke, Ambassador of the People's Republic of China to the United Republic of Tanzania is scheduled today at 06:40 PM and invitation cards have already been circulated to you all. Transport will be made available directly from the venue to the reception.

Mr. President, I thank you.

**President:** Thank you Secretary-General. We now resume the general statements that are yet to be delivered by the Member States. This morning, we begin with the statement from India. India, you have the floor.

**Ms. Uma Sekhar, Additional Secretary, Legal and Treaties Division, Ministry of External Affairs and Head of Delegation of Republic of India:** Your Excellency, the President of AALCO; Your Excellency, the Secretary-General of AALCO; Excellencies, Distinguished Delegates, and Observers;

Let me begin by extending on behalf of the delegation of India, our warmest felicitations to your Excellency Hon'ble Dr. Augustine Philip Mahiga, Minister of Justice and Constitutional Affairs on your election as the President of AALCO. We are sure that your wisdom, experience, and expertise will steer our deliberations to a successful conclusion. I also avail of this opportunity to congratulate for his election as Vice-President of this Session.

We also wish to thank the Government and People of Tanzania for hosting this Annual Session in this historic city of Dar es Salaam. We thank them for the excellent arrangements made for this session and for the warm hospitality extended to us.

The Indian delegation also takes this opportunity to thank His Excellency, Mr. Masahiro Mikami, outgoing President of the (57<sup>th</sup> Session of AALCO) for steering the Session in an effective manner.

Our appreciations go to the Secretary-General, Deputy Secretary-Generals, Officers, and staff of AALCO for the excellent preparations they have made for our Session, including the timely preparation of documents to help our consideration of the various items on the agenda of the Session.

Mr. President, our delegation takes note of various activities and events successfully undertaken since the Fifty-Seventh Annual Session of AALCO. To mention a few, the Celebration of AALCO's Constitution Day; Working Group Meeting (WGM) on International Law in Cyberspace; China-AALCO Exchange and Research Program on International Law; Public Lecture by H.E. Ms. Anna Joubin-Bret, Secretary, UNCITRAL; AALCO-ICRC Seminar on Autonomous Weapon Systems, Artificial Intelligence and Armed Conflict; and Seminar on 'Operational Functioning of the International Criminal Court (ICC) and International Judicial Education: Emerging Paradigms', organized by AALCO in Collaboration with the Delhi Judicial Academy (DJA).

We take note of the release of AALCO publications, namely, Yearbook of AALCO, AALCO Journal of International Law and Newsletters. We also take note of the Special Study on "Violation of International Law in Palestine and Other occupied Territories by Israel and the Legal Status of Jerusalem". We commend the effort of the AALCO Secretariat for bringing these useful publications in the field of international law.

Indian delegation believes that the conclusion of MoUs/Cooperation agreement (University Teknologi MARA) will facilitate the AALCO in successfully discharging its mandate in the field of international law

Indian Delegation welcomes the Republic of the Philippines back to the AALCO family.

Indian delegation would like to reiterate that AALCO being an inter-governmental organization must continue to fulfill its primary objective of to function as an advisory body to its Member States in the field of international law. We believe that the past and the proposed activities of AALCO would facilitate in successfully discharging its mandate. We also believe that AALCO has a substantive role in the field of research, publications and capacity building exercises. We call upon member states to ensure that a shortage of finance and human resources should not hinder AALCO from achieving its full potential.

The theme Multilateralism and the International legal order based on international law for deliberations by this esteemed gathering could not have been more relevant and timely.

International legal order based on international law is a prerequisite for the maintenance of international peace and security and for the prosperity of all. International law-based order is superior to others on the ground that it avoids inequality, ensures uniformity, and stands for justice and fundamental values. For instance, United Nations stands for the principles of sovereign equality of states and non-intervention, and respect for human rights and fundamental freedom among others. Similarly, the process of WTO strives for and is based on the principle of non-discrimination. A fair and equitable rules-based global order assumes special significance for the AALCO family given our national priorities, development commitments and aspiration of our people.

Multilateralism is based on laws that govern the interaction between the States for greater collective welfare. However, uneven impacts of globalization, both within and among nations, are leading to a situation where the spirit of multilateralism appears to be in retreat today. Multilateralism is in crisis today, perhaps at a time when we most need it. In the last few years, the issues and themes of multilateralism and a rules-based global order has been debated. The need for multilateral has been reiterated for inclusive growth for all.

Multilateralism is under stress today and rules-based international order under strain. Multilateralism and international law based global order are as relevant today as they were 70 years back during the founding of the United Nations and multilateral framework.

Cooperative and Effective multilateralism is the only answer to the range of interconnected challenges that we face in our inter-dependent world. This point to the strong need for rule of law at the national and international levels.

Multilateralism is rooted in the Indian tradition of 'world is one family' and respect for international law is enshrined in the Indian Constitution. India firmly believes that multilateralism is an effective tool to deal with issues of global significance, such as protecting and preserving the human environment, sustainable growth, and development, recognizing fundamental human values, exploiting natural resources at sea, exploration and use of outer space among others. Further, multilateralism ensures non-discrimination among States and uniformity in State practice. Cooperation through the United Nations Organizations, World Trade Organization, multilateral environmental agreements, and human rights treaties attempts a world order at a larger scale.

India, with one-sixth of the global population, is the world's largest democracy based on rule of law and has emerged as the fast growing economy. In India, the independence of the judiciary, legislature and executive along with a free and vibrant media and civil society with strong traditions of electoral democracy are cherished and are the basis for the rule of law in our country.

India has always engaged actively in international efforts to develop norms, standards and laws governing global interactions across various sectors. India also believes in the peaceful settlement of disputes according to laid down laws. India continues to make serious efforts to bring its national laws in consonance with its international obligations.

India continues to partner with fellow developing countries in capacity building efforts on aspects such as electoral practices, drafting of legislation and other law enforcement issues.

At an international level, as better transport and communication technologies began to connect distant societies and economies, the international aspect of the rule of law began to crystallize. In the last few decades, globalization has picked up pace driven by technology. This continues to lead to the requirement of nation states coming together to define rules of cooperation to prevent chaos. Today, there is a very wide range of areas where rule of law governs the actions of nation states to a large measure. Then there are emerging areas such as artificial intelligence or cyber security where the technology or activities of entities outpaces law and the situation is complicated by the involvement of non-state actors and cross border implications. We (international community) are now engaged in developing norms relating to the emerging complex areas of Marine Biodiversity Beyond National Jurisdiction (BBNJ) and Global Geospatial Information Management (GGIM).

Terrorism continues to pose a common threat which requires common efforts to counter it effectively. My fellow delegates, you will agree with me when I lay emphasis on the renewed efforts to strengthen the multilateral framework and international law to ensure zero-tolerance towards training, financing, and support to terrorist groups throughout the world.

The AALCO Member States have a common interest in preserving and advancing a rules-based and inclusive international order, including through reforms that reflect the new realities of the 21<sup>st</sup> century. It is important to support and strengthen the rules-based

multilateral trading system at a time when globally agreed trade practices and norms are being selectively questioned.

We reaffirm our commitment to enhance the voice and representation of emerging and developing economies, especially those in Africa, in the decision making bodies of the multilateral mechanisms.

The centrality of the United Nations to international relations and the WTO to international trade must be recognized, preserved and protected. Adherence to international law is critical. However, the need of the hour reforms. Effective multilateralism and international rule of law requires that the global governance structures should reflect contemporary realities. We hope that the international community will be able to transform the United Nations to meet the emerging global challenges of the 21<sup>st</sup> century.

India has been working to make the multilateral system fit for the challenges it faces, as well as more transparent to deliver on citizens' expectations, not least by fully supporting reforms to modernize the United Nations and improve the functioning of the World Trade Organization. We hope this will also be a priority area of work for AALCO.

AALCO's role as the only inter-governmental organization uniting continents of Asia and Africa in the field of International law in promoting international legal order based on international law is truly extraordinary. AALCO's contribution in the various fields ranging from the law of the sea, human rights including refugee law to international trade law deserves special appreciation.

Mr. President, I would like to conclude here. We look forward to actively participating in the deliberations on the agenda items and once again thank the Government of Tanzania and the AALCO Secretariat for the arrangements made for this Session. Thank you, Mr. President.

**President:** Thank you delegation of India for the kind words to AALCO and Tanzania, and also for underscoring the significance of international law for maintenance of peace and security and the significance of multilateralism and its significance to AALCO. Thank you very much indeed. The next speaker in my list is Nepal. Please take the floor.

**His Excellency Hon. Bhanu Bhakta Dhakal, Minister, Ministry of Law, Justice and Parliamentary Affairs and Head of Delegation of the Government of Nepal:** Mr. President, Hon'ble Ministers, Your Excellencies, Ambassadors, Mr. Secretary-General, Distinguished Delegates and Observers, Ladies and Gentlemen, at the outset, on behalf of the Nepali delegation and on my own, I would like to congratulate you, Mr. President and Vice-President on your unanimous election. I assure you of our full support in the discharge of your responsibilities.

I would like to appreciate and acknowledge the commendable contribution made to the Organization by the outgoing President of the Fifty-seventh Session, His Excellency Amb. Koji Haneda, Japan.

Mr. President, the progress of science, technology and connectivity has opened up new opportunities, and at the same time new challenges have emerged such as environmental degradations, climate change, unpredictable world economy, and human rights violations and others. No country can resolve these challenges alone. A multilateral system based on the respect of international law, international cooperation and partnership is the best way to cope with these challenges. It is necessary to regenerate the multilateralism through mechanism building on global and regional basis. We agree that the cooperative approach is the most

efficient way to serve our collective interests, as decisions taken in a multilateral framework has proved to be more democratic, inclusive, strong and sustainable.

It is necessary to interlink international cooperation with multilateral and regional mechanisms to include within international legal framework. This will directly contribute to protection of democracy, and human right and promotion of world peace. It is our collective responsibility to work towards a more peaceful, secured and prosperous world for present and future generations. We see no alternative to multilateralism. I firmly believe that the role of AALCO in promoting multilateralism in African and Asian region will be more significant in upcoming days.

Mr. President, the growth in international trade and foreign investment and the mobility of citizens around the world is increasing opportunities and posing legal risks. It is essential that legal certainty and access to justice are ensured in civil and commercial disputes for curing these shortcomings.

The emphasized multilateral mechanism will support for mutual legal assistance in resolving those kinds of legal problems among the countries.

It is mandatory to have legal certainty and multilateral arrangement for capacity enhancement and mutual assistance mechanism to developing countries to gain optimum benefit from world trade and global investment.

Mr. President, Nepal believes oceans and marine resources are the common heritage of humankind and benefits from the oceans should be shared among Member States in fair and equitable manner. The freedom of transit of land locked countries to and from the high seas should be further ensured having regard to the principles of the law of sea.

My delegation takes this opportunity to reiterate the linkage between mountains and seas regarding climate change. Himalayan glaciers are melting rapidly due to climate change causing the rise of sea level, and leading to the adverse effect on the livelihood and habitant of coastal areas and mountains. We are at high risk of climate change. Several countries of the Himalayan regions and coastal areas are suffering heavily from the severe consequences of the acts that we have not committed. We have been advocating that it is our shared responsibility to preserve the marine biodiversity and marine environment. Therefore, I would like to emphasize the need of concrete mechanism to protect the Himalaya biodiversity and marine biodiversity.

In addition, the developing and especially landlocked countries should be provided with a share in marine resources, technology transfer and capacity building. Nepal reaffirms that capacity-building lies at the center of States' abilities, particularly for developing countries, to benefit completely from the oceans and their resources. Therefore, Nepal supports the importance of AALCO's role in undergoing negotiations to develop legally binding instrument regarding BBNJ.

Mr. President, cybercrime is a fastest growing transnational threat. It needs to be tackled jointly by the international community. The Budapest Convention on Cyber Crime is the only existing comprehensive multilateral instrument that specifically deals with cyber-crime. I believe that harmonization of domestic legislations to the standard of the Budapest Convention will help to contribute for the safe use of cyberspace.

Nepal welcomes the two-fold proposal related to cyberspace put forward by the Chair in the fourth meeting of the open-ended Working Group on International Law in cyberspace. Non-

binding general document clarifying the consensual basic principles of international law applicable in cyberspace will guide to adopt national policy and enactment of domestic law regarding cyberspace and international law.

Mr. President, my delegation welcomes the selected agendas approved for this Session. All the issues including Law of the Sea, International Law in Cyberspace, Peaceful Settlement of Disputes and International Trade and Investment laws are very timely and relevant.

Mr. President, on this occasion, let me share some developments taken place in my country. We have recently adopted the Fifteenth Five-Year Plan with a long-term development perspective. The implementation of international treaties to which Nepal is a party along with maintenance of rule of law for protection and promotion of human rights are some of the priorities incorporated in the Plan. In addition, commitments made in international forum and the 2030 Agenda of Sustainable Development and other internationally agreed targets have also been integrated in the Plan.

With the promulgation of the Constitution, sixteen laws have been enacted for implementation of fundamental rights guaranteed by the Constitution. Similarly, around 350 laws have been amended to fulfill constitutional mandate and international obligations. It is a historic achievement in the process of executing federalism in Nepal. We have worked thoroughly for the restructuring of the country through creating three levels of government by successfully concluding elections within three years of promulgation of the Constitution. The Government of Nepal is now focused on economic agenda to sustain this historic gain to fulfill the national slogan of 'Prosperous Nepal, Happy Nepali'. To this, the cooperation and good will of international community has also contributed a lot. For this, I would like to thank you all on behalf of Nepal.

Mr. President, let me express our sincere gratitude to the Government of Tanzania for hosting this Session and for a warm and cordial hospitality accorded to my delegation.

Mr. President, I am confident that this Session will be successful to achieve its objectives. Thank you.

**President:** Thank you, delegation of Nepal, a land-locked country. The emphasis was placed on climate change and cyberspace challenges. Now I call upon the Republic of Korea.

**His Excellency Mr. Tae Ick Cho, Ambassador, Embassy of Republic of Korea in Dar es Salaam, Tanzania and Head of Delegation of Republic of Korea:** Thank you, Mr. President. On behalf of the Government of the Republic of Korea, I would like to express my sincere gratitude to the Government of the United Republic of Tanzania for generously hosting this 58<sup>th</sup> Annual Session of AALCO for the third time after having presided at this Organization in 1986 and 2010. The grand opening ceremony held yesterday morning was kindly graced by the high-profile presence of Her Excellency Samia Hassan Suluhu, Vice President of this beautiful, peaceful and fast-growing country, which clearly showed us the importance the Tanzanian Government has put in this august body.

Let me also express my delegation's special thanks to H.E. Ambassador Koji Haneda, President of the 57<sup>th</sup> AALCO Annual Session for the Japanese Government's successful leadership and cooperation with AALCO Secretariat for the last one year.

I am pleased to congratulate Your Excellency Dr Augustine Mahiga, Minister of Constitutional and Legal Affairs of Tanzania on your election as President of this Annual Session and I am fully confident in your able and wise leadership, which will surely lead us

to a very fruitful and constructive discussion this whole week. My delegation also wishes to congratulate H.E. Prof. Mohamad Shalaldeh, Minister of Justice of Palestine for his election as Vice President and looks forward to his capable stewardship.

My special appreciation goes to H.E. Dr. Kennedy Gastorn, Secretary-General of AALCO, and his diligent staff for the efficient and smooth preparation and operation of this Session.

Last but not least, I would like to convey the Korean delegation's warm congratulations on the readmission of the Philippines to this unique inter-continental legal advisory body, which my delegation views will help us to encourage non-member countries belonging to our two continentals to join us in the future.

Mr. President and Distinguished Delegates, for the last over sixty years, AALCO has made dedicated efforts for the development of the international legal system by balancing and enriching it with creative ideas that are drawn from the rich legal traditions of Asian and African people. My government recognizes that AALCO has contributed greatly to the formation of a new legal order in various fields of international law. For example, AALCO has introduced such innovative concepts as "exclusive economic zone" and "burden sharing" to name a few. And its model instruments have reflected the strong and unified legal voice of the Asian and African regions in international law matters.

In the face of such daunting borderless challenges as climate change, human rights violations, and growing risks of cybercrimes, multilateralism, the rule-based international order and the rule of law play an essential role in enhancing the stability and predictability of international relations. At the same time, to ensure universal compliance with international law and contribute to its timely development, constructive dialogue among all state and non-state stakeholders of the international community is a matter of utmost importance. In this regard, active participation and dialogue within AALCO is essential and therefore should be sustained and even further promoted.

Mr. President and Distinguished Delegates, I would like to go over briefly some general ideas and the Korean Government's efforts to enhance multilateralism and the international legal order based on international law.

First, there is a need for states to make a more active contribution to the codification and progressive development of international law. It is important for all of us to remember that international law is formed by the consent and practices of states. Therefore, it is imperative that each state actively provides its input especially on the deliberations of the International Law Commission (ILC). My delegation hopes that AALCO will more actively facilitate exchanges of views on international law-making, including all those topics of the ILC. The intention here is not to duplicate the UNGA Legal Committee, but rather to assist each other in shaping opinions based on our regional perspectives. In this sense, my delegation would also like to see some more interactive communication among the state officials and experts of our regions in the field of international law.

In addition to inter-governmental settings such as this annual session, we need to encourage subsidiary seminars and gatherings of experts at domestic and regional levels. For example, the Republic of Korea has been holding an annual joint conference with the International Tribunal for the Law of the Sea on various issues concerning the law of the sea since 2018. My delegation welcomes the participation of state officials and experts from AALCO in that joint conference.



Second, we also need to pay more attention to the dissemination of international law at domestic level. My government, in close cooperation with academia, has been making active efforts to enhance Korean people's awareness and knowledge of international law. We have been hosting a mock court competition in public international law, as well as an annual thesis competition for students. And we have organized seminars and symposiums on topics of international concern. Last year, we successfully convened a series of town hall meetings with students and members of the local community. My delegation is willing to share the information on our outreach programs and initiatives with the Secretariat and other interested members. My delegation also wishes to explore joint endeavors with the Secretariat to raise awareness of international law.

In concluding, my delegation would like to remind all of you that this annual meetings of AALCO offer us a valuable opportunity to meet together, share our common interests, and face legal challenges hand in hand. Therefore I sincerely hope that under the able and wise leadership of Your Excellency Dr. Augustine Mahiga this session will lead us to actively and constructively exchange our views and practices on outstanding international legal issues and to narrow them down into AALCO's consensual positions that will be effectively delivered to ILC, UNGA Legal Committee and other relevant fora as a joint constructive contribution by H.E. Dr. Kennedy Gastorn and the Secretariat of the AALCO in the future. As a staunch advocate of the activities of AALCO since its membership in 1970, the Republic of Korea will contribute to this august body in this regard. Thank you, Mr. President.

**President:** Thank you very much indeed, for your kind words and for the role played by the Republic of Korea in capacity-building to facilitate the work of AALCO. I thank you for the information. Next speaker in my list is Viet Nam.

**Mr. Chu Tuan Duc, Vice Director-General of the Department of International Law and Treaties, Ministry of Foreign Affairs and Head of Delegation of Socialist Republic of Viet Nam:** Honorable President, Distinguished Delegates, Ladies and Gentleman, at the outset, on behalf of the delegation of Viet Nam, I would like to warmly congratulate Mr. President and Mr. Vice President. I am confident that under your able leadership and guidance, our Conference will be a success.

Mr. President, for the past 75 years, multilateralism has become indispensable, providing the fora for states to deliberate and establish common policies in different aspects of global governance and enhancing international law. Multilateralism and international law have since then been intertwined that one could not be achieved if foregoing the other.

International law is the foundation of equal relation among states, the key to multilateralism. And the UN Charter is undoubtedly the symbol of successful cooperation among states to build a rules-based order, and at the same time the cornerstone of our modern system of international law. In order to maintain international peace and security, states affirmed such fundamental principles in international relations as respect for sovereignty of states, prohibition of the threat or use of force, peaceful settlement of international disputes, and the like. This instrument has evidently been playing a key role in shaping the international relations as we see today.

Thanks to multilateral attempts, other significant instruments that reflect the determination of the international community towards sustainable peace and security have been adopted, notably the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970 and the Manila Declaration on the Peaceful Settlement of International Disputes 1982, through which the general principles of international law are

reaffirmed as foundation for international relations. Also, multilateralism, heavily influenced by the United Nations, has led to the adoption of many important treaties with a large state participation, specifically the four Geneva Conventions on International Humanitarian Law, the Vienna Convention on the Law of Treaties 1969, or the United Nations Convention for the Law of the Sea 1982.

Nevertheless, multilateralism as well as the international legal order is now facing undoubtable challenges. Recent years have witnessed alarming violations of international law on different levels and in different aspects, notably the use of force incompliant with the UN Charter, breaches of the international humanitarian law in armed conflicts. Meanwhile, unconventional issues that never cease arising need to be addressed as soon and effectively as possible, while states' perspectives still remain divided. One such matter is the regulating of cyberspace, which we are going to discuss in a few days to come.

In such context, Viet Nam acknowledges and emphasizes the significance of multilateralism with the central role of the United Nations, strongly upholds the principles of international law set forth in the UN Charter and constantly reaffirms the importance of the sovereignty, territorial integrity and the peaceful means of dispute settlement.

In the face of arising challenges, peaceful settlements of international dispute should be emphasized more than ever. The UN Charter, as well as other multilateral treaties such as the UNCLOS, has stipulated various dispute settlement mechanisms. The importance of these mechanisms and of the compliance with their decisions in good faith is hereby underlined.

Viet Nam is of the view that UNCLOS as constitution for the oceans shall be the sole foundation for making maritime claims. In exercising its rights, a coastal state shall give due regard to legitimate rights and interests of other states pursuant to the Convention. Parties to maritime disputes shall exercise self-restraint in conduct of unilateral and coercive acts, which might complicate the situation and escalate tensions, threatening the regional and international peace and security.

For the past decades, Viet Nam has become member to significant organizations and to various treaties. Furthermore, Viet Nam has made important steps towards active participation in the codification and progressive development of international law. In December 2018, Viet Nam has official become member of the United National Commission on International Trade Law (UNCITRAL) for the term 2019-2025. And in 2019, Viet Nam has been elected as a non-permanent member to the Security Council for the term 2020-2021. This is an opportunity for Viet Nam to further emphasize the importance of multilateralism, AALCO included.

On the regional level, Viet Nam has proved its commitment to multilateralism and international legal order by [...], including the multilateral attempts to effectively implement the Declaration of Conduct in its entirety and to negotiate an effective and substantive Code of Conduct consistent with the UNCLOS.

Last but not least, this Delegation has carefully considered the report of the Secretary-General, Prof. Dr. Kennedy Gastorn, on the work of the organization. We commend Prof. Dr. Gastorn's efforts and the Organization's proactive engagement with its Member States and entities as well as emerging issues of international law as illustrated various successful activities as mentioned in the report. In this regard, we would like to place in the record our support for the Organization's Report on the Work of AALCO at the 58<sup>th</sup> Annual Session.

My Delegation also would like to express sincere thanks to Tanzania as the host country for the hospitality and arrangement of the present Annual Session.

In conclusion, my Delegation reaffirms that Viet Nam recognizes that the international legal order is essential for achieving and maintaining peace and security and will further contribute to the codification and progressive development of international law as an active member of AALCO, as well as upholding and promoting multilateralism as a member of the UNSC. I thank you Mr. President.

**President:** Thank you very much, Viet Nam, for your admiration of a rule-based order and multilateralism. We wish you all the best for your aspirations to be a member of the UN Security Council. The next speaker in my list in Egypt.

**His Excellency Mr. Mohammed Gabar Abulwafa, Ambassador, Embassy of the Arab Republic of Egypt in Dar es Salaam, Tanzania and Head of Delegation of Arab Republic of Egypt<sup>7</sup>:** Good morning. Mr. President, Heads and Members of distinguished delegations, Ladies and gentlemen, at the outset, I would like to extend my sincere congratulations to H.E. Dr. Augustin Mahiga, Minister of Legal and Constitutional Affairs of the United Republic of Tanzania, on his election as President of the current session, wishing him success in the conduct of the sessions. I would also like to extend my thanks to His Excellency Dr. Mohammad Al-Shalaldeh, Minister of Justice of the sisterly State of Palestine, for his country's election as Vice-President of the current session. I would also like to thank the United Republic of Tanzania for hosting the present session and for the hospitality extended to us and to the State of Japan for its successful presidency of the previous session. I would like to thank the Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO and the AALCO Secretariat, for the outstanding efforts and constructive work done to prepare for the work of the current session.

It is my pleasure to be here today to head my delegation and attend the 58<sup>th</sup> session of this esteemed Organization, which has been of great importance for Egypt since its inception in 1956. This stems from Egypt's full belief in the centrality of its role and the nobility of its mission as an important framework to assist Member States in all endeavors aimed at strengthening the rule of law and developing the mechanisms and systems of international law work in various fields and at various levels. In this connection, I assure Egypt's continued and continuous support to the Organization, its Secretary-General and all its activities in this context.

Mr. President, Ladies and gentlemen, with regard to the theme of the current session, "Multilateralism and International Order based on International Law", it is necessary to emphasize that cooperation on the international arena is the basis of the principle of multilateralism, the only and optimal solution to the transnational threats facing States and multilateralism. This means cooperation between states within a collective framework and not imposing certain values and concepts on others, but requires respect for cultural and civilizational interests and differences.

The current phase of the world has emphasized the need to strengthen mechanisms of cooperation between States and international groups, and even to develop new mechanisms to coordinate national policies to ensure that the transnational threats are addressed. On the security front, there is the threat of terrorism that any region or state is no longer isolated from, and therefore everyone must counter this threat through its commitment to non-

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<sup>7</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

violence, not financing and providing safe haven to the terrorist groups. On the economic front, the financial crises experienced by the world in recent years stressed the need to coordinate in order to lay new foundations for global trade and investments of multinational companies so as to ensure that financial manipulation and corruption are countered. On the cultural front, pluralism means respect for cultural diversity and not imposing certain cultural values on everyone.

It is regrettable that many violations of international law, international humanitarian law and the lack of respect for its rules, especially in many regions of the world that have been suffering from armed conflicts and prolonged conflicts for many years without a solution, are taking place in the current period. This is the direct reason why we continue to suffer from the inability to contain and prevent armed conflicts, confront the threat of terrorism, nuclear disarmament, and address the major imbalances in the global economic system, which have widened the gap between the developed and developing worlds. In short, this is the crisis of the new world order and its inability to fulfill the purposes and objectives which it was founded for.

Mr. President, respect for multilateralism requires the advancement of multilateral mechanisms in the field of international relations, and from there, the importance of talking about reforming the UN system to cope with those requirements. Strengthening multilateral action at the international level will also require strengthening the role of regional organizations in matters of coordination among their members on issues of peace, security and economic integration. I would like to mention the role played by the Arab Republic of Egypt in this regard through its current presidency of the African Union, where it has worked to strengthen cooperation based on respect for multilateralism in the African continent.

In connection with that, one of the most important issues for the international community today is to strengthen the role of international law in preventing conflicts, to achieve peace and development, and to address the challenges facing the world, as well as the importance of supporting multilateral cooperation, confronting unilateral policies and violating international obligations. There is no doubt that AALCO has an important role to play in promoting multilateral cooperation and respect for international legitimacy.

I would like to reiterate Egypt's firm position on respect for the principles of international law, respect for the sovereignty of States and non-interference in their internal affairs as the only way to find peaceful and sustainable solutions to conflicts in many regions of the world. Egypt, like the vast majority of the peoples and nations of the world, has a vested interest in abiding by the rules of international law to live in a just international order, capable of coping with the challenges imposed by nature, such as climate change, natural disasters, diseases and epidemics, and man-made, such as wars, terrorism and flagrant disparities in the distribution of resources, and opportunities for growth.

Mr. President, the history of the United Nations is witness to the important role played by Egypt in the establishment of the world Organization and the drafting of its Charter at the San Francisco Conference and its continued defense of the issues of developing countries, based on the provisions of international law and adhering to the established principles of its Charter and its supreme goals. Egypt also supported the efforts of developing countries in the development of international law in line with their interests. They succeeded in consolidating advanced legal concepts such as the right to development, the right to self-determination, the sovereignty of the state over its resources, the common heritage of humanity, the special

economic zone and the protection of human rights without discrimination, and justice and equality in the application of international economic law under globalization.

Egypt has also played an important role in promoting legal cooperation between Asian and African countries and coordinating their positions in the field of international law - through their active and continuous participation in the work and activities of AALCO to develop the rules of international law, which supported the joint efforts of the Member States and their proposals in promoting important aspects of treaty law, the law of the sea, international humanitarian law, international criminal law, environmental protection law and others. There is no doubt that the current session of the Organization addresses important issues related to the extraterritorial application of national legislation, international law in cyberspace, the law of the sea, Violations of International Law in Palestine and Other Occupied territories by Israel and Other International Legal Issues related to the Question of Palestine, international trade and investment law, and peaceful settlement of disputes, that will reaffirm the role of the Organization in upholding and developing international law, in line with the interests of Asian and African countries.

Mr. President, in the end, I cannot fail to mention that it is the responsibility of all States to respect and abide by the principles of international law, whether they relate to world peace and security or to the rules of international humanitarian law during armed conflict. In this context, Egypt calls to exert further efforts for the adherence of more States to existing multilateral treaties, to give priority to the implementation of existing international norms and instruments before considering the establishment of new mechanisms, and to work on the drafting of uniform model laws which guide Member States in dealing with many issues that promote respect for the rules of international law.

I wish the work of the current session all the best. Many thanks.

**President:** Thank you Egypt, a founding member, for your strong messages for the international rule-based law, and peace and security and multilateralism. The next speaker in my list is Indonesia.

**Tudiono Tudiono, Director of Central Authority and International Law, Ministry of Law and Human Rights and Head of Delegation of the Republic of Indonesia:** Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, at the outset, my delegation would like to congratulate you Excellency Dr. Augustin P. Mahiga of Tanzania and H.E. Prof. Mohamad Shalaldeh of Palestine for your election as President and Vice President of the Fifty-Eighth AALCO meeting. Your wise and able stewardship, we believe, will lead our deliberation to a successful outcome. We would also like to express our high appreciation to H.E. Amb. Koji Haneda of Japan for his excellent leadership during the Fifty Seventh AALCO meeting.

Let me take this opportunity to convey my delegation's sincere gratitude to the government and people of Tanzania for hosting this meeting, their warm welcome and generous hospitality afforded to us. High appreciation also goes to AALCO Secretariat and Organizing Committee from the host country for their hard work in arranging this meeting.

My delegation expresses its gratitude and appreciation to the Secretary-General Hon. Kennedy Gastorn for his comprehensive and important report on the work of AALCO. We believe in the relevance and strategic importance AALCO could play in strengthening friendship, solidarity, and cooperation particularly in international law setting to achieve

good global governance and rule of international law. These noble goals reflect the spirit of Bandung 1955.

My delegation welcomes the Philippines, our brother in ASEAN, for rejoining as the 48<sup>th</sup> AALCO Member State.

I have taken note that the substantive matters under the Agenda of our Session this year are very relevant and important to current global dynamic challenges and development. My delegation will make intervention on different issues when we discuss each agenda item later. However, at this opportunity, my delegation would like to comment on some important issues of our main concern.

As an archipelagic country, Indonesia has been taking various efforts to stay on the line with the mandate of United Nations Convention on the Law of the Sea 1982 (UNCLOS) that have been widely adopted as international law. In this juncture, at the national level, our efforts are focused on: developing maritime and human resources; maritime security, maritime law and safety enforcement; strengthening maritime governance and institution; developing maritime economy; marine spatial management and protection; developing maritime culture; and maritime diplomacy. Those efforts show Indonesia's commitment in supporting the manifestation of law and global order as well as three United Nations pillars: peace, development, and human rights.

Indonesia attaches great importance on preventing and combating Illegal, Unreported, and Undocumented Fishing (IUU Fishing) which threatens the fisheries sector that become the livelihood of millions of people in the world. Former UN Secretary General Mr. Kofi Annan once stated that IUU fishing was "one of the most severe problems affecting world fisheries." It was revealed that the global fishing industry not only drew more than US\$80 billion in fisheries revenue but also generate more than \$240 billion for the global economy. Every year, it is estimated that 26 million metric tons fish worth of 23.5 million US Dollars are lost due to IUU Fishing.

We note that international communities increasingly pay serious attention on addressing the IUU Fishing. The issue of IUU Fishing has become an important agenda in ASEAN, East Asia Summit, ARF, UN Ocean Conference, Our Ocean Conference, World Ocean Summit, UN Congress on Crime Prevention and Criminal Justice recognized the importance of addressing fisheries-related crime. Some global networks have been established to support global action such as Friends of Ocean Action, Friends of Fisheries, High Level Panel for a Sustainable Ocean Economy, Fisheries Transparency Initiative.

There are a number of important initiatives or instruments that have been taken in various regions and forums. AALCO should not be left out in this important and strategic endeavor. AALCO needs to take important role in global efforts to achieve sustainable and responsible fisheries management, safeguarding the environment and sustainable development. We express our sincere gratitude and high appreciation to Secretary General and all Heads of Delegation which during the HoD meeting on 20 October 2019 approved the Annotated Agenda with the inclusion of Indonesian proposed new agenda item concerning Preventing and Combating IUU Fishing" to be discussed at this Fifty-Eighth session.

On the issue of Palestine, Indonesia consistently is of the view that Palestinian people have the right to legitimate struggle for their self-determination and independence. Indonesia steadfastly support the struggle of Palestine in their self-determination and ultimately, their independence based on two-States solution with 1967 borders, including East Jerusalem as

Palestine's capital. Indonesia consistently expresses its view in various international assemblies, especially during Indonesia's non-permanent membership of the United Nations Security Council for the period of 2019-2020.

On combating transnational organized crime that affects the security and sovereignty of each country, Indonesia strongly supports the enforcement of International Law in Cyberspace. Indonesia focuses its concern on the following topics: 1) international cooperation in combating crime in cyberspace; 2) international law in cyberspace challenges that consist of the matters on non-interference principle in cyberspace, data sovereignty, and transborder data flow; and 3) data security, filtering malicious online content, and the safety usage of cyberspace.

Mr. President, Distinguished Delegates, this year, on 2-6 November, in Jakarta, Indonesia will start to embark the joint capacity building and training between The Ministry of Law and Human Right of the Republic of Indonesia and Ministry of Justice of Lao People's Democratic Republic. The joint capacity building and training is focused on enhancing the capacity of officials in law enforcement agencies and the Ministry of Justice particularly Central Authority on Mutual Legal Assistance in criminal matters, extradition, and legal cooperation. The program is expected could facilitate exchange of experience and best practices among others in international arbitration, MLA in assets tracing and recovery, collecting evidence for investigating, prosecuting and judicial proceeding in the requested country, as well as cooperation in combating TOCs. We would be more than happy if this cooperation could be developed and expanded, in cooperation with AALCO, to cover many other Asia African countries next year and in the future.

In conclusion, Mr. President, with the spirit of friendship, solidarity, the we feeling, and sincere cooperation, I believe AALCO could maintain its relevance and strategic importance in addressing global challenges to achieve good global governance through improving or strengthening international law that reflect existing dynamics and realities. This Annual Session is timely to renew our commitments for strengthening cooperation, and work together toward a harmonized law amongst States of Asian and African regions. I hope we could have a fruitful deliberation and a successful outcome in our meeting this year. I thank you Mr. President.

**President:** Thank you Indonesia, a founding member of AALCO, for reminding us the Bandung spirit that we can internalize for international cooperation, and the strategic importance of AALCO. Thank you for highlighting the maritime economy, especially in the area of fishing, and of course, the issue of Palestine. I now call the delegation of Palestine to speak.

**His Excellency Mohammed Shalaldeh, Minister of Justice and Head of Delegation of State of Palestine<sup>8</sup>:** H. E. Mr. Augustine Mahiga, President of 58<sup>th</sup> Session of Asian-African Legal Consultative Organization, H. E. Professor Kennedy Gastorn, Secretary-General of the Asian-African Legal Consultative Organization (AALCO), Excellencies and representatives of the States participating in this session, Ladies and Gentlemen, Greetings!

I reiterate my profound thanks and gratitude to all of you for the election of the State of Palestine as the Vice-President of this Organization in this Session, and I am honored to join you today in the work of this session, but let me first convey to you the greetings of His Excellency President Mahmoud Abbas and Prime Minister Mohammad Shtayyeh. My sincere

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<sup>8</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

thanks to the United Republic of Tanzania for its historic positions in support of the Palestinian issue, the nature of the relationship between Palestine and Tanzania is a historical one established by the founder of the Tanzanian state Julius Nyerere and the late President Yasser Arafat.

Since 1976, Tanzania and a group of countries (Pakistan, Panama and Romania) have introduced a UN Security Council resolution stating the right of the Palestinian people to exercise the right of self-determination and to establish an independent state in accordance with the UN Charter, and the necessity of Israel's withdrawal from the territories occupied since June 1967, and it condemns the establishment of Jewish settlements in the Occupied Territories, but this resolution was vetoed by US as usual. To this day, Tanzania and the other free nations, which you represent are continue to defend the Palestinian cause in the corridors of the United Nations, which was created to defend the right of self-determination of peoples, their freedom and their struggle against “colonialism”.

I would like to express our deep gratitude and thanks to the Asian-African Legal Consultative Organization, which believed in the international law is the only way to resolve international disputes and that is the guarantor of rights and freedoms. This session has devoted a special item to our just cause entitled “Violations of International Law in Palestine, Other Occupied Territories by Israel, and the Legal Status of Jerusalem”.

Ladies and Gentlemen, what is happening now in the Palestinian territories - gross and flagrant violations committed by Israeli occupying forces, the Israeli government and the settlers - is a flagrant violation of the rules of international law and international humanitarian law, that is because Israel attempts to impose its policy contrary to international law.

These violations have continued since the beginning of the occupation, and a state continues to occupy and confiscate large areas of the Palestinian territories through settlement under various excuses, especially for military purposes. Israeli occupation has continued through its jurisdiction the legalization of random outposts built on Palestinian private property.

The final agreement, through a proposal put forward by US President Donald Trump to end the Israeli-Palestinian conflict, which is called the “deal of the century”, will remain unacceptable to the Palestinians and the Palestinian leadership without the need to engage in the many speculations that have been said about the terms and content of the plan, with the continued assertion by the Palestinian leadership that we do not and will not accept attempts to annex the West Bank and the occupied Golan, affirming the right to resist occupation by all means based on the principles and rules of international law and international humanitarian law.

Ladies and Gentlemen, the Israeli Occupation Army continues its policy of collective punishment against Palestinian citizens in many towns, villages and communities. Demolition of houses as collective punishment is one of the most extreme methods which Israel uses in the West Bank, including East Jerusalem.

A few months ago, the Israeli occupation forces demolished 116 apartments in 15 buildings located in Wadi al-Hummus neighborhood in Sur Baher, southeast of occupied Jerusalem, under the pretext of being close to the apartheid wall, which was confirmed as illegal in the advisory opinion issued by the International Court of Justice in 2004.



Ladies and Gentlemen, this is a small part of what the Israeli occupation is doing and we will go into the details of its violations when we discuss with you the item on the agenda of this conference.

We hope that this session, with your kind presence and active participation, will be a legal basis, on which the status of international law could be strengthened and its role in resolving international disputes by law rather than by force, ending all forms of racial discrimination, all forms of aggression, ending all forms of occupation and enforcing rules, and applying International and humanitarian law and international conventions and covenants on all States and peoples without exception.

Finally, we welcome the re-joining of the Republic of the Philippines to the Organization, appreciating the role played by this Organization in preparing legal studies on the status of Jerusalem in international law in both Arabic and English.

Thanks to the representatives of the countries who spoke before me and affirmed the positions of their countries in support of the Palestinian cause and the right to self-determination and the establishment of a Palestinian state on the borders of June 4, 1967, with Jerusalem as its capital.

- The United Nations bears legal and moral responsibility for the protection of peace and international law in Palestine.
- Implementation of international legitimacy resolutions towards the Palestinian cause
- Review of the obligation of states and their respect for international treaties and conventions.
- Admission of the state of Palestine as a permanent member of the United Nations.
- Invitation of AALCO to move to the stage of finding legal and judicial mechanisms to hold the State violating international treaties and resolutions to account.

**President:** Thank you very much Palestine for this very powerful message on the future fate and rights of the Palestinian people. I hope AALCO will take this seriously to advance the cause of the Palestinian people. The next speaker in my list is Turkey.

**His Excellency Mr. Ali Davutoglu, Ambassador, Embassy of Turkey in Dar es Salaam, Tanzania and Head of Delegation of Republic of Turkey:** Honorable Minister, Ambassador Dr. Augustine Mahiga, the President of the 58<sup>th</sup> Session of AALCO, Honorable Minister, Mohammed al- Shalaldeh, the Vice-President of the 58<sup>th</sup> Session of AALCO, Honorable Secretary General, Prof. Kennedy Gastorn, Excellencies, Ladies and Gentlemen, I would like to thank Honorable Minister Mahiga for giving me the opportunity to address you all.

Since the head of delegation of the Syrian regime misused this august platform to voice baseless claims and smears with regard to Turkey's involvement in Syria, I wish to clarify certain points.

The Syrian crisis has already entered its ninth year. An adverse consequence of civil war, terrorist organizations have gained foothold in Syria, just in the neighborhood of Turkey. DAESH and PYD/PYG are forefront of terrorist activities. PYD/YPG is the offshoot of PKK,

which is designated as a terrorist organization by European Union and NATO. Now Turkey is currently fighting these organizations that present risk and threat to our national security.

Our resolve to fight against these terrorist organizations is firm. DAESH and PYD forcefully displaced local people, changed demographic structure and even set so-called “local administrations”. Because of civil war, DAESH and PYD/YPG millions of people fled Syria. Turkey now host 4 million Syrians.

Through tunnels dug by PYD/YPG along the bordering areas of Turkey and Syria, explosives and ammunition have been smuggled to Turkey to be handed over to the PKK terrorist organization in Turkey. The tunnels are 60 km long. They are constructed 13 meters under the ground. The tunnels have the height of 3 meters and the width is 2.5 meters.

USA and the coalition powers gave ammunitions to PYD/YPG under the pretext of fighting with DAESH. The ammunitions were brought by 30 thousand long vehicles. It is nonsense to use a terrorist organization PYG to fight with another terrorist organization DAESH. Their main secret objective is the partition of Syria. PYD/YPG occupied 27 percent of Syria.

In fact, Turkey as an active member of the Global Coalition against DEASH since its inception, Turkey fought against DEASH in Syria more than any other country and paid the heaviest price. Turkey was the only country engaging in chest-to-chest combat against DEASH terrorists in Syria.

Turkey successfully conducted two major operations, namely Euphrates Shield in 2017 and Operation Olive Branch in 2018, Turkey cleared an area over 4.000 sq. km from DEASH and PYD/YPG terror, allowing more than 360.000 Syrians to return to their homes in this area. During these operations more than 3000 DAESH terrorists were killed.

However, the threat of terrorism originating from Syria and targeting our borders has not yet ended.

Over the last two years, PYD/YPG, the Syrian offshoot of the PKK terrorist organization, has perpetrated more than 300 terrorist attacks targeting Turkey or Syrians within Syria. Over a hundred of these cases targeted Turkey from the east of River Euphrates.

There has been growing evidence about PYD/YPG’s human rights violations such as recruiting child soldiers, intimidating dissidents, demographic engineering and forced conscription in areas under its control. Local population’s grievances against PYD/YPG’s tyrannical rule have been on constant rise.

Our expectations and sensitivities regarding the PYD/YPG threat were repeatedly brought to the attention of all our Allies, beginning with those who have military and civilian presence in the east of Euphrates, especially the US.

Through all contacts, we emphasized that, if necessary, we would not hesitate to use our right of self-defense stemming from international law.

We reiterated that Turkey should not be expected to tolerate the presence of terrorists at its borders. The presence of terrorist groups pursuing separatist agendas also threatens the territorial integrity and unity of Syria.

Turkey was compelled to take action in order to correct the grave mistakes of Allied and partner countries in Syria.

Against this backdrop, the Turkish Armed Forces launched “Operation Peace Spring” on 9 October 2019 with the support of the Syrian National Army, the united armed branch of the Syrian opposition. Turkey wants to establish a safe zone from terrorists in Northeastern Syria along the Turkey-Syria border.

The objectives of Operation Peace Spring are clear: (i) To eliminate a long-standing terror threat against Turkey’s national security by establishing safe zone, (ii) to enforce Syria’s territorial integrity and unity (iii) to liberate the local population from PYD/YPG’s oppression and (iv) to lay the ground for safe and voluntary returns of displaced Syrians. This operation will also provide the opportunity for at least two million displaced Syrians, including Kurds, Arabs and Christians to return to their ancestor’s lands after having been subject to ethnic cleansing by PYD/YPG. The return will be in line with international law and in coordination with relevant UN Agencies.

The operation was launched on the basis of international law, in accordance with our right of self-defense as outlined in Article 51 of the UN Charter and the relevant Security Council resolutions and in full respect of Syria’s territorial integrity and unity.

As was the case with Operations Euphrates Shield and Olive Branch, only terrorist elements and their hideouts, shelters, emplacements, weapons, vehicles and equipment have been targeted during the planning and execution phases of the operation.

We intend to continue the operation until all terrorists have been wiped out of the region, our border security has been ensured, and local Syrians have been liberated from the tyranny of PYD/YPG as well as the DEASH threat.

I want to underline that Turkey is not targeting “Kurds”. This could clearly be understood by the fact that more than 360 thousand Syrians of Kurdish origins fled from YPG terror and sought shelter in Turkey.

Preservation of the territorial integrity and political unity of Syria is essential for Turkey. Certain countries, which explicitly or implicitly support the separatist agenda of PYD/YPG terrorist organization, are making baseless accusations against Turkey on this matter. There is an outcry in European countries and in USA. Because it was not expected that Turkey could be successful against heavily armoured PYD/YPG. This is a manifestation of their frustration for the disruption of their plans to divide Syria.

The allegation that Operation Peace Spring would damage efforts to reach a political solution in Syria is far from reality. Turkey is one of the few countries that exerted maximum and genuine efforts to establish the Constitutional Committee, in close cooperation with other Astana guarantors and the UN.

Our main expectation from the international community, particularly from our Allies, is to support our fight against terrorism.

In this context, with the Joint Statement of Turkey and the US on Turkey’s legitimate security concerns on its borders are acknowledged.

The Turkey has paused Operation Peace Spring in order to allow the withdrawal of YPG from the safe zone within 120 hours. It will finish today, 22<sup>nd</sup> October.

In the Joint Statement, both countries have reiterated their pledge to uphold human life, human rights, and the protection of religious and ethnic communities.

Turkey and the US are committed to ending ISIS/DAESH activities in northeast Syria. This will include coordination on detention facilities and internally displaced persons from formerly ISIS/DAESH-controlled areas, as appropriate.

Turkey and the US agree that counter-terrorism operations must target only terrorists and their hideouts, shelters, emplacements, weapons, vehicles and equipment.

Both countries reiterate their commitment to the political unity and territorial integrity of Syria and UN-led political process, which aims at ending the Syrian conflict in accordance with UNSC Resolution 2254.

The two sides agreed on the continued importance and functionality of a safe zone in order to address the national security concerns of Turkey, to include the re-collection of YPG heavy weapons and the disablement of their fortifications and all other fighting positions.

Turkey will continue to firmly counter all kinds of terrorist organizations.

And yesterday 21<sup>st</sup> October the Charge d' affairs of the Syrian regime wrongfully used the word "bloody" to describe Turkey's involvement in Syria. I recommend her to look upon the crimes committed by the regime she represents, which include the use of chemical weapons and barrel bombs against its own population. Around a million innocent civilian lost their lives due to that regime's disregard for civilian lives. More than 5,5 million are displaced, 3.7 million of whom are under temporary protection in Turkey. You should be grateful because Turkey has prevented the partition of Syria.

Esteemed President, I would like to thank you for giving me the floor. I wish that the 58<sup>th</sup> Session of AALCO will reach its objectives.

**President:** Thank you very much for this update on the situation in Syria and the involvement of Turkey in northern Syria. The next speaker on our list is Ghana.

**Justice Yaw Appau, Justice of Supreme Court, Judicial Service of Ghana and Head of Delegation of the Republic of Ghana:** Good morning. Mr. President, as the only delegate from Ghana, let me first congratulate you and the Vice-President for your election to the high offices of this regional Organization.

Your Excellency Mr. President, in my country Ghana, instead of acknowledging the presence of all dignitaries and invited guests present at a meeting when delivering a speech within time constraint, we mention only the most important dignitaries at the high table and add the phrase; "all protocols observed", to indicate the acknowledgment of all present at the meeting. This is to avoid time wasting on acknowledgment alone. We learnt this practice from our big brother Nigeria and we saw it was good. I will therefore adopt this practice here.

So our esteemed President and Vice of the 58<sup>th</sup> Annual Session of AALCO, your Excellency the indefatigable Secretary-General of AALCO, all protocols observed, I deem it a great honour to be part of this beautiful gathering in the beautiful commercial city of Dar es Salaam which literally means House of Peace and which until recently served as the administrative capital of this great historical nation of the United Republic of Tanzania. I began by conveying to you fraternal greetings and felicitations from the government and people of the land of Gold- Ghana- which used to be called Gold Coast, pre independence by the colonialists because of its richness in gold. My statement this morning/afternoon is more of a solidarity message in support of the good works or activities of the great organization AALCO.

I have to be candid that until the chief justice of any country delegated me to represent her at this conference, I knew very little about the activities of AALCO notwithstanding the fact that my country is a Member State.

However, having read the report of our youthful and versatile Secretary-General and other materials presented to me upon registration on arrival on Sunday 20<sup>th</sup>, I have come to realise the important role this Organization has played and still playing in the promotion of multilateralism and International Legal order based on International Law with the main agenda or objective of protecting the interests of Asian and African countries in their Commercial and economic deliberations with the economic and military grants of the investment.

I don't know or can't tell what would have been the fate of moot of our member states, if this Organization, which is the preventer of the Non-Aligned Movement, had not been established or formed. On behalf of my country Ghana, I give Kudos to the founding fathers of this indispensable organisation for their great dream. One of the greatest achievements of this organization is the establishment of arbitration centres in our two regions (2 in Asia and 3 in Africa currently) for the settlement of economic and commercial disputes among member states to minimise the flow of arbitration cases to arbitral institutions outside our two regions.

I pray the rise of such centres would be established to handle the numerous caseloads involving member countries particularly to avoid the hegemony of west over and seemingly financially weak and fragile nations, withstanding the fact that we have economic grants like China, Japan, South Korea and the Gulf States in our fold. My country is strongly behind AALCO in all its dealings and efforts to promote a sound international legal order based on the rule of law as opposed to the rule of the mighty.

To conclude, I wish, on behalf of my country, to congratulate the current securities or in other words the Secretariat of AALCO for their great achievements in championing the cause of our two regions in the fight against impunity, to ensure fairness and equity in our Commercial and economic dealings with the powerful west. I assure you Mr. Secretary-General that all the arrears of membership dues owed by my country as indicated in the Financial report or Budget for the year 2020, would be settled sooner than later. On this note, I would use this opportunity to call on all other Member States who still owe arrears of dues to settle their arrears to help this great organization grow stronger and struggle. This will ensure that the Organisation has the wherewithal to carry on with its indispensable global activities. I thank you for this opportunity to address the august gathering. Asante.

**Prof. Sifuni Ernest Mchome, Permanent Secretary, Ministry of Constitutional and Legal Affairs and Head of Delegation of United Republic of Tanzania:** Honorable President, Ambassador Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs, Prof. Ambassador Appointee, Prof Kennedy Gastorn, Secretary General of AALCO, Hon Ministers, Deputy Ministers, Attorneys General from AALCO Member States, Head of Delegations of AALCO Member States, Excellences High Commissioners and Ambassadors, Distinguished Invited Guests, Ladies and Gentlemen,

Allow me to once again take this opportunity to welcome you all to the United Republic of Tanzania, and particularly, to this beautiful City of Dar es Salaam. It is an honour and a great privilege for the United Republic of Tanzania to host yet another Annual Session of AALCO for the third time. The country did so in 1986 in Arusha and 2010 here in Dar es Salaam.

Let me sincerely express my gratitude to the Secretary General of AALCO, Prof. Kennedy Gastorn and the entire team at the Secretariat for their dedication to the work of this noble Organization in upholding the principles of togetherness or multilateralism and the International Legal Order that serves the interests of all players in International Law development.

More so, I wish to commend Member States for the endurance and commitment to support the work of AALCO in fostering the core values of this Organization. It is my belief that we will continue to honor our obligations and make AALCO shine in the international law arena as it continues to represent our common interests.

Since emancipation of AALCO in 1956, the United Republic of Tanzania has continued to uphold the principle of Multilateralism and International Legal Order, based on principles of International Law which continues to evolve for the benefit of humanity. Tanzania has played a significant role in implementing the core values of the United Nations Charter in promoting international peace and good order, not only in our regions, but also beyond. We remain committed to this principle of multilateralism, as opposed to unilateralism, and we urge all member states of AALCO to embrace it in the promotion of the cherished values of international rule of law, democracy, human and peoples' rights as well as good governance for strengthening peace and security in Asia, Africa and globally in order to attain sustainable economic development that we cherish come 2030.

Today, the world is witnessing an emerging trend of unilateralism within the international system, which essentially is repugnant to the principle of good international rule of law and world order. The United Republic of Tanzania would like to reiterate its commitment to the international rule of law and order. The United Republic of Tanzania have continued to be the hub of peace and security in the region and have always been part of the international peace keeping forces in the region and beyond which demonstrates its commitment in maintenance of international order, peace and security. We believe that AALCO Member States will continue to work together in upholding international rule of law in harmony with the principle of multilateralism.

On the same premise, the Government of the United Republic of Tanzania through this AALCO Forum would like to urge the international community to call for lifting up of unilateral sanctions imposed on the Republic of Zimbabwe. These sanctions are still in place despite democratic change of leadership taking place in that country. The sanctions undermine the Republic of Zimbabwe's efforts in recovering from its economic crisis by crippling development in the country. It is imperative that they be lifted to serve common people including the elderly, women and children who are vulnerable from poverty mainly caused by economic sanctions. Importantly so, it should be noted that these sanctions do not only affect the people of the Republic of Zimbabwe and their government but also, neighboring states. The Republic of Zimbabwe, as a sovereign State, has the right to self-determination and has the right to exercise its powers and freedom as enshrined under Article 2(4) of the UN Charter. Together, let us make the Republic of Zimbabwe thrive economically, socially and politically by causing the unilateral sanctions come to an end.

Distinguished Participants, in conclusion, allow me, once again, and on behalf of the Government to reiterate our commitment to multilateralism and International rule of law and legal order for the benefit of humankind and humanity. The United Republic of Tanzania will continue to render its unwavering support to the United Nations' on-going reforms to make the Organization more significant, to the contemporary needs and challenges.

Tanzania remains devoted to the work of AALCO and will continue to render its support to the Secretary General and the Secretariat as they to continue to perform their duties and making this Organization more effective. I thank you, Mr. President. Asanteni Sana.

**President:** Thank you very much, Permanent Secretary, for underscoring the need for a platform to rescue multilateralism, and that is how Tanzania, by offering to host this meeting here, is inviting all of you to combine our resources and efforts to rescue multilateralism under international law. Now I call upon Nigeria.

**Mrs. Islamiyah Olajumoke Ojora-Lawal, Senior State Counsel, Federal Ministry of Justice and Member of Delegation of Federal Republic of Nigeria:** Your Excellencies, President and Vice President of the 58<sup>th</sup> Session of AALCO, Distinguished Secretary General, Distinguished Delegates, on behalf of my delegation, let me convey the warm greetings of the Government and good people of the Federal Republic of Nigeria to Your Excellencies and to the Secretariat on this occasion of the successful convening of the 58<sup>th</sup> Session of our Organization in the beautiful and historic city of Dar Es Salaam, United Republic of Tanzania.

My delegation once more, expresses its gratitude to the Government and good people of Tanzania for hosting this Session, for the warm hospitality accorded us since our arrival and for the excellent facilities provided for this Session. Mr. President, we congratulate you and His Excellency, Mr. Vice President on your election. We are hopeful that your tenure will offer a fresh opportunity to consolidate on the current work of our Organization.

Mr. President, my delegation is pleased to observe that the Agenda of this Session has built on the on- going work of the Organization from the 57<sup>th</sup> Session in Tokyo, Japan. The Theme for the General Statements, the Substantive Agenda items, particularly, Topics on the Agenda of the International Law Commission, Law of the Sea, International Trade and Investment Laws, International Law in Cyberspace and Peaceful Settlement of Disputes affect our collective and individual interests and therefore deserve extensive deliberation, in the interest of deepening African and Asian solidarity.

Mr. President, since the 57<sup>th</sup> Session was concluded in Tokyo, Japan in 2018, the Government of the Federal Republic of Nigeria has continued to take steps to ensure that the ideals espoused by AALCO in respect of the Rule of Law are reflected in our domestic policies and practices. We believe particularly that the entrenchment and consolidation of a democratic order will place Nigeria in a strong position to remain a credible and responsible member of this Organization and indeed of the international community.

In international relations, multilateralism refers to an alliance of multiple countries pursuing a common goal; it is a process of organizing relations between groups of three or more States. Beyond that basic quantitative aspect, it is generally considered to comprise certain qualitative elements or principles that shape the character of the arrangement or institution.

A united humanity will be able to confront the many troubling problems of the present: from the menace of terrorism to the humiliating poverty in which millions of human beings live, from the proliferation of weapons to the pandemics and the environmental destruction which threatens the future of our planet. Therefore, it is critical to end the false concept that multilateralism undermines the sovereignty of States, when in fact it bolsters sovereignty.

Mr. President, my delegation wishes to observe that the world is increasingly polarized as extreme nationalism and multidimensional challenges increase, including climate change and

terrorism that recognizes no borders. We wish to recall the legacy of multilateralism and the International Agreements which have made the world a better place, from the Universal Declaration of Human Rights to 2030 Agenda for Sustainable Development. No country, however peaceful, can resolve global challenges alone.

Mr. President, it is noteworthy to state that for nearly seventy five (75) years, multilateral arrangements have saved lives, expanded economic and social progress, upheld human rights and helped prevent a third descent into global conflagration. Such cooperation cannot be taken for granted. Against the background of today's difficult circumstances, AALCO must recall the urgency felt by its founders and reinvigorate its tools. The principles of working together endure, but the specifics must take account of our rapidly changing world. It is not enough to proclaim the virtue of multilateralism. Its added value must be proven as well. AALCO points the way, defending universal values and recognizing people's common future. My delegation is calling for a stronger commitment to a rule- based order with an effective AALCO at its centre.

Mr. President, multilateralism and diplomacy have a proven record of service to people everywhere. Such cooperation cannot be taken for granted at a time when multilateral efforts are under pressure from unresolved conflicts, runaway climate change, widening inequalities and other threats. Global challenges are increasingly interconnected, but the responses are increasingly fragmented amid a growing lack of trust in Governments, political establishments and International organizations, as well as the rising appeal of nationalist and populist voices that demonize and divide.

Multilateralism must also be networked and inclusive, with close cooperation among international and regional organizations as well as partnerships with business, civil society, Parliaments, academia, the philanthropic community and others, particularly young people. Strengthening multilateralism means strengthening the commitment to achieving the Sustainable Development Goals and building a world that is safer and more just for future generations. That commitment is needed now, more than ever, from AALCO and from leaders and citizens everywhere.

Mr. President, Nigeria together with her partners have consistently taken action to maintain and implement major international Agreements, such as the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change. We are delivering on our Paris pledges through ambitious policies at home and decisive support to partner countries.

We are intensifying our cooperation with United Nations Agencies and Regional Organizations such as ECOWAS and the African Union to coordinate more on peace keeping conflict resolution, humanitarian aid delivery and better migration management in Syria, Yemen, Libya and Afghanistan.

We have been working to make our multilateral system fit for these challenges, as well as more transparent to deliver on citizens expectations, not least by fully supporting AALCO and improve the functioning of the World Trade Organization.

Mr. President, my delegation wishes to state that it is our collective responsibility to work towards a more peaceful, secure and prosperous world for present and future generations. The AALCO, together with its Member States, will continue to strengthen partnerships, to uphold and promote International Law and fundamental rights, to support peace and democracy, to stand side-by-side with people in need all over the world. We will continue to be a principled, reliable, consistent and cooperative global player, a point of reference for multilateralism.



Finally, we wish to express our appreciation to the Government and people of Tanzania for hosting the 58<sup>th</sup> Session and the Secretariat for the warm hospitality extended to members of my delegation since our arrival at this historic city of Dar es Salaam.

Nigeria reiterates its commitment to AALCO and calls on the Organization to continue to provide expert knowledge and guidance to Member States. We wish all the delegations fruitful deliberations. Thank you.

**President:** When Nigeria speaks, Africa speaks. And when a Nigerian woman speaks, African women speak. Thank you very much. Nigeria has per capita the highest number of lawyers. Therefore, friends and defenders of AALCO, thank you for your statement. Now we are breaking for coffee for 15 minutes. And when we come back at 11:30, the following non-members will be invited to speak: Belarus, Germany, Russia and Afghanistan. Thank you.

**Ms. Christine Agimba, Deputy Solicitor General, Office of the Attorney General & Department of Justice and Head of Delegation of Republic of Kenya:** Thank you Mr. President, for the opportunity to make this brief general statement on behalf of the Republic of Kenya. Let me join other delegations in congratulating you, Mr. President and the Vice President for being elected to lead the 58<sup>th</sup> Annual Session and the work of the Asian-African Legal Consultative Organization (AALCO) in the coming year. We wish to assure you, Mr. President and the Vice President, of Kenya's support during your tenure as President and the same support will be extended to the Vice President.

Let me also express, on behalf of the Kenyan delegation, our sincere appreciation to the outgoing President, Honourable Amb. Koji Haneda of Japan, for the accomplishments achieved during his tenure.

Mr. President, I wish to take this opportunity to thank the AALCO Secretariat and in particular H.E. Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO, for his tireless efforts in steering the work of this Organization and ensuring that the interests of the two regions are well articulated at various international fora such as the United Nations General Assembly, the International Law Commission and at the World Trade Organization. We also appreciate the work of the AALCO Secretariat in monitoring developments in topical areas in the UN and other international institutions, and in conducting and presenting results of these studies to keep Member states informed.

We also note with much appreciation the training opportunities on different aspects of international law extended to AALCO member states by China and Japan under the auspices of AALCO, from which government officials from Kenya have benefitted.

Mr. President, in the modern globalized world, interconnectedness and interdependency are a reality and therefore the theme of this session "Multilateralism and the International Legal Order based on International Law" is very timely. Kenya recognizes the importance of strengthened multilateral engagement in the promotion of international cooperation and for enhanced collaboration in finding lasting solutions to global challenges.

During the 57<sup>th</sup> Annual Session of AALCO in Tokyo, Japan, the importance of the Blue Economy to mankind was acknowledged in the discussions on the agenda topic "Law of the Sea". Indeed in recognition of the importance of multilateral engagement in addressing contemporary international issues, Kenya hosted the First Sustainable Blue Economy Conference which brought together with participants from 184 countries, with the main aim of learning how to build a Blue Economy that harnesses the potential of our water bodies and

leverages on latest innovations for our common good of mankind while conserving waters for future generations.

Kenya continues to forge greater collaboration not only with the United Nations system(s) but also other international institutions and bodies such as AALCO and the Commonwealth.

Kenya participated at the 74<sup>th</sup> Session of the United Nations General Assembly held in September 2019 at the UN Headquarters in New York where Kenya stressed the need to reaffirm the values of the UN Charter that embrace a common humanity, safeguards a rules based international order, and underscores equality and respect of all humanity.

However, Kenya also identified that there is need to re-energize the multilateral system in order to guarantee the world's common future, and more importantly to reform the multilateral system to ensure its centrality in global governance, to reflect the diversity of our nations and to ensure that multilateral organizations become more responsive to issues affecting all countries and regions of the world.

Kenya therefore recognizes the important role that AALCO continues to play in providing an important multilateral platform for the Member States of AALCO to develop common positions on contemporary legal issues in relation to the promotion of international peace and security, trade, the law of the sea, refugees, sustainable development, among other critical areas.

Mr. President, we therefore note with interest the items on the Agenda at this Session which will give member states an opportunity to deliberate upon important topics such as peaceful settlement of disputes, with a focus on international environmental disputes, international trade and investment laws, among others. We also note with particular interest the significant time allocated to the topic on the International Trade and Investment and the experts who will speak on this topic. We welcome this as the creation of a predictable, transparent international legal framework and enabling environment for fair a multilateral trading system is of great importance and interest to all Member States present and we therefore look forward to our deliberations on this.

We note the inclusion of expert speakers who will share their views and experiences for consideration by the distinguished delegates as we discuss and formulate common positions on these important topics.

To conclude Mr. President, allow me on behalf of the Kenyan delegation and on my own behalf to express our pleasure at being here in this beautiful city of Dar-es-salaam in our neighbouring country on this auspicious occasion of the Fifty-Eighth Session of AALCO. I wish to also take this opportunity to thank the Government of Tanzania and her people for the warm welcome and hospitality extended to us since our arrival. I thank you. Asante sana Bwana Rais.

**President:** thank you very much Kenya. Of late, you have demonstrated leadership by convening an international conference on blue economy, and your intervention has been very consistent with the theme of the AALCO conference this week. Thank you very much indeed.

I see a request from a Member State before we move to the non-Member States, for an additional statement: the People's Republic of China.

[...]

**President:** Thank you for that clarification. Now we proceed to hear statements from non-Member States of AALCO. The first speaker in this category is Belarus.

**His Excellency Mr. Dmitry Kuptel, Ambassador, Embassy of Republic of Belarus in Kenya- Observer Delegation:** Distinguished Chairperson, Excellencies, Ladies, and Gentlemen, allow me first to express s gratitude on behalf of the Republic of Belarus to AALCO's secretariat for inviting us to participate in this session in the capacity of an observer to the Organization. Our words of thanks also go to our generous hosts, the Government of the United Republic of Tanzania, for perfectly arranging this meeting. Belarus highly values this opportunity to exchange views with such a representative body of expert lawyers and diplomats.

As suggested by the agenda for this meeting, in my statement I will focus on multilateralism and international order based on international law. The world nowadays faces a number of acute challenges such as threats to international pace security and sustainable de elopement as well as climate change. The international community is striving to find adequate responses to combat terrorism, international organized crime, drug, and human trafficking, migration. We hope that eventually would come to understand that a single State or even a group of States, regardless of their level of development, is not in a position to address these issues and to prevent military, economic or ecological disasters.

Belarus firmly adheres to multilateralism which implies in particular that modern challenges require a commensurate collective response of a global scale. In our view, the essence of this approach is aptly summarized by the SDGs motto – “Leave no one behind”. This request relates not only to individuals, but to States and regions as well- none should be overlooked, and every State and region must have equal rights in setting and implementing universal solutions. It is obvious that only by genuinely multilateral path would we be able to mobilize political, economic, intellectual and other resources needed to face the contemporary challenges.

The United Nations, which seems to be a natural leader and coordinator in these efforts, should fully embrace its role and responsibility. In this regard, in particular, we reject extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating actions, as well as arbitrary travel restrictions that limit the Charter-based sovereignty and independence of States and restrict the freedom of trade and investment. Belarus is of the view that the United Nations Security Council is the only body empowered to legitimately impose sanctions, whatever their precise denomination. Actions by other States and groups of States simply “hijack” the prerogatives of the Council and undermine the authority of the United Nations and multilateral system as a whole.

Responsibility, in our view, is the key to multilateralism. A lot is spoken nowadays about rights- rights of minorities, rights of communities, rights of individuals. These are extremely important. At the same time, each one of us, individuals and States alike should realize the responsibilities and obligations we carry- international legal obligations of States; mutual obligations of governments, Societies, and individuals, enshrined in our constitutions; responsibility of our generation vis-a-vis past generations and generations to come. If we intend to leave a habitable planet for our children, we should pay the debts to our ancestors by not repeating their mistakes.

One of such fatal mistakes would be the departure from the principles of the United Nations Charter and the whole system of international law based on them. A perfect legal case can be made - and is repeatedly made - for such departure. The history has shown, however, that

international law, based on voluntarily established rules, on an equal partnership of international actors is the only viable alternative to “survival of the fittest” on a planetary scale. This choice has already been made back in 1945, and Belarus as the founding Member of the United Nations remembers all too well the price paid for it.

As our measurable contribution to strengthening multilateralism and international order based on international law Belarus is for several years advocating the need to stop confrontation and restart an inclusive dialogue on the key issues of security in our region, similar to Helsinki process of 1970. It is worth mentioning in this room that one of the tangible outcomes of the process was the 1975 Helsinki Final Act, which serves as one of the fundamental pillars of the rule of law on the regional level.

We attach fundamental importance to the rule of law on an international level, which accords predictability and legitimacy to the actions of States and strengthens their sovereign quality. We sometimes witness references to “fundamental national interests” as a pretext for violating international legal obligations. In our understanding, in the long run, adhering to international law, is exactly the fundamental interest of every nation, big or small, weak or powerful. I thank you for your kind attention.

**President:** Thank you very much for your analysis on the underpinnings and evolution of international law and the role of sanctions and the illegality of those sanctions, if not through the Security Council. Very consistent with our theme of discussion, really appreciate it, very insightful analysis about evolution of international law since the Second World War. I now call upon Germany.

**Dr. Christophe Eick, Legal Adviser, Director General Legal Affairs, Federal Foreign Office, Federal Republic of Germany- Observer Delegation:** My country, Germany, is honored to take part in the 58<sup>th</sup> Annual Session of the Asian-African Legal Consultative Organization (AALCO). We highly value this opportunity to engage with the legal advisers and indeed the legal fraternity from Africa and Asia. We would like to thank the Government of the United Republic of Tanzania for their warm welcome and the General Secretariat of AALCO for organizing this Annual Session.

You have chosen “Multilateralism and the International Legal Order based on International Law” as a general theme for this debate. This choice, of course, is very timely and pertinent to our work as legal practitioners. This is not the order that States here present today have been advocating. An order based on strengthened multilateralism with the United Nations at its core; an order that we have an interest in preserving. This is why Germany, together with France, Canada, Ghana, Singapore, Mexico, and Chile, organized an event at the margins of this year’s High-Level Week of the UN General Assembly in New York setting up an “alliance for multilateralism”.

The idea of the “alliance for multilateralism” is to create a network of countries allowing for the constitution of flexible issue-based coalitions formed around specific projects and policy outcomes. It concentrates in particular on the three following streams of action: to protect preserve and advance international law, including internationally agreed norms, agreements, and institutions, including through political initiatives, budget contributions, the provision of capabilities and expertise; to drive strong initiatives where there is the need to further develop and thereby strengthen the multilateral system, in particular where governance is absent or insufficient; to reform and to modernize existing international institutions, in order to make them more inclusive, representative, democratic, transparent, accountable and more effective in their functioning as well as the capacity to deliver tangible results to citizens.

Our call was heeded overwhelmingly, 52 Foreign Ministers or Deputy Foreign Ministers participated in that event. We will continue to work together to take and support initiatives that feed into the three streams of action referred to above and organize further meetings to pursue and broaden our collective efforts.

Why are we so convinced of the importance of international law? We believe that the rules-based international order and international law at its core lie in our national interest. But we are also convinced that they lie - at least in the long run - in the interest of all countries and in the interest of the international community as a whole.

First: International law is imperative for all countries to be able to participate in international relations on an equal footing. In a world order based only on power and the exercise thereof, those who hold the most power and use it most ruthlessly will win. International law offers a fundamentally different approach: that of sovereign equality of states.

Second, international law acts as the guardrails of just foreign policy action. It places boundaries on arbitrary power politics. The prohibition of the use of force enshrined in the Charter of the United Nations is paramount in this regard. It embodies the aspiration and the promise that countries can, as a matter of principle, deal with one another without the use of violence. This was a quantum leap in the history of international law.

Third, the law creates peace. It provides countries with procedures for resolving conflicts in peaceful ways. The rise in the number of cases before international courts in recent decades shows that ever more countries are making use of the possibilities for peaceful settlement of conflicts that international law offers.

In the past 100 years, we have progressed from a world in which might is right to a world governed, although imperfectly, by the rule of law. We have moved away from a world where mighty nations acted alone to a world in which countries, big and small, cooperate in order to achieve their common objectives.

However, unilateralism has not disappeared and will certainly not do so in the future. We as international lawyers are called upon to be the guardians of a multilateral rules-based international order. Unilateralism will not disappear - but it is our duty to make sure that it remains under constant watch to justify itself against the backdrop of international law. I thank you Mr. President.

**President:** Thank you very much Germany for bringing in a new perspective on international law and the character of the international system, in particular the underpinnings of the United Nations General Assembly. Thank you very much. Next speaker, Russian Federation.

**Mr. Maxim Musikhin, Vice-Director of Legal Department, Ministry of Foreign Affairs of the Russian Federation- Observer Delegation:** Mr. President, Your Excellences, distinguished delegates, dear colleagues, today I have the honor to present the general statement on behalf of the Russia delegation on a very important and urgent topic “Multilateralism and the International Legal Order based on International Law”.

Russia maintains the position that respect for international law is a key element of stability in international relations. Its universally recognized principles and norms constitute a solid ground for interstate cooperation and serve as a reliable basis of fair, transparent and sustainable international relations. We support the further enhancing of compliance of international law in international affairs as well as the equal and just participation of all states in its development.

Violation of fundamental principles of international law such as the sovereign equality of states and non-interference in their internal affairs has resulted into escalation of violence in several regions, for example, in the Middle East. We consider unacceptable any actions to interfere in the internal or external affairs of states in order to overthrow their legitimate governments or influence their policy in domestic or international relations.

Striking examples of a violation of the non-interference principle is the extraterritorial application by some states of their national legislation and unilateral sanctions.

Currently, the system of contemporary international law is being challenged. Approaches are being promoted which obviously water down the existing legal grounds, in first line the sovereignty of states. They represent a threat for the current legal order.

For example, we witness attempts to replace the order based on international law by something alternative sometimes referred to as “rules based order”. In fact these so-called “rules” contradict collective norms and principles fixed in the UN Charter and represent the views of certain states, or group of states, and serve to promote their narrow political interests only.

The practical example of this trend is establishment of attribution mechanisms that are called upon to name, shame and ultimately instigate unilateral sanctions. They are established by voting without any attempts to reach consensus. They contradict the rules of the international organization, including the UN Charter as in the case “Mechanism” for Syria (so-called IIM), or violate the Chemical Weapons Convention in case of Investigation and Identification Team (IIT) in OPCW.

The proponents of mechanisms don’t use legal arguments. Instead they simply advocate that existing norms do not work properly, the UN is paralyzed or the international community is passive and unable meet serious challenges.

Russia on the contrary has always stood for collective, consensual decisions considering the needs of all states in accordance with international law. We believe that the existing legal order based on the UN Charter and universally recognized principles and norms has to be maintained in order to strengthen stability and security in international relations.

At the same time alternatives to international law can jeopardize multilateralism, lead to its fragmentation. Therefore, it is necessary to ensure that states consistently comply with their obligations, especially with those established within the UN, and above all the principles of non-interference and respect for sovereignty. In this regard the idea of multilateralism in international relations becomes crucial meaning that the international community as a whole should establish through the conclusion of international treaties and the establishment of international customs.

For instance, as an evidence of adherence to these principles we propose to start negotiating a multilateral instrument aimed to combat cybercrime. We introduced a draft resolution in the Third Committee of the UN General assembly called “Countering the use of information and communications technologies for criminal purposes”. It is calling for creation of an open negotiating platform for this purpose with participation of every interested state. Hope for your support and co-sponsorship. Only together we can find the right solution. I will be deliberating on this issue more in detail under appropriate agenda item. Thank you all for your kind attention.

**President:** Thank you for putting the United Nations in the centre of this discourse on international law and multilateralism. We look forward to more animated interventions. Thank you. The next speaker from non-Member States is Afghanistan.

**Dr. A. Baseer Haidari, Minister of Justice, Ministry of Justice, Islamic Republic of Afghanistan- Observer Delegation:** Honorable Chairperson, Distinguished Ministers, Heads of Delegations, Representatives of the Members States, Observers and valued Guests; Assalamu Alaikum Wa Rahmatullah Wa Barakatuh!

Today, it is an urgent need to further develop and strengthen cooperation for the purpose of addressing the challenges that I, before the economic, commercial, legal and cultural developments of other countries. Therefore, availing myself of this opportunity, I would like to briefly touch on some of the important issues, such as Strengthening World Trade and Laws of the World Trade Organization (WTO), Justice Cooperation and Judicial Collaboration in Combating Terrorism, Reinforcement of Laws, Providing Opportunities for the Implementation of Relevant Conventions at the Member States level, and the International Investments.

Distinguished Participants, in the past two years, after acquiring the membership of the World Trade Organization (WTO) in 2016, Afghanistan, has been able to process, publish and enforce 23 legislative documents relevant to this organization and international treaties, amongst them: the Law on Protection of Private Investments, Law on Protection of Consumers, Law on Foreign Trade-in Goods, Mines Law and Law on Customs are to name a few. As mentioned earlier, I am sure that the enforcement of these legislative documents, strengthen the commercial relations between Afghanistan and other countries, and the trade and employment opportunities will improve, and countries, availing the experiences of each other, would be able to identify, solve and fill the existing gaps in the arena of international trade and investments.

Furthermore, one of the efficient and important steps Afghanistan has taken recently on August 07, 2019, is the signing of the Singapore Convention on Settlement of International Trade Disputes through Mediation. The convention may play a long-lasting bridging role in the area of international trade amongst the member states. In addition, with the implementation of the provisions of this Convention, the opportunities for investment would increase and it would lead to strengthening solidarity in the trade relations amongst the countries in a way that, according to the Convention, they would settle their trade disputes amicably with lesser costs and at the earliest possible time through mediation, without recourse to the courts.

On the other hand, international terrorism, as one of the biggest challenges, in fact threatens the interests of all countries and provides opportunity for numerous other trans-boundary crimes such as money laundering, drugs trafficking, human trafficking, and other organized crimes, which unfortunately these crimes are transmitting as a contagious disease and consequently, since long, they inflict countless material and intellectual losses to the people of Afghanistan in particular and to the people of the world in general, since Afghanistan, as a member of the international community, has been in the forefront of the battle against this ominous phenomenon, and to the extent possible has prevented the growth and prevalence of terrorism to the countries of region and world.

As international cooperation, it is tremendously important to develop practicable policies and strategies, on the basis of which, the role of societies in developing legislative, criminal and executive policies, should not only be ensured more than ever but to implement them,

appropriate ways should proactively be explored and at the same time, necessary measures must be adopted to attract the required international cooperation. Similarly, as an important principle for establishing stability and economic prosperity amongst the countries, the role of trust-building should not be avoided and special attention must be paid not only to build it but also to further strengthen it. Afghanistan, in this regard, in order to attract the trust of the people and other institutions, has processed, adopted and published some of the important laws, such as Law on Combat against Corruption, Law on Access to Information and the Law on Protecting the Whistleblowers of Administrative Corruption. Above all, the Law on Trade Arbitration and the Law on Mediation in Trade Disputes have been adopted, taking the multiple agreements that Afghanistan has concluded with various governments in this regard, which will undeniably facilitate speedy, impartial and just settlement of trade and economic disputes.

For the purpose of promoting the international rule of law, Afghanistan has constantly availed from the best internationally accepted practices, and from the experiences of the developed countries to further enrich its national legislative documents, and actively has participated in the important international forums and conferences, amongst them the programs related to Equal Access to Justice, Sustainable Development Goals, Addressing the Legal Requirements of Persons, Upgrading the Quality Level of Justice Services, and Eradication of Inequalities, and providing proper opportunities for investment, are a few to be mentioned.

However, Afghanistan, more than any other country, has suffered ruthless atrocities from the terrorists and insurgent groups, it has so far been able to take effective steps with regard to international cooperation, amongst which, concluding and implementing protocols and multilateral agreements with the countries of the region and the world on combating against narcotics, extradition of the accused and criminals, terrorism, separatism and extremism, transit, trade, and services, are to be named.

To address these trans-boundary menaces, it is important to establish necessary coordination and judicial collaboration amongst the relevant countries. This objective shall only be realized when laws of our countries are compatible with the international principles and values, and all countries, responsibly, cooperate amongst themselves in supporting the battle against terrorism and other security challenges.

In the end, I would like to express my heartfelt gratitude to the host government and the Asian-African Legal Consultative Organization (AALCO) for inviting Afghanistan to this splendid gathering, and I hope that the Member States, and the observer states of this conference, as usual, extend their support to the just cause of Afghanistan and its people, in combating against the international terrorism and other ominous phenomena. Thank you.

**President:** Thank you very much. You don't get very often first-hand information about Afghanistan: the dynamics and the challenges faced. Thank you very much indeed. This is really appreciated. Now we have finished the non-Member States' interventions. We invite International Criminal Court.

**Phakiso Mochochoko, Director, Jurisdiction, Complementarity and Cooperation Division of International Criminal Court (ICC) – Observer:** Mr. President, Mr. Secretary-General, Excellencies, Ladies and Gentlemen, it is my pleasure to present remarks, today, on behalf of the Office of the Prosecutor of the International Criminal Court, which is an observer to the Asian-African Legal Consultative Organization.



I'm honoured to address this august body, and provide an overview of the work of the Office and discuss a number of important challenges we face when conducting our core activities mandated by the Rome Statute, the founding treaty of the Court: preliminary examinations, investigations and prosecutions of the most serious crimes of concern to the international community as a whole.

I recognize, of course, that not all AALCO Member States are States Parties to the ICC Rome Statute. That said, the objectives of our organizations converge as we both seek to advance a world order based on the rule of law.

The adoption of the Rome Statute, in 1998, is in many ways the culmination of a rapid evolution of modern international criminal law, set into motion in the aftermath of the horrors experienced during the Second World War.

The ICC's creation benefitted from a feeling of strong commitment of the international community to ensure that individual perpetrators, regardless of status or ranks, are to be held accountable for atrocity crimes. Over the past fifteen years, the system of international criminal justice created by the Rome Statute was put into motion.

An important responsibility therein, lies with the Office of the Prosecutor, as the Prosecutor is entrusted with the task of selecting the situations and cases for investigation and prosecution, and thus the Court's general intervention.

To do so, the Office is guided by the Rome Statute and its rules and regulations, firstly, but also by its Strategic Plan, as well as the specific policies that the Office has developed and published, notably those on preliminary examinations, case selection and prioritization, but also on sexual and gender-based crimes and children.

One of the goals in producing these policies has been to bring transparency to the work and methodologies of the Office, as well as to create greater awareness of the complexity of considerations that the Office needs to address each time a situation calls for its attention. As you might appreciate, these are no easy considerations.

The Office of the Prosecutor conducts preliminary examinations of all situations that come to its attention, through communications submitted to the Office, or following referrals by States Parties or the UN Security Council, to determine whether the situations warrant investigation.

During this phase of activities, in line with our established policy, the Office conducts a rigorous analysis of all available information to determine whether the statutory requirements of jurisdiction, complementarity, gravity and the interests of justice are met.

The Office is currently conducting nine preliminary examinations. In the past year, the Office completed two preliminary examinations: we requested authorization from the ICC Pre-Trial Chamber, on 4 July 2019, to proceed with an investigation concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh, and we closed the preliminary examination of the situation in Gabon, on 21 September 2018, following the determination by the Prosecutor that there was no reasonable basis to proceed with an investigation into this situation for lack of subject-matter jurisdiction.

Our Office additionally continues progressively its preliminary examinations of the situations in Colombia, Guinea, Iraq/UK, Nigeria, Palestine, the Philippines, Ukraine, and Venezuela.

As you can appreciate from the list just mentioned, each of the situations under preliminary examination is a delicate one, and calls for careful analysis and scrutiny.

Due to the specific circumstances of each situation, there are no specific timelines for our assessment. We nonetheless seek to continuously enhance our efficiency and optimize the preliminary examinations, also to maximize their relevance for any subsequent investigation by the Office, for example through systematic exploitation of open source data; building networks of cooperation partners; and the identification of potential cases.

The decisions the Office has taken thus far in relation to our preliminary examinations, and the manner in which we make them, demonstrate the commitment of the Office to apply ‘the black letter of the law’ in strict conformity with the Rome Statute, and to carry out this crucial work with complete independence and impartiality.

In simple terms: when the statutory requirements are met in any given situation, our duty is to open an investigation, and we will not hesitate to do so when appropriate.

Mr. President, turning now to the Office's investigations, I am pleased to note that despite significant challenges, such as lack of cooperation, dwindling resources, and political attacks aimed at undermining our independent legal work, we have nonetheless made progress across the situations of which the Court is seized.

These include Burundi, the Central African Republic, Uganda, Democratic Republic of Congo, Darfur (Sudan), Libya, Cote d'Ivoire, Mali and Georgia. The ICC Judges are also seized of proceedings in relation to the situation in Afghanistan, to determine if our Office may be authorized to initiate investigations.

In furtherance of the Office's investigations, in the courtroom itself, we have experienced this year, ups and downs, even if we are gradually starting to see the fruits of our continuously refined prosecution strategies, in particular in our most recent cases.

On 15 January 2019, the ICC Judges acquitted by majority Mr. Gbagbo and Mr. Blé Goudé of all charges in relation to crimes allegedly committed in Cote d'Ivoire. The case is currently being appealed.

By contrast, on 8 July 2019, the ICC Judges found Mr. Bosco Ntaganda guilty of five counts of crimes against humanity and thirteen counts of war crimes, committed in Ituri, DRC, in 2002 and 2003.

The Court very recently, on 30 September 2019, also confirmed the charges of war crimes and crimes against humanity brought by the Prosecutor against Mr. Al Hassan, for charges that include rape and sexual slavery, and persecution of the inhabitants of Timbuktu, Mali, on religious and gender grounds. The case has been committed him to trial.

Earlier this month, the Court also held hearings to confirm the charges in another case, that against Mssrs Yekatom and Ngaissoma in relation to the situation in the Central African Republic.

This is just a sample of our ongoing work. Ultimately, however, it is not the quantity but the quality of our investigations and prosecutions that we pride ourselves on.

Throughout all our activities, we evaluate and learn lessons, and aim to constantly improve our work methods and practices. We are nonetheless cognizant that the Office, and the Court by extension, cannot operate on its own.

In the Rome Statute's spirit of complementarity and cooperation the Office has been making efforts to develop a coordinated investigative and prosecutorial strategy for crimes under the Rome Statute, as well as other serious crimes that foster further insecurity in the situations where the Office is active.

Our engagement with law enforcement authorities from a great number of countries allows for collaborative efforts to gather and analyze information, and helps to identify which of the judicial actors may be in the best position to investigate or prosecute alleged crimes. Such a symbiotic relationship is crucial to an effective investigation and prosecution of atrocity crimes across the globe.

Ultimately, the effectiveness of my Office will largely depend on external factors. For example, the continued presence and influence of the 15 suspects at large in the situations we investigate contributes to a large extent to protracted tensions and violence.

Even for the day-to-day conduct of the Office's investigations, we rely heavily on the cooperation and assistance of States, for instance for the purpose of identifying the whereabouts of persons of interest; the examination of places and sites, including the exhumation of mass grave sites; the provision of records, such as financial, military, or asylum records; and the protection of victims and witness.

Excellencies, despite our best efforts, I regret to observe that the world today is facing a particularly turbulent period. We see too many protracted conflicts plague our continents which, in combination with rising nationalist ideologies, pose a threat to international institutions and multilateralism, with the credibility of the system of international law regularly being questioned. We at the International Criminal Court have seen what political attacks we can expect when working in the service of justice. During these difficult times, we must stand firmly with our beliefs. The cause of international criminal justice has been implanted in our consciousness and it is a reality; there must be no going back in this forward march of humanity. We ought to remember, at all times, that the implementation of a system of international criminal justice was not merely a choice, it was a necessity, based on the experience of centuries of suffering from the most atrocious crimes.

On this path we have come a long way, but we have miles to go still before the protective embrace of international criminal law reaches all four corners of the globe, for the betterment and progress of humanity. I thank you for your attention and wish you fruitful deliberations today.

**President:** Thank you very much for this enlightening presentation. On the lacuna that has existed in the international justice system, which allowed serious crimes to go unpunished; now at least, crimes against humanity and genocides are being tried, notwithstanding the political controversies around the ICC. We still wish you all the best. The next presentation is from the Committee of Legal Advisors on Public International Law of the European Union.

**Mr. Petr Valek, Chair of Committee of Legal Advisors on Public International Law (CAHDI) – Observer:** First of all, I would like to express my sincere gratitude to the African-Asian Legal Consultative Organization (AALCO) and, in particular, to its Secretary-General, Prof. Kennedy Gastorn, for offering me this opportunity to present the work of the

Committee of Legal Advisers of Public International Law - which is known by its acronym CAHDI - the name of the Committee in its French version, *Comité Ad Hoc sur le droit international public*. I also thank him for his participation in several meetings of the CAHDI.

I have recently taken part in - and I believe many of you too - the Second World Meeting of Societies for International Law in The Hague, where the title of the first plenary round table has been “New Crisis of International Law or Threat of Collapse of the International Legal Order?” In the discussion that followed afterward one of the speakers challenged the very title of this round table by saying that there is no crisis of international law, but rather the crisis caused by the lack of political will of States to respect international law. I believe he had a point. In this context, I see the role of us, legal advisers on international law, as crucial for shaping the decisions of our political leadership. And the same can be said about CAHDI and AALCO whose mandate and work are quite similar, as I will try to point out in my statement. My presentation will be focused on the three following issues.

- I. The background of the CAHDI, and its current composition;
- II. The contribution of the CAHDI to the development of Public International Law;
- III. The contribution of the CAHDI to the work of the UN International Law Commission (ILC) and the Sixth Committee of the UN General Assembly.

#### I. Background and Membership of the CAHDI

The CAHDI is an intergovernmental committee that brings together the Legal Advisers of the Ministries of Foreign Affairs of the member states of the Council of Europe, as well as a significant number of observer States and Organizations. The CAHDI reports directly to the Committee of Ministers, the executive body of the Council of Europe.

Its origins can be traced back to the 1990s when the political architecture of Europe was being redesigned and the Council of Europe was playing a key role in the political changes in Central and Eastern Europe. The Legal Advisers of the Ministries of Foreign Affairs actively participated in this process. In 1991, its predecessor - the Committee of Experts - was transformed into the current “Committee of Legal Advisers on Public International Law” (CAHDI). Its first meeting took place in Strasbourg in April 1991 under the chairmanship of Mr. Helmut Turk, the Austrian Legal Adviser at the time, and on that occasion the CAHDI welcomed a special guest: the Crown Prince of Spain, now King Felipe VI, who attended the meeting during a working visit to the Council of Europe. The long life of the CAHDI started with key legal discussions for the Council of Europe at that moment: State succession in Europe in relation to treaties, State property, archives, and debts.

Sixteen legal advisers attended the first meeting of the CAHDI. At present, 28 years after its birth, the CAHDI brings together the Legal Advisers of the Ministries of Foreign Affairs of the 47 member States of the Council of Europe, as well as the 5 observer States to the Council of Europe (Canada, Holy See, Japan, Mexico and the United States of America), 4 further observer States to the CAHDI (Australia, Belarus, Israel, and New Zealand), and the following 10 participating international organizations:

- the European Union;
- United Nations and its specialized agencies;

- the North Atlantic Treaty Organisation (NATO);
  - the Organisation for Economic Co-operation and Development (OECD);
  - the International Criminal Police Organisation (INTERPOL);
  - the Organisation for Security and Co-operation in Europe (OSCE);
  - the International Committee of Red Cross (ICRC);
  - The Hague Conference on Private International Law;
  - the European Organisation for Nuclear Research (CERN);
- In 2017, participant status was granted to you: the Asian-African Legal Consultative Organization (AALCO) and I would like to emphasize the importance that the CAHDI attaches to your Organization.

Most of the Head of Delegations participating in the CAHDI meetings are the Legal Advisers of the respective Ministries of Foreign Affairs themselves, thus ensuring representation of the States at the highest possible rank. Moreover, the delegations participating in our meetings are often composed of two or three members and, hence, we have welcomed around 90 participants at each of our two biannual meetings in the past years.

I have been the Chair of the CAHDI since 2019 and was re-elected as Chair for 2020.

## II. The Contribution of the CAHDI to the Development of Public International Law

In the framework of a truly pan-European setting, the CAHDI is a legal forum for coordination, but also for discussion, reflection and advice, being a laboratory of ideas, which is essential for the development of international law. CAHDI's biannual meetings allow all participants to inform each other on topical issues of common interest and to exchange national experiences and practices, so we do not have "to re-invent the wheel."

As concrete examples of CAHDI's contribution to the development of public international law, I would like to mention the "Pilot Project on State Practice regarding State Succession and Issues of Recognition" which can be found in a 1999 Book encompassing the practice of 16 member States of the Council of Europe.

Furthermore, the CAHDI prepared a number of recommendations of the Committee of Ministers to the Member States in the area of diplomatic and treaty law.<sup>9</sup> Another task successfully conducted by CAHDI has been an evaluation of the Council of Europe conventions and protocols.<sup>10</sup>

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<sup>9</sup> Recommendation No. R(97)10 on debts of diplomatic missions, permanent missions and diplomatic missions "with double accreditation", as well as those of their members; Recommendation No R (99) 13 on responses to inadmissible reservations to international treaties as well as its appendix containing model response clauses to reservations; Recommendation CM/Rec (2008) 8 on the acceptance of the jurisdiction of the International Court of Justice and its appendix containing Model clauses for possible inclusion in the declaration of acceptance of the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court; Recommendation CM/Rec(2008)9 on the nomination of international arbitrators and conciliators.

<sup>10</sup> Two Conventions (1957 European Convention for the Peaceful Settlement of Disputes ETS NO.23 and the 1968 European Convention on the Abolition of Legalization of Documents executed by Diplomatic Agents or Consular Officers ETS No.63) are still very useful for States, even if they were adopted in the 1960s. The CAHDI encouraged the Council of Europe and its member States, as well as other CAHDI delegations, to

An important initiative, in which the CAHDI was directly involved, was the revised “*Model Final Clauses for Conventions, Additional Protocols and Amending Protocols concluded within the Council of Europe*” adopted by the Committee of Ministers of the Council of Europe on 5 July 2017, duly taking into account the latest developments in treaty law and the fact that the Conventions concluded under the auspices of the Council of Europe have not only become more varied as regards their subject matter, but also in relation to an ever-widening reach beyond Europe.

This global reach of the more recent Council of Europe conventions and protocols has led to increased participation of non-member States, alongside the European Union and other international organizations. Today, out of the 223 treaties concluded within the Council of Europe, 153 are open to non-member States, upon invitation by the Committee of Ministers. For instance, since 2012 the Treaty Office has received over a hundred requests from non-member States to become a party to Council of Europe conventions (e.g., the *Convention on Mutual Administrative Assistance in Tax Matters*- ETS No.127 - has far more signatures and ratifications from non-member States - 67 - than the number of Council of Europe member States, which is 47).

Let’s continue with another example in the field of treaty law, which is also one of CAHDI’s flagship activities: in its capacity as the “*European Observatory of Reservations to International Treaties*”, the CAHDI examines reservations and declarations subject to objection at its meetings thereby promoting and monitoring the States’ adherence to the international law. The CAHDI examines both the reservations and declarations made to Council of Europe conventions as well as to the conventions deposited with the UN Secretary-General. This function, which the CAHDI has operated for more than 18 years, has proved its effectiveness. In carrying out this examination, the CAHDI makes use of the so-called “*dialogue reservataire*”, a concept based on good faith and fostering dialogue and conciliation.

This working method not only allows States which have formulated a problematic reservation to have an opportunity to clarify its scope and effect and, if necessary tone it down or withdraw it, but also allows other delegations to understand the rationale behind reservations before formally objecting to them. In this regard, we are observing the revival of a trend to subordinate the application of treaty provisions to domestic law. As we know, such reservations are inadmissible under international law due to Art. 27 of the Vienna Convention on the Law of Treaties and sometimes because they are against the object and purpose of a treaty too.

### III. The Contribution of the CAHDI to the Work of the UN International Law Commission (ILC) and the Sixth Committee of the UN General Assembly

The CAHDI also plays an important role in fostering co-operation and collaboration between the Council of Europe and the United Nations. The external dimension of

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ensure their promotion. Three Conventions and one Protocol (1967 *European Convention on Consular Functions* ETS No.61; 1972 *European Convention on State Immunity* ETS NO.74 and its 1972 *Additional Protocol* ETS No.74A; 1974 *European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes* ETS No.82) have not been much used by States due to the adoption of universal conventions, such as the 1963 *Vienna Convention on Consular Relations*, the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* or the 2002 *Rome Statute of the International Criminal Court*. However, the CAHDI considered that some of these conventions could constitute evidence of international custom. In any case, it did not encourage any “massive denunciation” or termination as it is up to the Parties to decide about the “life cycle” of these Conventions.

the CAHDI is illustrated by the fact that CAHDI's experts - the Legal Advisers of the Council of Europe member and observer States - equally take part in the sessions of Sixth (Legal) Committee of the UN General Assembly, which allows us to have legal coherence on certain issues and to act as a link between the two Organizations. Furthermore, in order to strengthen this co-operation, the CAHDI invites as guest speakers the UN Legal Counsel, the President of the International Court of Justice (as well as presidents of other international courts and tribunals) and, each September, has an exchange of views with the Chair of the International Law Commission (ILC). Indeed, the work of the ILC is on the agenda of all CAHDI meetings as a permanent item. These annual exchanges of views are the tangible evidence of the close links developed between the two institutions.

In this context, I would also like to mention the Observations of the Secretariat of the CAHDI concerning the Draft Articles on Crimes against Humanity, adopted by the ILC on first reading at its 69<sup>th</sup> Session. Indeed, the Council of Europe was one of the first actors to address the prevention of impunity for crimes against humanity with the adoption in 1974 of its *European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes* (ITS No. 82). As it was concluded by the CAHDI in 2016, this Convention has been interpreted and understood as constituting evidence of international custom.

This year, the CAHDI Secretary submitted observations and comments on the draft *Guide to Provisional Application of Treaties*, adopted on first reading by the ILC at its 70<sup>th</sup> Session in 2018. Historically, the CAHDI also highly contributed to the Study on Reservations conducted by Mr. Alain Pellet as Special Rapporteur which led to the adoption by the ILC at its 63<sup>rd</sup> session in 2011 of the Guide to Practice on Reservations to Treaties.

Furthermore, I would like to raise here the “*Declaration on Jurisdictional Immunities of State-Owned Cultural Property*”,<sup>11</sup> which I believe can have a direct impact on the practice of States. The Declaration, developed within the framework of the CAHDI is a non-legally binding document which expresses a common understanding of *opinio juris* concerning the fundamental rule that certain kind of State property - cultural property on exhibition - enjoys immunity from any measure of constraints, such as attachment, arrest or execution, in another State. By signing this Declaration, a State recognizes the customary nature of the relevant provisions of the *UN Convention on Jurisdictional Immunities of States and Their Property* (2004) which, as you know, has not yet entered into force.

The Declaration was a joint initiative of the Ministers of Foreign Affairs of the Czech Republic and Austria, who signed it in Brussels on 18 November 2013 and opened it for signature by other States, members and non-members of the Council of Europe. To date, the Declaration has been signed by the Ministers of Foreign Affairs of 20 States,<sup>12</sup> members and non-members of the Council of Europe. The CAHDI Secretariat performs the functions of the depositary of the Declaration. Furthermore, the Declaration was circulated among the members of the United Nations under the agenda item “*The rule of law at the national and international Levels*” of the UN General Assembly in 2017 in order to raise the awareness about the Declaration beyond the Council of Europe.

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<sup>11</sup> “Declaration on Jurisdictional Immunities of State Owned Cultural Property”, presented at the 46<sup>th</sup> meeting of the CAHDI (Strasbourg, 16-17 September 2013).

<sup>12</sup> Albania, Armenia, Austria, Belarus, Belgium, Czech Republic, Estonia, Finland, France, Georgia, Holy See, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Russian Federation and Slovak Republic.

The input of the CAHDI to discussions of important and topical issues of public international law is by far not limited to discussions at its biannual meetings. In-between the meetings, the evidence on State practice concerning a certain topic currently under consideration is being collected and, on several occasions, has served as a basis for a publication. This allows us to make our research available to the outside public.

For instance, at its 53<sup>rd</sup> meeting in March 2017, the CAHDI agreed on the preparation of a publication on the topic of “Immunities of special missions”. This CAHDI publication was prepared by Sir Michael WOOD, member of the ILC and former Chair of the CAHDI, together with Mr. Andrew SANGER and it contains an analytical report on legislation and practice, including the main trends arising from the replies to the questionnaire prepared by the CAHDI on this matter and provided by 38 CAHDI delegations.

I would also like to mention the three databases set up by the CAHDI and which correspond to major research projects, covering: the immunities of States and international organizations; the organization and functions of the Office of the Legal Adviser in the Ministry of Foreign Affairs; the implementation of United Nations sanctions and respect for Human Rights. These databases reflect the States’ practice in specific fields of public international law, through the contributions of member and observer states of the Council of Europe, based on domestic legislation and case-law, as well as any other relevant documents.

#### Final Remarks

I would like to reiterate that the CAHDI is a legal forum which assists too and co-operates with member and non-member states and international organizations in order to develop the rule of law at the international level, as a key factor in the inter-state relations. The CAHDI has played and continues to play after 28 years of its existence, an important role in the development of public international law. Thank you Mr. President.

**President:** A very detailed explanation and documentation as we are establishing working relationships with this Organization. We look forward to benefitting from this relationship. The next submission is from the ICRC.

**Mrs. Andrea Heath, Head of Mission, International Committee of the Red Cross (ICRC) Tanzania- Observer:** Mr. President, Mr. Vice-President, Mr. Secretary General of the Asian-African Legal Consultative Organization, Your Excellencies, Distinguished Delegates, thank you to the Asian-African Legal Consultative Organization and to the Government of The United Republic of Tanzania for providing the International Committee of the Red Cross, this opportunity to address AALCO’s 58<sup>th</sup> Annual Session.

We are a neutral, independent and impartial organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflicts and to prevent violations by promoting international humanitarian law - IHL. This year is the 70<sup>th</sup> anniversary of the defining instruments of contemporary IHL: the four Geneva Conventions. At their adoption in 1949, the Conventions developed and advanced the law for the benefit of civilians who, only a few years earlier, had borne the horrific brunt of the Second World War. Perhaps most prophetically, however, the Geneva Convention through Common Article 3, came to regulate the behavior of the belligerents in conflicts opposing State and organized non-state armed groups. Today, this framework for so-called ‘non-international armed conflict’ is a critical part of the Geneva Conventions’ enduring legacy.



The conflicts in Syria, Yemen, Ukraine and, nearer to us, in Libya, Nigeria, Somalia and South Sudan, reminds us every day of the importance to ensure respect for the Geneva Conventions. With our partners in the Red Cross and Red Crescent Movement, we bear witness to the catastrophic consequences of armed conflict: hostilities in and sieges of urban areas and their humanitarian implications, including displacement. Increasingly protracted conflicts affect utilities, services, and commodities, threatening lives and causing major development set-backs. Yet, there is cause to celebrate the Geneva Conventions. We can be immensely proud of what the Conventions represent, and how they have been appropriated. They are universally ratified. Every State has expressed its commitment to preserving humanity in war.

Every day we work to address violations of IHL. We remain convinced, however, that parties to the armed conflict also adhere to the law. Every time that medical care is provided to those in need, detainees can communicate with their families or civilians are spared, IHL is working. Decades later, updated and strengthened by their 1977 Additional Protocols and other instruments, the Geneva Conventions are still fit for purpose. IHL is as relevant today as it was in 1949.

Mr. President, Distinguished Delegates, the ICRC and AALCO share a history of constructive engagement to promote IHL. We have had opportunity to present a range of humanitarian and related legal considerations, including humanitarian access, sexual violence, and internal displacement.

These topics remain relevant today. This year, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known as the 'Kampala Convention', turns ten. It is the world's first and only legally binding instrument for internally displaced persons: a milestone in efforts to address displacement across Africa and a model for other regions. The ICRC urges all African States to support this vital instrument and, in doing so, strengthen the African network of inter-State cooperation and support.

Here in the East and Horn of Africa, we are also focused upon the implications of the illicit, unregulated trade in conventional weapons. Despite some important differences, regional instruments such as the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons, and the international Arms Trade Treaty share a common purpose. Through regulation of trade-in and access to weapons, both instruments aim for peace, security, and the reduction of human suffering. Both can serve humanitarian and development ends. In many respects, they are complementary and mutually reinforcing.

Mr. President, Distinguished Delegates, Let us turn to another topic with profound legal and humanitarian implications: the limits that IHL imposes upon cyber operations during armed conflicts. As we all know, technological developments offer tremendous opportunities for humanity. But they also entail risks. In today's armed conflicts, cyber operations are already being used as a means or method of warfare. A few States have publicly acknowledged their use, and an increasing number of States are developing military cyber capabilities, whether for offensive or defensive purposes.

The ICRC welcomes the attention that AALCO has given to the topic 'International Law in Cyberspace' since its Fifty-Third Annual Session in Teheran. We congratulate AALCO for having the foresight to establish, almost five years ago in Beijing, an Open-ended Working Group on International Law in Cyberspace. These decisions have placed AALCO at the forefront of the global conversation on these matters. This year's Annual Session present

AALCO member States with a further opportunity to take a leading role, including in relation to IHL.

The ICRC is deeply concerned about the potential human costs of cyber operations. Although at present, most cyber-attacks are not part of ongoing armed conflicts, such attacks generate significant economic costs and have on occasion disrupted the provision of essential services to the civilian population. The health-care sector is particularly vulnerable to cyber-attacks. Other critical civilian infrastructure, including electricity, water and sanitation systems, has also been affected. These attacks are reportedly becoming more frequent, and their severity is increasing more rapidly than anticipated.

With this in mind, we welcome the inclusion of a provision aimed at ensuring respect for IHL in paragraph 2(h) of the Consensual Basic Principles on International Law Applicable in Cyberspace. In the ICRC's view, there is no question that cyber operations during armed conflicts are regulated by IHL just like any other means or methods of warfare used by a belligerent in a conflict, whether new or old.

Let me underscore that, to affirm that IHL sets limits on the belligerents' conduct during armed conflicts does not encourage the militarization of cyberspace or legitimize cyber warfare. As the proposed Principles also note, the UN Charter is applicable to States' actions in their use of information and communication technologies. The Charter framework includes in particular the prohibition against the threat or use of force and the obligation to settle international dispute by peaceful means.

What IHL provides is an additional layer of protection against the effects of hostilities. For example, under IHL, belligerents must respect and protect medical facilities and personnel at all times. Accordingly, cyberattacks against the health-care sector during armed conflict would in most cases violate IHL. Likewise, the IHL principles of distinction, proportionality and precaution afford protection to civilians and civilian objects, and objects indispensable to the survival of the civilian population enjoy more stringent specific protection. Critical civilian infrastructure is therefore afforded strong protection against the effects of cyberattacks during armed conflicts.

We welcome the efforts of AALCO, its member States, and its Open-ended Working Group, to study how international law applies to cyberspace with a view to promoting common understandings. By adopting the draft Principles, AALCO would contribute to progressing the international conversation on the issue. We thank AALCO for giving us the opportunity to engage on this issue and stand ready to lend our expertise to such discussions. One of our legal advisors from Geneva will be here for the entire day this Wednesday to support your deliberations.

Mr. President, Distinguished Delegates, the Geneva Conventions symbolize our enduring and common humanity. Rooted in ideas which have existed in all civilizations, they limit the devastating effects of warfare. Its pragmatic rules are grounded in battlefield realities and designed to protect and respect human life and dignity. The Conventions do not legitimize or prolong the war, but instead, by reducing the suffering they help prepare the ground for peace.

While the destructive effects of conflicts are today most visible in the physical world, the protective scope of IHL also extends to cyberspace. This is why we urge States to affirm that IHL imposes limits to the use of cyber operations during armed conflicts.

The unique characteristics of cyberspace however raise questions about the interpretation of IHL rules, questions that States must urgently address. Affirming that IHL applies in cyber space and discussing its interpretation does not imply that new rules might not be useful or even needed. But if new rules are developed, they should build upon and strengthen existing law.

Thank you, Mr. President and Distinguished Delegates. We appreciate, as always, your interest in respect of our mutual ambition to promote international humanitarian law and ensure its continued relevance for today's armed conflicts. Thank you very much.

**President:** Anything I would say about ICRC would be an understatement because ICRC speaks for itself. I really encourage the partnership with AALCO, especially in this new area of cyberspace. Thank you very much. Next, UNEP, you are welcome.

**Ms. Elizabeth Maruma Mrema, Director of the Law Division at the United Nations Environment Programme (UNEP) – Observer:** H.E. Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO, Heads of Delegations, Distinguished Participants, it gives me great pleasure to address the 58<sup>th</sup> Annual Season of the Asian-African Legal Consultative Organization on the very significant topic of “*peaceful settlement of international environmental disputes*”.

Dispute settlement has long been a focus of inter-State relations and remains an important tool for dealing with international environmental problems. All nations that have signed the United Nations Charter are under an obligation to settle their disputes peacefully including through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means they may choose.<sup>13</sup>

The United Nations Environment Programme (UNEP) has through its Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme) promoted the development of mechanisms for peaceful settlement of environmental disputes. For instance, the Second programme (Montevideo Programme II) had among its objectives “the further development of mechanisms to facilitate the avoidance and settlement of environmental disputes”. It therefore endorsed a strategy of developing “methods, procedures and mechanisms that promote; *inter alia*, informed decisions, mutual understanding and confidence-building, with a view to avoiding environmental disputes and, where such avoidance is not possible, to their peaceful settlement.”

In 2005, UNEP and the Asian-African Legal Consultative Organization (AALCO) concluded a memorandum of understanding to serve as a guiding tool in identifying and carrying out specific collaborative activities in the field of environmental law. Our gathering today provides us with the opportunity to identify the development and strengthening of mechanisms for peaceful settlement of environmental disputes as one of the collaborative activities going forward.

In addition, UNEP has played significant roles in facilitating and assisting in the avoidance and settlement of international environmental disputes by providing scientific and technical expertise as well as fact-finding services. For instance, in 2006, UNEP following a request from the Government of Cote d'Ivoire undertook an independent environmental assessment of sites affected by the dumping of toxic waste from a ship known as the “*Probo Koala*”. The objective was to determine if these sites continued to pose risks to the environment or to

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<sup>13</sup> Article 33 of the UN Charter.

public health, and to make recommendations about additional or corrective clean-up measures required in case contamination was detected. The assessment eventually revealed that none of the sites where wastes from the Probo Koala were dumped showed contamination exceeding the limits set by the Government of Cote d'Ivoire.

The Probo Koala case is a classic example of the international community increasingly paying attention to the need to develop and use means of dispute avoidance, and to the closely related question of improving implementation of, and compliance with international obligations.

It further augments the case for effective dispute resolution mechanisms which are incorporated in most multilateral environmental agreements. Permit me to discuss some of these mechanisms.

#### Dispute Settlement Mechanisms

Several multilateral environmental agreements contain provisions for the submission of disputes arising from their interpretation or application to the International Court of Justice. Article 20 of the Basel Convention and Article 27 of the Convention on Biological Diversity are examples in this regard.

Other treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide for referral of disputes to the Permanent Court of Arbitration.

Yet other treaties have dispute resolution tribunals built within their framework. For instance, Article 288 of UNCLOS allows parties to refer disputes concerning interpretation or application of the Convention to the International Tribunal for the law of the Sea (ITLOS), the International Court of Justice or an arbitral tribunal.

The Protocol to the Antarctic Treaty on Environmental Protection also provides a comprehensive scheme for the settlement of environmental disputes. Though the protocol does not create any new court, but disputes concerning interpretation or application of certain articles of the protocol are subject to compulsory arbitration, once attempts at negotiation and conciliation have been exhausted.

Settlement of environmental disputes may also fall within the competence of treaty bodies. For example, the US-Canadian International Joint Commission has the mandate to act as an arbitrator, with the consent of both parties. The Commission for Environmental Cooperation established under the 1993 North American Agreement on Environmental Cooperation also has dispute settlement powers to ensure that each party effectively enforces its own environmental laws through appropriate government action.

A trend has also emerged where International and regional financial institutions and civil society are playing important roles in environmental dispute avoidance and dispute settlement. International and regional financial institutions are doing this by, inter alia: providing incentives to countries to resolve environmental problems, such as giving in appropriate cases, financial or technical assistance; approving only projects that are environmentally sound and that, at the very least, do not create international tensions, but help relieve already existing tensions or serve to prevent the creation of new ones; and taking into account compliance by countries with their environmental obligations in approving projects. Civil society on the other hand has for instance been alerting governments and intergovernmental organizations to environmental problems.

In practice however, environmental disputes rarely reach the point of binding settlement. This is largely attributable to the fact that parties to international environmental agreements are ordinarily required to cooperate and exchange information in circumstances that are likely to give rise to a dispute over compliance with obligations under the agreement. This is in line with Principle 19 of the Rio Declaration which provides that *“States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith”*.

#### Special Dispute Resolution Procedures

A special dispute resolution mechanism that goes beyond the classical settlement of disputes as envisaged under Article 33 of the UN Charter is the non-compliance procedures. Non-compliance procedures are designed to be forward-looking, facilitative, non-confrontational and emphasize cooperation and therefore well suited to address non-compliance within a multilateral context.

The non-compliance approach which favours prevention follows the general trend in international environmental law, which relies to a greater degree on such means as reporting or verification processes rather than having recourse to settlement of disputes procedure.

Several multilateral environmental agreements including the 1985 Vienna Convention on the Protection of the Ozone, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the Kyoto protocol and the Basel Convention have set up non-compliance procedures.

The non-compliance procedures are regarded as the most effective mechanisms in assuring compliance with multilateral environmental agreements especially because they are aimed mainly at helping a State in non-compliance rather than the imposition of sanctions. They are thus more effective for bringing about environmental improvement.

However, in cases where States continue in non-compliance despite provision of assistance and in cases of blatant disregard to implement international rules, the use of sanctions such as is the case under the CITES convention and the climate change convention provides a useful tool for dispute avoidance and settlement.

Another recent and innovative dispute avoidance and resolution mechanism is the environmental rights initiative. The initiative works with governments to strengthen institutional capacities to develop and implement policy and legal frameworks that protect environmental rights effectively and inclusively. It supports civil society organizations and vulnerable populations in their efforts to access information on their rights and raises awareness of environmental rights violations. The initiative also collaborates with media on the training of journalists on issues related to environmental rights and environmental defenders with a view to improve coverage of rights issues. And, more recently, the initiative has begun engaging with businesses, including through the UN Global Compact, to help them to better understand their environmental rights responsibilities, and to provide guidance on how to move from a compliance culture to championing environmental rights.

In conclusion, dispute settlement remains an important tool for dealing with international environmental problems. UNEP and AALCO should explore modalities for promoting non-compliance procedures as suitable mechanisms for environmental dispute settlement and avoidance.

The fifth Montevideo Programme for the Development and Periodic Review of Environmental Law for the decade beginning in 2020 (Montevideo Programme V), which has among its objectives “Strengthening the effective implementation of environmental law” provides a key avenue to enhance capacity to ensure effective development and implementation of environmental dispute settlement mechanisms.

International and regional financial institutions can, and should, play an important role in environmental dispute avoidance and dispute settlement. UNEP and AALCO should reach out to these institutions to advance the idea.

Governments, civil society, environmental NGOs, the business community, the media and other relevant stakeholders have a key role in promoting environmental avoidance and settlement of disputes. The environmental rights initiative provides a common platform for all these stakeholders to work collaboratively towards this goal.

Finally, UNEP and AALCO need to reinvigorate the memorandum of understanding as an avenue for promoting the establishment and strengthening of mechanisms for environmental dispute avoidance and settlement.

I thank you and wish you fruitful deliberations even as we look forward to continuing our collaboration on environmental protection. Thank you.

**President:** Thank you very much indeed. This is a new frontier, but very relevant and important. Partnerships which are fruitful between the UNEP and AALCO should expand and be enriched. That brings us to the end of General Statements.

**The Meeting was adjourned thereafter.**

## **IX. VERBATIM RECORD OF THE THIRD GENERAL MEETING**

**IX. THIRD GENERAL MEETING HELD ON TUESDAY, 22 OCTOBER 2019  
AT 3.10 PM**

**His Excellency, Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, and the President of the Fifty-Eighth Annual Session in the Chair.**

**AGENDA ITEM: EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES**

**President:** Good afternoon everyone. Now it is time to begin discussion on our substantive agenda items. The next first item on our list is “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties”. I invite the Secretary-General to make an introductory statement on the subject.

**Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Thank you Mr. President. Excellencies, Distinguished Delegates, Ladies and Gentlemen.

Allow me to introduce the agenda item “Extraterritorial Application of National Legislations: Sanctions imposed against Third Parties” as discussed in the Secretariat Report AALCO/58/DAR ES SALAAM /2019/SD/S6. This was originally introduced at the Thirty-Sixth Session of the AALCO in Tehran in 1997. Since the topic has been relevant to the current international situation, once again the delegation for Islamic Republic of Iran and an early intimation from the host country, United Republic of Tanzania to include this topic into the agenda of the Fifty-Eighth Annual Session.

Extraterritorial Measures or the application of the domestic laws having extraterritorial effect violates the sovereign interests of a State. Imposition of unilateral sanctions impermissible under international law as it violates the international rule of law, core principles of the Charter of the United Nations, and general principles of international law.

Mr. President, the concept of extraterritorial application of national legislation violates the principles of the United Nations Charter, namely; (i) principle of sovereign equality and territorial integrity, (ii) principle of non-intervention and (iii) duty to cooperate. Hence, consensus by the international community shows that the coercive measures are not in conformity with such principles and also the principle of duty to cooperate should be regarded as rule of law.

Mr. President, the concept of extraterritorial application of national legislation also breaches Human Rights Obligations. These include, (i) the right to self-determination, (ii) the right to development, (iii) the right to life and associated rights, (iv) right to food and (v) right to health and medicine. Extraterritorial application of national legislation and violation of human rights obligations, such as law enforcement may result in unilateral coercive measures that create obstacles to trade relations among States, impeding the full realization of the rights set forth in international human rights instruments. The UN General Assembly has repeatedly denounced economic coercion as a means to achieve political goals in its resolutions. It is noteworthy that economic sanctions that seek to achieve regime changes in the targeted States or infringe upon its political independence may amount to a violation of right to self-determination of the people of that state and their right to choose their government.



Moreover, the right to development has implicit references in several international human rights instruments and the UN Charter. Besides, in the Declaration of the Right to Development, the UN General Assembly certified the right to development as a human right in 1986. Subsequently, the African Charter on Human and Peoples' Rights, the 1992 Rio Declaration on Environment and Development, the 1993 Vienna Declaration and Programme of Action, the Millennium Declaration, the 2002 Monterrey Consensus, the 2005 World Summit Outcome Document and the 2007 Declaration on the Rights of Indigenous peoples have confirmed the right in their documents. Imposition of unilateral sanctions via extraterritorial application of national legislation could have adverse effects on the enjoyment of the rights of development by the targeted and third countries. Therefore, the UN General Assembly and the Human Rights Council have taken actions to cease or eliminate the use of such measures in light of realization of the human rights enshrined under international instruments.

It is also noteworthy that under any justification the extraterritorial application cannot occur at the cost of human life. The right to life and its associated rights are fundamental human rights which have been confirmed in several international human rights instruments. Especially, health and foods are basic elements in daily life. This in itself delays the development of their economic infrastructure and result in deprivation of overall development. Extraterritorial application of national legislation in the form of sanctions is harmful to the right of the targeted States to development and victimises the most disadvantaged sanctions of the society in those states.

Mr. President, the diverse aspects of unilateral and secondary sanctions remarkably have been addressed by the UN. Since the Vienna Declaration and Programme of Action adopted the World Conference on Human Rights in 1993, the topic has been given more attention and the UN General Assembly, and the Human Rights Council have adopted important instruments. Resolutions adopted by the UN organs expressed the illegality of the measures and the contradiction between implementation of enshrined human rights under international instruments and such coercive measures. The UN also pointed out three obligations incumbent upon user, target and third States under international law as follows: a) not to recognise those measures nor ally them, and b) to counteract the extraterritorial application or effects of unilateral coercive measures in this context. c) to avoid imposition of such measures. Additionally, the Human Rights Council, at its 28<sup>th</sup> Session appointed a Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights in 2015. It was the first appointment of the Special Rapporteur on this topic. The Special Rapporteur dealing with the subject has also confirmed the impact of unilateral sanctions on various social and economic rights including the rights concerning health, foods, medical cares and education. Moreover, The International Court of Justice dealt with the extraterritorial application of national legislations for the first time. In its order, the Court recognised the linkage between extraterritorial application of laws and regulation on enjoyment of some protected rights in 2018.

Mr. President, in view of these concerns, the Secretariat's report has covered the issues dealing with overview of the AALCO's work on the Extraterritorial Application of National legislation: Sanctions Imposed against Third Parties, AALCO's Secretariat's Special Study on "Unilateral and Secondary Sanctions: An International law Perspective", Human Rights and Unilateral Coercive Measures, appointment of the first Special Rapporteur by the Human Rights Council and recent ruling of the International Court of Justice. The issues for Focused Deliberations at this meeting are (1) extraterritorial application of national legislation and

violation of principle of the United Nations Charter and (2) extraterritorial application of national legislation and violation of human rights obligations.

On these notes, I request the distinguished delegates to present their views and look forward for an in-depth deliberation on this agenda item.

Thank you very much.

**President:** Thank you Secretary-General for your extensive introductory remarks. Now I open the floor for comments from Member States. I now give the floor to **Prof. Palamagamba J.A.M. Kabudi (MP), from the United Republic of Tanzania**, you have the floor Sir. Discussion on this topic is open to both Member States and Observers. First I invite the delegation of Tanzania.

**Prof. Palamagamba J.A.M. Kabudi (MP), United Republic of Tanzania:** At the outset allow me to express my profound gratitude to AALCO Secretariat and the Ministry of Legal and Constitutional Affairs of the United Republic of Tanzania for inviting me to participate in today's session. It is a privilege to me to propose a few remarks on a subject so dear to me personally and to the United Republic of Tanzania as a Chair of South Africa Development Community (SADC) of which the Republic of Zimbabwe is a founding member state.

I commend AALCO Secretariat for agreeing to include this topic "Extra territorial Application of National Legislation; sanctions imposed against Third Parties: lifting sanction against Zimbabwe." It is a topic which is timely and which in recent times has gained a global attention.

## **2. The Concept of Extraterritorial Application of National Legislation**

It is a basic principle of international law that a state is sovereign in its own territory and, as sovereignty is exclusive, no state may unilaterally act in another state's territory.<sup>14</sup> Attempts to exercise jurisdiction within the territory of another state can constitute violations of international law,<sup>15</sup> and may give rise to a claim before the International Court of Justice or other appropriate forum.

Extraterritoriality as a principle of international law and in strict legal terms refers to the application of domestic law to a foreign conduct.<sup>16</sup> This principle signifies the legal ability of a government to exercise authority beyond its normal boundaries and in such situations a country's laws extending beyond its boundaries in the sense that they may authorise the courts of that country to enforce their jurisdiction against parties appearing before them in with respect to acts they allegedly engaged in outside that country.

Much as it is an accepted principle of International law, this principle however has been abused by some states over the years by using force to impose their domestic fancies and will upon other states. Another dimension of Extra-territorial application of domestic laws is the emerging trend of unilateralism used by powerful states under the pretext of humanitarian intervention to interfere in the domestic affairs of other states. These States have unilaterally imposed sanctions on other states for acts done in the other state.

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<sup>14</sup> C. Hyde, International Law, pg 199 (2<sup>nd</sup> Ed. 1945)

<sup>15</sup> C. Hyde Supra, p.200

<sup>16</sup> Allan E. Gotlieb, Extraterritoriality: A Canadian Perspective, 5 Nw.J. Int'l L. & Bus.449 (1983-1984)

In this age of increased global interdependence, the ability of anyone nation to act unilaterally is limited. Furthermore, in order to receive effective support from allies and other countries, a nation must act within the consensual framework of international law.

Apparently, these actions have huge impacts and consequences which escalate into internal conflicts and henceforth great violation of human rights. Extraterritorial application of laws has often produced retaliatory legislation and solidified foreign opposition to such policies. In such situations, the discussions on such acts turn from the merits of the particular policy, be it antitrust or export controls, to the method of implementation and its concomitant infringement of sovereignty.

Extraterritorial application of laws can thus be self-defeating, resulting in serious international tensions with ultimately little advancement towards any substantive policy goal. Over the years we have seen, such acts to have adverse impact; increased the costs of international trade and investment, and created stress in the international system.

Today, extraterritorial application of national legislations and unilateral acts of states over others are strongly seen to violate Article 2(4) of the UN Charter and the principles of international law.

### **3. UN and Regional Blocks Sanctions**

Some scholars have argued, since the end of the Cold War, sanctions have become a popular tool for states to press authoritarian regimes to democratize and to respect human rights.<sup>17</sup> In international law however, sanctions are taken to be coercive measures taken against a state which has committed an international illegal act or has seriously breached an international rule or obligation, by a state or a group of states or decided by an international organization.<sup>18</sup> Much as they can serve a variety of purpose, be it coerce, constrain access to resources, not all sanctions are imposed for reasons of breaking an international law, they may be imposed in a case of a threat to peace (Article 19 of the UN Charter).

We all know sanctions can take many forms, be it military, political or diplomatic, and may also involve economic coercion. Much as relying on sanctions instead of alternative means of coercion may raise hopes that international military conflicts can be avoided.<sup>19</sup> The only widely accepted sanctions are those issues by the Security Council under Chapter VII of the UN Charter and more precisely Article 41 which has been widely used. At the regional levels we have witnessed the use of sanctions by EU (in 48 situations) and the AU (11 cases) and at times the regional blocks impose their own sanctions not connected with the UN.

Sanctions issued under the UN Charter and the regional blocks are widely accepted. However international law leaves rooms for unilateral measures by States which are subject to controversy regarding their lawfulness, in particular if they are imposed extra-territorially. It is about the sanctions applied by a country acting alone, or almost alone. Unilateral sanctions are widely criticized as violating the principle of state sovereignty and the rule of law and

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<sup>17</sup> Walldorf, William C. 2014. Sanctions, Regime Type, and Democratization: Lessons from U.S.-Central American Relations in the 1980s. *Political Science Quarterly* 129 (4): 643-674

<sup>18</sup> The USV Annals of Economics and Public Administration, Vol 13, Issue 1(17), 2013 pg 264.

<sup>19</sup> Gutmann, Jerg, Matthias Neuenkirch, and Florian Neumeier. 2016. Precision-Guided or Blunt? The Effects of US Economic Sanctions on Human Rights. *Joint Discussion Paper Series in Economics* 27.

holding the risk of breaking other principles of international law. Accordingly, unilateral sanctions could be considered as a challenge to the existing international legal order which is anchored in the UN Charter, according to which sanctions are to be imposed by the UNSC, following a determination that there is a threat to or a breach of international peace and security.<sup>20</sup> In other words, UN member States are not entitled to impose economic sanctions upon another Member or any Sovereign State.

#### **4. Unilateral Sanctions against Zimbabwe**

Sanctions against Zimbabwe can be partly traced on the land reforms in Zimbabwe which officially began in 1980 by signing of the Lancaster House Agreement. It was an effort to equitably distribute land between Black subsistence farmers and white Zimbabweans of European ancestry who had economic and political superiority. At independence for the United Kingdom in 1980, the Zimbabwean authorities were empowered to initiate the necessary reforms, as long as land was bought and sold on a willing basis and that the British Government would finance half of the cost. However in the late 1990s The UK Prime Minister Tony Blair terminated the agreement when funds from the Margaret Thatcher's administration were exhausted, repudiating all the commitments to land reforms in Zimbabwe.

In responding to that, Zimbabwe embarked in forcibly confiscation of white farmers without compensation, and a fast track redistribution campaign. In response to what was described as the “fast-track land reforms” in Zimbabwe, the US Government put the Zimbabwean Government on credit freeze in 2001 through the Zimbabwe Democracy and Economic Recovery Act of 2001. The Act imposed sanctions on Zimbabwe, allegedly to provide for transition to democracy and economic recovery. It is sad to note that, Zimbabwe has been on sanctions since 2001, the sanctions dates back to the reign of former President, the late Robert Gabriel Mugabe. The EU sanctions on Zimbabwe consist of an arms embargo and targeted asset freezes and travel bans while the US has imposed financial restrictions (under the Zimbabwe Democracy and Economic Recovery Act of 2001), sanctions under Africa Growth and Opportunity Act (AGOA) and travel sanctions against individuals and entities under the Executive orders. Further on 2<sup>nd</sup> March, 2018 the US extended its sanctions regime on Zimbabwe until 2019 and the EU had done the same on February, 2018 and renewed its sanctions on Zimbabwe for another year.<sup>21</sup>

Today such unilateral sanctions constitute an increasingly preferred choice for certain States, and present a dilemma of growing significance. Today, sanctions are hugely criticized for the “side effects” they have on the civil population, but more importantly their imposition may ultimately not be successful in achieving their stated political objective. It is on this basis that we call for the removal of sanctions against Zimbabwe. We oppose this kind of unilateralism in interfering in the domestic affairs of other states. This is also abrogates Article 2(4) the principle enshrined under the United Nations Charter and it is against International Law.

With the Zimbabwe sanctions and many others around the world, today it is an open secret that today, there is a growing movement of States arguing for the illegality of unilateral

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<sup>20</sup> Marossi, Ali Z., and Marisa R. Bassett, eds. 2015. *Economic Sanctions in International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences*. New York: Springer Publishing

<sup>21</sup> Report of the Special Rapporteur on the Negative impact of Unilateral Coercive Measures on the enjoyment of Human Rights A/HRC/39/54

coercive measures. For instance, on its part, the United Nations as per Resolution 27/21 of 1971 created the office of Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on Human Rights. In which resolution such unilateral coercive measures and legislation are declared to be contrary to international law, international humanitarian law, the Charter and norms and principles governing peaceful relations among states and highlights that these measures on long term may result into humanitarian concerns on targeted states.

As indicated in the Secretariat Brief on this topic, unilateral sanctions must be examined from the position of the relevant UN General Assembly adopted resolution A/RES/S8/200 of 2014 which condemned certain unilateral coercive measures as being tools for political or economic pressure against any country, (b) resolution A/RES/73/167 of 17 December 2018, and (c) Resolution A/RES/73/167 of 17 December 2018.

In addition, it is important to take note of the Human Rights Council Resolution A/HRC/39/S4 of 2018, which declared that "sanctions, especially those purporting to have extraterritorial effect, are used as a routine foreign policy tool against each and every State, Government or entity that the most prolific sanctions user unilaterally determines, on the basis of questionable "evidence" or mere suspicious or allegations of a corrupt regime engaged in malign activities in attempting to subvert Western democracies, the very architecture of the international system based on the Charter of the United Nations and the International Bill of Human Rights is a risk.

In August 2019 the Southern African Development Community (SADC) expressed a firm solidarity with Zimbabwe, calling for an end to the crippling sanctions. As part of the United

Republic of Tanzania Chairmanship of SADC we have championed a campaign to call upon the International Community to lift sanctions against Zimbabwe be it unilateral or multilateral.

The SADC Communique states that; "Summit noted the adverse impact on the economy of Zimbabwe and the region at large/ of prolonged economic sanctions imposed on Zimbabwe and expressed solidarity with Zimbabwe, and called for the immediate lifting of the sanctions to facilitate social-economic recovery in the country."

As per the communique SADC Summit further declared 25<sup>th</sup> October as the date on which SADC Member states can collectively voice their disapproval of the sanctions through various activities and platforms until the sanctions are lifted.

You may wish to note that on 27th September 2019 while addressing the United Nations General Assembly (UNGA) I appealed to the International Community and called for lifting up unilateral sanctions that have been imposed on Zimbabwe for far long - a painful experience by any standard. In that speech I said;

"The Government of the United Republic of Tanzania as chair of the SADC would like to urge the international community to call for lifting up unilateral sanctions imposed on Zimbabwe. Far too long, Zimbabwe has been on sanctions, which have negatively affected its people, especially the vulnerable groups such as women, elderly and children. These sanctions have also negatively affected other countries in the Southern African region. These unilateral sanctions should unconditionally be removed now."

It is heartwarming and noteworthy that Zimbabwe's President Emerson Mnangagwa used the platform of the United Nations to deliver a clarion call for the removal of historical sanctions against his country on 25 September 2019. He said; “these achievements are in spite of the continued albatross of the illegal economic sanctions. These sanctions constitute a denial of the human rights of the people of Zimbabwe to develop and improvement of their quality of life. Furthermore, sanctions are slowing down our progress, inhibiting our economic recovery and punishing the poorest and most vulnerable.”

The Special Rapporteur on Negative Impact of Unilateral Coercive Measures on Human Rights on his report (A/HRC/39/54) expressed concerns that sanction that were applied to certain politicians in Zimbabwe during the National elections in July, 2018 were unnecessary coercive measure that negatively affected the right of Zimbabweans to choose their own political future. While the Special Rapporteur welcomed the regime change in Zimbabwe and stressed that the regime change could not happen "under a shadow of economic coercion" He noted that the sanctions had led only to the suffering of ordinary people rather than bringing political change.

The adverse effect of financial sanctions on the economy of the target State and at times the region is often quite perceptible, as in the case of Zimbabwe.

In this regard therefore, the United Republic of Tanzania through this platform urges other member states of AALCO to have a common voice and be heard against the abuse of Extra-territorial application of domestic laws contrary to the established norms of international law. Specifically, Tanzania argues AALCO member states to call upon all states that have imposed sanctions against Zimbabwe to lift them. Zimbabwe as sovereign state has the right to self-determination and has right to exercise its power and freedom as a sovereign state.

I am particularly glad that AALCO is also taking the lead in this regard and salute the efforts. Perhaps it would not be too late to place a recommendation at this stage that *going forward* AALCO undertakes a Special Study on the Illegality of Sanctions against Humanitarian/ Human Rights Considerations/ e.g. with case studies of the most effected countries I have made reference to. I thank you Mr. President.

**President:** Thank you Prof. Palamagamba J.A.M. Kabudi, now I invite the next speaker the delegate from the Islamic Republic of Iran for his views.

**The Delegate of the Islamic Republic of Iran:** Thank you Mr. President. “In the name of God, the Compassionate, the Merciful”

Mr. President, At the outset, I would like to thank AALCO for inclusion of this important and necessary topic in its agenda especially in the light of the recent developments emanating from adventurism. I also express my gratitude to the Secretariat for preparation of the report on this topic and its evaluation regarding different aspects of the topic.

Mr. President The founders of United Nations has perceived to establish a new era in which the rule of law and justice could be the foundation of new international order thus creating a sound platform for human beings to realize their aspirations in terms of prosperity and well-being. Despites all these commitments, and regardless of existence of a robust legal framework established on the basis of state's obligations emanating from international law, unilateralism is the most pressing challenge for the rule of law at the international level. It has

been crystalized either in the form of waging trade war against countries, imposition of extraterritorial illegal economic and trade sanctions or any other international wrongful act which have paralyzed the foundations of international law and rule-based international legal order. This is nothing but “naked economic terrorism” which not only deliberately and indiscriminately targets civilians but also causes them pain and suffering at the interest of political short-sighted purposes.

Today, it has been clear for everybody that, in practice sanctions even those of United Nations Security Council could have not succeeded in realizing their designated objectives. Instead, it has been targeting the most vulnerable people and innocent civilians with no other effect and result, but infringement of fundamental human rights including in particular the right to life. This is why we can now claim that the unilateral sanctions are in contradiction with principles of International law enshrined in the United Nations charter and those principles stated in 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States including principle of sovereign equality of States, non-intervention and duty to cooperation.

In fact, the extraterritorial application of national legislation, especially those with secondary effects not only affects the targeted States and its civilian but also has made situation more complicated for the third countries. Moreover, the negative effects of extraterritorial application also affect international cooperation in different areas. To cite an example, unilateral sanctions detrimental to collective response to crimes, impacts allocation of resources and impairs the cooperation in combating crimes such as transnational organized crimes, corruption, human trafficking and smuggling of migrants.

The UN Human Rights Council Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights has clearly made the point that certain sets of peremptory norms could possibly be breached through the imposition of (at least certain forms of) economic sanctions. This is why he refers to the article 41 (2) of the ILC Articles on responsibility of States for internationally wrongful acts and concludes that, States could be under a legal obligation not to recognize and/or aid to the effects of unlawful sanctions, especially those applied extraterritorially and secondary economic sanctions. Such an obligation derives from the well-established general principle of law *ex injuria jus non oritur*, meaning that legal rights cannot derive from illegal acts.

Mr. President the Islamic Republic of Iran in an effort to respect the international rule of law has chosen to recourse to the International Court of Justice. Last year, the ICJ in its provisional order reiterated that the United States is obliged, under its international commitments, to remove the obstacles created as a result of its actions and illegal decisions made upon its pullout from the JCPOA, including the impediments which have emerged on the path of Iran's trade in certain domains. The Court has also recognized the damages and irreparable harm that the US has caused to Iran and its international business relations.

The court's unanimous order was another clear testament to the illegality of the United States' sanctions against our people and citizens. However, since the indication of the Order, the United States has failed to implement measures requested by the Court; on the contrary, by imposing new sanctions it has moved on an opposite direction, though we have passed the waves of this unprecedented pressure.

In another move the U.S has illegally and in flagrant violation of international law, confiscated billions of dollars of assets of the people, government and Central Bank of the Islamic Republic of Iran under the US court's rulings in clear breach of its immunity. In this regard, the Islamic Republic of Iran had instituted proceedings against the United States before the International Court of Justice which the Court unanimously has found that it has jurisdiction, and this case is now in the merits stage.

Mr. President, at the end and in line with the theme of this year session, I would like to remind that, the imposition and threat to imposition of unilateral sanctions by the United States as it used to do, along with its other consistent breaches of international law has put into question the foundations of international law and international legal order. Thus, we maintain the time is ripe to take urgent actions against these kind of unilateralism which endanger solidarity and coexistence in international community, and runs counter to the purposes and principles enshrined in the UN Charter.

In this context, we invite the AALCO Secretariat, in furtherance of the previous studies undertaken by the Secretariat, to prepare a special study on the illegality of the extraterritorial application of national laws and in particular its impacts on third countries. Thank you Mr. President.

**President:** I thank the distinguished delegate from the Islamic Republic of Iran. Now I give the floor to the distinguished delegate from the People's Republic of China.

**The Delegate of the People's Republic of China:** Mr. President, Nowadays, we are facing a wider array of global challenges and re-surfing unilateralism and power politics, especially characterized by unilateral sanctions against other countries beyond the framework of UN Security Council. China remains consistent in its position to oppose unilateral sanctions as such because of its threat to international peace, stability and development.

Firstly, such unilateral sanctions in many occasions violate the integrity of UN Security Council sanctions and cannot be deemed legal. The Security Council resolutions for sanctions are normally adopted as a package, after considering various factors in a comprehensive and balanced manner, including their purposes, means, scope and humanitarian effects. Above all, sanctions resolutions demonstrate the vital role played by UN collective security mechanism. According to the UN Charter, Security Council resolutions are legally binding to its all Member States. All Member States shall implement the resolutions. Unilateral sanctions which go beyond the scope of the Security Council resolutions for sanctions are in breach of the delicate consensus and balance. It goes against the UN Charter and finds no basis in international law.

Secondly, unilateral sanctions are often accompanied by improper long-arm jurisdiction which violates the basic norms of exercising extraterritorial jurisdiction. Unilateral sanctions are often adopted by a state in accordance with its domestic law to meet its political needs. Sometimes, secondary sanctions are imposed upon the third states, by establishing and exercising jurisdiction based on extremely thin connections, resulting in the improper extraterritorial application of its domestic laws. Such sanctions violate the purposes and principles of the UN Charter and basic principles of international law, especially the principles of sovereign equality and non-interference and put the stability of international relations at risk.



China is of the view that the abuse of unilateral sanctions are not only in lack of legitimacy and justification in international law but also won't help to solve the problem. On the contrary, it will bring tension to international relations. China always advocates that when it comes to state-to-state relations, the principle of mutual respect, equal treatment, peaceful co-existence and win-win cooperation should be followed. Thank you, Mr. President.

**President:** I thank the delegate from the People's Republic of China. I recognize the distinguished delegate from Egypt.

**The Delegate of the Arab Republic of Egypt:**<sup>22</sup> Egypt expresses its principled position on opposing the use of national legislation as a tool to impose unilateral sanctions against other countries and especially imposing sanctions against third parties. This is because this violates the principal of equality in sovereignty between countries which is the pillar of international law, and also breaks the regional jurisdiction limits of the national legislation, and violates the principle of non - interference in the regional affairs.

Egypt stresses the danger of using national legislation as a tool to impose the sanctions against third parties at international level because it clearly violates the pillars of present international order, and it could force the concerned countries to take retaliatory measures and thus could poses threat to international peace and security.

In connection with the above, Egypt believes that the legitimate and acceptable framework for imposing sanctions against a country is through the collective international frameworks, in particular by Security Council, in accordance with powers and prerogatives of the Council in this regard and under the UN Charter as the principal organ for the maintenance of international peace and security.

**President:** I thank the distinguished delegate of Egypt. I now call upon the distinguished delegate from Palestine.

**The Delegate of the State of Palestine:**<sup>23</sup> Imposing collective sanctions by one country against another is a violation of the UN Charter and contrary to the principles and rules of international law, human rights and international humanitarian law.

The imposition of sanctions by the Security Council is permissible, but unilateral sanctions are contrary to Article 41 of the UN Charter and violate the principle of sovereign equality, the principle of non-interference and the right to self-determination and the right to development.

This applies to the Occupied Palestinian Territory through the imposition of collective punishment by the occupying Power on the civilian population, through settlement, expropriation of land, the construction of the apartheid wall, forced deportation, piracy on clearing funds, sanctions against prisoners and detainees, collective sanctions and the blockade of the Gaza Strip and likewise the occupying power enacted racist legislation against the civilian population, such as the national law, the Nakba law and the stone-throwers law.

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<sup>22</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

<sup>23</sup> The statement was delivered in Arabic. This is unofficial translation done by the Secretariat.

The State of Palestine has recommended:

1. To abide by the principles and norms of international law concerning the imposition of sanctions by the United Nations
2. Criminalization of unilateral collective sanctions in times of peace, war and occupation through the Statute of the International Criminal Court and through the legal mechanisms of the United Nations legal organs
3. Inviting the countries of the AALCO not to recognize and deal with collective sanctions with unilateral sanctions.

**President:** I thank the distinguished delegate from Palestine who is also the Vice-President. I now call upon the distinguished delegate from Indonesia.

**The Delegate of the Republic of Indonesia:** Thank you Mr. President for giving me the floor, On the issue of Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties, my delegation is of the view that unilateral sanctions are against the fundamental principle of national sovereignty and international law especially in the present discussion it involves third parties.

Indonesia would like to comment on the current situation in Iran that brought upon this topics. Indonesia views the Joint Comprehensive Plan of Action (JCPOA) agreed by US, UK, France, China, Russia and Germany in 2015 as a historic achievement within the framework of multilateral diplomacy and negotiations to address the issue of nuclear non-proliferation and disarmament.

We regret the US decision to withdraw from JCPOA and unilaterally reinstate economic sanctions against Iran.

We call all parties to uphold the UN Security Council's decision in support of JCPOA, endorsed by Resolution 2231 (2015), in order to maintain world peace and security.

My delegation emphasizes the importance of making JCPOA as a “building blocks” of regional peace and security, which shall be the basis for strengthening trust and confidence between Iran and all related parties, including the US. Thank you Mr. President.

**President:** Thank you very much distinguished delegate from Indonesia. Are there any more Member States who would like to make interventions? Or even Non Member-States? I see none. I now invite the Secretariat to give the next course of action, and any procedural issues associated with that.

**Prof. Dr. Kennedy Gastorn, Secretary-General:** Thank you Mr. President. According to our schedule Mr. President this agenda item was allocated this time before the coffee break. In view of the fact that we have been able to exhausted this important topic timely the matter has been decided so that the topics that were to be discussed tomorrow will be discussed today. In view of that I am aware that the next topic for discussion is the “Selected Agenda Items on the Agenda of the International Law Commission” (ILC). However, the delegates representing the ILC are not in the audience at the moment. At the same time the topic “International Law in Cyberspace” also experts to this topic are not in the audience. In view

of that Mr. President the Secretariat recommends to take up either one of the following matters shortly after break, namely “Law of the Sea” or “Peaceful Settlement of Disputes”. Mr. President a decision on which topic we take up now can be discussed informally during the short break. Accordingly we would recommend that we break for refreshment for 15 minutes and then resume.

**President:** Thank you Mr. Secretary-General. We will now take a break and return to the hall at 4.00 PM.

**X. VERBATIM RECORD OF THE THIRD  
GENERAL MEETING (CONTD.)**

**X. THE VERBATIM RECORD OF THE THIRD GENERAL MEETING (CONTD.)  
HELD ON TUESDAY, 22 OCTOBER 2019, AT 04:15 PM**

**AGENDA ITEM: PEACEFUL SETTLEMENT OF DISPUTES**

**H.E. Mohammed Shalaldeh, Minister of Justice, State of Palestine and Vice-President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** The importance of peaceful resolution of disputes within international law has assumed even greater importance. It is time for the world community to acknowledge the reality that the peaceful settlement of disputes is today a non-negotiable global imperative and one that has to be scrupulously honoured in both letter and spirit. The United Nations, as always, has taken keen interest in the topic and we continue to draw inspiration from their commitment to the progressive development of the law on this important topic, especially the Manila Declaration on the Peaceful Settlement of International Disputes, 1982. AALCO has always believed and expressed the view that all settlement of disputes between States should take place through peaceful means alone, with diplomatic measures taking priority followed by institutional international/regional efforts to solve unresolvable issues in the most amicable manner.

Our brief on the subject, prepared for the first time in 2018 gave an overview of the topic from an international law perspective. The brief highlighted the varied dimensions of the topic and focused on the major methods of dispute settlement, which can and should be resorted to by States in their engagements with other members of the international community. Member States, welcoming our work, were of the collective view that AALCO should continue its engagement with the subject. Building on this foundation, our endeavour this year has been to reemphasize the importance of peaceful settlement of disputes to the world community, while additionally focussing our attention on the peaceful settlement of environment disputes.

As we are all aware, the hazards posed by climate change and rampant changes to the environment constitute one of the biggest threat to the collective existence of humanity. The emergence of environmental standards that seek to push states towards greater 'green' compliance has resulted in multiple interpretations and possibilities of conflict. The rise of new technologies and the challenges posed by increased mobility of work force, capital and resources across frontiers has further increased pressure on the environment to keep pace with anthropocentric activity. Catastrophes like the Amazon Rainforest wildfires that made global headlines are the result a complex interplay of factors which the world community can endeavour to prevent by advancing their understanding of environmental law and its varied dimensions.

In such a scenario, a serious understanding of environmental dispute resolution is in our best interest and AALCO remains committed to furthering our collective understanding on this important subject. We look to hear from our esteemed Member States on their views on the subject and hope to incorporate the ideas that emerge for greater substantive deliberations in our upcoming Annual Sessions and urge greater inter-State cooperation on environmental protection for the collective good of our common resources keeping in mind the values of sustainable development in letter and spirit. Before I close, I take this opportunity to thank our Member States for their strong commitment to environmental protection and I hope that

AALCO's deliberations in this area will further increase our understanding of newly emerging areas on this front. Thank you Mr. Vice-President!

**Vice President:** Thank you Secretary-General for your remarks, in which he focused on legal protection of environment and the stand of AALCO on peaceful settlement of disputes in international law. Now, I call upon the Delegate of the Islamic Republic of Iran to make their statements<sup>24</sup>.

**The Delegate of Islamic Republic of Iran:** "In the name of God, the Compassionate, the Merciful." Mr. Vice-President, we are of the view that prevention from being in a dispute is always the basic element in friendly relations between States. Thus, we emphasize the fundamental responsibility of States for the prevention of disputes. We also affirm the right of all States to resort to peaceful means of their own choice for the prevention of disputes or situations. In this vein, we maintain that Article 33 of the Charter of the United Nations, which contains a range of diplomatic and legal methods for settlement of disputes, should be interpreted in light of Article 2 (3) and 2 (4) thereof which enshrines a fundamental principle of international law serving as one of the pivotal cornerstones of the international peace and security. In fact, based on international law, not only States are free to choose resort to peaceful means, but also they are free to choose the methods for dispute settlement. The UN legal and dispute settlement system continues to reflect the state sovereignty. According to Article 33, States will seek the peaceful means of their own choice.

Mr. Vice- President, during last five years, the Islamic republic of Iran has showed its commitment to international law by recourse to peaceful methods of dispute settlement. For achieving a meaningful negotiation, the Islamic Republic of Iran during more than eighteen months of lengthy and technically specific negotiations on the nuclear issue signed "The Joint Comprehensive Plan of Action (JCPOA)" on 14 July 2015. While the Islamic Republic of Iran demonstrated its good faith through the adoption and implementation of the JCPOA provisions with the approval of the IAEA despite insufficient cooperation on the part of some parties to the instrument, the US unilaterally withdrew from the JCPOA in clear disregard of good faith and in sheer demonstration of an arrogant unilateralism void of respect for the most rudimentary tenets underlying international relations between civilized nations. Yet, the Islamic Republic of Iran never deviated from rule of law and instead had resort to a peaceful means of settlement of disputes, that is, the International Court of Justice. On 16 July 2018, the Islamic Republic of Iran filed its application together with a request for Provisional Measures to the International Court of Justice to protect its rights under the bilateral Treaty of Amity between the two countries, which were infringed as the result of the re-imposition of sanctions previously lifted under the JCPOA. Last year, the Court unanimously indicated provisional measures whereby:

"The United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, shall remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities; and (iii) spare parts, equipment and associated services necessary for the safety of civil aviation." And also:

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<sup>24</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

“The United States of America shall ensure that licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point.”

The US is also under an obligation to comply with the Order of provisional measures as indicated by the Court in paragraph 100 of the Order:

"The Court reaffirms that its "orders on provisional measures have binding effect" and thus create international legal obligations for any party to whom the provisional measures are addressed."

Nevertheless, US failed to implement the order to this date, which is in contradiction with the aforementioned paragraph of the order and the ICJ jurisprudence.

Mr. Vice- President, finally, I would like to refer to the activity of the Special Committee on the charter of the United Nations, which intended to consider methods of dispute settlements embodied in article 33 of the UN charter. During last two years, negotiation, enquiry, mediation and good offices have been considered in framework of this agenda, which has led to representing useful contribution from different States on these methods. We are of the view that considering each method of peaceful settlement of dispute in framework of this AALCO's agenda might be a fruitful study.

In conclusion, my delegation believes that empowering and strengthening of existing international legal tools for peaceful settlement of disputes between States should be among the priorities of the international community, including those of the AALCO. I thank you, Mr. Vice- President.

**Vice President:** I thank the delegation of the Islamic Republic of Iran for their statement focusing on the need for every State to resort to the means of peaceful settlement of disputes and focus on the UN Charter. Next, I invite the delegation of Japan to make their statement<sup>25</sup>.

**The Delegate of Japan:** Thank you Chair for allowing me to take the floor on this important topic. First of all, I would also like to express our gratitude to the Secretary-General and his staff for compiling a detailed report.

As mentioned in the Secretariat's report, Japan proposed to include this topic for the first time during last year's AACLO Annual Session held in Tokyo. As a permanent forum on international law issues, AALCO has contributed to the exchanges of views and State practices among its Member States. On the other hand, discussions at AALCO have focused primarily on substantive law. AALCO is a perfect forum to learn other States' experience in dispute settlement as well, and that is why Japan proposed to take-up peaceful settlement of disputes at the Annual Session hosted by Japan.

Sovereign and equal States are free to choose a means of dispute settlement that is most appropriate, given the nature and the circumstances of the dispute. But when a dispute cannot be resolved through negotiations, Japan believes strongly in the role that a third-party settlement can play in dispute settlement.

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<sup>25</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

To show Japan's commitment to peaceful settlement of disputes, Japan made in 1958, the "optional clause" declaration under Article 36, paragraph 2 of the Statute of the ICJ. As for ITLOS, Japan has not made any reservation pursuant to Article 298 of UNCLOS limiting the applicability of the compulsory procedures entailing binding decisions and as a matter of fact, Japan has participated fully to all proceedings before the ICJ and ITLOS.

Mr. Chairperson, we witness increasing number of cases in dockets both in ICJ and in ITLOS. This is a reflection of the confidence States place on Courts and Tribunals. We share a common interest in maintaining such credibility. Finally, agenda item identifies peaceful settlement of environmental disputes. A challenge, however, in referring environmental disputes to international courts and tribunals could be associated with the highly technical and scientific issues that are almost inevitably involved in such disputes. The courts and tribunals will be required to assess large volume of facts and evidence presented before it, and the role of experts and witnesses will be essential. Perhaps, for example, the ICJ should consider making more use of Court-appointed experts to assist the Court in properly ascertaining the technical and scientific facts and evidence. I thank you Mr. Chairperson.

**Vice President:** I thank the delegation of Japan for their Statement, which focused on Japan's proposal of the item 'Peaceful Settlement of Disputes' and talk about the jurisdiction of the ICJ. Next, I invite the delegation of Indonesia to make their statement<sup>26</sup>.

**The Delegate of the Republic of Indonesia:** Mr. Vice- President, Distinguish Delegates, Ladies and Gentlemen, allow me, on behalf of the Indonesian Delegation, to deliver our intervention for the issues of Peaceful Settlement of Disputes as follows:

Indonesia supports positive steps for Dispute Settlement. Peaceful Settlement of Disputes we believe will contribute to the stability of our region and in a global scope as well, and encourages a better legal order transcending numerous issues. Indonesia is one the countries that prioritizes peaceful settlement of disputes. This is shown with numerous practices that Indonesia has gone through, settling disputes in a peaceful manner, such as the case of Sipadan Ligitan, and a number of cases under the WTO.

Mr.Vice- President, Distinguished Delegates, within the scope of peaceful settlement of disputes, Indonesia encourages the establishment of comprehensive international mechanism in environmental related disputes. Indonesia, as one of the largest archipelagic states in the world, bordering with 10 states and located between 2 oceans, is extremely vulnerable to environmental catastrophes, especially to the marine environment. Indonesia emphasizes the development of internationally recognized comprehensive standard of indemnity for coral reefs damages, as well as pollution resulting from offshore oil exploration. In this regard, it is important to include the contingency principles in addressing environmental damages and its recovery. Thank you.

**Vice President:** I thank the delegation of the Republic of Indonesia for their statement supporting the resolution of disputes through peaceful means and focus on Indonesia's

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<sup>26</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.



encouragement of comprehensive settlement of disputes, especially environmental disputes. Next, I invite the delegate of the Republic of India to make their statement<sup>27</sup>.

**The Delegate of the Republic of India:** Thank you Mr. Chair. Your Excellencies, distinguished delegates and my fellow participants. On behalf of the Indian delegation, I take this opportunity to thank the Secretary General for his introductory remarks. The topic chosen is highly pertinent to commemorate the 150<sup>th</sup> Anniversary of Mahatma Gandhi, the importance of 'peaceful settlement of disputes' is so relevant. I thank the Secretary-General for choosing this topic and dwelling on it.

Mr. Vice- President, one of the major contributions of modern international law has been the emergence of 'peaceful settlement' of international disputes as the fundamental and peremptory norm of international law. This principle has been strengthened in practice by the development of institutional mechanisms to settle the disputes. Peaceful Settlement of Disputes lies at the core of international legal order based on international law.

Chapter VI of the UN Charter is exclusively devoted to pacific settlement of disputes and States are obliged to settle their disputes by peaceful means under Article 2. As the principal judicial organ of the UN, the International Court of Justice has an important adjudicatory role to play to ensure peaceful settlement of disputes. It must be highlighted that the idea of sovereign equality is enshrined in the peaceful settlement of disputes, which implies that consent of the State is irrefutable and States have the freedom to choose from the various means of peaceful settlement based on the nature of the dispute. With these general comments on the topic, I would now like to reflect on the peaceful settlement of environmental disputes, which is the focus of our deliberations today.

It is common knowledge that our environment is coming under increasing stress and faces dangerous threats resulting from various human activities. This is further complicated as environment adheres to no defined national boundaries and is seamless. The impact of national activities of one State can have significant adverse impact on environment of another State.

Due to transboundary effects of harm to environment, peaceful settlement of environment disputes has become a major challenge and concern of the international community. At present, there are frameworks to address and resolve these disputes. For instance, Principle 26 of the 1992 Rio Declaration mandates States to resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations. Further, Article 33(1) of the UN Charter specifies the means and methods of peaceful settlement of disputes, such as "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

In addition, most of the multilateral environmental agreements (MEA) adopt all or any of these methods as a means of settlement of environmental disputes. There are also procedures laid down under Article 11 of the Vienna Convention for the Protection of Ozone Layer 1985, and Article 14 of the United Nations Framework Convention on Climate Change

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<sup>27</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

(UNFCCC) 1992. WTO dispute settlement also provides for adjudicative means to settle disputes, which involve trade and environmental issues.

Despite the existence of peaceful settlement mechanisms, there is fragmentation and duplication of efforts, which lead to incomplete or slow redressal of these type of disputes. In some cases, it has even led to the problem of multiple dispute resolution forums where one State would activate WTO dispute panel while another State would approach ITLOS or even ICJ for the same dispute.

This calls for greater efforts to a common understanding on resolution of environment related disputes and an integrated approach to these disputes for their effective and speedy resolution. We recommend that AALCO could take the lead in more research on the topic with a view to design a common approach.

We also urge member states to participate in knowledge and practice sharing based on their experiences. This could be a useful start, which will go a long way to develop an integrated and effective approach to environment disputes. I thank you Chair.

**Vice President:** I thank the delegation of India for their important legal statement, which focused on the peaceful settlement of environmental disputes. But I say there is not only environmental disputes there are also different other kinds of disputes, though this remains one of the most important. Now, I invite the delegation of the Republic of Vietnam to make their statement<sup>28</sup>.

**The Delegate of the Republic of Vietnam:** Thank you Mr. Vice- President. On behalf of the Vietnam's delegation, I would like to make a brief observation.

It is our consistent position that all disputes must be resolved by peaceful means, through mechanism and tools including diplomatic and legal processes in accordance with international law. It is crucial that states respect their obligations of non-use of force, refraining from any actions that may escalate tension and strictly comply with international law. In addition, we reaffirm the vitality of international legal and judicial institutions in the maintenance of international peace and security by helping States to settle disputes by peaceful means in full respect of the international law.

In line with this conviction, Viet Nam has so far participated in two Advisory Opinion proceedings before the International Court of Justice on the questions of Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion) and Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion).

Mr. Vice-President, Viet Nam has consistently shown our utmost respect to this particular principle of international law, promoting and taking part in the peaceful means of settling disputes, in order to protect the international legal order. First, it is important that States observe obligations to settle international disputes by peaceful means, without resort to threat or use of force, in full compliance with international law. We believe that dialogues should always be the first option, but if dialogues fail, States should refer to third party dispute

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<sup>28</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

settlement mechanisms. The final decisions rendered by such mechanisms should be respected and complied with by the States concerned.

We would like to thank the Secretariat for preparing a detailed report on the matter, especially the study on the peaceful settlements on international environmental disputes. As the protection of environment has garnered more and more attention from States as well as individuals, an analysis of this rather new issue, in relation with other pressing matters such as States' obligation to protect the maritime environment under UNCLOS, would be a step towards the progressive development of international law. Therefore, Viet Nam fully supports the inclusion of peaceful settlements of international environmental disputes in this report and expects further examination on the matter. I thank you for your kind attention, Mr. Vice-President.

**Vice President:** I thank the delegation of the Republic of Vietnam for this important legal vision, which reiterates that all Member States of AALCO abide by peaceful settlement of disputes. The issue is that double standards exist in the application of the principle of peaceful of disputes, which unfortunately prevents its universal application and leads to the violation of international law. This is the problem being faced by the international community<sup>29</sup>.

**The Delegate of the People's Republic of China:** Thank you Mr. Vice- President. We would like to join the other delegations in thanking the Secretariat for preparing a very detailed brief on this topic, especially the comprehensive introduction on settlement of environmental disputes. It is believed that the peaceful settlement of disputes is a fundamental principle of international law. We are of the view that dispute settlement should be aimed at maintaining peace and achieving win-win results. To this end, China is of the view that the principle of State Consent shall be strictly observed in choosing the means of disputes settlement, rather than imposing a dispute settlement procedure on other States. Settlement of disputes between states through negotiation and consultation can best reflect the true will of parties to disputes and the principle of sovereign equality, and its results can be best accepted and executed by parties. This is the most conducive way to settle of disputes, and also the most common and important one in practice. Third party dispute settlement institution should strictly adhere to its mandate, refrain from expanding and abusing its jurisdiction at will and going against the will of parties to disputes, which can only lead to deviation from its original intention of promoting peace and win-win situation.

Mr. Vice- President, in the field of international environmental disputes settlement, besides the traditional mechanisms for dispute settlement, one important development has been, just as the report of the Secretariat mentioned, the incorporation of non-compliance procedures under various multilateral environmental agreements (MEAs). This procedure is of great significance in preventing disputes and facilitating implementation of MEAs, and is also an important complement to traditional dispute settlement mechanisms. The lack of capacity and means of implementation of MEAs by developing countries needs more attention. We should uphold the principle of Common but Differentiated Responsibilities, use the non-compliance procedures to facilitate implementation of MEAs, and ensure that the developed countries fulfil the commitment to providing financial support, technical assistance and capacity building to the developing countries for the implementation of MEAs. China attaches great

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<sup>29</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

importance to environmental protection, integrates ecological civilization into the overall national development strategy, promotes innovation of concepts, institutions and practices, and strives to build a beautiful country. Building a clean and beautiful world is an integral part of the pursuit of a community of shared future for mankind; we support the strengthening of global environmental governance, including the dispute settlement mechanisms and the non-compliance procedures, to facilitate international cooperation in addressing environmental challenges. Thank you, Mr. Vice-President.

**Vice President:** I thank the delegation of the People's Republic of China for their stand on the peaceful settlement of disputes, which is the priority of the international community. Resorting to power or threatening to use power is a violation of the UN Charter. It is the stand of all AALCO Member States that all States should abide by the UN Charter and the use of power/threat to use power is not legal in international law. Thank you delegation of the People's Republic of China for the Statement<sup>30</sup>.

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<sup>30</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

## **XI. THIRD GENERAL MEETING (CONTD.)**

**XI. VERBATIM RECORD OF THE THIRD GENERAL MEETING (CONTD.)  
HELD ON TUESDAY, 22 OCTOBER 2019, at 04:55 PM**

**AGENDA ITEM: VIOLATIONS OF INTERNATIONAL LAW IN PALESTINE AND  
OTHER OCCUPIED TERRITORIES BY ISRAEL AND OTHER INTERNATIONAL  
LEGAL ISSUES RELATED TO THE QUESTION OF PALESTINE**

**His Excellency, Mr. Mohammed Shalaldeh, Minister of Justice, State of Palestine in the chair.**

**His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Few topics in the history of AALCO have come close to determining the moral compass of AALCO as the international law issues relating to the Question of Palestine. Over the years, AALCO has deliberated numerous aspects of the subject, including but not limited to the “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories” starting from 1988. Over the course of the next thirty years, AALCO has consistently applied itself to every conceivable international law dimension concerning the historic land of Palestine and her people. Different Special Studies outlining the position of the Secretariat on various aspects have been published and well appreciated by our Member States. Our efforts have not gone in vain and AALCO’s efforts in this regard and the Afro-Asian position on the rights of the Palestinian people is well appreciated by the global community. It has been our consistent position over the decades that the Palestinian people have been denied the fundamental protections afforded to them by international law. The Occupying power in sheer disregard of international law continuous to violate the most basic rights of the people of Palestine.

During the Fifty Seventh Annual Session held in Tokyo, Japan in October 2018, AALCO was mandated to prepare a Special Study on ‘The Status of Jerusalem in International Law’ conceptualized in the context of recent attempts to disrupt the status quo. The Secretariat in line with this mandate prepared a detailed Special Study detailing all relevant aspects of the topic from an international law perspective, keeping in mind the decision of the US administration to shift the embassy of the country from Tel Aviv to Jerusalem. I am extremely happy to mention that the Study, which seeks to make an original contribution to the subject, has been formally released in the current Annual Session. The Study is amongst the first comprehensive ones undertaken in the wake of the Jerusalem embassy shift and we hope it can bring some clarity on the varied legal dimensions and US practice on the subject. I invite all of you to actively participate in the deliberations that follow and share your positions on this highly significant topic for the people of Palestine and the world community at large. Thanking you!

**The Delegate of Palestine<sup>31</sup>:** I thank the AALCO delegates for including the topic of Israeli violations in the Occupied Palestinian Territory in the work of the 58th Session of this esteemed Organization. The inclusion of this item comes in line with the principles and norms of international law, international humanitarian law and human rights.

Now we are talking about the application of and respect for international law. Israel continues to occupy the occupied Palestinian territories. The question that arises is, what is the legal

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<sup>31</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

status of the occupied Palestinian territory, as you know briefly since the partition resolution of 29/11/1947, No.181/2, which divided the State of Palestine into two states, Jewish state and the Arab state. The Jewish state is established and the Arab state is not established so far and thus what is the legal value of this resolution, which is considered legally, according to international law the legal basis for the establishment of a Palestinian state in addition to all the relevant resolutions on this aspect.

Also, a special resolution No. 194 was issued on the right of return and compensation for Palestinian refugees. To date, this resolution has not been implemented. When Israel was accepted as a state in the United Nations and when Israel's delegate participated in the United Nations, the acceptance of the State of Israel was dependent on two conditions. The first condition is Israel's commitment and its respect for the application of Partition Resolution 181/2 issued on 29/11/1947 and its respect for the application of the decision of the right of return and compensation for Palestinian refugees. In international law, this state is the only state the recognition of which is attached with two conditions. None of them has been implemented to date. In 1977, a resolution was issued on the International Day of Solidarity with the Palestinian People on 29/11 of every year, meaning that the world would remember the partition resolution on the establishment of two states, and so far this decision has not been respected.

In 1967, the occupied Arab territories, including the West Bank, Gaza Strip and East Jerusalem, were occupied, and the occupied Golan and Sinai were occupied. As you are aware, Sinai was returned under the Camp David agreement. There was a dispute over Taba and Taba was returned based on the arbitration agreement between Israel and Egypt. Taba was returned to Egyptian sovereignty. The West Bank, Gaza Strip and East Jerusalem are still occupied. Moreover, Israel did not content itself with this occupation, but annexed East Jerusalem, and consequently changed the legal status, which contradicts the partition resolution issued and said to internationalize the city of Jerusalem. Israel announced the annexation of the Golan with the support of the United States of America.

Since 1967, Israel has been committing the most heinous crimes as an occupying Power in the Palestinian Territories. I therefore wish that AALCO move from presenting Israeli violations in the Occupied Territories to legal and judicial mechanisms to hold the occupying Power accountable for its violations in the Occupied Palestinian Territory, by all peaceful means, whether in the Human Rights Council, the International Court of Justice or the Security Council; In the UN General Assembly or in all UN special agencies and other regional and international organizations.

With regard to universal jurisdiction, there is some legislation based on Article 146 of the Fourth Geneva Convention that obliges states to enact legal legislation to prosecute and hold accountable those who commit war crimes, genocide and crimes against humanity regardless of where the crime is occurred or what the nationality of the perpetrator is. This is an invitation to AALCO members to enact in their penal legislation in accordance with universal jurisdiction, and we could also call on AALCO states to ratify the ICC Statute, as we talk about legal mechanisms in international criminal law to hold the occupation accountable for these crimes in relation to the issue of the Occupied Palestinian Territory.

Israel, as an occupying Power, has ratified the Fourth Geneva Convention of 1949, in 1951. To date, Israel does not recognize the applicability of this Convention to the Occupied Palestinian Territory with arguments, which has no basis in international law. All United

Nations resolutions adopted by the General Assembly and the Security Council and the Advisory Opinion of the International Court of Justice in 2004 affirmed the applicability of the Fourth Geneva Convention of 1949 to the Occupied Palestinian Territory, including East Jerusalem. This applies legally to the occupied Golan.

The State of Palestine has acceded to more than 100 conventions, including those relating to human rights. We have rights and duties and abide by all principles and rules of international law, international humanitarian law, human rights and all relevant international conventions. We, under the occupation government, have the legal personality in accordance with the General Assembly resolution dated 29/11/2012, which is in line with the partition resolution that gave the legal status to Palestine, as it has moved or turned into a person of international law and from a national liberation movement to a state under occupation. We have rights and duties and abide by all principles and rules of international law, international humanitarian law, human rights and all relevant international conventions.

Unfortunately, this clear legal status of the Occupied Palestinian territory, including East Jerusalem, the occupying power does not recognize this status and this is evident by the fact that the occupying Power has committed the most heinous crimes, which in international humanitarian law are called gross violations. When they do settlement by deporting their inhabitants to this occupied territory in flagrant violation of the rules and principles of international humanitarian law, especially the text of article 49 of the Fourth Geneva Convention, as well as a violation of article 8, where settlement is a crime punishable by law. Three legal cases have been filed in the ICC: the settlement file, the prisoners' file and the last file of war on the Gaza Strip in 2014. So far, no reference has been heard from the ICC except some judgments. This is a question before the court. Action must be taken to initiate and scrutinize the initiation not only of the Prosecutor, but in cooperation with the Pre-Trial Chamber of the International Criminal Court in order to initiate an investigation and action to prosecute and hold accountable those who have committed war crimes, genocide and crimes against humanity. Settlement is considered a war crime and Israel is under the imposition of a fait accompli policy, whether in Jerusalem or the West Bank. There is also a tendency to the Prime Minister of the occupation that he will annex the occupied Palestinian territories, especially in the Jordan Valley, which is considered the food basket of the occupied Palestinian territory.

So what is required of the Palestinian people? Yes, we respect and abide by all resolutions of international legitimacy, but this people have the right to defend themselves by all peaceful and non-peaceful means based on international law, and the Palestinian leadership has presented more than once in the Security Council, represented by the President of the State of Palestine, Mr. Mahmoud Abbas, more than an initiative in the Security Council. There is an Arab initiative that has not been recognized or respected by the occupying Power or by the United States of America instead of solving the Palestinian issue.

There is also a bilateral agreement that did not respect this agreement and was disregarded by imposing collective penalties through piracy on clearing funds under the Palestinian prisoners and detainees. Here in this legal forum I say that the legal status of national liberation movements was resolved in international law in Article 4 of Protocol I of 1977, under the movements that fight for self-determination, against foreign occupation and against colonial domination. These conflicts are international armed conflicts in the sense that they have the legal status of prisoners of war and Israel does not recognize this status.



Here, the United States, instead of resolving the issue in accordance with international legal resolutions, recognized the city of Jerusalem as the capital of the occupying Power and moved its embassy to Jerusalem. This is an affirmation of the not respecting of the principles of international law and international humanitarian law. This action is a flagrant violation of all international conventions and treaties, the 1961 Vienna Convention on Diplomatic Relations and the Third Protocol. A case in the International Court of Justice filed by the State of Palestine where it complained that the United States violated the Vienna Convention on Diplomatic Relations. Members of the court are currently awaiting for the US response to the Palestinian complaint, which begins in November this year.

Talk about Israeli violations is very long. Here I affirm what is the legal value of the advisory opinion issued by the International Court of Justice in 2004 at the request of the General Assembly and the General Assembly of the United Nations representing 193 States. This body I consider it a legislative body as a world parliament for international organization. Yes, there is an executive authority with the membership of the 15-nation Security Council. I also emphasize the legal value of the resolutions adopted by the General Assembly because they represent the will of the international organization and represent the will of the international community. Therefore, it is necessary to reconsider the respect and implementation of the resolutions issued by the General Assembly, if we talk about the resolutions of the General Assembly from a legal point of view that do not take it binding, but take it as the recommendation in terms of morality. So why was the State of Israel established on the basis of the General Assembly resolution and this resolution has not been respected by Israel and the rest of the world by implementing the partition resolution so far.

There are many resolutions 242 and 338 that have not been respected and have not been implemented. Israel, as an occupying power, does not recognize the applicability of any agreement to the Palestinian people and imposes a fait accompli policy by Judaizing the city of East Jerusalem and not recognizing the Palestinian reality. It adopts the policy of forced displacement and demolition of houses in the last period in the area of Wadi Hummus, near the city of East Jerusalem.

This situation, from my legal point of view and these grave violations of all principles and norms of international law, must be legally protected by the United Nations. This requires the support and assistance of such organizations as AALCO and all other regional organizations such as the League of Arab States, OIC, Organization of African Unity, organization of Non-Aligned States, the European Union and the Organization of American States, and therefore, they have positions to enforce legal protection for the Palestinian people because the most heinous crimes were being committed daily against the Palestinian people, against the civilian population and against religious and cultural property.

When it comes to Jerusalem, the occupying Power violates the 1954 Hague Convention on Legal Protection. Jerusalem is registered in the record of the World Heritage, Bethlehem, Hebron and all cultural and religious property, as many important resolutions have been issued by UNESCO and by the General Assembly and the Security Council, but unfortunately, they were not respected and applied. If we talk about the Gaza Strip and before we talked about collective sanctions, the Gaza Strip suffers the both as it suffer collective sanctions by the occupying power. When I speak of Gaza Strip, is it conceivable that the occupation authority declares the occupied territory hostile territory?

Israel as an occupying Power When it withdrew from the Gaza Strip declared this territory a hostile territory and the Gaza Strip is still under occupation, and the sovereign airspace and crossings and even birth certificate is still issued in the name of the occupying Power. So, it is still under occupation. This economic siege and these collective punishments in addition to the crimes committed against the Palestinian people in the Gaza Strip, I believe that the international responsibility borne by the occupying Power takes place as a legal international responsibility and the individual criminal responsibility borne by starting from the Prime Minister to the soldier or officer or settler in this territory. Consequently, we must turn this and the rest of the clauses not only to complain because complaints exist through the media and through the press, but as international and regional organizations, we must move from theorizing to national and judicial mechanisms of accountability so that no one can escape from the punishment and we could say that there is yes in the applications of international criminal law, in the applications of the ICC, and in international law.

And here I say in all this policy by the United States of America that it is what is said about it the deal of the century. What is the deal of the century not to East Jerusalem to be the capital of Palestine with settlement and with settlement expansion and with all violations and therefore this is a marginalization of the main role of international law and the principles of international humanitarian law and the marginalization of the role of this international body and thus I say the action must be activated by the General Assembly based on the Uniting for Peace resolution issued in 1979 regarding the Korean War. Why the role of the Security Council was not activated? Why the advisory role of the International Court of Justice was not activated to convey these views? With my due respect to the International Court of Justice, why did these judges met and this view has been issued which confirms many of legal principals and did not respect them.

Therefore, we must remove the argument that the law governing international relations is the law of force, not the force of law. Unfortunately, the law governing international relations is currently the law of force represented in the United States of America in violation of all international resolutions related not only to the Palestinian issue, but to other issues not less Importance of the Palestinian cause.

In this regard, I reiterate that these violations are documented by many human rights institutions operating in the Occupied Palestinian Territories, including within Israel, such as B'Tselem, other organizations and human rights organizations, and reports of international organizations such as Amnesty International and Human Rights Council as well. Fact-finding committees and investigative committees visited the Occupied Palestinian Territory and met with the Prosecutor and the staff of the International Criminal Court, but unfortunately these resolutions remain unimplemented because they are submitted to the General Assembly when we talk about the Human Rights Council. Its decisions are very important and its documentation is vital, but are these reports submitted to the General Assembly, discussed? Are the legal action taken?

Here I am very sorry about the duplication of dealings in the United Nations through the Security Council in this aspect, where the United States of America has great influence at the expense of peoples and therefore I would say the Palestinian cause. We as a Palestinian people are with peaceful resistance in accordance with the principles of international law and human rights. We are committed to all the principles of international law, the Charter of the United Nations and international treaties related to human rights. In return, as a Palestinian people, we call on the international community to resolve the Palestinian issue in accordance

with the standards of international legitimacy and on the basis of all resolutions of international legitimacy starting with all UN resolutions because these resolutions do not fall into limitation and enjoy a very important legal value in resolving the Palestinian issue because peace and war starts from Palestine. So, this is a point of tension not only for the Palestinian people, but for the entire region. At the end, I thank everyone for their full solidarity with the liberation movements and the right of self-determination of the Palestinian people, and I thank you all.

**Vice-President:** Now, I invite the delegation of Qatar to make their statement<sup>32</sup>.

**The Delegate of the State of Qatar**<sup>33</sup>: H. E. The Secretary-General of the Asian-African legal consultative organization, Distinguished Member States, Ladies and Gentlemen, May peace and mercy and blessings of God be upon you.

The position of the State of Qatar on the Palestinian issue and the peace process remains unchanged, namely supporting the rights of the Palestinian people and denouncing the illegal Israeli actions against them. The State of Qatar believes that just issues cannot be solved by subjecting them to the balance of power between the occupier and the reality under occupation, but solved with respect for international legitimacy. Ensuring stability in the Middle East is linked to a just solution to the Palestinian issue in accordance with the principles, resolutions and Charter of the United Nations, which establishes the right of self-determination and the inadmissibility of annexing the territories of others by force.

The brutal attacks by the Israeli occupying forces that have resulted in the deterioration of the situation in the Palestinian territories, especially the inhumane conditions in the Gaza Strip, the suffocating siege suffered by the Palestinian people, the continued settlement in the West Bank and the flagrant violations of international humanitarian law, especially the Fourth Geneva Convention, must be condemned by States.

The State of Qatar reiterates the importance of a peaceful and diplomatic solution based on adherence to the resolutions of international legitimacy, particularly the principle of a two-state solution and the Arab Peace Initiative.

The AALCO has an important role to be appreciated for putting forward this important axis to unify the visions between the two continents. We also hope that the efforts of the Organization will bear fruit by achieving the desired objectives of raising such topics. May the peace and blessings of God be upon you.

**Vice-President:** I thank the delegation of the State of Qatar for their statement. We appreciate and value the efforts of the delegation, which is based on international resolutions. I now call upon the delegate of the Republic of Indonesia<sup>34</sup>.

**The Delegate of Republic of Indonesia:** Thank you Mr. Vice- President, Distinguished Delegates, Ladies and Gentlemen.

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<sup>32</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

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<sup>34</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

My delegation believes this current issue of Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues Related to the Question of Palestine to be of utmost importance.

Indonesia strongly deplores Prime Minister Netanyahu's statement declaring Israel's plan to annex parts of the West Bank if he remains in power. The statement he made clearly contravenes international law and various UN resolutions and threatens the prospect of the peace process. Indonesia always attaches priority to the issue of Palestine, particularly during Indonesia's Non-Permanent Membership of the United Nations Security Council for the period of 2019-2020.

Mr. President, Distinguished Delegates, the overall situation with regards to the issue of Palestine is marked by the lack of credible peace process and plan, more worsening economic and financial condition that is due to the occupation-related policies that finally resulted also to the worsening humanitarian situation among the Palestinian people.

On that background, Indonesia highlights three urgent points that need international attention and intervention: first the protection of the Palestinian civilians; second the need to address the humanitarian condition; and third the peace process that must be resumed.

To establish a credible peace process, Indonesia is of the view that it must fulfil the following criteria:

1. Inclusivity of all parties of the conflict: Palestine and Israel;
2. Comprehensiveness, seeking solutions not only for economic purposes, but also for political reasons;
3. Be in conformity with internationally agreed parameters, which address the core issues of the conflict such as border issues, settlements, return of refugees, East Jerusalem as Palestine's capital, security and access to water.

Mr. President, Distinguished Delegates, Indonesia reiterates its strong commitment to support Palestinians and Israelis to resolve the conflict based on international law, relevant UN resolutions and prior agreements, and realizing the two States vision, Israel and Palestine, living side by side in peace and security. Indonesia will continue to play an active role within various international forums to ensure that any peace initiative shall be based on the two-State solution and the aforementioned principles.

In this regard, Indonesia calls upon all AALCO members and partner countries to refocus attention on the need for addressing the issue of Palestine as the root cause of all conflicts in the Middle East. Thank you!

**Vice-President:** I thank the delegation of the Republic of Indonesia for this legal and political stand based on international resolutions. The issue of Palestine is not merely an economic issue, it is a political issue. The principle of 'Two-State solution' must be accepted and we reject the 'deal of the century' proposed by the US. Next, I invite the delegation of the People's Republic of China to make their statement<sup>35</sup>.

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<sup>35</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

**The Delegate of the People's Republic of China:** Thank you Mr. President, the question of Palestine is at the root core of the Middle East issue and is also the root cause of the regional issues. Safeguarding the legitimate rights and interests of the Palestinian people is the shared responsibility of the international community. Foreign occupation and historical grievances are the source of this complex and difficult issue. Recently, the conflict in the Gaza Strip has escalated; the situation in Jerusalem has remained grim, settlement construction and destruction of Palestinian property has continued, inflammatory rhetoric and actions have been frequent and escalated, the Middle East peace process has stalled. The international community should continue to endeavour to resolve the Palestinian issue peacefully by upholding multilateralism, promoting dialogue and negotiations, and through political consultation based on international law.

China is of the view that three principles should be observed in the settlement of the Palestinian issue. Firstly, insisting upon peace talks, and promoting Palestinian-Israeli relation return to the right track of resolving differences through equal dialogue and negotiation at an early date. Secondly, adhering to international consensus and principles including the "two-State solution", relevant UN resolutions, the principle of "land for peace" and the Arab Peace Initiative, upholding establishing a fully sovereign Palestinian State, and promote peaceful coexistence of Palestine and Israel as two States. Thirdly, ensuring the voice and propositions of parties concerned, especially Palestine, are heeded and avoiding imposing any solutions.

Mr. Vice-President, Chinese government's position on this item of Palestine is clear and consistent. China has always committed to supporting the just cause of the Palestinian people to restore their legitimate national rights. China supports the establishment of an independent Palestine State that enjoys full sovereignty on the basis of 1967 borders with East Jerusalem as its capital. China stands ready to work with the international community to promote a comprehensive, just and lasting solution of the Palestinian issue as soon as possible. Thank you, Mr. President.

**Vice-President:** I thank the delegation of the People's Republic of China for their legally firm stand towards the Palestine issue. The position of the People's Republic of China has always been supportive of the legitimate rights of the Palestinian people based on the 'Two State solution' and not on the hegemony of the occupying force or the United States. The responsibility of finding a solution is not on the shoulders of the Palestinian people alone and the international community has to share this responsibility as well. Now, I invite the delegation of the Arab Republic of Egypt to make their statement<sup>36</sup>.

**The Delegation of the Arab Republic of Egypt<sup>37</sup>:** Mr Vice- President, with regard to the violations of the international law in the Palestine and other occupied territories by Israel and legal status of Jerusalem.

Egypt reaffirms its strong stand of supporting the Palestinian's people for establishing their independent state on all the territories occupied since 1967, with Jerusalem as its capital. This stand is based on rules of the international law with regard to the illegalising the accession of land with force. This stand is also based on the related UN resolution, especially UNSC resolution No. 242 of 1967, UNSC resolution 338 of 1973 and 2334 of 2016.

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<sup>36</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

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In connection with the above, Egypt reiterates that Israeli settlements in occupied Palestinian lands, including in Jerusalem, are illegal. These illegal settlements are blatant violations of international law and UN resolutions. Similarly, Egypt believes that Israel being a occupying force should bear its responsibility in accordance with rules of the International humanitarian law, specially fourth Geneva convention 1949 in All occupied Palestinian territory which include Gaza strip, west bank including East Jerusalem.

Egypt supports the peaceful settlement of the Palestine issue through negotiations between Israel and Palestine on the basis of the resolutions of international legitimacy and Arab Peace Initiatives.

With regard to the issue of legal status of Jerusalem, Egypt stresses on the legal status quo of the Jerusalem, especially East Jerusalem which is regarded as occupied Palestinian land. Similarly, Egypt believes that any move that alter the legal status of Jerusalem is a null and void move and must be abolished, and because it confronts with the international law and UNSC resolutions. In this regard, it is worth mentioning the efforts that Egypt made – after US president announced accepting Jerusalem as Israeli capital- in order to prepare and present a resolution in the UNSC which aimed at of maintaining status quo of Jerusalem and preventing the other countries from opening their diplomatic mission in the Jerusalem, in compliance with the UNSC resolution number 478 of 1980. Though the Egyptian resolution draft could not be passed in the UNSC due to American veto, however its theme was adopted by the UN general assembly (ES-10/L.22) in December 2017 with massive majority which reflects world's supportive stand for Palestinian people's right and need for committing with the output of the peace process between Israel and Palestine, which made Jerusalem status one of issue which should be resolved through dialogue, in accordance with the related UN resolutions. Thank you very much!

**Vice-President:** We thank the delegate of the Arab Republic of Egypt for their legal position, which is based on international resolutions. Egyptian position and Arab position is firm and unwavering on the question of Palestine in spite of resolutions coming from United States or the occupation forces All thanks and appreciation to Egypt for this position. I would now like to invite the Secretary-General<sup>38</sup>.

**Secretary-General:** Your Excellency, the Vice-President of AALCO, Excellencies and Distinguished Delegates. We have received a request from the Islamic Republic of Iran that the Statement of the Islamic Republic of Iran on this subject will be delivered tomorrow morning. That means as we conclude this item namely, "Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues Related to the Question of Palestine" we shall accommodate one Statement from the Islamic Republic of Iran tomorrow morning. Mr. Vice-President, on the account of today's programme, I would want to put on record the following; that tomorrow we shall begin by receiving the Statement on Peaceful Settlement of Disputes from the State of Qatar to be followed by the Statements on Palestine by the Islamic Republic of Iran. Thereafter, we shall embark on the topic, International Law Commission. I am aware that all members of the International Law Commission are expected to sit on the dais and Amb. Dr. Hassouna who is the Chair of the Working Group on Methods of the International Law Commission will also make a necessary remark to be followed by Prof. Georg Nolte and also other members who

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<sup>38</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

may wish to make necessary remarks before opening forum for discussions. After the topic of the International Law Commission, we shall embark on the topic on International Law in Cyberspace to be followed by the topic on Law of the Sea. I wish to take this opportunity to once again emphasize that under the Law of the Sea, there are three items that are going to be deliberated tomorrow, namely marine biodiversity beyond national jurisdiction, freedom of navigation in international waters, international straits, and the legal regime for combatting Illegal, Unreported and Unregulated Fishing.

Mr. Vice-President, if tomorrow we are able to cover the three topics, namely, ILC, International Law in Cyberspace and Law of the Sea that means the following day on Thursday we shall be able to cover the topic of international trade and investment and receive reports of AALCO's Regional Arbitration Centers and also deal with the concluding session for this Annual Session allowing delegates on Friday to enjoy the other hospitality that would be arranged and announced by the Secretariat of the hosts. With this note, Mr. Vice-President, I would recommend that we adjourn this meeting for a short break to be followed immediately by the organized dinner where transport arrangements will be announced by the host secretariat. Thank you Mr. Vice-President.

**Vice-President:** Now, we are stopping here for ten minutes and after that, we will return to hall for announcement regarding transport and dinner. Thank you for your legal effort in this session and other sessions also. Thank you all indeed<sup>39</sup>.

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<sup>39</sup> This statement was delivered in Arabic. This is an unofficial translation by the Secretariat.

## **XII. VERBATIM RECORD OF THE THIRD GENERAL MEETING (CONTD.)**



**XII. VERBATIM RECORD OF THE THIRD GENERAL MEETING (CONTD.)  
HELD ON WEDNESDAY, 23 OCTOBER 2019 AT 11 AM**

**AGENDA ITEM: PEACEFUL SETTLEMENT OF DISPUTES**

**His Excellency Ambassador Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, the President of the Fifty-Seventh Annual Session of AALCO in the Chair.**

**President:** We are starting our morning session little bit late because the bureau and the leadership of the Secretariat were invited to visit H.E., John Pombe Magufuli, President of the United Republic of Tanzania. We went to take the courtesy call and explained to him what has been going on. He is following up with keen interest. He has sent his best wishes to you and he looks forward to a constructive conclusion of this meeting. He reiterated the honour Tanzania has in organizing this meeting. He is inviting all of you to see the rest of the country and Dar es Salaam where we are. With this few remarks, let us continue from where we stopped yesterday. On the topic, Peaceful Settlement of Disputes, there were two outstanding requests from the floor to make interventions on the subject. The first one is from Tanzania. Tanzania you are welcome to take the floor.

**The Delegate of the United Republic of Tanzania:** Mr. President, we thank you. We wish to make a short statement on peaceful settlement of disputes. We state that the principle of peaceful settlement of international disputes is enshrined under UN Charter (Art. 2 pt. 3) which states, "All members shall settle their international disputes by peaceful means so that international peace and security, and justice, are not endangered". The Charter also provides in article 33 (1) that negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, regional agencies or arrangements and other peaceful means of peaceful settlement of disputes may be used as chosen by parties. The Charter expresses, on the one hand, the general obligation of peaceful settlement and on the other hand, the right of free choice of means of settlement.

Peaceful resolution of disputes involves diplomatic and judicial means of dispute settlement. Diplomatic means includes negotiation, mediation, inquiry, and conciliation. Judicial means includes settlement of disputes through a range of international courts and tribunals, in particular the International Court of Justice, the United Nations Convention on the Law of the Sea dispute settlement mechanisms, the dispute settlement procedures and mechanisms of the World Trade Organization, and ad hoc arbitral tribunals in both inter-State and investor-State disputes.

From this broad context, United Republic of Tanzania has always been the front-runner in the use of peaceful means in resolving disputes both at international and regional levels. The United Republic of Tanzania has participated in peaceful resolutions of disputes in the Great Lakes Region especially in Burundi. We have been involved in peacekeeping missions in different parts of the world for international peace and security.

Mr. Chairman, Tanzania has also been strongly involved in hosting massive refugees from the neighbouring countries in the Great Lakes Region in an effort to settle different disputes existing in that region.

Peaceful settlement of disputes is preferred to avoid effects of use of force and coercive means in settling disputes. This is the most effective way to diminish human suffering and the massive economic costs of conflicts and their aftermath. Evidence has shown that in most countries where forcible or coercive means were employed, these countries have been drowning into unending internal conflicts and economic crisis. There is inadequate international peace building activities in assisting countries emerging from conflict or in reducing the risk of relapsing into conflict and at laying the foundation for sustainable peace and development.

From this standpoint, the United Republic of Tanzania calls upon other AALCO member states to continue support to the principles of peaceful settlement of disputes in order to avoid escalation of human sufferings and economic and other hardships.

Mr. Chairman, in this context therefore, the United Republic of Tanzania would like to recommend the following:

- I. The need for international coordination and support for peaceful conflict resolution processes rather than the use of force or unilateralism.
- II. The need for strong internal institutions for nonviolent dispute settlement in divided societies.
- III. The prompt international responses in conflict situations.
- IV. The need for the international community to help in remedying situations in countries that are affected by use of war or other violent means in the resolution of disputes. Mr. Chairman, we present.

**President:** I thank the distinguished delegate from Tanzania for his contribution to this subject. The next speaker in my list is the leader of the delegation from Qatar.

**The Delegate of the State of Qatar:** Thank you Mr. President, the International Community endeavors to resolve disputes through judicial, diplomatic or political mechanisms to prevent these differences from snowballing into armed conflict with a view to maintain peace in the world. The UN Charter has approved the Principle of disputes resolution by peaceful means vide article No. (33) Item No. (1) which states that all parties to any dispute that might jeopardize international peace and security must try to find solution by way of negotiation, mediation, consensus, arbitration and judicial settlement, and must recourse to regional organizations and agencies and offer peaceful means of choice.

The State of Qatar on various occasions has reiterated its firm position that is the necessity of resolution of differences and disputes through peaceful means referred to in the UN Charter based on the foundation of respect of sovereignty of States without bowing to the pressures and dictates of other countries through the use of blockade and sanctions.

All of you must be aware of the inhuman, illegal and oppressive blockade imposed upon us. In spite of this, the State of Qatar has never backed out of calling for dialogue in international for and resolving the Gulf Crises and not to let other nations interfere in the issue.

We avail this opportunity to place our highest appreciation for the noble efforts of His Highness Sheikh Sabah Al Ahmad Al Sabah, Emir of the sisterly State of Kuwait to help the friendly and sisterly States to resolve this crises. Thank you Mr. President.

**President:** I thank the delegate of Qatar for the Statement. With that, we come to the end of this session.

**XIII. VERBATIM RECORD OF THE THIRD  
GENERAL MEETING (CONTD.)**

**XIII. VERBATIM RECORD OF THE THIRD GENERAL MEETING (CONTD.)  
HELD ON TUESDAY, 23 OCTOBER 2019, AT 11:10 AM WEDNESDAY, 23  
OCTOBER 2019.**

**AGENDA ITEM: VIOLATIONS OF INTERNATIONAL LAW IN PALESTINE AND  
OTHER OCCUPIED TERRITORIES BY ISRAEL AND OTHER INTERNATIONAL  
LEGAL ISSUES RELATED TO THE QUESTION OF PALESTINE**

**H.E. Amb. Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of  
the United Republic of Tanzania in the chair.**

**President:** We have one speaker who has requested to speak on the subject of Palestine. This is from the Islamic Republic of Iran.

**The Delegation of the Islamic Republic of Iran:** Thank you Mr. President. “In the name of God, the Compassionate, the Merciful”

Mr. President, at the outset, I would like to commend the Secretariat for preparing the report under this agenda item, especially in light of the recent developments. At the same time, it may be useful to include more elaboration of the measures taken by the State of Palestine concerning application instituting proceedings against the United States before the ICJ over the relocation of the latter’s Embassy to al-Quds al-Sharif. My delegation also thanks the Secretariat for preparation of the inclusive Study on the legal status of al Quds al-Sharif, which contains main legal issues on the matter.

Mr. President, for the past seven decades, the question of Palestine has been one of the most complicated political and legal issues at the regional and international levels. From the beginning, the Israeli regime has ignored international law and defied from the decisions of international institutions, including many UN resolutions. It has violated other international legal instruments through its actions as it continues to commit numerous war crimes, carry out its apartheid policy, commit massive and systematic violations of human rights, expand settlements and displace an ever-increasing number of Palestinians. The Israeli regime’s criminal acts against the Palestinians and other peoples of the region are currently the gravest threat posed to regional and international peace and security.

Likewise, the desperate attempts by the President of the United States for expansion of the occupied territories has continued in different directions from Golan Heights to al-Quds al-Sharif. In one his endless adventures he tried to change the legal status of al-Quds al-Sharif by relocating the US Embassy in occupied territories which is not only illegal but runs counter to numerous UN Security Council and General Assembly resolutions. While the Islamic Republic of Iran has clearly and consistently emphasised the Statehood of Palestine and the illegitimacy of any claims of sovereignty or statehood by the Occupying regime in the occupied territories, the legal status of al-Quds al-Sharif has remained unchanged for decades and this has been confirmed by UN Security Council, General Assembly and the International Court of Justice.

The Security Council Resolution 252 of 21 May 1968, for instance, asked the Israeli regime to cancel all activities in al-Quds al-Sharif while condemning the occupation of any land through armed aggression. The Security Council further reaffirmed, in resolution 476 of 30 June 1980, in stronger terms, that all measures, which had altered the status of al-Quds al-

Sharif, were “null and void” and had to be rescinded. And more pertinently, the Security Council Resolution 478 of 20 August 1980 condemned the enactment of Israeli law proclaiming a change in status of al-Quds al-Sharif and also called on all States “ that have established diplomatic missions” there to withdraw them from the city.

In the most recent attempt, the UN General Assembly condemned US decision to relocate its embassy to al-Quds al-Sharif on 21 December 2017 by declaring that “any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council.”

Numerous calls by the UN General Assembly to UN Member States to refrain from recognizing and assisting any changes in the legal status of the al-Quds al-Sharif is just the tip of the iceberg and is indicative of a more abominable disregard for principles of international law by certain States. I am referring to the advisory opinion of the International Court of Justice in 2004 on the illegality of the construction of the wall in the occupied territories, which based on that States are under an obligation not to recognize or not to assist situations created as the result of violations of peremptory rules of international law. The defiance of the Israeli regime in the face of the well-established principles of international law is not repudiated in due terms by certain State. While some purport to aid the existence of such an illegal situation, others unwillingly help by demonstrating silence.

Mr. President, we take note of the application instituting proceedings, by the State of Palestine; in the International Court of Justice against the United States of America, on 28 September 2018, over the relocation of the embassy of the United States of America in Israel to the Holy City, relying on 1961 Vienna Convention on Diplomatic Relations and the Optional Protocol thereof. In this relation, we are concurring with the Palestine that the relocation of the US embassy in occupied territories is not consistent with the goals and purposes of the Convention. Moreover, based on article 21 (1) of the Convention, the sending State can only establish a diplomatic mission on the territory of the receiving State which provides that

*“[t]he receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.”*

We hope that the decision by the International Court of Justice on the status of the Occupied Territories could take the issue one-step further in condemnation of the long-held defiance of the Israeli regime and certain States in this regard.

Mr. President, in conclusion, the Islamic Republic of Iran is of the view that any solution to the crisis requires the termination of the occupation, crimes and violations committed by the Israeli regime; the restoration of the inalienable rights of the Palestinian people to self-determination; and the establishment of their independent and viable State of Palestine, with Al Quds Al Sharif as its capital. We maintain our support for the Palestinian people in their rightful and legitimate struggle against the occupation and for their just quest to exercise their right to self-determination. I Thank you Mr. President.

**President:** I thank the delegation of the Islamic Republic of Iran for their Statement, which is very detailed, and I appreciate the research that has gone behind the Statement. Are there any

other interventions on the topic ‘Peaceful Settlement of Disputes from Member States?’ I don’t see any. So the next agenda item is selected items on agenda of the International Law Commission.

**XIV. VERBATIM RECORD OF THE FOURTH  
GENERAL MEETING**



**XIV. VERBATIM RECORD OF THE FOURTH GENERAL MEETING HELD ON  
WEDNESDAY, 23 OCTOBER 2019, AT 11:18 AM**

**AGENDA ITEM: SELECT ITEMS ON THE AGENDA OF THE INTERNATIONAL  
LAW COMMISSION**

**His Excellency Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, President of the Fifty-Eighth Annual Session in the Chair.**

**President:** So the next agenda item, is the Selected Items on the Agenda of the International Law Commission. First I invite the Secretary-General to give his introductory state on this subject.

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Mr. President, Excellencies, Distinguished Delegates. Allow me Mr. President to first invite the Members of the International Law Commission to the podium so that they can also have an opportunity to respond to and receive comments from the Member States.

With your permission Mr. President. AALCO as an organization is statutorily mandated to examine subject that are under consideration of the United Nations International Law Commission and forward its views to Member States and make recommendation to the United Nations International Law Commission based on viewpoints and inputs of the Member States on the Commission's agenda items. In its quest to fulfill this statutory mandate over the years, AALCO has forged and nurtured a close relationship with the ILC. It has also become customary for AALCO and the ILC to be represented during each other's sessions. The Asian and African Members of the Commission have undoubtedly made and continue to make a valuable contribution to the Commission their presence essential if the ILC is to be truly representative geographically. At this juncture I would like to welcome Members of the International Law Commissions starting with Ambassador Hussein Hassouna who has been a Member of the International Law Commission since 2007 and served as its Chair in 2012 and 2017 and currently is the Chair of the Working Group on the Method of its work. Professor Georg Nolte who has been a Member of the Commission since 2007 and its Chair in 2017 and also special rapporteur for the topic subsequent agreements and subsequent practice in relation to interpretation of treaties. Likewise I would wish to welcome Dr. Aniruddha Rajput who has been a Member of the Commission since 2017 and served as the Chairperson of the Drafting Committee for the sixty-ninth session of the ILC in 2017 and Prof. Chris Mena Peter a Member of the International Law Commission from the United Republic of Tanzania

Mr. President while introducing them I have not asked them to standup so that people can identify them against their names because I understand that each one of them will have an opportunity to make quick remarks and representations and among themselves they have arranged that one of them will take the floor to introduce their colleagues. Mr. President the document AALCO/58/DAR ES SALAAM/2019/SD/S1 reports on the work of the ILC on the following substantive topics that were placed on the agenda for its Seventy-First Session (2019): (1) Peremptory Norms of General International Law (jus cogens); (2) Succession of States in respect of State Responsibility; (3) Crimes against Humanity; (4) Immunity of State Officials from Foreign Criminal Jurisdiction; (5) Protection of the Environment in Relation to Armed Conflicts; and (6) General Principles of Law. Mr. President, apart from substantive

deliberations on these topics I would encourage the Member States to kindly consider making on particular interest to the current topics before the International Law Commission as mentioned above. Furthermore apart from presenting individual positions of Member States on the topics under consideration of the United Nations International Law Commission I urge the Member States to consider developing collective positions based on consensus on topics wherever possible. This would enable AALCO to forward its position as an organization to the Commission. Allow me in closing this statement to invite the Members of the Commission to take the floor by way of making necessary remarks.

**Dr. Hussein A. Hassouna, Member, International Law Commission:** We express our gratitude for the wonderful hospitality accorded to us in the beautiful city of Dar es Salaam. We appreciate the work of AALCO and the work of the active and dynamic Secretary-General, which has contributed to strengthening relations between AALCO and the ILC.

Mr. Chairperson, Ladies and Gentlemen. It is an honour for me to participate once more in the annual session of AALCO, and address the issue of relationship and interaction between the Commission and the Sixth Committee of the General Assembly. As a former member of the Sixth Committee and a current member of the Commission, this subject is of particular interest to me, having been involved in the work of both bodies and having witnessed their joint achievements in the field of codification and progressive development of international law.

I will begin by stating that the Commission's relationship with the Sixth Committee of the General Assembly is central to the Commission's work. In fact, the Commission has been able to have such an impact on international law because of its unique relationship with the Sixth Committee, a relationship which is both reactive and proactive, but at its roots, firmly founded upon interaction and communication.

The Commission proposes topics for the benefit of making the law more visible and more readily available for states, as well as presents reports on its work which serve as the basis for the Sixth Committee debates on the various topics. In turn, the Sixth Committee comments, provides data, and advises the Commission on how topics can be improved and which should be prioritized. It is this relationship that has enabled states, developed and developing, to provide their input on the formulation of international law, and to help develop a truly transnational conception of international law. For their part, the fifteenth Commission Members belonging to Asia and Africa are playing an active role in ensuring that the development of international law reflects their major concerns and legitimate interests. In that connection I wish to express my appreciation to the governments and academic institutions which in collaboration with AALCO have established training and research program in international law. It is an important contribution in enhancing the experience and knowledge of young international lawyer.

If the presentation by the Chairman of the Commission of its annual report on the Sixth Committee has traditionally been the formal procedure leading to interaction between the two bodies, various activities have contributed in recent years to promote their relationship. Thus, in addition to the Chairman of the Commission, a number of Commission members have been present during the Sixth Committee's debate on the report. An "interactive dialogue" has been held between Special Rapporteurs and interested members of the Sixth Committee on the margins of the debate. Informal briefings at other times of the year were provided by

Commission members whenever they were present in New York, for interested Sixth Committee members.

The meeting of the Commission in New York during the first part of its 70<sup>th</sup> session in 2018 was also designed, in large part, to allow for greater formal and informal interaction between members of the Commission and of the Sixth Committee. Such interaction has enabled the Commission to discuss its work with the members of the Sixth Committee so as to allow the Commission to develop its activities, including the choice of its topics, in response to the needs and concerns of states. It was also during that period that an open debate was held in the Security Council on its role in upholding international law. Mention was made in that debate of the need to recognize the work of the principle legal organ to the United Nations, the International Law Commission, and its invaluable contributions over the years. Let us hope that such recognition will lead the Security Council to ensuring that international law is applied and respected worldwide.

Mr. Chairperson, the Commission is generally autonomous with regard to its relationship with the Sixth Committee. The view of the General Assembly and the Sixth Committee has been that the Commission should have a substantial degree of autonomy and should not be subject to detailed directives from either the Sixth Committee or the General Assembly. Overall, the dependence of the Commission on the Sixth Committee and the General Assembly is based upon the guidance and information those two bodies can give to the Commission in its pursuit of the formation of international law, and making it more clear and accessible. Otherwise, the Commission has great autonomy in deciding how to make this possible.

One must recognize, however that although both the Commission and the Sixth Committee deal with issues pertaining to the codification and progressive development of international law, they differ in how they approach these issues, and one of the reasons for that lies in the composition of those bodies. Let us remember that the Commission is composed of independent experts who avoid politics in their discussions and their selection of topics. And although they normally agree on most issues by consensus, on controversial issues they sometimes have to resort to voting. The Sixth Committee, on the other hand, is composed of state representatives who bring a political background and perspective to discussions. The independence of the Commission experts encourages impartiality and objectiveness in approaching a certain subject, although they are often also influenced by their legal background and national experience.

On the other hand, the Sixth Committee members serve more as advocates for their individual states' interests. Indeed, the election by the General Assembly of the members of the Commission is regretfully always in my view influenced by political considerations and is not mainly based on the qualifications of the candidates. In spite of this different dual approach, it is certain that both the objective perspective of the Commission members and the subjective perspective of the state representatives are needed to address the codification of international law. Both perspectives are needed to get the full scope of international practice regarding a topic, but also to make sure that the codification of such a topic is relevant and needed by States. Without further collaboration, the work of the Commission is in danger of becoming academic and irrelevant, and the Sixth Committee is in danger of losing objective expertise on cutting edge issues in international law, an expertise that is greatly needed for a fruitful collaboration of the two bodies in the codification and development of international law.

Mr. President, in seeking to enhance its relationship with the Sixth Committee and other bodies, the Commission has dealt with that issue in the context of reviewing its methods of work. This process has been periodically undertaken by the Commission, at the request of the General Assembly at times, and more recently in 2011 and 2017 upon its own initiative. That review, aimed at expediting and streamlining the Commission procedures, had an internal dimension covering how the Commission organizes its work, and an external dimension, as to how the work and the final product of the Commission is communicated to the General Assembly and its member states, in particular, the Commission's relationship with the Sixth Committee and with Governments regarding information on the state practice crucial to the Commission's work. The work of the working group on methods of work, which I have the honor of chairing, is still in progress and will resume at the next Geneva session of the Commission in 2020. A final report with the conclusions of that work will thereafter be presented to the General Assembly.

With regard to the outcome of the Commission's work products, we may notice its increasing practice of formulating "principles," "guidelines," "conclusions," or "reports of study groups" rather than draft treaties or conventions. This development is likely a reaction to States' diminished support for creating binding obligations through treaties. In spite of that, the legal authority of such texts has been recognized through decisions of Courts, organizations and academic quotations. Furthermore, I consider that AALCO members should be encouraged to recommend to the Sixth Committee the adoption of Conventions on the most important topics addressed by the Commission.

In addition, although the Commission's statute envisages full cooperation with governments in its deliberation process through reporting to the Sixth Committee and exchanging documents through the Commission's work on a document, in practice, there seems to be a disconnect between the expectations of the Commission and States. Even in some of the most recent successful work products by the Commission, such as the draft articles on State Responsibility and Expulsion of Aliens, the Sixth Committee continues to postpone consideration of their final form to future sessions. While the Sixth Committee does not explain its decisions regarding the final outcome of the Commission work procedures, it cites States' hesitation about certain aspects and often requests further comments from governments. This was the case, for instance, with Prevention of Transboundary harm and Diplomatic protection. On such a problem, there must be room for improvement in communication between the Commission and the Sixth Committee. One suggestion to prevent stalling of a final product of the Commission would be for States to submit preferences for the final outcome of a given topic in their comments throughout the deliberation process. This would allow the Special Rapporteurs and the Commission members to learn where States stand, and what they expect out of the topic and how they value the work generally. Another suggestion to face that problem would be to support the General Assembly and the Sixth Committee recommending to the Commission topics for codification. This procedure resulted in the successful Rome Statute on the International Criminal Court, and could be replicated to ensure that the Commission is focusing on the topics that are ripe for codification and have the necessary political support by the General Assembly. In that context, the Commission has welcomed the proposal by Micronesia on behalf of a number of Island States and developing States, that the Commission addresses the topic of sea-level rise. In response to the proposal, the Commission has established a study group to address the legal implications of such an important issue which might affect coastal States in both Africa and Asia. Likewise, the Commission would certainly welcome

proposals by AALCO members to address subjects of concern to them. This should be strongly encouraged by AALCO.

In proceeding with the analysis of topics on its agenda, the Commission always seeks the opinion of States through their written comments or oral views expressed during the Sixth Committee debates. It is noteworthy that the number of States that submit comments has consistently been limited. Moreover, the commenting states do not reflect the diverse views held by Member States, and the African and Asian perspectives are particularly underrepresented. And despite continuous calls by Commission members for states to submit comments on a given topic, comments from underrepresented states remain disproportionately low. This may be explained in my view by the lack of human and financial resources on the part of governments and missions in New York. But it has also resulted in the absence of their perspectives in the process of formulating universal rules of international law. In my view, the solution lies in encouraging their participation through regional United Nations procedures, as well as regional organizations. In addition, an organization like the Asian-African Legal Consultative Organization can play an important role in coordinating the position of its members towards the work of the Commission and induce them to submit their views on the various topics on its agenda.

Mr. Chairperson, it is occasionally argued that the Commission may not be the proper institution to address technical areas of international law. However, I am convinced that the Commission can address such complex and specialized topics. For example, the Special Rapporteur for the topic of protection of the atmosphere proactively brought scientists to earlier Commission sessions to inform Members of the scientific nuances of the law of the atmosphere. In my view, the Commission should explore more specialized areas of international law, and by doing so, it could benefit from outside coordination, either with scientists or experts in relevant fields, or with specialized international institutions. Through such process, the legal work of the Commission would be based on solid scientific ground.

In conclusion, I would assert that although the future of the Commission has been claimed by some commentators to be uncertain, its institutional knowledge, and framework within the General Assembly and partnership with the Sixth Committee, make it uniquely positioned to continue to codify and progressively develop international law. Indeed, the Commission plays a greater role and assumes a more important responsibility when states fail to abide by international law and are unable to agree on its development. In my view, it is through its strong support of the work of the Commission, that AALCO can effectively contribute to the consolidation of an international legal order based on the rule of law, a topic that was thoroughly addressed at the current session of AALCO. Finally I wish our session a successful conclusion. Thank you.

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Thank you very much Ambassador Dr. Hussein Hassouna, the Chair of the Working Group on the Methods of the International Law Commission. I should have mentioned that Ambassador Hassouna comes from the Arab Republic of Egypt. Next I would like to invite Member of the International Law Commission Professor George Nolte, who has been a Member of the Commission since 2007 and its chair in 2010 and also Special Rapporteur on the topic “subsequent agreements and subsequent practice in relation to interpretation of treaties.” We have also been informed that he is a candidate for the post of a Judge of the International Court of Justice in the upcoming election next year.

**Dr. George Nolte, Member of the International Law Commission:** Mr. President; Mr. Vice-President; Mr. Secretary-General, Excellencies, Ladies and Gentlemen. I would like to thank you for the invitation to participate in this Annual Session of AALCO. This is a great honour and privilege for me. It is the first time that I attend an Annual Session of AALCO. But I know AALCO since the early eighties when I was a student of international law. At the time, my teacher told me that a good international lawyer is one who looks at the views of all States, and not only at the positions of western, eastern or powerful States. He then mentioned the Asian African Legal Consultative Committee, as AALCO was called then, and said that I could find valuable information on the positions of Asian and African States its Quarterly Bulletin. This advice of my teacher has influenced my general approach to international law, and I have since always tried to find all available positions and to take them into account.

This is also the approach of the International Law Commission. The Special Rapporteurs, and the Commission itself, make every effort to identify the positions of as many States, international organizations and other actors as possible. One of the reasons why the annual report of the ILC is so long, and so difficult to read, is because many positions and materials go into it and need to be reflected. It is for this reason that I would like to commend the AALCO Secretariat for its 2019 “Report on Matters Related to the Work of the International Law Commission at its Seventy-first Session”. This report provides a succinct and helpful overview of the work of the Commission for those officials in ministries who have little time to study the ILC report in depth. I think that the elaboration of such an overview is an important task of an organization like AALCO. It should facilitate the work of its member States and contribute to the harmonization of their views in time before the annual debate in the Sixth Committee.

Moving to the work of the Commission in 2019, it can be said that the seventy-first session has been constructive and productive. Constructive, because the deliberations have taken place in a friendly and cooperative spirit and because all decisions have been taken by consensus. Productive, because the Commission has adopted outcomes on three topics, one on second reading, and two on first reading, and has made progress on other topics.

In the time allotted to me, I would like to make a few remarks on the three topics which the Commission has concluded on first or second reading in 2019, as well as a remark on the question of new topics. Otherwise I fully associate myself with the comments made by eminent colleague Ambassador Hassouna.

First, Crimes against Humanity: the draft articles on crimes against humanity which have been adopted on second reading this year do not compete with the Rome Statute on the International Criminal Court. They rather pursue the modest goal of offering a basis for ordinary international criminal cooperation with regard to this international crime. The draft articles on crimes against humanity do not contain unusual or burdensome obligations for States. They rather remain within the familiar framework of international criminal cooperation. The provisions on extradition and mutual legal assistance, for example, are inspired by the UN Convention against Corruption - to which 186 States are parties. The draft articles provide for a definition of crimes against humanity, which is taken from the uncontroversial core of the Rome Statute. In substance, the draft articles spell out some general obligations of prevention and criminalization of crimes against humanity under national law. The draft articles formulate an obligation to establish jurisdiction over such crimes, a duty to investigate and to take preliminary measures if an alleged offender is present in the territory of State party, duties to prosecute or extradite, as well as obligations to

ensure that alleged offenders are treated fairly. These draft articles on crimes against humanity have been adopted with the goal that they are acceptable to every State that shares the basic commitment to prevent and punish core international crimes, including to those States that have not ratified the Rome Statute of the International Criminal Court.

The Commission has recommended that the draft articles on crimes against humanity be elaborated as a convention. Thus, the Commission has not merely recommended that the General Assembly “take note”. Indeed, the goal of the draft articles on crimes against humanity can only be reached by way of a treaty, not through an informal non-binding instrument, and not through mere ad hoc co-operation between States. Criminal law is, after all, an area which requires parliamentary legislation and legally assured harmonization. This is confirmed by the existence of many treaties in the area of international criminal cooperation. The Commission, by adopting the draft articles on crimes against humanity, has acted in the fulfillment of its mandate, as originally understood, to pursue “the progressive development of international law and its codification” through the elaboration of treaties.

Second topic. Peremptory norms of general international law (*jus cogens*): This is a particularly important topic since *jus cogens* norms “reflect and protect fundamental values of the international community” and “are hierarchically superior to other rules of international law.” The outcome of the work on first reading will disappoint those who have expected that the Commission will elaborate a list of all norms of *jus cogens* and to explain their meaning. But this has never been the main purpose of the work of the Commission on this topic. As the Special Rapporteur for the topic, Professor Dire Tladi from South Africa has explained, the topic has always primarily been a methodological one that is: to explain how norms of *jus cogens* come into existence and which effects they have. This focus of the topic explains why the Commission has only adopted an illustrative list, in an Annex, of those norms of *jus cogens* which the Commission itself had previously recognized. It would have taken several more years if the Commission had tried to adopt a fully elaborated list of norms of *jus cogens*. The methodological nature of the topic also explains why the Commission does not envisage to propose the elaboration of a convention.

Third, Protection of the environment in relation to armed conflict: this is an important and complex topic. The draft principles which the Commission has adopted during this session on first reading, are not limited to general statements on the protection of the environment in armed conflict, but they also consider the environmental effects of armed conflicts on human health and the exploitation of resources. The principles include both restatements of existing rules of international law, such as the prohibition against plunder, as well as policy recommendations, for example regarding corporate due diligence and corporate liability. As a general matter, I consider it important that the principles distinguish as clearly as possible between what is already existing law, *lex lata*, and which rules the Commission considers to be desirable, *lex ferenda*. This distinction is particularly important for courts as courts can only apply existing law and cannot simply make up law.

Fourth, and finally, New Topics: The Commission is interested in the views of States regarding the choice of new topics. Since it has completed a number of topics in 2018 and 2019, next year the Commission will probably choose from among the five potential topics which it has put on the list of its long- term programme of work during the current quinquennium: These five potential topics are, in the order in which they were put on the list: Please follow them with the choice in mind that you representatives of States have to make .

“The settlement of international disputes to which international organizations are parties”, proposed by Sir Michael Wood”;

-“Evidence before international courts and tribunals”, proposed by Mr. Aniruddha Rajput;

“Universal criminal jurisdiction”, proposed by Mr. Charles Jalloh for Sierra Leone;

-“Reparations to individuals for gross violations of international human rights law and serious violations of international humanitarian law”, proposed by Mr. Claudio Grossman from Chile;

-“Prevention and repression of piracy and armed robbery at sea”, originally proposed by Mr. Yacouba Cisse from Côte d’Ivoire.

It would be helpful for the Commission if member States could indicate their preferences during next week’s debate in the Sixth Committee on the ILC report. With this I conclude my statement. I thank you for your attention and I wish a successful conclusion of this panel and this session.

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Thank you very much Professor George Nolte from Germany. I would now like to invite Dr. Aniruddha Rajput from the Republic of India. He has been a Member of the Commission since 2017 and served as the Chairman of the Drafting Committee of the 69<sup>th</sup> session of the International Law Commission in 2017.

**Dr. Aniruddha Rajput, Member, International Law Commission:** Thank you Mr. Secretary-General. Mr. President, who is the actually Vice-President I am honoured to be under your Chairmanship to see you chairing the session.

Mr. Secretary-General, Excellencies, Ladies and Gentlemen. Unlike my previous speakers, the distinguished Members of the Commission who gave a general outline about the functioning of the Commission, and its relationship with the Sixth Committee as was done by Ambassador Hassouna. Thereafter touching upon on some specific topics as was done by Professor George Nolte I would like to proceed further in the same direction and express some views in the session that happened this year of the International Law Commission which was its 71<sup>st</sup> session. I intend touch to limit myself to four topics and make very brief comments, as one could imagine the report of the Commission runs in 394 pages it would not be realistic to do an exhaustive study. What I wish to do is to try to highlight the stage at which a specific topic is, and thereafter highlight some of the important issues on which the views of the Member States of AALCO would be of extreme importance in deciding how the commission should proceed on these topics.

The first topic was touched upon by Professor Nolte, the peremptory norms of general international law (*jus cogens*). The topics stands at the procedural stage where the Members of the Commission considered the fourth reports as well as the first reading. Therefore at the sixth committee it would be helpful to see what the States would have to say not only on the fourth report but also on the first reading. I intend to highlight some fundamental aspects that might of interest or special concern for Member States of AALCO.

The first aspect that emerges from the work is draft conclusion 3 where the International Law Commission makes reference to fundamental values of international community. The question arises as to how the words fundamental values of the international ought to be interpreted and taken into account. Fundamental values has been an issue of special concern for countries from Asia and Africa in light of various impinging factors on their resources to



contribute towards the progressive development and codification of international law. It would therefore be helpful to see how the States from Asia and Africa perceive these issues or the choice of fundamental values to be characteristic feature of peremptory norms of general international law.

Secondly, it would helpful to see how states perceive the distinction between characteristics and criteria that the International Law Commission tries to make in draft conclusion 3 and 4 respectively. The draft conclusion 3 the Commission identifies the characteristics that is how to define a peremptory norm or how to understand peremptory norm but the actual content the actual criteria emerges in draft conclusion 4. Would this lead to any sort of conclusion or is it sufficiently clear this something that the States would have to reflect and tell the International Law Commission as to what they think on these issues.

The third point is what sources of international law can realistically and convincingly form the basis of the formation of peremptory norms international law. The Commission has identified that customary international law is the most obvious or the most probable source of formation of peremptory norms. It has been historically well known that the Asian and African states have had certain amount of reservation towards the conception of customary international law which arises due to the fact of inability or historical experience of not having their practice being sufficiently being taken into account in the over-all process of law making. Thus would it be appropriate to give a higher position to customary international law? Or what should be relationship of customary international law and treaties? Or general principles of law in relation to formation of peremptory norms of general international law?

There is also a related issue of how far violations of all norms of peremptory norms of general international law (*jus cogens*) would result into erga omnes obligations? There is a certain category of violations that may result into violation of erga omnes obligations. These are the limited topics in relation to jus cogens where I thought the views of States would be of importance for the International Law Commission.

The second topic I would briefly touch upon is in relation to succession of States in respect of State responsibility. This year the Commission considered the third report and some part of the Commentary that the Rapporteur presented this year. It would helpful to see what the views of the Member States are in relation to the report as well as the commentary at this juncture.

Some very fundamental issues in relation to state responsibility arise. One of them is whether the Commission should follow the clean slate rule that is once there is succession there is no question of succession of State responsibility. Or there should be different perspective where through some interpretative mechanism such as unjust enrichment or simple notions of justice the Commission should try to conceptualize responsibility in one way or another and then try to find some reasoning and come in a reverse manner to impose responsibility on the state concerned or the state that has been succeeded.

Also on some aspects the Commission has recommended that a State may want to take responsibility even when it is not strictly responsible in its capacity as a successor state. Is this voluntary choice in taking over responsibility as a part of succession a realistic and workable formula based upon state practice would be something where the views of the States would be of extreme importance.

Likewise draft article 14 refers to succession of responsibility based on territory or citizenship. Is territory or citizenship a sufficient link to decide whether responsibility should pass to the successor state.

Succession of States in respect of State responsibility is indeed a topic in which the Commission is struggling with diverse State practice and the nature of the that practice. The Commission would immensely appreciate the views of States and specifically views of States from Asia and Africa in relation to experience on succession of responsibility. We do find that the material that is being currently presented is mostly centred around Europe and it would greatly strengthen the arms of the Special Rapporteur to have reactions from Asian and African States.

The next topic I wish to touch upon is the immunity of state officials from foreign criminal jurisdiction. It has been one of the controversial and difficult topics that the Commission had been facing. This what the Commission was considering was after having adopted draft article 7, which provides for exception to immunity *rationae materiae* is there a possibility of having procedural safeguards imbedded into draft article 7 or there should be dedicated to exceptions contained in draft article 7 which would ensure that whenever an exception is made to immunity few additional and few precise safeguards would have to be met. As the delegates would recall that draft article 7 related to exceptions to immunity in situations where there serious international crimes alleged in a particular situation.

In relation to general safeguards there is also the question what orientation the Commission should take? At the moment the Commission has taken a view in relation to the stage and the appropriate authority for determination of immunity, it is a tentative view as expressed by the Special Rapporteur and still being discussed or deliberated in the drafting committee, that it is the national court of the receiving state that would determine immunity. It is to be the national court of the receiving state or the sending state which is to determine immunity or the exceptions to immunity? Then at which stage should this immunity be taken into account? Where is the appropriate balance of the interest of the sending state and the receiving state in relation to invocation and operation of immunity?

The larger issue that the Commission is grappling with is what is the role of diverse laws which are applied in different countries in relation to immunity either its invocation or its exception in national jurisdiction. National laws, national state practices in Asian and African countries in relation to treatment of immunity situations would be of great assistance to the International Law Commission to proceed further.

There is also the challenge that the Commission should not be overly prescriptive because there are certain constitutional structures within the national systems which the Commission should not seek to disturb in any manner. It is therefore trying to seek a balance of not being overly prescriptive but at the same providing some amount of sufficient guidance which can ensure stability of international relations and sovereign equality of states.

The last topic which I'll very briefly turn to since the Commission has started work only this year is on general principles of law recognized by civilized nations the that used to represent one of the sources under article 38 (1). The obvious as one could say the controversial part of the term is civilized nations. Asian and African States have conventionally objected to the use of the term. The Commission is keen to use another term. Should it be community of States? Should it be general international community? What would be the appropriate nomenclature

to describe such kind of community and whose laws are we talking about that would be something important for the Commission to decide based on the comments of the States. At the same it is important to identify from where to find out the general principles? What should be the source? Should the commission be looking at or should the Commission be prescribing that while identifying one ought to look at the nations systems across jurisdiction and identify which are those general principles applied across jurisdictions and then declare them as a part of methodology? Or the Commission could adopt a methodology of saying that there could be some general principles that do not originate in national jurisdiction but could very well be imported from the international community based on values of the international community. Which again raises the question who identifies those values and whose are to be those values? Before going to that stage do, we need to take a bottom up view that is looking at the domestic jurisdiction and going up or we need to look at the international regime and see if there are any principles which could be treated as general principles?

This was a brief overview of what the Commission did this session at the 71<sup>st</sup> session. It would be a good opportunity to receive comments from States from Asia and Africa. I being a member who represents India which is an Asian State but I do consider myself to represent again the values of Asia and Africa, and I am very confident that the Members from the region do that in their capacity and we very much look forwards to comments from the Member States of AALCO. Thank you very much.

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Thank you very much. Now before receiving comments from member States allow me to invite Chris Mena Peter the Member of the International Law Commission from the United Republic of Tanzania. You would probably give us a short overview as to what the Commission is all about in a minute or two.

**Dr. Chris M. Peter, Member, International Law Commission:** Thank you very much Mr. President, Mr. Secretary-General, as we were thought by Ghana all protocol observed. Mr. President in a court of law when you sit in a panel and already four judges have spoken and you are the last there is always this attraction of saying that you have had the opportunity to hear all your colleagues, to read their statements, and I have nothing more to add. I will not do that.

Mr. President let me be a little bit historical, we were told that whenever there are challenges there will always be opportunities. So if you look at the history of the International Law Commission, What it is? What challenges do we face? What opportunities are there which through AALCO we can utilize?

Now the International Law Commission was established in 1947 it was supposed to undertake two of the mandates given by the General Assembly in the United Nations in 13 (1)(a) that is to initiate studies and make recommendations for the purposes of encouraging progressive development of international law. The second task was codification of international law.

Now this Commission meets twice a year in European office of the UN in Geneva. Now the ILC began its work in 1948 therefore last year we celebrated the 70<sup>th</sup> anniversary in New York and Geneva. What my colleagues were explaining is what happened this year during the 71<sup>st</sup> session of the Commission. The Commission comprises of 34 members from across the globe. They are elected by the UN General Assembly and they are elected from the

geographical divisions of the world according to the UN. There are African States, there are Asian Pacific States, Latin American States, Eastern European and Western European and others. You get your number according to your area. If you look at the Members of AALCO Members of ILC of Asia and Africa we comprise half of ILC. We are almost half that is 15 out of 34 but is that number reflected in our influence on the Commission. Our influence is in changing international law. What can AALCO do in playing with these numbers to make these number have a sense of making Asia and Africa controllers of international law which we are not in determination of topics we debate. Which topics resonate with Asia and Africa are these topics of international law close to our hearts. I think that is an opportunity which AALCO should address. Mr. Secretary-General I am sure you are doing your best but that is an opportunity which you could take so that we are not just passenger in the bus which creates international law.

Mr. President, when it comes going into the ILC, you can be a good Ambassador you can be a professor but you need your State. It is your State which nominates and carries you through the ILC. I would like to take this opportunity at home to pay tribute to the Government of the United Republic of Tanzania for nominating me and holding my hand throughout my career in the UN. First I served through a nomination of Tanzania on the Committee on the Elimination of all forms of Racial Discrimination and later on the ILC. I would like to take this opportunity to thank the former President Dr. Jakaya Kikwete who was the first one to nominate me into the CERD and later told that you should go to ILC. He would always follow up as well, whenever we used to meet in Geneva, he would ask me in Swahili how are you making it. I would tell him Your Excellency everything is in order.

Also I would like to thank the current president of the United Republic Tanzania His Excellency, Dr. John Pombe Magufuli for nominating me during the renewal of my tenure in 2016. Definitely without his endorsement I wouldn't be where I am today.

Mr. President, I would also like to sincerely thank the President of the 58th session of AALCO Hon'ble Dr. Augustine Philip Mahiga, MP and I believe the PS will take my greetings to him. As a top diplomat Dr. Mahiga was the one who spearheaded my campaign to the ILC, and got support from the African Union and SADC. He deployed a big number of staff in Dar es Salaam, Addis Ababa, Geneva, New York and other capitals to make the sure the campaign goes on. I also want to thank the foot soldiers from the Ministry of Foreign Affairs, some of the who are here and many of them who are not here. [names of MOFA Members from URT]. I would also like to join others in thanking the Government of the United Republic of Tanzania and AALCO for the successful organization of this annual session.

**His Excellency, Dr. Mohammed Shalaldeh, Minister of Justice, State of Palestine, the Vice-President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**Vice-President:** Thank you, to the Speaker from the United Republic of Tanzania for this legal statement which focused on legal relations between the International Law Commission and AALCO. We hope that the impact of the work of AALCO continues to influence and strengthen international law and international relations. Now I invite the delegation of the Republic of Korea to deliver their statement.<sup>40</sup>

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<sup>40</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

**The Delegate of the Republic of Korea:** Thank you, Mr. Vice-President. First I would like to thank the speakers from the ILC for their insightful and informative statements as well as the Secretariat of AALCO for the preparation of the report for their in depth analysis and comments regarding the agenda. My delegation would like to touch upon three items on the agenda of this session.

With regard to “*jus cogens*”, my delegation expresses its deep appreciation to the Special Rapporteur and the Commission for enabling the successful conclusion of the first reading of the draft conclusions on this topic. The report and the draft conclusions cover some of the most challenging aspects of international law including the relationship between peremptory norms of general international law in relation to treaties, state responsibility, individual criminal responsibility, and other sources of international law.

There is one point that my delegation would like to reiterate. The Government of the Republic of Korea agrees that the eight norms listed in the annex are all *jus cogens* norms and that the commentaries of the draft Conclusion 23 sufficiently explain the legal basis for each of these norms. However, the draft article provides only the *jus cogens* norms already mentioned by the ILC in the draft conclusions. I think that, to address the issue of *jus cogens*, it should provide a more comprehensive and practical list of examples for the States.

Regarding the topic, “Immunity of State officials from foreign criminal jurisdiction”, the study on the immunity of State officials from foreign criminal jurisdiction requires in-depth research on relevant State practices. Especially with regard to the draft article 7, my delegation would like to point out that the nature and gravity of the crimes in question do not determine whether immunity applies because immunity is a procedural matter not a substantive one.

My delegation also believes that the limitations and exceptions of the immunity of State officials is not just a legal issue but also a sensitive political issue. We hope that the ILC will examine this issue with caution and prudence by taking into account the larger political implications.

With regard to the topic “Crimes against Humanity”, my delegation is confident that the work of the ILC on this draft article will contribute to preventing crimes against humanity and effectively reduce the immunity gap.

My delegation supports the long-form provisions on extradition and mutual legal assistance. Such a specific and detailed approach will contribute to strengthening law enforcement cooperation among State Parties by providing a suitable legal basis for cooperation, particularly in the absence of a bilateral treaty on extradition or mutual legal assistance.

My delegation is also of the position that the draft articles should be in line with the Rome Statute of the ICC as much as possible for the coherence and stability of the international criminal legal order. And much more consideration should be given to the relationship between the future treaty on crimes against humanity and other relevant international instruments – including the initiative to adopt a new Convention on Mutual Legal Assistance for Crimes Against Humanity, Genocide, and War Crimes and the topic of “Immunity of State Officials from Foreign Criminal Jurisdiction”, which is currently being discussed by the ILC.

When elaborating an international convention on this topic, the opinions of States should be fully reflected through the UN's Sixth Committee meetings or other informal conferences. Thank you.

**Vice-President:** Thank you to the delegation of the Republic of Korea for their statement. Now I invite the delegation of Japan to deliver their statement.<sup>41</sup>

**The Delegate of Japan:** Thank you, Mr. Vice-President. On behalf of my delegation I would like to express gratitude to the Members of the ILC for their in-depth analysis. Japan attaches importance to the rule of law and will continue contributing to the development of international law, as well as to the stability and prosperity of the international community. As the international system evolves and a range of international norms develop day to day, it is important to identify and codify the emerging principles of international law.

The ILC plays a pivotal role in this process of codification and progressive development of international law. It is important that the ILC maintains a dialogue with regional organizations including AALCO, as the views and practices of Asia and Africa carry significant weight in formulating laws. The discussion today is particularly timely as the Sixth Committee of the UN will discuss the work of the ILC next week in New York; we now have opportunity to identify common ground on the topics examined by the ILC.

This year the ILC completed the second reading of the draft articles on "prevention and punishment of crimes against humanity". Japan takes full note of the importance of this topic. At the same time, a distinction should be made between the codification of existing norms and the creation of new norms. If the ILC opts to create norms, the draft articles should strike a delicate balance so that they will be accepted by States when a diplomatic conference is convened. At this moment, Japan envisages substantial discussions to be raised in the process of drafting a treaty.

In the interest of time, I will not comment on all the topics discussed in the ILC.

This year, the ILC also completed the first reading of the draft principles on "protection of the environment in relation to armed conflicts" and draft conclusions on "peremptory norms of general international law (*jus cogens*). Further comments will be complied in due course. Japan stresses importance of contributions from States. Draft principle and draft conclusions, unlike draft articles of a treaty, will not be negotiated in a diplomatic conference, as they will not become a treaty. Nevertheless, they will be referred to by States and Courts. Interventions from States are necessary at an early stage.

Finally, Japan welcomes the energetic efforts of the ILC in the codification and progressive development of international law. However, future works of the ILC need careful selection. If States are overwhelmed by the products of the ILC, the task of the ILC will not be completed.

**Vice-President:** Thank you to the delegation of Japan. Now I invite the Islamic Republic of Iran to deliver their statement.<sup>42</sup>

**The Delegate of the Islamic Republic of Iran:** "In the Name of God"

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<sup>41</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

<sup>42</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Mr. President, my delegation would like to thank the Secretariat for its comprehensive reports on “Matters related to the work of the International Law Commission at its seventy-first session”, contained on document AALCO/58/DAR ES SALAAM/2019/SD/S1. We also welcome the valuable presence of pertinent members of International Law commission Prof. George Nolte, Ambassador Hussein A. Hassouna and Dr. Aniruddha Rajput and Professor Chris Mena Peter and appreciate their fruitful presentation in this forum.

As from the topic on the agenda of the Commission during its seventy first session, we may elaborate some of our key points on “*jus cogens*”, “Immunity of State officials from foreign criminal jurisdiction” and “crimes against humanity.”

Mr. President, as regard to Preemptory Norms of general international law (Gus Cogens), we thanked special rapporteur for preparation of his fourth report and adoption of the draft conclusions on the first reading. In this regard I may arise some general remark and some on draft conclusions.

With regard to the draft conclusion 23 on non-exhaustive list, my delegation reiterates that developing a list of *jus cogens* norms needs further consideration. Notwithstanding the reservations raised by states against a list of *jus cogens* norms, it is hardly to be convinced with the necessity to have such a list. From the methodological point of view, having a list may substantially change the fundamentally process/methodological-oriented nature of this topic. The commission should be concentrated on discussing methodological and secondary rules, more than the legal status of particular norms. There are some norms whose inclusion in the list might be controversial and require an in-depth study and could be future topics for consideration by the Commission.

On the Draft Conclusion 16 [17(1)], my delegation is of the view that non-derogability of rules of *jus cogens* would be equally applicable to the resolutions, decisions and other acts of UN Security Council. It is generally agreed that treaties cannot delegate to the international organizations powers contrary to *jus cogens*, since this would trigger article 53 of the Vienna Convention. Thus, when states don't have a power to act contrary to the rules of *jus cogens*, they obviously cannot delegate that to the Security Council as an organ which is based on a treaty instrument. In this regard, we are of the conviction that article 103 of the UN Charter only affirms that in the event of a conflict between the obligations under the present Charter itself and the obligations under any other international agreement; their obligations under the present Charter would prevail. Therefore, in the event of conflict between norms of *jus cogens* and Charter obligations, *jus cogens* norms remain superior and article 103 of the Charter of the United Nations will not be applied. In this context, we also consider those resolutions of the Security Council are inconsistent with international law and the provisions of the UN Charter, do not create any obligation for States.

Mr. President, on the second topic, namely “Immunity of State officials from foreign criminal jurisdiction” we would like to thank the Special Rapporteur Ms. Concepcion Escobar Hernandez, for preparation of the seventh report which continues to address the consideration of procedural aspects of immunity.

With regard to draft article 7, we express our disappointment with the manner in which this Draft Article has been provisionally drafted and the impact that it would have on the working methods of the Commission. First of all, this shows that there has been a fundamental division of opinions on certain issues among members, raising difficulty to conclude whether

draft article 7 reflects *lex lata*. Moreover, it indicates that this draft article is not supported by a customary foundation.

In this regard, we appreciate the proposal made on Article 7 by prof. Nolte in the ILC. We think that it needs to be examined carefully by the Commission.

Mr. President, on the third topic allow me to state our key points on “crimes against humanity”. On this topic, we would like to thank the Special Rapporteur, Mr. Sean Murphy, for preparation his fourth report and take note the adoption of the entire set of draft articles on prevention and punishment of crimes against humanity on second reading. We would like to make some comments specially on the final form of the draft articles.

On the final form of the work of Commission, we are not convinced, at this juncture, about the desirability and the necessity of elaboration a new convention on crimes against humanity. Instances of crimes against humanity have been elaborated in numerous international instruments including the Statute of International Criminal Court. Thus, my delegation doubts whether the final outcome of the Commission in this regard could contribute to the existing literature on the topic; this rationale is further bolstered by the fact that numerous national legislations provide for the definition and instances of crimes against humanity. Over and above, the principle of *aut dedere aut judicare* and bilateral judicial assistance agreements provide for sufficient legal basis for prevention and punishment of crimes against humanity.

Mr. President, in conclusion, I wish to add two significant considerations. First, we are of the view that the International law commission must avoid from accumulation of topics in its agenda and thus, it must always pay attention to recommendations at its fiftieth session in 1998. The second consideration is that the International law commission must reflect the general view of all States and enrich its work through proper consideration of different legal traditions and general membership viewpoints and practices. Thank you Mr. President.

**Vice-President:** Thank you the Islamic Republic of Iran for their statement. Now I invite the delegation of the People’s Republic of China.<sup>43</sup>

**The Delegate of the People’s Republic of China:** Thank you Mr. Vice-President. The Chinese Delegation is pleased to participate in the discussion on the agenda item “Work of the International Law Commission” and welcome the members of the International Law Commission to join this meeting. Over the years, AALCO has been actively making comments and recommendations that reflect the concerns and interests of its member States on the work of the Commission according to its Statute, therefore greatly promotes the better absorption of the views of Asian and African countries in Commission's work of codifying and developing international law. Taking this opportunity, Chinese delegation would like to make a few comments on several important topics considered by the Commission at its 71st Session:

As to the topic of Crimes against humanity, the Commission adopted the Draft Articles on the second reading this year and suggested submitting the adopted Draft Articles to the UN General Assembly as the basis of discussing a new international convention. China has always attached importance to the prevention and punishment of serious crimes including crimes against humanity. However, the Draft Articles are not based on empirical analysis of

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<sup>43</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.



international practice, but are made by analogy or deduction from the provisions of other international conventions and partial practice of some international criminal courts which has not acquired a universal character. It is hard to say that the Draft Articles represents general consensus. China believes that the time not yet ripe to launch the negotiation of a new convention.

As to the topic of Immunity of State officials from foreign criminal jurisdiction, the topic raises huge controversy both within and outside the Commission. This is particularly the case when the Commission adopted by vote Draft Article 7 in the absence of consensus, which stipulates that immunity *ratione materiae* shall not apply when State officials are suspected of committing several serious crimes. At its Session of this year, the Commission focused on the procedural safeguards related to the immunity of State officials. China believes that adequate procedural safeguards are necessary for respecting State officials' immunity, preventing political abuse of litigation and stabilize international relations, such as respect of the nationality State's priority of jurisdiction by the forum State, and the obligation of the forum State to communicate with the nationality State at the earliest time. It should also be emphasized that the defect of Draft Article 7 is substantive and could not be fixed by any procedural safeguards. We recommend the Commission revisit the Draft Articles and correct the conclusion based on extensive State practice and *opinio juris*.

As to the topic of Peremptory norms of general international law (*jus cogens*), China notices that the Commission adopted 23 draft conclusions and their commentaries on the first reading this year. China thinks that the Commission should be extremely prudent since *jus cogens* holds the highest hierarchy in international law. In particular, the standard of identifying *jus cogens* must be clear and rigorous, and parties should apply such standards without compromise in the future practices.

As to the topic of General principles of law, the research of the Commission is conducive to the clarification of the nature, functions, identification and sources of general principles of law, and provides guidance for the practice of States and international institutions in the identification and application of general principles of law. China holds that the identification of general principles of law must be carried out through rigorous analysis and it is inappropriate to regard national legal principles recognized only by a minority of States, regional States or certain legal systems as general principles of law in the sense of a source of international law without a careful review.

Mr. Vice-President, AALCO has maintained good interactions with the International Law Commission for a long time. Chinese Delegation supports the AALCO's efforts to continue to strengthen the good communication and interaction with the Commission, to fully reflect the concerns and interests of member States, and to make contributions to the codification and progressive development of international law. Thank you, Mr. Vice-President.

**Vice-President:** Thank you, the People's Republic of China for their statement. I now invite the delegation of the Republic of India to deliver their statement.<sup>44</sup>

**The Delegate of the Republic of India:** Thank you Mr. Chair. Distinguished delegates and my fellow participants, my delegation would like to thank the Secretary General of AALCO for his introduction of the agenda item. We also commend the AALCO Secretariat for its

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<sup>44</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

very useful brief on the subject. Let me also join the previous speakers in congratulating the Members of the International Law Commission for their insightful information presented before the audience.

Indian delegation would like to comment on a few topics on the agenda of the International Law Commission.

#### Peremptory Norms of General International law (Jus Cogens)

Mr. President, We take note of the fourth report of the Special Rapporteur on Peremptory Norms of General International law (Jus Cogens). It essentially considered the question of the existence of regional jus cogens and provides a non-exhaustive list of norms including of those previously recognized by the Commission as possessing peremptory character. We take note of the provisionally adopted draft conclusions forwarded to member states seeking their comments and observations by 2020.

We would like to share our comments on two aspects addressed in the report. First, is the issue of existence of regional peremptory norms. This has been a subject of much debate among international law scholars about its existence and definition. In our considered view, while peremptory norms could be influenced by regional practice of States, the very idea of peremptory norms is that they are universal in nature and application. (We would like to put forth the question already raised by Secretary General of AALCO, i.e. whether peremptory norms will still be 'peremptory' if they apply to some States but not all States. This question merits careful examination).

Our second observation is on Draft Conclusion 23 which provides for a non-exhaustive and illustrative list of peremptory norms. The list include: the prohibition of aggression or aggressive force; the prohibition of genocide; the prohibition of slavery; prohibition of apartheid and racial discrimination; the prohibition of crimes against humanity; the prohibition of torture; the right to self-determination: the basic rules of international humanitarian law.

In our view, some of the identified peremptory norms are not well-defined in international law. Different interpretations as to applicability of these norms exists among member states. Hence, there is a need to have more intense discussion on the list of peremptory norms as provided by the Special Rapporteur.

#### Crimes against Humanity

Mr. President, as regards the topic on 'crimes against humanity', we welcome the fourth report of the Special Rapporteur, Mr. Sean Murphy, on this important topic. The report addresses various actions to be taken by States under their national laws with respect to crimes against humanity (CAH). In this report, the Special Rapporteur has primarily reviewed the comments and observations made by States, international organizations and others since the adoption, on first reading in 2017, of the complete set of draft articles on crimes against humanity.

The Commission has recommended the draft articles on prevention and punishment of crimes against humanity to the General Assembly. In particular, the Commission has recommended for elaboration of a Convention by the UN General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

In this regard, we reiterate our position that, considering the international mechanisms that are already dealing with the matter, including the International Criminal Court, necessity of having a Convention exclusively addressing crimes against humanity need to be examined. In our view, the Rome Statute provides sufficient legal basis for the domestic criminalization and prosecution of crimes against humanity. In addition, any work on this topic could lead to duplicating the efforts already undertaken in existing regimes.

#### Immunity of State officials from foreign criminal jurisdiction

Mr. President, India would like to congratulate the Special Rapporteur Ms. Escobar Hernandez, on her extensive work and tireless efforts in simplifying the complexities of the topic into Draft Articles on immunity of State officials from foreign criminal jurisdiction and for her seventh report which elaborates on the procedural aspects of the immunity.

The question as to whether immunity of State Officials should prevail over the duty to prosecute and punish individuals responsible for crimes has resurfaced in the light of the new developments in international law. For instance, international and national courts which have prosecuted state officials have faced challenges in a number of areas including jurisdictional matters, enforcement of warrants of arrest etc.

We fully subscribe to the Special Rapporteur's proposal that there should be certain procedural safeguards with respect to immunity of State officials. The procedural safeguards detailed under Draft Articles 8 to 16 will be useful to both the forum State and the State of the official. We take note of the Draft Articles which might help in eliminating the risk of politicization of the prosecution and avoid instability in inter-State relations.

As regards Draft Article 14 regarding transfer of criminal proceedings, we are of the view that the Draft Article should expressly provide for request for transfer of proceedings by the State of the official. We would like to reiterate that there is a need to achieve a balance between the interests of the forum State and those of the State of the official, in line with the principle of reciprocity.

We would like to respond to the question posed by the Special Rapporteur whether a mechanism for settlement of disputes between the forum State and the State of the official should also be proposed in the draft articles. We understand that a dispute settlement mechanism is not necessary as the consultations provided in Draft Article 15 should be sufficient. Any differences or disputes between Forum State and State of official can also be settled through diplomatic channels.

#### Sea-level rise and its implications

Mr. President, we thank the Commission for taking up the issue of "Sea-level rise and its implications" as one of its agenda items. We endorse the view that Sea-level rise is one of the consequences of global warming.

The consequences of Sea-level rise are manifold and can cause the submersion of existing land territories, thereby raising complex issues of sovereignty and access to natural resources. Sea-level rise is also expected to change the existing boundaries of maritime zones, with concomitant political, economic, and security implications. We believe that the focus of international law should also address the issue of livelihood and displacement which will

affect millions of people in the coastal areas. The 2014 ILC Draft Articles on the Protection of Persons in the Event of Disasters are useful beginning in this regard.

This year, India has launched the Global Coalition for Disaster Resilient Infrastructure (CDRI). This builds on the Sendai framework and will support countries - developed and developing - to build climate and disaster resilient infrastructure. The Coalition's secretariat, supported by UNDRR and based in Delhi, will facilitate knowledge exchange, provide technical support and support capacity building.

#### Protection of the environment in non-international armed conflicts

Mr. President, as regards the topic on the 'protection of the environment in non-international armed conflicts' we welcome the efforts of Special Rapporteur Ms. Marja Lehto for submitting her second report. The second report discussed several questions pertaining to this important topic, with a focus on how the international rules and practices concerning natural resources may enhance the protection of the environment, during and after such conflicts. It also addressed questions related to the responsibility and liability of States and non-State actors. The Special Rapporteur has proposed seven draft principles on this topic.

The Commission has transmitted the 28 draft principles on protection of the environment in relation to armed conflicts to Governments, international organizations, and other stakeholders for their comments and observations. In our view, protection of environment during armed conflict finds mention in several international instruments such as the Hague Regulations of 1907, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 and Additional Protocol-I to the Geneva Conventions, 1977.

It is, therefore, suggested that the draft principles should not be in conflict with the obligations arising from existing Conventions. Any work on this topic should not duplicate the efforts already undertaken in the existing regimes. I, thank you Mr. President.

**Vice-President:** Thank you, the Republic of India for your statement. I now invite the delegation of Viet Nam to deliver their statement.<sup>45</sup>

**The Delegate of the Socialist Republic of Viet Nam:** Honourable Vice President, Distinguished Delegates, Ladies and Gentlemen. First and foremost, our delegation would like to express our gratitude and appreciation to the comprehensive report by the AALCO Secretariat on Matters related to the Work of the International Law Commission at its 71<sup>st</sup> session, as well as to the fruitful work by the International Law Commission as a whole.

On this occasion, allow us to acknowledge the ILC's dedication to the progressive development and codification of international law. We share the belief that topics discussed at the ILC are of high significance and would influence modern international law. Therefore, we thank AALCO for providing us another forum to voice our opinions and share our points of view with the ILC members directly.

Turning to the specific topics, we would first of all congratulate Special Rapporteur Dr. Tladi for finishing the first reading of the topic, and for successfully coming up with a non-exhaustive list of peremptory norms of general international (jus cogens). The adoption of such a list reflects the Commission's contribution to the codification of international law,

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<sup>45</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

although some have shown their concern that such a list might cause the impressions that unlisted principles are not *jus cogens*. We embrace the solution that the list would contain only norms that the ILC has previously recognized as having peremptory characteristic, to ensure the consistency of the Commissions' work. Besides, we share the Special Rapporteur's perspective that regional peremptory norms do not exist, due to the lack of state practice as well as the potential conflict with the very definition of *jus cogens* that has previously been analysed in previous reports.

We also congratulate Special Rapporteur Dr. Murphy for the completion of his fourth report on Crimes against humanity, and specifically the draft articles on prevention and punishment of crimes against humanity. The necessity of a new convention on crimes against humanity as well as its formation, from our perspective should be carefully examined by the UN General Assembly, and in this case, at the Sixth Committee.

Next we would like to commend the Special Rapporteur Madam Lehto on her extensive report on the Protection of environment in armed conflicts. The methodology of this report might have caused a little confusion, as the "draft principles" is ambiguous in terms of expected outcome, whether it is rule, guidance of policy. This is a challenging topic, requiring the Special Rapporteur to carry out in depth research on a wide range of matters. We appreciate Madam Lehto's detailed study on non-state actors' liability by exploring a number of accountability mechanisms, highlighting the necessity for the implementation of not only legislative but also administrative, judicial and other measures to ensure the responsibility of non-state actors towards the protection of the environment in armed conflicts. Overall, we agree that international humanitarian law and international environmental law should be the foundation for this newly developed area. We would also like to express our support for the Special Rapporteur's application of the Martens Clause to the protection of environment in armed conflicts, to uphold and protect humanitarian values where regulations are still lacked.

Regarding the topic Immunity of state officials from foreign jurisdiction, Viet Nam maintains the view that the fundamental principles of international law stipulated under the UN Charter shall be of utmost importance, namely the sovereign equality and non-interference in states' internal affairs, whereas we are attempting to combat impunity for serious international crimes.

Next, we would like to welcome the first report on General principles of law, which is long-used term but has yet not been carefully examined. The report has provided a systematic analysis of the topic, and we look forward to seeing further development in the upcoming reports.

Last but not least, we would like to express our appreciation for the introduction of the topic Sea-level rise in relation to international law. As a coastal state, Viet Nam has realized and in fact experienced the impact of sea level rise, which would undoubtedly create obstacles in implementing the law of the sea in particular, and international law in general. It is high time that the international community harmonised efforts to raise awareness on this matter, including conducting substantial study on its legal aspect. We applaud the ILC's first attempts to gather scientific proof and state practices before studying the effects of sea level rise to international law and would undertake to contribute to this meaningful and practical topic that greatly influences the progressive development of international law.

Again, we thank the ILC members for your hard work and wish to the Commission a more fruitful year ahead. We strongly encourage AALCO member states to voice their opinions on the topics here at AALCO and at the upcoming Sixth Committee meetings. I thank you, Mr. President.

**Vice-President:** Thank to the delegation of the Socialist Republic of Viet Nam. I now invite the delegation of the Republic of Belarus.<sup>46</sup>

**Delegate of the Republic of Belarus:** Distinguished Chairperson, Excellencies, Ladies and Gentlemen. Let me share briefly our views regarding the work of the International Law Commission (the ILC) during its seventy-first session.

The Commission has adopted on second reading the draft articles on crimes against humanity. The draft articles are recommended to the General Assembly as the basis for elaboration of a convention either by the GA itself or by a diplomatic conference.

It is understood, the Commission and the Special Rapporteur have done a tremendous job that resulted, in our assessment, in a high-quality outcome. It is reasonable for the Commission to conclude its part of work on the subject. It would be a shame should the articles remain just a draft. We particularly note the elaborated mutual legal assistance clauses, which could serve as a model for other treaties, including bilateral.

It should be noted, however, that the subject matter of draft articles – criminal law – requires, at least as far as Belarus is concerned, certain adjustments of national criminal law. Firstly, it concerns terminology employed by National Criminal Code and Code of Criminal Procedure. This is not a fundamental problem – the draft is a very good document, and certain tweaks could be introduced during further intergovernmental processes.

We believe, nevertheless, that the United Nations Secretariat supported by the governments' criminal law experts should coordinate the future work on the draft. It is our intention to introduce language to that effect into annual resolution on ILC report.

We welcome the adoption by the Commission on the first reading of the draft conclusions on peremptory norms of international law (*jus cogens*) and thank Dr. Dire Tladi for his excellent work. Belarus is generally of the view that the ILC should focus on fundamental issues of general international law, on the concepts which are taken as a given in international legal discourse, and to clarify their legal content. In this case the ILC and the Special Rapporteur were able to limit themselves to legal dimension of the topic without venturing into realms of philosophy or political science. I should note, for clarity's sake, that it would not be easy to evade certain research into legal philosophy and history, as far as this topic is concerned.

Belarus is also supportive of a conservative approach chosen by the Commission regarding this topic – enthusiasm on progressive development of *jus cogens* would result in irrelevance of the outcome for many States. However, reflections upon this and some other topics considered by the Commission, especially in the field of law of treaties, beg somewhat provocative question – could the Commission go beyond the Vienna Convention on the Law of Treaties? It is, of course, the starting point for any law of treaties research, but the Commission is capable to study the state practice and produce more than a commentary,

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<sup>46</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

albeit fundamental, to certain provisions of the Convention, and to answer questions, the Convention failed to answer.

On the other hand, we are quite skeptical regarding draft principles on protection of the environment in relation to armed conflict. It is becoming increasingly common in legal thinking to view “interdisciplinary” topics as very perspective from academic point of view. However, we have certain reservations regarding practical usefulness of such researches – at least, as far as this one is concerned. The draft principles acknowledge either that international environmental law continues to apply during an armed conflict or that international humanitarian law applies to the protection of environment. Both conclusions seem self-evident. There are also certain elements in draft principles, which relate only indirectly to their subject matter, like, for example, State responsibility for actions of individuals and corporations, corporate due diligence, etc. Certain draft principles merit further research, like, for example, application of the “Martens Clause” to the environment or performance of functions of Occupying Powers by international organizations in the peacekeeping context.

As far as the topic of Succession of States in respect of State Responsibility is concerned, we share the Commission’s assessment regarding context-specific and sensitive character of the issues involved. In this regard, we commend the supplementary nature of the intended draft articles – perhaps, it would be more appropriate to consider calling them draft conclusions or principles. Anyway, the issues on the table are of great interest, regarding, for example, the “clean slate” rule in scenarios where territory and/or population of a new independent State have been affected by internationally wrongful act by another State.

Regarding the sixth and seventh reports on Immunity of State Officials from Foreign Criminal Jurisdiction we do have certain questions, which were also raised in the Commission. In general, we are concerned that the balance of the draft articles is shifted strongly in favor of the State that exercise jurisdiction. In particular, speaking of procedural issues, it is evidenced by the duty of ‘the nationality State’ to invoke immunity without corresponding duty of ‘the jurisdiction State’ to notify the former immediately and to give bona fide consideration to its representations; right (but not the duty) of ‘the jurisdiction State’ to request all relevant information from ‘the nationality State’; supplementary nature of transfer of proceedings to ‘the nationality State’ etc. We also fail to find support in practice for the assumption that immunity issues should be decided through court/MLA intercourse, and not through diplomatic channels, which is the case in real-life scenarios.

Belarus also welcomes the first report on the topic of general principles of law. We view this topic as very perspective due to lack of its prior systemic conceptualization – notwithstanding abundant State practice, precedents and doctrine. We look forward for illustrative list of the principles – it would be useful for practitioners, discerning of their functions (in our view-filling the gaps in positive international law), their place in hierarchy of other sources of international law. I thank you for your kind attention and possibility of having the floor.

**Vice-President:** Thank you, Republic of Belarus for your statement. I now invite the delegation of the Russian Federation to deliver their statement.<sup>47</sup>

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<sup>47</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

**Delegate of the Russian Federation:** Thank you Mr. Vice-President. First of all I would like thank the Hon'ble Members of the International Law Commission for their participation and useful explanations.

Let me say a few words about the nature of the conclusions of the Commission and the normative content of the topics referred to the Sixth Commission. Despite the fact that many of the Commissions products in recent years have not undergone transformation into binding documents agreed upon by States they are being used by international and national courts. Courts even sometimes use the reports of the Special Rapporteur, this of course enhances the importance of the Commission and its drafts. At the same time some of the conclusions of the Commission and the reports of the Special Rapporteur don't reflect the State practice or *opinion juris*. So texts of the Commission should be considered with due regard to the States' opinion that can be found for example in the statements in the Sixth Committee. We are ofcourse happy that the proposal of a number of delegations in relation to the topic 'identification of customary international law' and 'subsequent agreements and subsequent practice in relation to the interpretation of treaties' included a provision by which the statements of delegations in the Sixth Committee were taken on board and into account. Is this sufficient however remains a big question.

Let me now turn to specific topics discussed today. Crimes against humanity. Mr. Murphy did an outstanding job as Special Rapporteur while working on this topic, however a very detailed set of provisions on extradition and mutual legal assistance in the investigation, prosecution of crimes against humanity might have an adverse effect on accession to a potential instrument. We also doubt whether it was a wise idea to base these provisions on the UN conventions against corruption and against transnational organized crime. The different legal nature of the crimes in question might need a different approach to provisions on mutual legal assistance.

There is also a question which was raised by some delegations here in the room. We also witness that there is an in fact competitive draft on the table the so called 'MLA' initiative tabled by the Netherlands and a group of other States, so at this time for us it is at least it remains unclear how to deal with those two issues together.

Now let turn to peremptory norms of general international law (*jus cogens*). We have concerns regarding the developments of this topic. For instance we are a bit concerned about the decision of the Commission to include a non-binding non-exhaustive in the form of an Annex to the draft conclusion. This is of course in our point of view better than in the draft conclusion itself but frankly we are not happy with this decision either. As we understand the aim of topic was to provide a practical methodological guidance relating to the identification of *jus cogens* norms. Putting forward such a non-exhaustive list may falsely imply that the ultimate purpose of the Commission work is precisely the development of the list whether it was included in the draft itself or in an annex. Secondly we are disappointed that the Special Rapporteur did not examine the importance of the principles laid down in the Charter of the UN and further developed for instance in the declaration of international law concern friendly relations and cooperation among States in accordance with the Charter. The consideration by the Commission of an illustrative list without providing an analysis of the Charter and its purposes and principles in our view is inappropriate. In this regard we welcome the short reference to the UN Charter in commentary but we think it is not sufficient.



The next topic that I would like comment on if I may is the “Immunity of State officials from foreign criminal jurisdiction.” The main problematic point about this draft is draft article 7. Our position regarding draft article 7 remains unchanged. We don’t see any evidence in the existing international law specially regarding practice of States or opinion juris that could prove the existence of exceptions to immunity *ratione materiae*. Indeed we cannot observe any such trends in the practice of States. We don’t share the view that the draft article 7 would progressive development of the law on the contrary this is a move towards the erosion of the fundamental rules of international law which can only create tensions in interstate relations. Inevitably there will be even more attempts to put political pressure as noted by the Chair of the drafting committee by prosecuting their officials in another State. The adopted of draft article 7 by vote was in our point of view inconsistent with the practice of consensus. We are seriously disappointed that the Special Rapporteur doesn’t plant to return to reconsider the draft article 7. We hope that this issue could be raised in the Commission again. At the seventy-first session the Commission considered reports which were devoted to address procedural aspects of immunity. Of course we don’t have any objection to the issue per se being taken up by the Commission, however in our opinion such scrutiny should be self-contained so far it cannot be seen as fixing the harmful and inappropriate content on draft article 7.

In conclusions I would like to say a few words about the future work of the Commission and specifically focus on the topic of ‘Universal Criminal Jurisdiction.’ As it is well known the Sixth Committee of the General Assembly has been debating the topic, it was called ‘the scope and application of the principle of Universal Jurisdiction’ since 2009 and it was doing so every year without any visible progress. The main differences remain regarding the definition of the concept, its scope, the parameters of application, conditions and criteria for exercising such jurisdiction. Therefore we don’t think the referral of the topic to the Commission would help the cause, and is a good idea. Primarily since in our view there is no evidence of widespread and established practice that could show the existence of the rules of customary law in this area. Thank you very much for your attention.

**Vice-President:** I thank the delegation of the Russian Federation for their statement. I now invite the delegation of the Arab Republic of Egypt to deliver their statement.<sup>48</sup>

**The Delegate of the Arab Republic of Egypt:** The delegation of Egypt thanks AALCO for devoting time for this session and for the participation of a number of ILC members who delivered presentations on topics of interest to the members of the Organization.

The delegation commends the Organization’s role in supporting international law and supporting the efforts of African and Asian countries in codifying and developing the rules of international law in accordance with the legitimate interests and aspirations of developing countries.

The delegation welcomes the outcome of the work of the International Law Commission at its last seventy-first session, including the adoption of a full set of draft articles on the prevention and punishment of crimes against humanity, while endorsing the Commission’s recommendation that the United Nations General Assembly or an International Conference of Plenipotentiaries should draft an international convention on the basis of those articles. In our view, the convention will be an effective legal mechanism to combat terrorism that threaten

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<sup>48</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

the entity of states, as well as all crimes that the United Nations has condemned as crimes against humanity.

The delegation welcomes the adoption a number of draft principles on the protection of the environment in relation to armed conflicts by the Commission, and reaffirms the obligations contained in the Principles of the Occupying Power to protect the environment of the occupied territories and the environment of their indigenous peoples, as well as the obligations of parties to non-international armed conflicts to protect and not harm the environment.

The delegation Supports the adoption of a number of draft conclusions on peremptory norms of general international law (*jus cogens*) by the Commission, which are universally applicable and obligatory. It also supported the Commission's continued consideration of the issue of immunity of State officials from criminal security jurisdiction, while emphasizing the importance of procedural safeguards for the application of the draft articles.

With regard to the continuation of the Commission to discuss the issue of succession of States in State responsibility, which relates to the succession of States as a result of unity or separation and related issues relating to damage resulting from internationally unlawful acts committed against the predecessor State and its nationals, The delegation may consider the importance of addressing the experiences of African States and Developing States in general in this regard and not limit itself to the examples and experiences of Western and developed countries.

On the Commission's consideration of the report of the Special Rapporteur on the "general principles of law", the delegation said that Commission must unanimously support its unanimous rejection of the term "civilized nations" in Article 38 of the Statute of the International Court of Justice, which provides for the application of the "general principles of law endorsed by civilized nations." This term is incompatible with the contemporary international order. The commission should also clarify the difference between general principles of law and customary international law.

The delegation welcomes the decision of Commission to include a new topic in its program, namely sea level rise in relation to international law, and the establishment of a study group to examine various aspects of the topic, which has recently increased in importance as a large number of coastal States are affected by sea level rise, including African and Asian countries.

The delegation supports the Commission's decision to include two other topics in its long-term program, namely, compensating individuals for serious violations of international human rights and humanitarian law, and preventing and suppressing acts of piracy and armed robbery at sea, a serious phenomenon that may threaten international peace and security.

**Vice-President:** I thank the delegation of the Arab Republic of Egypt for their statement. I invite the delegation of the United Republic of Tanzania.<sup>49</sup>

**The Delegate of the United Republic of Tanzania:** Thank you Mr. Vice-President. The United Republic of Tanzania would wish to make a short statement on International Law Commission. The United Republic of Tanzania recognizes and supports the topics on the

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<sup>49</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

agenda of the International Law Commission focussing on ‘Immunity of State officials from foreign criminal jurisdiction’, ‘Crimes against humanity’, ‘Protection of the environment in relation to armed conflict’, ‘Peremptory norms of general international law’, ‘Succession of States in respect of State responsibility’ and, ‘General principles of law’. In pursuance to these topics the United Republic of Tanzania among other things has played a major role in the development more specifically the international justice system including hosting the International Criminal Tribunal for Rwanda and currently the United Nations Residual Mechanism which replaced the ICTR and the African Court on Human’s and People’s Rights hosted in Arusha. In upholding the international criminal justice system Tanzania remains committed to the International Criminal Court (ICC) however the Court needs to address some of the challenges including the feeling of African States and other which considers the Court is not impartial in dispensing justice needs reform. The United Republic of Tanzania shares the concerns of other African States that the ICC should operate in an impartial manner and therefore AALCO Member States and the International Law Commission should work on these issues for the betterment of the system of international law. Thank you.

**Vice-President:** I thank the delegation of the United Republic of Tanzania. I now handover the floor to Secretary-General.<sup>50</sup>

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Thank you, Your Excellency, the Vice-President. Excellencies, distinguished delegates that concluded the intervention on this matter and as we now embark on the next item namely lunch break. We shall receive the proper announcement from the local secretariat staff on the logistics. In the meantime let me remind you that the draft summary report of yesterday’s session is already circulated to all of you for your comments. If you have any comments please send them through the email indicated or make them available or known to the members of the Secretariat. At the same time when resume after we shall proceed on the topic ‘International Law in Cyberspace’ to be followed by the Law of the Sea and if possible we shall receive report on the work of the Regional Arbitration Centres.

**Vice-President:** I hereby declare this session as closed. I invite you all to join us for lunch. Thank you all.<sup>51</sup>

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<sup>50</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

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**XV. VERBATIM RECORD OF THE FOURTH  
GENERAL MEETING (CONTD.)**

**XV. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)  
HELD ON WEDNESDAY, 23 OCTOBER 2019. AT 03:00 PM**

**His Excellency Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, President of the Fifty-Eighth Annual Session in the Chair.**

**AGENDA ITEM: INTERNATIONAL LAW IN CYBERSPACE**

**Vice-President:** Now we move towards the topic of ‘International Law in Cyberspace.’ I invite the Secretary-General to deliver his introductory statement.<sup>52</sup>

**Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Mr. Vice-President, Distinguished delegates, Ladies and Gentlemen.

AALCO’s engagement with this topic, namely international law in cyberspace emerged in the context and with the People’s Republic of China proposing the topic as an agenda item in 2014. Since then, the topic has been on the agenda of AALCO every year with its significance growing each year.

It is important to mention that our discussion on this topic here in Dar es Salaam will be taking place in the backdrop of the just concluded Fourth Meeting of the Open-ended Working Group on International Law in Cyberspace concluded in Hangzhou, China from 2-4 September 2019.

We are pleased to have invited Rapporteur on this topic, Prof. Zhixiong Huang of Wuhan University Law School, People’s Republic of China who has been engaged to work on this topic to iron out some of the more complex dimensions of the subject. On this note, I congratulate the People’s Republic of China, the Rapporteur and each of our Member States for their active interest in the topic.

It is important Mr. Vice-President to note that the topic of Cyberspace has attracted big attention from our Member States. It is on this note that in this Session, we have invited Special Rapporteur with one expert Prof. Zakayo N. Lukumay, to initiate and assist deliberations in the capacity as an expert. While Prof. Zakayo will represent in his capacity as expert accordingly he will present in his individual capacity. I, therefore, wish to invite our Special Rapporteur, Prof. Huang to make necessary presentation which relates to his ongoing work as Special Rapporteur on this topic. Prof. Huang

**Prof. Zhixiong Huang, Rapporteur of the AALCO Open-ended Working Group on International Law in Cyberspace:** Thank you Mr. Secretary- General. Mr Vice-President, Distinguished Delegates during the Fourth Meeting of the Working Group on International Law in Cyberspace held in Hangzhou, I briefly reported how the Member States responded to the Questionnaire on Cybercrime we had prepared. Today is my great pleasure to present a slightly updated report for your deliberation. During the Fifty-Seventh Annual Session of the AALCO, held in Tokyo last October one of the decisions made by the Member States is for me “to prepare a report on the latest developments on international law in cyberspace and on the special need of Member States for international cooperation against cybercrime”. In my

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<sup>52</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

capacity as Rapporteur of the Open-Ended Working Group on International Law in Cyberspace. So how to prepared the report and in particular how to understand the special need of Member States for international cooperation against cybercrime after consulting the Secretariat, I studied from preparing a questionnaire for the Member States. It included four parts, i.e., domestic law, international cooperation, capacity building and technical assistance and public-private partnership. There were 38 Questions in total. The questionnaire was sent to the Member States by the Secretariat on March 29 this year and by the end of August 2019, 11 replies had been received from the Member States. These countries were Oman, Myanmar, Iran, Korea, Japan, Bahrain, Malaysia, Kuwait, China, Ghana and Thailand. Most of the replies were organized according to the 38 questions in the questionnaire. A few Member States chose to offer their views on the four parts of the questionnaire on a more general way. All the replies provided a useful source for understanding the special need of AALCO Member States for international cooperation against cybercrimes. Below, I will try to summarize the key messages in the replies.

In terms of domestic law on cybercrimes, most i.e., 8 out of the 11 countries confirmed that they had already formulated or amended such domestic laws and most of them had the same or similar views on the basic issues relating to the substantive law of cybercrime including conviction and sentencing. So for example, the domestic laws of all the replying Member States involved references relating to infringement of intellectual property and except for one Member State, all the others had domestic laws involving the criminal form of cybercrime such as \_\_\_\_\_ attempt. States were more divided on the issue of investigation and electronic evidence i.e., whether the domestic laws included procedural laws of cybercrime. Actually out of the 10 countries, which replied to the question, five answered yes, while the other five answered no and also on procedure of electronic evidence. This time 6 countries answered yes, while 4 answered no. Member States emphasized the vital importance of international coordination in this area. One State made the point that strict precautions were required when a police forensic team or an expert were collecting electronic evidence. Another State provided detailed explanation on possible rules addressing various aspects of capacity for collecting electronic evidence, methods of collecting electronic evidence, admissibility of rules of electronic evidence and trans border access to electronic evidence.

The second part of the questionnaire on international cooperation witnessed the different attitude of the replying States on most questions. The number of States, which have joined the Budapest Convention on Cybercrime, the agreement on ensuring cooperation in information security between the Shanghai- Cooperation Organization and the League of Arab States Convention respectively was one. Eight States suggested that they had not joined any such crime conventions. Four States joined the Twenty-Four/Seven Cooperation Network of Cybercrime and six did not. Four States had signed bilateral cybercrime treaties and three replied no. Only one State confirmed that its domestic law included regulations concerning trans-border access to data for criminal purposes. While most other States did not have such regulations. On the question of Article 32 (b) of the Budapest Convention, one State was in support of this Article and one State was against it. While most other States did not make clear their position. All the Member States indicated that they had conducted law enforcement cooperation and legal assistance concerning such crimes with other countries and most appeared to view the function of existing legal assistance in the law enforcement cooperation framework in combatting transnational cybercrime as not fully satisfactory but they differed as to how this cooperation should be improved. The Member States were able to reach more consensus on the issue of capacity building and technical assistance. All of them were of the view that capacity building and technical assistance for combatting

cybercrime were necessary and they all recognized the need to set uniform standards for combatting cybercrime. Most States had received technical assistance related to cybercrime and cybersecurity from other States or international organizations. Also most States provided detailed and practical suggestions as to how capacity building could be strengthened in terms of personal training, critical information, infrastructure and some other aspects. Regarding the last part i.e., public-private partnership, all Member States agreed that it was beneficial to combatting cybercrime and they offered helpful but sometime different views on such issues as qualified private entities, the scope and means of private entities investigating etc. One State made the point that some legal basis is indispensable for the development of public-private partnership. To conclude, while showing a degree of difference on many specific issues such as suggestions for international coordination in domestic law and attitude towards Article 32 (b) of the Budapest Convention on Trans-border access to data. Most Member States replying to the questionnaire indicated the need for enhanced international cooperation in combatting cybercrime and for strengthening of the capacity building and technical assistance in this regard. Looking ahead, further inputs, from AALCO Member States in this topic will be most sincerely welcomed so that I can further develop my report based on the mandate of the AALCO. With this, I finish my report. Thank you for your attention.

**Secretary-General:** Thank you very much, Prof. Huang. It is now my honour to invite the second expert Dr. Zakayo Lukumay who is also the principle of the Law School of Tanzania. I am informed that you will use the podium since you want to use some sort of technologies.

**Prof. Zakayo N. Lukumay, Senior Lecturer and Acting Principal of the Law School of Tanzania:** Hon'ble Vice-President and Hon'ble Secretary-General, Distinguished Delegates. I take this opportunity to thank AALCO for giving me this opportunity to give a presentation on how international law principles can be applied on cybercrimes. The purpose of this presentation is to examine the applicability of international law principles to cyberspace. These principles are those related to international cooperation, sovereignty, jurisdiction and law of armed conflicts. Cyberspace is global in nature. Cyberspace refers to the global network of interdependent information, technology infrastructures, telecommunications networks and computer processing systems in which online communication takes place. This global network (the internet) has made it possible for individuals to interact, exchange ideas, share information, provide social support and conduct business. But in view of the anonymous nature of the internet, it has been possible for criminals to engage into a variety of criminal activities in cyberspace. Such Cyberspace has become a new area of conflict between nations. Cyber-attacks are now becoming prevalent creating chances of engaging in a war. The present State of the internet has created a necessity for a system of laws and regulations known as cyber laws. Different countries are adopting their own strategies to face the challenges posed by cyber criminals. The increasing sophistication and speed of computer systems, convergence of information and communication technologies, enhanced the capacity of technological change to benefit society but also provide opportunities for those who seek to exploit the same capacity for criminal purposes. Cybercrime is not a defined legal category but a label that has been applied to a range of illicit activities associated with information and communication technologies and computer networks. Cybercrime is a crime committed using a computer as a target or a tool. I must say that there is no agreement so far in many countries as to what would constitute a criminal conduct for it to be outlawed. It appears that each country would define a cybercrime depending on its own interest, depending on its own politics and it depends on their Constitutions as well. It happens that what is a cybercrime in Tanzania is not a cybercrime elsewhere and as we will see later this brings complications and challenges when you want to enforce the laws and cybercrime legislations. In Tanzania, we

have a note 215 (not clear), which criminalizes a number of activities, quite a number of them. The reason I included this is to show that many crimes, offline crimes can now be committed using computer networks. At the end of the day, you may not have what is called cybercrimes but you just have a topic of crimes and cyber-crimes may be just a sub-topic in the larger set of crimes and this may have the effect of threatening lives and properties, disruption of critical services, terrorism and economic sabotage as well as propaganda and theft of information. In Tanzania, for example, when an offender is found guilty, he will be condemned to a jail term, a fine, compensation, or all the above depending on the offence. The heaviest sentence for cybercrime in Tanzania is imprisonment for not less than 7 years and fine not less than 100 million. But I also included this to throw a challenge. This piece of legislation as many other pieces of legislation is country specific. Each country, as I said, determines what activity in the cyberspace should be outlawed. Tanzania has for example decided to punish dissemination of false information. But when you have different legislations, international cooperation becomes a challenge and here I call for countries to agree on harmonization for their pieces of legislation, in other words to agree on what activities should be criminalized and what activities should not. In the absence of an agreement on what would constitute a cybercrime, I would propose application of international law for the reason that the internet is global, in other words, the internet has global reach. It is possible now for computer crimes to be committed from outside borders of a country. As such, cyberspace has changed established criminal law, which is purely domestic. Transnational criminal activities need appropriate legal instruments. Solutions to the problem of cybercrime should be addressed by international law through the adoption of binding international legal instruments- Treaties and conventions, customary international law general principles and scholarly works. But key issues arise as far as the international approach is concerned. When you have a cyberattack for example, the question that would arise as far as the internet is concerned with respect to its governance is who governs the internet. So aspects of global governance comes in, sovereignty of States- each State would have its own control on its infrastructure in line with cyber activities and governance of its activities within its own jurisdiction. You have a challenge on online freedom and how the law of armed conflict can apply to cyberspace. You also have a challenge in international cooperation in combatting criminal activity. I propose that we make use of Article 19 of ICCPR and a State may exercise extraterritorial jurisdiction pursuant to Article 19 because the State has the right under international law to defend itself against any cyber-attack threatening national security, public order or the lawful rights and freedoms of others, including the rights of privacy and intellectual properties. I also propose that a country should invoke the universal jurisdiction theory. Under this, a country can invoke universal jurisdiction, when the offence has an international character like piracy. Cybercrime has international character and I propose that universal jurisdiction theory can apply. When you read my long paper, you can see the challenges I posed far as using universal jurisdiction theory and this requires some consensus between countries. But there is also the Budapest Convention. Chapter 23 can be used for international cooperation. The problem with this is that this is not an international kind of instrument and as such, it cannot resolve all issues such as jurisdiction is concerned. Because of the way it is worded, it depends on the goodwill of the country you seek cooperation from. The Convention is also short on giving States the necessary weapons to fight this type of crime. On cyberterrorism, I propose the use of the 1988 Rome Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation, which can also be interpreted to cover cyber-activities. On cyber-war, the question is whether *jus ad bellum* can be applied to a cyber-attack. You have the answer in Article 2 (4) of the UN Charter, which refers you to Article 51 of the same Charter. My question is whether, Article 51 of the United Nations Charter be invoked for a country, which



needs to protect itself against cyber-attacks. There is a consensus that the law of armed conflict can be applied to cyber-attacks especially where destruction of infrastructure/ critical infrastructure is made like railways, banks etc. But the question is whether cyberspace is a battle between nations. In a conventional war, you may know where the enemy is coming from, but in a cyberwar, you may not know where the enemy is coming from. The question is whether international law questions can be invoked to address cyber-attacks. An other problem is it is difficult to attribute a cyber-attack to a State, when it is done by an individual. You cannot say that this individual has been sponsored or sanctioned by a certain State in order to invoke the principles of international law. An other problem is how can you attribute a cyber-attack to a certain country. It becomes a speculation that this attack comes from this country. I know from a technical point of view, you can locate the source or root of the attack. It is, therefore, risky to invoke the rules of warfare given its anonymous nature and lack of certainty as far as sponsorship is concerned. But there is also another problem. Some infrastructure as far as the internet is concerned is owned by private person/ company and they are not owned by the State. To attack a county just because its citizen has launched a cyber-attack becomes a bit challenging. These questions call for more dialogue as to how the law of armed conflict can be extended to cover cyber-crimes. In conclusion, I insist that international crimes are international and because they are international, they have the tendency of crossing borders, they need an international solution. There is need for an international legal binding instrument under the auspices of the United Nations. I underline the auspices of the United Nations because that is the organ which many countries agree with. The Budapest Convention though has gained an international recognition, was not made under the auspices of the United Nations. Because cybercrime conventions can be overtaken by technological advancements, there is need to have a technological- neutral legal instrument.

On international cooperation, I advise that there should be an agreement on what activities should be outlawed and harmonization should be one of the steps towards international cooperation. Again, application of modern technologies should be employed to curb cyber-attacks and AALCO countries may borrow a leaf from China.

Asante Sana.

**Vice-President:** Thank you for this legal presentation. Now I open the floor for deliberations. I invite the delegation of the Republic of Kenya to deliver their statement.<sup>53</sup>

**Republic of Kenya:** Thank you Mr. President, it is with great honour that I have this opportunity to make the following statement on behalf of the Republic of Kenya on this agenda item on “International Law in Cyberspace.”

Distinguished Delegates, Kenya recognizes the critical role that cyberspace plays in the global economy, and that it has national and international dimensions that include industry, commerce, intellectual property, security, technology, culture, policy, and even diplomacy. It is acknowledged that Cyberspace is a unique phenomenon with distinct characteristics and those new and emerging technologies which are expected to change and improve many fundamental tasks and interactions in the coming years, such as artificial intelligence, block chain, internet of things and quantum computing, among others, present significant opportunities for the global community at large.

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<sup>53</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

However, it is also acknowledged that challenges have emerged with these technological advancements and that there is need to urgently address the lack of international norms to address the emerging issues or to address threats attached to the use of cyberspace.

Distinguished Delegates that is why the work that has been ongoing within the auspices of AALCO to encourage member states to deliberate on matters pertaining to emerging international legal issues on cyberspace is important. We note with appreciation the work and the reports of the Open-ended Working Group.

Distinguished delegates, Kenya acknowledges in particular the emerging legal issues surrounding misuse of computers and cyberspace in general and the need for an international legal framework, in addition to existing regional frameworks, to enhance cooperation in combating cybercrime.

In order to mitigate cyber threats and foster a safer Kenyan cyberspace, Kenya has taken considerable steps to develop strategies and strengthen its domestic legal framework to address threats attached thereto. To address the threat to cyber security, Kenya has enacted The Misuse of the Computer and Cybercrimes Act, 2018 with the following objectives:

1. Prevent the unlawful use of computer systems;
2. Facilitate the prevention, detection, investigation, prosecution and punishment of cybercrimes;
3. Protect the rights to privacy, freedom of expression & access to information as guaranteed under the Constitution; and
4. To facilitate international co-operation on matters covered under the Act.

To enhance International Co-operation in combatting cybercrime, the provisions of this Act compliment Kenya's existing legal Framework for Mutual Legal Assistance and Extradition. This will therefore allow for international cooperation in case investigations, information and intelligence sharing in any criminal matter with requesting or requested States for purposes of proceedings concerning offences related to computer misuse and cybercrime.

Distinguished Delegates, the enactment of Kenya Information and Communications Act, 2015 has gone a long way in strengthening the multi-agency collaboration framework, among other key facets, that support national cyber security resilience. The National coordination agency detects, prevents and responds to various cyber threats targeted at Kenya and acts as the interface between local and international ICT service providers whose platforms are used to perpetrate cybercrimes, and our Judicial Law and Order Sector which investigates and prosecutes cybercrimes.

Mr. President, to conclude, Kenya acknowledges and appreciates the work of the open-ended Working Group on International Law and Cyberspace, and assures the Group of its continued support for the same. Kenya is in the process of preparing detailed responses to the questionnaire to be submitted to the AALCO secretariat. Thank you Mr. President.

**Vice-President:** I thank the delegation of the Republic of Kenya. I now invite the delegation of the United Republic of Tanzania to deliver their statement.<sup>54</sup>

**The Delegate of the United Republic of Tanzania:** It should be noted that cyberspace is not and should not be a lawless arena where anyone can conduct hostile activities without rules or restraint. Otherwise the cyberspace will end up being anarchist.

United Republic of Tanzania is in agreement that cyberspace is subject to the principles of sovereignty and jurisdiction as well as prohibitions on intervention in the affairs of other States and the use of force. States have the right to apply “countermeasures” to either bring about a lawful situation or de-escalate an unlawful situation in cyber space. Such countermeasures may be physical anti-access and are denial operations aimed, for example, at preventing aircraft landings or over flights. States could lawfully undertake a denial operation as a countermeasure against malicious cyber activity until it receives compensation for harm inflicted.

From the above the United Republic of Tanzania recommends the following:

- i. There should be an international legally binding instrument to regulate cyber space. Moreover, there is a need to establish clarity on the role of international law in cyberspace since some States have begun disseminating their own interpretations of international law with regard to cyber space.
- ii. Also there is a need to determine whether existing law is sufficient or satisfactory to provide sufficient guidance and guarantees for states’ relations cyberspace.
- iii. Further, there is a need to classify cyber-attacks that qualify as violations of international law.
- iv. Political will of major cyber powers to discuss red lines for offensive cyber activity need to be addressed.
- v. The application of international law to cyberspace need to be clear with respect to humanitarian costs of cyber-attacks especially when some organizations use cyberspace for communications and logistics that have been subject to cyber-attacks.
- vi. There must be multilateral responses to existing emerging threats in cyberspace.

**Vice-President:** I thank the delegation of the United Republic of Tanzania for their statement. I now invite the delegation of the Government of Nepal to deliver their statement.<sup>55</sup>

**The Delegate of the Government of Nepal:** Mr. President, Your Excellences, Ministers and Ambassadors, Mr. Secretary-General, Distinguished Delegates, Participants and Observers, Ladies and Gentlemen.

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<sup>54</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

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Mr. President, the delegation of Nepal deeply acknowledges and appreciated the efforts for the development in the field of international law of cyberspace prepared by AALCO Working Group on International Law in Cyberspace. In fact, AALCO has endeavored to make a significant contribution to the development of international law of cyberspace. This approach has engrossed on the necessity to elucidate the norms of international law of Cyberspace and further expansion of these norms considering the new technical developments.

Mr. President, technology has resulted in significant change and international law has always been asked to deal with those changes. New technologies raise new issues and questions. It is now generally held that international law applies to cyberspace and the legal debate has shifted to how international law applies in cyberspace.

We must articulate and build consensus around how it applies and reconsider from there whether and what additional understanding are needed.

All states including AALCO Member States seek norms for cyberspace but they have very different ideas as to the desired end state and the means to get there. However, a non-binding general document clarifying the consensual basic principles of international law applicable in cyberspace would be vital.

As a Member States, Nepal has always extended its full cooperation in developing international law of cyberspace and enhancing cooperation in countering cybercrime.

Mr. President, Nepal aims to address the challenges by creating institutional capacities within the country that monitor development and provide related services, guidance and information.

In order to address the challenges of cyber security and issues of cyberspace, the Government of Nepal has endorsed a bill on Information and Technology to the House of Representatives. Since cyber security is not a mere domestic deal, the global undertaking to countering cybercrimes is emergent.

Mr. President, Nepal is in favor of a comprehensive and non-binding international instrument clarifying the consensual basic principles of international law applicable in cyberspace. The resolution adopted at the previous Annual Session encouraged us to make amendment of domestic law on cybercrime in line with the spirit of Budapest Convention.

Sovereignty in Cyberspace, Governance of Cyberspace, Cyber Warfare, and Cybercrimes are the issues and areas that the international law on cyberspace has to deal with. And these concepts are very new to developing countries, where necessary infrastructure and human resource regarding cybercrime are yet to be developed.

Therefore, I believe, special measure has to be established to address inclusion and cooperation among member states to enhance cooperation in capacity building and set uniform standards for combating cybercrime.

I would like to notify that Nepal is under process of consultation with responsible authorities to contribute the “Special Need of the Member States for International Cooperation against Cybercrime.”

Finally, on this occasion, I would like reiterate that Nepal wishes to place on record that AALCO should take initiation in the development of appropriate and effective rules of

international law to combat cybercrimes and of international regime that assists the international community for building robust mechanism and modality and balancing between the state domain and public domain vis-à-vis development of secured and inclusive cyberspace. Thank you for your attention.

**Vice-President:** I thank the delegation of the Government of Nepal for their statement. I now invite the delegation of the Republic of India to deliver their statement.<sup>56</sup>

**The Delegate of the Republic of India:** Thank you Mr. President, on behalf of the Indian delegation, I take this opportunity to thank the AALCO Secretariat for the preparation of a detailed background document on the topic and the introductory statement made by the Secretary-General.

Mr. President, cyberspace, as we all know, is a complex domain that goes beyond our understanding of traditional domains of land, sea, air and space and its unique attributes present its own set of opportunities and challenges. The increasing use of Information and Communication technologies has generated social awareness, accelerated economic development, improved delivery of services to citizens and placed unprecedented power and information at the hands of an individual. The lack of borders in cyberspace and the anonymity of the actors has ensured that the traditional concepts of sovereignty, jurisdiction and privacy are challenged.

Taking into consideration the existing and potential threats posed to the international peace and security by the malicious use of ICTs, it is important to prioritize the need to have common understanding and implementation of important norms already agreed in the UNGGEs. States should consider best practices to cooperate to exchange information and should encourage responsible reporting of malicious use of ICT. Even as technologies of active defence are developed, the attackers are several steps ahead. The classical form of ICT infrastructure based jurisdiction is under reconsideration in terms of evolving nature of cyberspace environment to the data based jurisdictional aspects.

There is a need to develop better understanding of applicability of international law in cyberspace. Commitments of States under the UN charter and other international law would apply to its behaviour in cyberspace. However, the novel character of cyberspace and the vulnerability of cyber infrastructure have led to questions whether existing international law can provide sufficient answers to the emerging concerns in cyberspace. The working of the UNGGE reports so far do not clearly acknowledge that international humanitarian law (IHL) applies to state actions in cyberspace. It is thus clear that there is no consensus on the applicability of IHL to the cyber domain. What qualifies as the use of force or armed attack has also not been settled in cyberspace. Equally challenging are the issue of attribution and judging the legality of cyber-attack as per principles of distinction, proportionality, necessity and distinguishing between military and civilian targets. The International Community has to agree on common definitions of cyber sovereignty, jurisdiction, weapon conflict, crime, deterrence, attacks, etc. We need to engage bilaterally and multilaterally to discuss how the various international law for their relevance and applicability to cyberspace may be necessary. This may also help identify gaps that may need to be filled on an ongoing basis given the dynamic and fast changing character of internet.

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<sup>56</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

India participated in the discussions of 5<sup>th</sup> UNGGE leading to adoption of two resolutions in the UN First Committee of the General Assembly in November 2018. India participated in the first substantive meeting of OEWG on September 9-13, 2019 in New York. India endorses the need to have a common understanding on how international law is applicable to State use of ICTs is important for promoting an open, secure, stable, accessible, interoperable and peaceful ICT environment. India hopes that discussions under UN and other multilateral fora will continue to study these issues with a view to promote common understanding on existing and potential threats in the sphere of information security and possible cooperative measures to address them. The development and implementation of cybersecurity laws, policies and practices should be consistent with international law including international human rights law. Keeping in view of this obligations upon the States, it is the need of the hour that States should have meaningful and constructive discussions on how international law applies to the State use of ICTs.

In this regard, it is important to have regular institutional dialogue at the UN level as well as regular dialogue at bilateral, regional and multilateral levels. However, any such discussions here in AALCO, should consider the work on the topic that is being conducted within the auspices of the UN, with a view to avoid duplication of work. Thank you Mr. President.

**Vice-President:** I thank the delegation of the Republic of India. I now invite the delegation of the Republic of Korea to deliver their statement.<sup>57</sup>

**The Delegate of the Republic of Korea:** Thank you Mr. President with the remarkable advances in ICTs, we have seen the advent of a high-tech and inter-connected world. It has presented us with a new domain of boundless opportunities, bringing unprecedented economic and social benefits. At the same time, however, the dual use of technology has brought about new security threats. Malicious actors are waging numerous attacks in the global cyber space. In Korea alone, over 23,000 cases of malware attacks were detected every day in 2017. Such cyber-attacks are not only increasing in number but also becoming more sophisticated and threatening both in scale and impact.

Cyber-security cannot be single-handedly addressed by anyone nation or actor. The global nature of the Internet requires international cooperation, or even, multilateralism. Therefore, we need to discuss mutual cooperation, assistance, and information sharing, and when doing so, we need to focus on the following critical elements.

First, international norms to govern cyberspace offer a common standard for each State's behaviours, which helps to guarantee greater predictability. I believe the discussions in this session and the work of the AALCO working group on international law in cyberspace will further deepen our understanding of the current landscape of the normative framework for cyberspace and the challenges ahead.

Second, practical measures designed for confidence and capacity building play a critical role in enhancing transparency and resilience in cyberspace. To enhance transparency and resilience in cyberspace more effectively, efforts to develop these measures should be made at national, regional, and global levels at the same time. The more we share knowledge and learn from each other, the clearer and stronger our posture becomes.

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<sup>57</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

In regard to these elements, the Republic of Korea IS also actively participating in the discussions on cyberspace norms in the UN GGE (Group of Governmental Experts) setting as well as holding bilateral cyber policy consultations with a dozen countries: The Republic of Korea has already submitted its answers to the questionnaire of the AALCO Open-ended Working Group on International Law in Cyberspace. I hope this will deepen the understanding of cyberspace actors about cyberspace issues and promote cooperation between States. Thank you, Mr. President.

**Vice-President:** I thank the delegation of the Republic of Korea for their statement. I now invite the delegation of the Islamic Republic of Iran to deliver their statement.<sup>58</sup>

**The Delegate of the Islamic Republic of Iran:** “In the name of God, the Compassionate, the Merciful”

Mr. President, at the outset, my delegation would like to express its gratitude to the Secretariat for its continued work on the item “International Law in Cyberspace” and the background report. We would also like to praise the Rapporteur of the Working Group, Prof. Zhixiong Huang, for his continuous effort on the topic, especially for preparation of the questionnaire on cybercrimes.

Mr. President, the Islamic Republic of Iran has attached great importance to the item “International Law in Cyberspace” since its inception in 2014. We followed with interest the developments of the topic at AALCO, namely the establishment of the Open-ended Working Group on International Law in Cyberspace that has held till now four meetings. We consider the working group a convenient platform for members to exchange ideas in a legal context and to contribute appropriate development of international law on cybercrime.

During the fourth Working Group Meeting, important issues concerning international law on cyberspace including the crucial debate on international cooperation in combating cybercrimes, application of the principle of non-intervention and also issues related to state sovereignty were discussed and my delegation has actively participated in the consideration of these issues.

With regard to combating cybercrime, we actively participate in the relevant discussions within the context of the United Nations so as to come up with a universally negotiated and adopted instrument on combatting cybercrime, taking into account the rapid changes and developments in this sphere. Domestically, the Islamic Republic of Iran has taken some important steps including ratification of Cybercrime Act (2009), Electronic Commerce Act (2003), the Law on Publicizing and Access to Data (LPAD) (2010) which provided legal ground in Cyberspace. With regard to executive measure in fighting cybercrimes, the Government of the Islamic Republic of Iran established Cyber Police in 2011 as an active organ in combating cybercrime.

Of course, the efforts of our government has not limited only to domestic sphere. Relevant national authorities had considerable cooperation with their foreign counterparts, In this context, the Islamic Republic of Iran has also signed agreements and Memorandum of Understanding with different countries particularly in our region, western and central Asia. In this line, the Islamic Republic of Iran, in collaboration with the Interpol, hosted International

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<sup>58</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Conference on Cybercrime in 2015, with participation of representatives from 15 states. Furthermore, the Cyber Police of Iran, responsible for ensuring cyber security in the country, has thus far launched joint missions with 111 countries and 200 executive bodies to confiscate fake drugs in the approximate value of 2 billion dollars.

With regard to the principle of non-intervention, I would like to emphasize that in light of fast technological advancement, respecting non-intervention principle is of great importance. This principle as the right of every Sovereign State to conduct its affairs without outside interference is one of the fundamental principles of international law and principles set forth within the United Nations Charter. Although the importance and general status of the principle of non-intervention is uncontested, the exact dimensions and contours of application of this principle on cyberspace is not clear and needs further work and deliberation.

Mr. President, we express our special thanks to the Secretary General for his valuable contribution and proposal of the consensual basic principles of international law applicable in cyber space which was drafted based on the existing work of the Rapporteur of AALCO working group and efforts within the United Nations. We also commend those governments that have provided their contribution. Iran will also present its comments on this draft in due course. We look forward to the next meeting of the working group to continue its work to fulfill its mandated tasks and to have its meaningful contribution to this important issue of the international community. Thank you Mr. President.

**Vice-President:** I thank the delegation of the Islamic Republic of Iran for their statement. I now invite the delegation of the People's Republic of China to deliver their statement.<sup>59</sup>

**The Delegate of the People's Republic of China:** Mr. President, China advocates the principles of peace, sovereignty, shared governance and shared benefits in international exchange and cooperation in cyberspace. The international community a multilateral, democratic and transparent global Internet governance system, and we should strive for the building of a community of shared future for mankind in cyberspace.

States generally agree that international law applies in cyberspace, but consensus has been slow in terms of how they apply. China supports the formulation of universally accepted international rules in cyberspace through multilateral and equitable, democratic negotiations under the United Nations. In this context, we take note of the resolutions adopted by the 73rd session of the UN General Assembly, which decided to establish a new Group of Governmental Experts and an Open Ended Working Group. We hope that these two processes will yield positive results.

The issue of combating cybercrime is of particular importance. Differences in law and practice among the States concerning criminalization, jurisdiction and electronic evidence collection, among other things, have made international cooperation to combat cybercrime a difficult task. Recently, UN Secretary-General submitted a report to the 3rd Committee of the UNGA on cybercrime pursuant to the resolution adopted by the General Assembly in 2018. The report highlights the challenges faced by states in combating cybercrime.

These challenges in combating cybercrime cannot be solved by a few regional conventions, including the Budapest Convention concluded 18 years ago. We believe that the only

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<sup>59</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.



effective solution is to collectively develop an international legal instrument that is negotiated by all states, and is open to all states. China welcomes the work of the United Nations Intergovernmental Expert Group on Cybercrime in Vienna, and fully supports the IEG to deliver concrete conclusions and suggestions on combating cybercrime before 2021.

Recently, Russia, China and a number of other States co-sponsored a draft UNGA resolution in New York, which requesting the General Assembly to establish an open-ended intergovernmental committee to elaborate a comprehensive international convention on combating cybercrime. We believe that, if adopted, the intergovernmental negotiation process set up by this resolution will provide an important platform for developing countries to participate in international rules making process for combating cybercrime, rather than having to buy our tickets to be admitted to the club of a bloc of countries. We call on more developing countries to co-sponsor or support this draft resolution.

China sticks to the principle of peaceful use of cyberspace and firmly opposes to cyber warfare or cyber arms race. We call upon Asian and African states to work together, to ensure that cyberspace becomes the new frontier for prosperity and development, rather than a new battlefield. Without state practice, we should be very prudent on the discussion of application of humanitarian law in so called “cyber wars.” The reason is very simple but fundamental: firstly, no cyber wars shall be permitted; and secondly, cyber war will be a totally new form of high-tech war. Given the “digital gap” between developing and the developed countries, developing countries in general will be in a disadvantaged position in the discussion and development of such rules, it will be difficult to ensure the rules are fair and equitable.

Mr. President, the AALCO Working Group on International Law in Cyberspace is an important platform; China supports the work of the working group, and hope that all AALCO Member States will be able to benefit from the work of the working group. China is pleased to have had the opportunity to host the 4th meeting of the working group this past September. The deliberations of the working group cover a broad range of new and important issues in international law in cyberspace, including combating cybercrime, regulating online harmful content, and issues relating to trans-border data flow. We are hoping that the work of the working group will help us prepare ourselves for the possible international rules-making processes under the UN.

One important outcome of the 4th working group meeting is the consensus to explore the drafting of a non-binding general document clarifying the consensual basic principles of international law applicable in cyberspace. The Secretary-General has provided very well organized draft principles; we appreciate the guidance and work of the Secretary-General in this regard, and look forward to continuing the discussion of these principles based on the valuable contribution from the Secretary-General. We also note that the principles concerning trans-border data flow and the regulation of online harmful content are missing in the Secretary-General's draft. We are hoping that the working group will incorporate these important aspects in the next iteration of the draft principles.

Mr. President, China hopes that AALCO can play a greater role in the development of international law in cyberspace. We will continue to support the work of the working group. We also call on all AALCO member states to actively participate in the discussion of the working group, and enhance our capacity of cyberspace governance and rules making. Thank you, Mr. President.

**Vice-President:** I thank the People's Republic of China for their statement. I now invite the delegation of the Republic of Indonesia to deliver their statement.<sup>60</sup>

**The Delegate of the Republic of Indonesia:** Thank you Mr. President for giving me the floor. Mr. President, Distinguished Delegates, Ladies and Gentlemen, Indonesia would like to reiterate its unwavering commitment in addressing cyberspace issues.

The government of Indonesia has taken various important measures to promote peaceful cyber environment and economic growth through cyberspace.

Peaceful cyber environment means respect to national sovereignty, protection of individual rights and prevention of violations in line with global principles and norms.

With regards to regulatory framework on cyberspace, Indonesia issued Law Number 11 of 2008 on the Electronic Information and Transaction which then was amended by Law Number 19 of 2016. The Government has issued Government Regulation Number 71 of 2019 on the Use of System and Electronic Transaction.

In addition to that, some regulations are being prepared such as:

- the bill on Cyber Security and Resilience,
- the bill on Personal Data Protection,

The government is in the final process of preparing a National Strategy on Cyber Security.

A number of regulations to combat conventional crimes using cyberspace have also been prepared, for instance drugs-related crime, human rights violations (especially that involves children, child discrimination, exploitation, and violence), as well as for counter terrorism and violent extremism.

Mr. President, Distinguish Delegates, dynamic challenges on how to assure cyber security are confronting our world today. In this vein, strong commitment and collaboration among the international community, I believe, is a must.

Indonesia, in principle, agrees for the adoption of the 11 Cyber Norms on Responsible State Behavior in line with the 2015 UN GGE (Group of Governmental Experts) Report.

Indonesia encourages the need for:

1. Establishing global principles and norms with a view to formulating global principles and norms to developing global architecture in cyberspace in various forum, both the UN and AALCO through multi-stakeholder approach to develop tolerant and inclusive cyberspace.
2. Developing open, free, and safe cyberspace for peaceful purpose with respect to state sovereignty and human rights through inclusive participation, and

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<sup>60</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

3. The use of diplomatic solutions and the avoidance of military force in resolving cyberspace conflict,

In addition to that, countries are obliged to take best efforts in dealing with challenges of cybercrime especially terrorism in cyberspace.

Mr. President, Distinguished delegates, Ladies and gentlemen, Indonesia is currently formulating a National Action Plan on Countering Extremism that Leads to Terrorism. This plan of Action is aimed at preventing the use of cyberspace as well as social media platform for radical-terrorism activities and its financing.

Indonesia extends its sincere gratitude and appreciation to the effort of the 4th Meeting of the AALCO Open-ended Working Group on International Law in Cyberspace that presents consensual basic principles of International Law Applicable in Cyberspace.

Indonesia takes note to the result of the Working Group. Indonesia can go along with point a) to g) that align with the 11 Cyber Norms on Responsible State Behavior of 2015 UN GGE (Group of Governmental Experts) Report.

However, point h) needs further discussion, as we believe this point is under the realm of military which is supposed to be discussed among themselves, such as through the forum of defence dialogue etc.

On this important issue, Indonesia would like to encourage AALCO:

1. To establish AALCO's point of contact directory consisting high and working level. The point of contact shall coordinate and confirm when cyber incidents occur.
2. To support social media companies to assist governments of AALCO Member States in filtering the spread of negative contents on terrorism, pornography (including child online protection on discrimination, exploitation, and violence), and other cybercrime-related matters.
3. To enhance public-private partnership through building collaboration to prevent the misuse of internet

Mr. President, Distinguished Delegates, in closing, we look forward to a productive and substantive exchange of views among the distinguished representatives on this issue, with a view to exploring the needs for various means in identifying gaps, as well as addressing the way forward for further actions to effectively enhance cooperation in addressing the threat of cybercrime and to protect our society from falling prey to cybercrimes. Thank you Mr. President.

**Vice-President:** I thank the delegation of the Republic of Indonesia for their statement. On behalf of all I thank the President of AALCO and with his permission, I will complete the statements of the remaining delegations. Now invite the delegation of Viet Nam to deliver their statement.<sup>61</sup>

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<sup>61</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

**The Delegate of the Socialist Republic of Viet Nam:** Honorable President, Distinguished Delegates, Ladies and Gentlemen, my delegation would like to join with other delegations to express our concern on the application of international law in cyberspace as cyber-security has increasingly become a global issue that deserves our utmost attention.

As the Fourth Industrial Revolution is nearing, every one of us has never been more exposed to the pros and cons of technology. States are no exception. We are facing unprecedented problems as ICT Technology has posed unforeseeable security risks. From spreading harmful or malicious contents, conducting spontaneous and individual acts for illicit personal gains to aiming attacks at the cyber environment, malicious cyber activities such as fake news have now expanded in scope, are becoming trans-boundary in nature, and adversely affect the socio-economic stability and national security of many states. For the past few years, Viet Nam has frequently suffered from “fake news” and cyber-attacks, threatening the national security and causing loss to state entities and nationals.

The lack of a universally accepted set of norms to govern activities in the cyberspace, as well as the diverse points of view on the application of established international law in the cyberspace calls for immediate actions from states to prevent the unpredictable threats to security on national, regional and international levels. Thus, Viet Nam truly appreciates the constant effort of AALCO to initiate and maintain the substantive discussion on the matter. It has created a forum for the members to put forward their perspective, share their national experiences and bridge their differences, in order to join efforts against the common threat of cyber criminals. From these cooperation activities, a general practice may emerge and lay foundation for the creation of norms in the governance of cyberspace.

Enhancing cyber-security within the territory of Viet Nam has been one of our priorities. Following the comprehensive Law on Cyber-security enacted in June 2018, a Governmental Decree detailing the implementation of the Law is now being built to substantially governs the entire cyber-security of the nation and seeks to combat cybercrimes, protecting not only government assets but all those that are critical to the stability, security of the country.

So far, Viet Nam has yet to become a party to any international convention on cybercrime or cybersecurity while still in the process of studying this evolving concept, gradually improving its national legal framework in this area with a view to ensuring its compatibility with the current relevant international norms and standards. Therefore, Viet Nam has been looking forward to discussions at both international and national levels with all states and partners on the understanding of cyberspace-related issues, in relation with well-recognised principles of international law and conventional norms such as territory, boundaries or armed attack. Without international cooperation, a common understanding of how international law applies in the cyberspace could hardly be obtained. With such an understanding, Viet Nam and other members of ASEAN have been exchanging views on different levels on combating transnational crimes, including cybercrimes. Cybersecurity is now one of the notable items on ASEAN meeting agenda, calling for attention, participation and cooperation from the members. Aside from Viet Nam, some members have also adopted significant legal instruments regulating conduct on cyberspace. In 2020, as the Chairman of ASEAN, Viet Nam would continue to foster the mutual effort to deepen the discussion on combating cybercrimes and ensuring a peaceful and safe cyberspace, as well as to harmonise the domestic regulations, expecting to contribute to a universally accepted understanding and set of norms.

Regarding the report prepared by the AALCO Secretariat contained in document AALCO/58/DAR ES SALAAM/2019/SD/S17 named "International Law in Cyberspace", this delegation would like to applaud the works done by Prof. Zhixiong Huang, Rapporteur of the AALCO Working Group on International Law in Cyberspace as well as the contribution by every member of the Working Group. Aside from the topic of combating cybercrimes, the latest discussion in Hang Zhou in September has brought into light some significant issues when it comes to applying established principles of international law in the face of newly formed practices.

Viet Nam holds the view that international law, especially the principles set forth by the UN Charter, shall be applicable to cyberspace. Accordingly, states must also use the cyberspace peacefully and refrain from using or threatening to use cyberattacks in international relations. However, as cyberspace is an evolving phenomenon, we should draw lessons from other domains such as outer-space and the law of the sea. Besides, the international community should take into consideration the interests of developing countries, allowing them to take the most advantage of technology while building a safe and peaceful cyberspace.

Although the delegates hardly reached an agreement during the Working Group meeting, we believe that exchanging views is the only way for states to deepen mutual understanding and to come up with resolutions. We therefore fully support the enhancement of AALCO's Member States' cooperation in countering cybercrimes by continuing the discussion on some key issues of international law in cyberspace, exchanging information and experience among AALCO Member States on a frequent basis and strengthening capacity building within AALCO. Viet Nam proposes that AALCO member states take part in cyber co-exercises to enhance the capacity to respond to cyber incidents, cooperate to raise the awareness of internet users, and come up with a code of conduct for peaceful and safe usage of cyberspace. Last but not least, my Delegation would like to thank the Secretariat for preparing the draft consensual basic principles of international law applicable in cyberspace. The document certainly reflects our common expectation to have a set of principles governing acts on cyberspace. However, the topic requires further study and should not be rushed for the purpose of adopting an outcome document. As the perspectives remain divided at present, this draft was not based on a sound legal argument and is more of political nature than of legal one. It should be elaborated if the draft principles aim to analyse or develop the acknowledged principles of international law. Most of all, the fundamental elements of military activities, such as "armed attack", "use of force", "self defense" or "hostility" ought to be carefully examined in the context of cyberspace" before arriving at a principle of applying the international law governing armed conflicts in cyberspace. I thank you for your kind attention, Mr. President.

**Vice-President:** I thank the delegation of Viet Nam for their statement. Now I invite the representative of the International Committee of the Red Cross to deliver their statement.<sup>62</sup>

**The Delegate of the International Committee of the Red Cross (ICRC):** Mr President, Mr. Vice-President, Mr. Secretary General, Your Excellencies, Distinguished Delegates, Thank you for providing the International Committee of the Red Cross this opportunity to address the topic of International Law in Cyberspace.

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<sup>62</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

As already mentioned in our statement delivered yesterday by the ICRC head of mission in Tanzania, in view of the mandate that the international community gave us, our focus is on the limits that international humanitarian law, or IHL, imposes on the use of cyber operations during armed conflicts.

Mr. Vice-President, Distinguished Delegates, Today, cyber operations are being used in on-going armed conflicts. Australia, the United Kingdom and the United States have officially acknowledged doing so, including in the territory of some of AALCO Member States according to U.S. official statements.

Cyber operations have also been used in other countries that are involved in an armed conflict otherwise waged with traditional means and methods of warfare. This was the case during the international armed conflict between Russia and Georgia in 2008. Cyber operations also affected the delivery of essential services such as electricity or otherwise negatively affected businesses more recently in Saudi Arabia and in Ukraine, two countries involved in a non-international armed conflict. The perpetrators remain unknown and attribution of responsibility is contested.

At the ICRC, we are concerned with the potential human cost of cyber operations during armed conflict - we published a report on this topic earlier this year. In our view, it is critical that States affirm that IHL limits the use of cyber operations during armed conflict and protect civilians and civilian objects, like it does with any other means and methods of warfare. What this means is that under existing international law, among many other rules, indiscriminate cyber means are prohibited; cyber attacks against civilians, indiscriminate cyber attack or disproportionate cyber attacks are prohibited; the delivery of medical services must be protected and respected, including when carrying out cyber operations during armed conflicts: it is prohibited to render useless objects indispensable to the survival of the population, including through cyber means. And the list goes on of the protection that IHL affords to civilians against the effects of hostilities.

What the application of IHL does NOT mean is to legitimize conflicts, neither in the tradition domains of warfare nor in cyber space. This is governed by the UN Charter and relevant customary international law. In cyber space as in any other space, the threat or use of force is prohibited and international disputes must be settled by peaceful means, a topic on tomorrow's agenda of this annual session. To assert that IHL applies does not encourage the militarization of cyber space either; on the opposite it imposes limits on the military cyber capabilities that States can develop. Of course, States may decide to impose additional limits that those found in existing law.

Mr. President, Distinguished Delegates, When an armed conflict unfortunately breaks out, we at the ICRC witness first-hand the immense suffering and extensive destruction caused by hostilities. What IHL provides is an additional layer of protection and a sense of humanity in the midst of such suffering. There is no doubt in our view that this protection limits the use of cyber operations during armed conflicts. We therefore welcome that, since several years, AALCO and its cyber working group included the study of IHL in its work. As a tangible outcome of the work of AALCO Open-Ended working group on international law and cyber space, the Secretary General put forward to the consideration of AALCO Member States Consensual Basic Principles on International Law Applicable in Cyberspace. They cover a broad range of key issues.

In view of the considerations above, we welcome the inclusion in paragraph 2(h) of a provision addressing the military use of cyber space and aimed at ensuring respect for IHL. By adopting a principle to this effect, AALCO would substantially contribute to progressing the international conversation on the issue.

We strongly encourage AALCO member States to continue to study how IHL restricts the use of cyber operations during armed conflicts. Determining how international law, including IHL, applies to cyber space is a shared responsibility among the international community. Every State, big or small, including those that would not consider developing cyber capabilities may become the direct or incidental victim of a cyber operation. Every State may have an interest to express its view on how international law, including IHL and the law of neutrality, protects them and their population against the effects of cyber attacks during armed conflicts.

True, the unique characteristics of cyberspace raise several critical questions about the interpretation of IHL rules. Take the example of a cyber operation that would render critical civilian infrastructure dysfunctional without causing physical damage. Is it an attack under IHL, which would mean it is clearly prohibited? Or is it an operation other than an attack governed by less precise and stringent rules? In our view, it is an attack, and a prohibited attack if directed at a civilian infrastructure; but it is for States to urgently address such questions.

Mr. President, Distinguished delegates, affirming that IHL applies in cyber space and discussing its interpretation does not imply that new rules might not be useful or even needed. As with the development of any new weapons, means or method of warfare, States may agree upon further rules to prohibit or limit specific military cyber capabilities or operations for a range of reasons, including humanitarian reasons. If new rules are developed, they should build upon and strengthen existing law.

In the meantime, the development of military cyber capabilities and their use during armed conflict does not occur in a legal void. It is already constrained by existing international law, including IHL.

Mr. President, Distinguished delegates, I thank you for your attention.

**Vice-President:** I thank the representative of the representative of the International Committee of the Red Cross for their statement. Now I invite the delegation of the Russian Federation to deliver their statement.<sup>63</sup>

**The Delegate of the Russian Federation:** Thank you Mr. Vice-President. My statement will consist of two parts first on the application of law and then on cyber-crime. At first glance the applicability of international law to ICT doesn't seem to be complicated. International Law regulates the activities of its subjects primarily States. Based on this its norms should be applied in any field where these subjects operate. This general conclusion regarding the applicability of law found general support within the framework of the Group of Governmental Experts on Development in the field of Information and Telecommunications in the context of international security in 2013 and 2015. This conclusion was also included in the resolution of the General Assembly 73/97/ However if we try to look behind the

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<sup>63</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

statement the issues become more complicated. Since the adoption of the latest report of the Group of Governmental Experts in 2015 the discussion has not progressed significantly. What are the reasons?

First of all its divergence in the opinion of the different groups of States. One group to which Russia belongs tries to develop legal aspects of the peaceful use of ICT including practical issues of protecting the sovereign equality of States, non-interference and cooperation.

While some others put on top analysis of military use of ICT including the applicability of Article 51 of the UN Charter and the right of self-defense.

Mr. Vice-President, the possibility of applying the right of self-defense in response to an ICT attack has already been reflected in the national military doctrines of States in their final declarations for instance in NATO summits particularly in Wales and Warsaw the Group of 7 also supported this position which was reflected in the document called G7 principles and actions on Cyber. The same group of countries intends to secure the right to apply countermeasures in response to cyber-attacks while avoiding or directly refusing to discuss the problem establishing relationship between the attack and the corresponding state as well as the problem of establishing standards of proof for such a connection and the damage caused.

There is also a group of countries that are most interested in promoting the principle of due diligence in its broad interpretation. According to which any computer attack from the territory of the State should lead to international legal responsibility of this State. Even if the connection between the harmful use of ICT and the State is not apparent. We believe however that the question of the standard of proof and attribution of the computer attack to the State in order to establish its international legal responsibility should precede any light weight generalizing conclusions and whether any countermeasures can be taken in response even more so in light of Article 51 of the UN Charter.

So we return to the issue of practical applicability to ICT of the universally recognized principles of the non-use of force which has the status of a peremptory norm of international law. Could any cyber-attack even without serious consequences constitute an armed attack or other unlawful use of force from the view of the UN Charter. In this context one cannot help but recall statements of some States that were witnessed hacking attacks which supposedly can be attributed to a certain State. At the same time no evidence is presented to support such allegations. History is rich with examples of wars which began with armed provocations. Recognizing certain types of use of ICT as an armed attack gives right to reciprocal use of force can plunge the world into chaos, and unpredictable consequences. In the same context the general applicability of International Humanitarian Law is a tricky question. Even the ICRC one of the main supporters of recognizing the applicability of IHL to ICT in its 2014 study in practical terms applying the key principles of distinction between military and civilian infrastructure and proportionality to ICT will be difficult if not impossible. Based on this example it seems as the most promising indeed is the topic of practical application of the principle of peaceful cooperation in the field of ICT. This principle could be the key in this area.

The principles of responsible behavior set forth in the already mentioned resolution of the General Assembly on the developments in the field of ICT can be considered as one of the forms of the implementation of this principle. The GA resolutions specially notes that “ the



United Nations should play a leading role in promoting dialogue to develop common understanding on the security or and the use of ICTs as well as in developing common understanding on the application of international law and norms rules and principles for responsible State behavior in this sphere.” Bringing the dialogue in the UN is important for building international consensus in this field. Regionalism in these matter may turn out to be dangerous. The resolution of the GA goes further and re-affirms and the right and duty of States to combat within constitutional prerogatives the dissemination of false and distorted news which can interpreted as interference in the internal affairs of other States or as being harmful to the promotion of peace and friendly relations amongst States and nations.

[inaudible.....]We believe that this provision is one of the key provisions in the resolution and practical measures for its implementation should be discussed. It seems that it would sense to consider the possibility of exchanging information regarding messages originating from the territory of a foreign state that specifically aims to overthrow the legitimate governments of other States. The question of how States could cooperate in bring an end to the spread of malicious information is one of the most complex and controversial issues in which there is also a traditional split in the opinions between States. On the one hand international law knows a number of prohibitions of propaganda on the other prohibitions on the dissemination of certain information on the internet should be adopted in accordance with human rights obligations. However it doesn’t negate the fact that in this area there is much room for further cooperation between States. I would like to add the line that the problem of the scope and specific forms of applicability of international law to the use of ICT cannot be solved just by extending certain international obligations to the ICT sphere. Currently priority should be given to the commitments of States on the implementation of the principle of cooperation in the field of ICT which can significantly narrow the field for controversy surrounding the issues of use of force and Article 51.

Mr. Vice-President, the second issue I would like comment is cyber-crime. We see a lot of potential cooperation here. The problem of the use of ICT for criminal purposes has become a truly global one and the damage to the world economy from this threat is growing. Cyber-crime including the information theft, hacking on the web gradually turns into kind of industry. Dark web is actively used by terrorists and criminals for active trade in drugs. The existing regional criminal law mechanism continues to counter this threat but they do not adequately cope with them. It was already highlighted today with regard to the Budapest Convention. They are often incompatible with each other at the same time States regardless of their level of development cannot effectively deal with criminal without proper international cooperation. We think the situation is complicated with a lack of system international legal framework. In this context there is indeed a need for an international binding instrument under of the auspices of the United Nations. It was already highlighted today by Professor Lukumay. This instrument should be based on the principles of sovereign equality and non-interference. The objectives might be as follows:

Firstly, to promote and strengthen measures to prevent crime and other illegal acts. Secondly to ensure the prosecution of such acts, facilitate the identification and investigation of such acts, thirdly to increase efficiency of international cooperation including training and technical assistance. In this regard a solid group of co-sponsors including Russia, China and a number of other States present in this room has drafted the UN General Assembly resolution entitled ‘Countering the use of ICT from criminal purposes’ which on the hand makes it possible to build on the discussions of this issue held in the UN General Assembly this year and on the other hand creates a negotiating platform which may be used in the long

term. It is important to take a step forward and move to practical arrangements. Mr. Vice-President if you and others in the room could support this draft resolution and become its co-sponsors. The sponsorship list is now open in New York. Thank you for your attention.

**Vice-President:** I thank the delegation of the Russian Federation. I now invite the delegation of the Sultanate of Oman to deliver their statement.<sup>64</sup>

**The Delegate of the Sultanate of Oman:**<sup>65</sup> Mr. President, with regard to the topic of “International Law in Cyberspace”, the Sultanate of Oman would like to express its thanks and appreciation for the valuable efforts of the Secretariat of the Organization and the open-ended Working Group on Cyberspace.

The Sultanate of Oman also agrees with the conclusions of the Working Group at its fourth meeting held in Hangzhou, China from 2-4 September 2019 on the importance of cooperation among Member States in the field of combating cybercrime, and the draft prepared by the Secretary-General on the applicable principles of international law on cyberspace, thus putting the first stone which Member States can build upon and deal with in order to adopt a unified, clear-cut position that can be put forward in other international forums, while welcoming any initiatives that may be put forward in this regard in order to accelerate the achievement of the desired goal, as My country attaches great importance to this subject, and has actively sought to find laws to regulate the various aspects of cyberspace at the national level, and to establish vital and effective institutions to regulate it in order to achieve the security information needed to exploit this vast space linking governments, individuals and institutions; for the impact that it has on the economy, social life, in addition to important vital sectors such as transport, services, and energy.

As this cyberspace continues to expand and multiply over time, thus crossing the national borders of States and its Non-benign uses affecting the sovereignty, security, economic and social stability of States which have become evident, States have no options but to cooperate with each other, to formulate the legal regulation governing transit, content and harmful use of cyberspace. We are confident that the efforts of this Organization in this regard will undoubtedly contribute to this, calling on the Secretariat and the open-ended Working Group to continue constructive work, to Member States to help them. Thank you, Mr. President.

**Vice-President:** I thank the representative of Sultanate of Oman. I thank all present for their studies and legal inputs on International Law in Cyberspace and also thank the professors with me on the dias. Now we shall have a break for fifteen minutes and will resume the deliberations with the Law of the Sea

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<sup>64</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

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**XVI. VERBATIM RECORD OF THE FOURTH  
GENERAL MEETING (CONTD.)**

**XVI. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)  
HELD ON WEDNESDAY, 23 OCTOBER 2019, AT 05:25 PM**

**His Excellency Dr. Augustine Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, the President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**AGENDA ITEM: LAW OF THE SEA**

**President:** After the break, we shall now take up the topic “Law of the Sea” for deliberations. The discussion on this topic is divided into three parts. The first one is BBNJ; second part is Freedom of Navigation; and the third part is Illegal, Unregulated and Unreported Fishing. Before opening the discussion, may I invite the Secretary-General to make the introductory remarks. Secretary-General, welcome.

**His Excellency Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO:** Thank you Mr. President. Mr. President, the agenda item “The Law of the Sea” was taken up for consideration by AALCO at the initiative of the Government of Indonesia in 1970. Since then it has been considered as one of the priority items at the Annual Sessions of the Organization for many years. As of 3 April 2018, 42 AALCO Member States have ratified the UNCLOS.

The Secretariat’s reports AALCO/58/DAR ES SALAAM/2019/SD/S2 and AALCO/58/DAR ES SALAAM/2019/SD/S2A furnish a backdrop to the two items proposed for deliberation, *viz.*, (a) the Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ) and (b) Issues Related to the Freedom of Navigation/Sail in the International Waters and Straits. The third point, Mr. Chair, is the issue relating to Illegal, Unregulated and Unreported (IUU) Fishing.

Regarding BBNJ, the quest of the international community to negotiate and draft an international legally binding instrument (ILBI) under the UNCLOS on the conservation and sustainable use of BBNJ has been introduced in the said report.

I urge the delegates from AALCO Member States to discuss these issues on BBNJ taking into account the pending constitution of the Working Group. As of now, AALCO secretariat has finalized the Terms of Reference for the establishment of AALCO Open-ended Working Group on BBNJ, pursuant to the decision on the same during the Fifty-Seventh Annual Session as contained in the Secretary-General’s Report and views from the Member States and Liaison Officers have been taken on board.

The second item for consideration, *i.e.*, “Issues related to the Freedom of Navigation/ Sail in the International Waters and Straits” has been taken up pursuant to the proposal by the Government of United Arab Emirates (UAE), by virtue of Rule 11(2) of Statutory Rules of AALCO.

A fine balance has been sought to be struck in the report between the sovereignty and maritime boundaries of a State and the principle of freedom of navigation in the 1958 Convention on the Law of the Sea and the 1982 UNCLOS. The sovereignty of all States to safeguard their maritime frontiers is a recognized principle of international law. Freedom of navigation must not be used as a pretext to challenge the maritime boundaries of another State, and the principle of non-intervention must be abided by, especially by the State asserting freedom of navigation.

The third item, issue of preventing and combatting IUU Fishing was proposed by the Government of Indonesia, and was endorsed by the Heads of Delegation. Mr. President, we

have invited one expert who will speak in his personal capacity in order to assist deliberations on this matter. All three elements would be discussed together in this session, i.e., Member States wishing to make any intervention on any aspect or all aspect should do so when given the opportunity to make their intervention. Allow me, Mr. President, to invite our expert to deliver his presentation, and before that I wish to introduce our expert Captain Ibrahim Mbiu Bendera. He is a ship captain, holding a Master Mariner License. He has sailed as a Captain for more than 23 years. He also holds a Bachelor of Laws and a Master's Degree in Maritime Law. He is currently an advocate and a part-time lecturer at Dar es Salaam Maritime Institute. On top of that, he has written several books including a book on Admiralty and Maritime Law in Tanzania. It is a huge book, of about 700 pages. He also writes in Kiswahili, and one of his poetry books is known as *Utenzewa Nelson Mandela*. I wish I could translate it in English. Now I invite Captain Bendera to present, not the 700 pages of his book, but within 10 minutes. Captain Bendera.

**Captain Ibrahim Mbiu Bendera, expert from the United Republic of Tanzania:** Thank you very much, Mr. Secretary-General, Mr. President, Mr. Vice President, all delegates. My paper is a combination of all the three items together. So we start with what is the background, what is the present, and let us look at what we can suggest for the future.

### Introduction

This paper is a humble attempt to bring up concrete discussions in this esteemed meeting on the pertinent legal issues facing two marine concepts, first is the legal issues Related to the Freedom of Navigation in the International Waters and Straits, and second is the regulation of Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ).

The first concept, Freedom of navigation is a maritime concept deriving from customary international law that ships flying the flag of any sovereign state shall not suffer interference from other States, apart from the exceptions provided for in international law.

In the second concept, the term “Biodiversity” is denoting the diverse nature of living organisms in various areas of the sea. We understand the powers that each coastal State has in regulating the waters under their jurisdiction, but these waters are connected with high seas in oceans which cover 71% of the Earth's surface. Hence legal issues facing marine biodiversity of areas beyond national jurisdiction are connected and if not controlled do or are affected by what is happening in sea areas beyond the jurisdiction of coastal States.

In this paper we start with a brief background of matters concerning the concepts of Freedom of navigation, which arises from Flag State Control over ships plying into a coastal State jurisdiction, then we look in the regulation of Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ). We shall then explore main international treaties covering them and lastly is the conclusion.

### Background

The history of “ancient” world is the history of great empires composed of people of different cultures and ethnic backgrounds which were held together by coercion and threat of forcible

re-conquest. Empires were many, e.g. Egypt,<sup>66</sup> China, Persia, Rome and Byzantine are examples. However, after ancient empires new ones were formed like the Ottoman Empire?<sup>67</sup>

International law is said to have come into existence much later on after maritime customs were established. It came after the formation of sovereign States which occurred in Europe in the 14<sup>th</sup> and 15<sup>th</sup> centuries;<sup>68</sup> this was a period where sovereign States were emerging from the church hegemony at those times.

Ships were the main source providing means of fulfilling European social economic requirements, especially at the time that their societal changes from feudalism, to industrialization and ultimately into capitalism was taking place through slavery, imperialism and colonialism. The ship was the tool which provided the means of fulfilling all these aspirations.<sup>69</sup>

### Freedom of Navigation

Freedom of navigation is a fundamental principle under Maritime Law<sup>70</sup> which has been historically governed by customs that differed across countries' legal systems that were, depending on their needs which were based on their maritime status, sometimes codified. These mainly emanated from the Mediterranean and Asiatic seafaring activities adopted into European customary maritime laws in early jurisdictions well before it was adopted under admiralty courts in England.<sup>71</sup> Maritime law was codified in the civil law from oral traditions (*lex maritima*), as consolidated in the *Roles of Oleron*.<sup>72</sup> Later on maritime law appeared in various written codes like *Rhodian law* as was referred in the *Justinian's Digest*,<sup>73</sup> *Consolato del Mare*,<sup>74</sup> the *Laws of Wisby*, etc.<sup>75</sup>

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<sup>66</sup> African empires is an umbrella term used in African studies to refer to a number of pre-colonial African kingdoms in Africa with multinational structures incorporating various populations and polities into a single entity, usually through conquest. For a list of African Empires kindly see Appendix I.

<sup>67</sup> Ottoman Empire from 1350 to 1922; in 1403 it was called Ottoman-Turks Empire. Europe became dominated by nation states with the rise of nationalism in Europe. The Ottoman Empire was a religious empire. The 19th century saw the rise of nationalism under the Ottoman Empire which resulted in the establishment of an independent Greece in 1821, Serbia in 1835, and Bulgaria in 1877-8.

<sup>68</sup> Various authors like Sassoferrato (1314-57); Ubaldo (1327-1400); Francisco de Vitoria (1486-1546); Gentili (1552-1608); and Hugo Grotius (1583-1645) have been accredited to contribute to writings on international law.

<sup>69</sup> Ibrahim M. Bendera "A Critical Assessment of Tanzania's State Practice on Flag State Control" a Course Work Paper for LLM at University of Dar es Salaam, 2005, pg 16.

<sup>70</sup> The word Maritime is derived from the Latin word maritimus, in which mare means sea and maritimus means of the sea. See Chambers English Dictionary, 1988.

<sup>71</sup> *Encyclopedia Britannica*, 15<sup>th</sup> Ed, Vol. 5 states that Admiralty courts were established in England by the year 1360.

<sup>72</sup> [https://en.wikipedia.org/wiki/Rolls\\_of\\_Oleron](https://en.wikipedia.org/wiki/Rolls_of_Oleron) cited on the 14<sup>th</sup> day of October 2019: "They were promulgated by Eleanor of Aquitaine in about 1160, after her return from the second crusade having accompanied her first husband Louis VII. The Rolls were based upon the medieval European customary sea law (*lex maritima*). Originally purely oral, the customary sea law was gradually committed to writing in the medieval sea codes. The customary sea law itself was based upon the ancient *Lex Rhodia*, which had governed Mediterranean commerce since before the 1st century. She likely became acquainted with them while at the court of King Baldwin III of Jerusalem, who had adopted them, as the *Maritime Assizes of the Kingdom of Jerusalem*. They are named for the island of Oleron since the island was the site of the maritime court associated with the most powerful seamen's guild of the Atlantic. She promulgated them in England at the very end of the twelfth century having been granted viceregal powers of England while King Richard I was on the third crusade."

<sup>73</sup> William Tetley, op. cit, pgs. 9 & 10.

<sup>74</sup> For example in the 14th-century Catalan *Consulate of the Sea* (Catalan: *Consolat de mar*; Italian: *Consolata del mare*).

Freedom of navigation as a legal and normative concept at its commencement it was mainly concerned with the capture of enemy goods on neutral ships in the high seas. Under *Consolato del Mare Code* a rule was established which was used by major naval powers, commonly known as the *Consolato* rule, which allowed military navies to freely attack enemy ships of any nation on the open seas, but not taking the goods belonging to neutral countries carried on board those enemy ships.<sup>76</sup>

However, as time passed on and maritime trade, travel, and conquest by the major European naval powers extended beyond European waters, new ideas regarding how to govern the maritime realm began to emerge. Two main divergent schools of thought emerged in the 17<sup>th</sup> century. The first promoted the concept of *mare clausum*, which held that states could limit or even close off seas or maritime areas to access by any or all foreign ships, just as areas of land could be owned by a state, limiting foreign activity there. *Mare clausum* was backed by the major naval and colonial powers of the day, including Spain and Portugal. By closing off access to the seas using their naval muscle, these States profited tremendously on maritime trade routes and foreign colonies.

On the other hand the second different rule, taken by the Dutch Republic, which by then was a dominant European trade carrier, championed what was known as *mare liberum* (free seas), which was summarized as “a free ship takes free goods.” This was contrary to the *Consolato* rule, which allowed military navies to freely attack enemy ships of any nation on the open seas. Under *mare liberum* even enemy goods, with the exception of contraband, were inviolable in neutral ships. This made neutral ships to be off-limits for attack on the high seas.

The *mare liberum* concept was advocated by Hugo Grotius, in which he stood for a shift in maritime norms that would make the high seas free for transport and shipping, regardless of the country of origin of the ship. Hugo Grotius<sup>77</sup> is quoted to have based the freedom of the sea under three doctrines which are *Res Communis*; *Res Nullius in Bonis*; and *Res Publica*; meaning it is a thing common to all; it is a thing among the property of no single person; and it is a thing of the public.

This represented a change in law which was a fundamental shift in the perception of the maritime realm as something not to be owned, as land is, but rather as a shared resource backed by a liberal view of sovereign equality that propounded that all sovereign states have equal access to the high seas; the world being interdependent by being connected by the sea. Thus *mare liberum* concept took over the *consolato* rule practiced by Spain and Portugal, as their naval power weakened; Grotius’ *Mare Liberum* became the accepted custom governing sovereignty at sea.

Freedom of navigation then started to be embodied in bilateral treaties to become part of what would today be called international law.<sup>78</sup> Nevertheless, as a principle of international law

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<sup>75</sup> Referred by Lord Mansfield in his famous decision in *Luke v. Lyde*, “The maritime law is not the law of a particular country but the general law of nations ... “ cited in Tetley, *Ibid*, pg 19.

<sup>76</sup> This legal custom was observed by England (later Great Britain), France, and Spain.

<sup>77</sup> Hugo Gratius, *Mere Liberum Chapter VIII* as quoted by Dr. S. K. Sharma, *Law a/Sea & Exclusive Economic Zone*, Taxmann, 2008, pg 256.

<sup>78</sup> The earliest example of such a treaty is one concluded between King Henry IV of France and the Ottoman Porte in 1609; followed in 1612 by one between the Porte and the Dutch Republic. After the Eighty Years’ War between Spain and the Dutch Republic had ended during which Spain defended their claim of sovereignty over the oceans against the Dutch claim of “freedom of the high seas,” as developed in Hugo Grotius’ *Mare Liberum*, the two concluded a treaty of commerce in which “free ship, free goods” was enshrined.



(apart from treaty law) “free ship, free goods” was soon overturned again by the practice of both sides in the French Revolutionary Wars of the turn of the 19th century. For instance, in the jurisprudence of the American courts of the early 19th-century, the *consolato* principle was universally applied in cases not covered by treaties. On the other hand, the US government made it a steadfast practice to enshrine the “free ship, free goods” principle in the treaties of amity and commerce it concluded with other countries (starting with the 1778 one with France and the 1782 one with the Dutch Republic).

In other words, the American view (following the British practice) was that at that time *consolato rule* was customary international law, which, however, could be superseded by treaty law on a bilateral basis. The USA, however, earnestly strove for the substitution of *consolato rule* by *mare liberum* “free ship” in customary law also.

That state of affairs came about when Britain finally gave up its resistance to the principles, first formulated by Empress Catherine in 1780, and acquiesced in the 1856 Paris Declaration Respecting Maritime Law, which enshrined “free ship makes free goods” and rejecting “enemy ship makes enemy goods.” The Declaration was signed by the major powers (except the US) and it was soon adhered to by most other powers. The new rule (a combination of the “best” parts of *Consolato* and “free ship”) became a “neutral flag covers enemy’s goods (except contraband)”; and “neutral goods are not liable to seizure under the enemy’s flag.”

While the concept *mare liberum* as a whole became an accepted international custom and law, the practice and implementation of freedom of navigation would during these years be developed through local jurisprudence and political decision-making especially on the issue of territorial waters. While there was agreement that a certain expanse of the seas from a State’s shorelines would be under stricter state control than the high seas, the exact distance this control would extend from the shoreline was debated. However, over time through local governance and jurisprudence a general agreement emerged that territorial waters would extend three leagues or three miles from the shoreline. This norm- and custom-formation commonly known as the “canon shot rule”<sup>79</sup> continued for centuries within the frame of *mare liberum*.

#### Coastal States jurisdiction over sea waters

Historically, a sovereign coastal State was generally accepted to have under its jurisdiction an area of the sea along its coastline, but the exact distance of the coastal State’s territorial sea

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The Dutch Republic subsequently concluded bilateral treaties with most other European countries, containing the “free ship, free goods” principle, including England in the Treaty of Breda (1667) and the Treaty of Westminster (1674). England continued to hold the *consolato* rule in relations with other countries, as did France. The Dutch eventually established a web of bilateral treaties that extended the privilege of “freedom of navigation” to their ships through much of Europe by remaining neutral in the 18<sup>th</sup> century European wars, serving all belligerents with their shipping services greatly affecting Great Britain especially in the War of the American Revolution, when the Dutch, shielded by the 1674 Anglo-Dutch treaty, supplied both the Americans and the French. Although the British made extensive use of their “right of search” of Dutch ships, leading to the abrogation of the 1674 treaty, which might have meant the death of the “free ship, free goods” doctrine, but Empress Catherine II of Russia had taken up the torch around the same time. In March 1780, she published a manifesto in which (among other things) she claimed the “free ship, free goods” principle, as a fundamental right of neutral states. To defend that principle, she formed the First League of Armed Neutrality to which the Dutch adhered at the end of the year (which sparked the Fourth Anglo-Dutch War). The principles from her manifesto were soon adhered to by the, members of the League and by France, Spain and the new American Republic also (even if, as belligerents, they could not become members of the League).

<sup>79</sup> Canon shot at that time reached a maximum of 3 nautical miles.

was not uniform.<sup>80</sup> The British under the Customs Consolidation Act, 1876<sup>81</sup> stipulated that any vessel within “three leagues” can be inspected and be forfeited if they have on board prohibited goods.<sup>82</sup> The three leagues have been termed the cannon shot limit covering a distance of three Nautical Miles (NM), or the marine league adopted by USA in 1794,<sup>83</sup> and was also used by France.

Other States like the Scandinavian countries<sup>84</sup> wanted a four nautical miles distance; while Portugal, Spain, Uruguay, Italy and Russia claimed from six to twelve nautical miles. This brought disagreements on the distance of territorial sea at the Hague Conference of 1930.<sup>85</sup> The disagreement<sup>86</sup> was more eminent at the Law of the Sea Conference of 1958 which was held on 29<sup>th</sup> April 1958 in Geneva, Switzerland,<sup>87</sup> in which Chile, Costa Rica, El Salvador and Peru wanted a 200 nautical mile territorial waters.<sup>88</sup>

The United Nations Conference on the Law of the Sea (UNCLOS 1958) opened for signature five conventions including an Optional Protocol Compulsory Settlement of Disputes<sup>89</sup> as follows:-

1. The Convention on the Territorial Sea and the Contiguous Zone (CTS);<sup>90</sup>
2. The Convention on the High Seas (CHS);<sup>91</sup>
3. The Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR);<sup>92</sup>
4. The Convention on the Continental Shelf (CCS);<sup>93</sup> and
5. The Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD).<sup>94</sup>

It has to be noted that under the CTS, the exact distances of territorial sea was not determined. Article 1(1) only stated that the sovereignty of a State extends beyond its land territory into a territorial sea. Article 24 established a Contiguous Zone of not more than 12 Nautical Miles (NM). This is a zone established to control certain matters including prevention of infringements to customs, fiscal, immigration and sanitary regulations.<sup>95</sup>

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<sup>80</sup> Bendera I. M, *Admiralty & Maritime Law in Tanzania*, Law Africa, 2017, pg 54

<sup>81</sup> 39 & 40 Vict., c. 36

<sup>82</sup> Ibid S. 179

<sup>83</sup> Dr. Satyendra Kumar Sharma, *Law of the Sea & Exclusive Economic Zone*, Taxmann's, 2008, pg 8

<sup>84</sup> Denmark, Norway & Sweden

<sup>85</sup> The Conference of Codification of International Law, 1930, the Hague

<sup>86</sup> As recorded at UN in the Final Act (AJCONF.131L.58, 1958, UNCLOS, Off. Rec. vol. 2,146)

<sup>87</sup> The Convention on Territorial Sea and Contiguous Zone, enacted on 29<sup>th</sup> April 1958 and entered in force on 10<sup>th</sup> September 1964

<sup>88</sup> Ibid, pg 8 & 9

<sup>89</sup> Article I provided as follows: “Disputes arising out of the interpretation or application of any Convention on the Law of the Sea shall lie within the compulsory jurisdiction of the International Court of Justice, and may accordingly be brought before the Court by an application made by any party to the dispute being Party to this Protocol.”

<sup>90</sup> Entered Into Force (EIF) on 10<sup>th</sup> September 1964; States bound by 23<sup>rd</sup> July 2008 were 52

<sup>91</sup> EIF 30<sup>th</sup> September 1962; States bound by 23<sup>rd</sup> July 2008 were 63

<sup>92</sup> EIF on 20<sup>th</sup> March 1966; States bound by 23<sup>rd</sup> July 2008 were 38

<sup>93</sup> EIF on 10<sup>th</sup> June 1964; States bound by 23<sup>rd</sup> July 2008 were 58

<sup>94</sup> EIF on 30<sup>th</sup> September 1962; States bound by 23<sup>rd</sup> July 2008 were 38

<sup>95</sup> Because of this “non universality” of the distance of territorial sea from the base line of a coastal State, the President of Tanganyika after independence issued a Proclamation in 1963 which stipulated a territorial sea of 12 NM. This was followed by another Proclamation by the President after the union of United Republic of Tanzania in 1967 maintaining territorial sea distance of 12 NM from base line for the United Republic of

Freedom of navigation became a prominent part of the United Nations Convention on the Law of the Sea, 1982 (herein UNCLOS). Article 87(1)(a) of this convention explicitly codifies this concept, stating that the high seas are open to all States. However, although the convention established three (3) maritime zones for coastal States measured from the base line,<sup>96</sup> namely internal waters (on the landward side of the base line),<sup>97</sup> territorial waters (up to 12 nautical miles (nM) on the seaward side of the base line)<sup>98</sup> and Exclusive Economic Zones (EEZ) (up to 200nM on the seaward side)<sup>99</sup> in which the coastal State has mandate over economic activities, but the EEZ is a part of the High Seas on other matters.

Under UNCLOS, vessel passages are under the following criteria:-

1. In the internal waters - no foreign vessel passage is allowed without permission, (innocent passage is not allowed);<sup>100</sup>
2. Innocent Passage; in the territorial waters where ships of all nations may pass under it;<sup>101</sup>
3. Transit passage in straits used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone;<sup>102</sup>
4. Freedom of navigation in the high seas.<sup>103</sup>

The jurisdiction of coastal States over ships plying in their internal waters is paramount as if they are part of its land territory,<sup>104</sup> meaning that with the exception of internal waters formed by institution of a baseline, on the area which previously was not internal waters in which innocent passage is allowed, otherwise no ship can enter into internal waters without the permission of the coastal State.<sup>105</sup> Hence no ship should be in internal waters if not allowed to be there by the coastal State. In the **Nicaragua vs. United States** case<sup>106</sup> the Court stated:

The basic legal concept of State sovereignty in customary international law, expressed in, inter alia, Article 2, paragraph 1, of the UN Charter, extends to the internal waters and territorial sea of every State and to the air space above its territory.

The jurisdiction of coastal States over ships plying in their territorial waters is limited because ships of all States, whether coastal or landlocked enjoy the right of innocent passage through territorial waters.<sup>107</sup> Passage means<sup>108</sup> a continuous and expeditious traversing without entering the internal waters or proceeding to or from internal waters; and it must be innocent<sup>109</sup> as long as it is not prejudicial to the peace, good order or security of the coastal

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Tanzania (herein URT). Another Proclamation was enacted in 1973 which established a territorial sea of fifty (50) nautical miles.

<sup>96</sup> UNCLOS Article 5

<sup>97</sup> Ibid Article 8

<sup>98</sup> Ibid Article 3

<sup>99</sup> Ibid Article 57

<sup>100</sup> Ibid Article 18(1)(a)

<sup>101</sup> Ibid Article 17

<sup>102</sup> Ibid Article 37

<sup>103</sup> Ibid Article 87

<sup>104</sup> Sohn L. B., Juras K. G, Noyes J. E. & Franckx E., *Law of the Sea: in a nut shell*, West Publishing, 2<sup>nd</sup> Ed, pg 172

<sup>105</sup> Art 8 (I) & (2)

<sup>106</sup> 1986 I.C.J.14, para. 212

<sup>107</sup> Art. 17

<sup>108</sup> Art. 18

<sup>109</sup> Art. 19

State. The passage of a foreign ship shall be prejudicial to peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:<sup>110</sup>

- a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- b) any exercise or practice with weapons of any kind;
- c) any act aimed at collecting information to the prejudice of the defense or security of the coastal State;
- d) any act of propaganda aimed at affecting the defense or security of the coastal State;
- e) the launching, landing or taking on board of any aircraft;
- f) the launching, landing or taking on board of any military device;
- g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- h) any act of willful and serious pollution contrary to this Convention;
- i) any fishing activities;
- j) the carrying out of research or survey activities;
- k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- l) any other activity not having a direct bearing on passage.

Freedom of the navigation when used in the EEZ and straits of international navigation<sup>111</sup> brings about questions on the maritime security of coastal States, although the UNCLOS has clearly mandated that the reservation of the high seas is for peaceful purposes.<sup>112</sup>

The term “Maritime Security” came into common usage for international security needs in the 1990s, and has recently received much more attention after the intensification of concerns over the maritime sector under the “Blue Economy” nomenclature.<sup>113</sup>

The issue becomes apparent when one State is at a stage of military confrontation with another State hence a coastal State may have the following questions:

1. How do we allow a naval vessel from our enemy to use freedom of navigation or Transit passage in our EEZ?
2. How do we allow a naval vessel from State A which is in military confrontation with neighbouring State B to pass through our waters to attack our neighbour?
3. Why is freedom of navigation and transit passage of military vessels carrying nuclear arms allowed in coastal States which have ratified the Treaty on the Prohibition of Nuclear Weapons (TPNW) which includes Weapons of Mass Destruction?<sup>114</sup>

Freedom of navigation brings in the control of trade on maritime transportation in the high seas. President J. F. Kennedy of USA is quoted to have said:

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<sup>110</sup> Art. 19(2)

<sup>111</sup> Strait of Malacca

<sup>112</sup> Ibid Article 88

<sup>113</sup> The challenges causing its prominence include piracy, maritime terrorism, maritime crimes such as human trafficking, the increasing significance of the security concerns in the “Blue Economy”, on issues relating to maritime environmental protection and resource management especially in the prevention, deterring and elimination of Illegal, Unreported and Unregulated (IUU) fishing activities.

<sup>114</sup> United Republic of Tanzania recently signed this treaty. See Daily News of 28<sup>th</sup> September 2019.

“Control of the seas means security. Control of the seas means peace. Control of the seas can mean victory. The United States must control the sea if it is to protect our security.”

The effect of this position can be seen from history, especially the WW I and WW II, that the side with superior maritime infrastructure won the world war. The entrance of USA in both world wars determined the success of the allied forces.

Currently the main difference between the needs of freedom of navigation between States lies in their economic and military powers, making major powers to need freedom for their military vessels to enter and pass through coastal States without being questioned, purporting to be guarding commercial vessels; while many coastal States need, for security reasons, to control the passage of foreign military vessels in their waters, meaning they want rights to control foreign military vessels in their waters. Hence since the law of the sea being so important, the differences in perspective make it difficult to establish a stable maritime security regime in the region.

It therefore follows that innocent passage should replace Freedom of Navigation in both territorial waters and EEZ, in which all foreign military ships should obtain permission before entering EEZ or territorial waters of coastal States. Commercial vessels are to enjoy the rights of innocent passage in territorial waters and in EEZ. User states freedom of their ships passing through coastal States should not be hampering coastal States rights to control maritime security.

By allowing States through Freedom of Navigation the right to conduct activities in another country's EEZ that are military in nature or result in the production of data to serve military needs which can be used against the interests of the coastal State itself or their neighbours. To a coastal State the unauthorized military activities in the EEZ are as unlawful and a threat to its territorial integrity and political independence.

The 21<sup>st</sup> century sets the stage for tremendous increases in naval precision, reach, and connectivity, ushering in a new era of joint operational effectiveness. Innovative concepts and technologies will integrate sea, land, air, space, and cyberspace to a greater extent than ever before. In this unified battle, the sea will provide a vast manoeuvre area from which to project direct and decisive power around the globe. Hence it can be said that freedom of navigation is the vehicle used in transposing military superiority on the maritime field making states to be able to perform sea strikes anywhere in the World; to establish a sea shield in your coast; and to have many sea bases in the World.

#### Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ)

As it was earlier noted, the term biodiversity denotes the diverse nature of living organisms in various areas of the oceans which cover 71% of the Earth's surface. In fact the sea is generally accepted by scientists as the place where life began<sup>115</sup> in the thin outer layer of the geosphere called the biosphere.

The biosphere is a system characterized by the continuous cycling of matter, some abiotic (non-living) while others are biotic (living), and an accompanying flow of solar energy in which certain biotic large molecules and cells are self-reproducing.

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<sup>115</sup> Encyclopaedia Britannica, Vol. 25, 1993, pg 191.

On the 13<sup>th</sup> day of February 2015 the United Nations<sup>116</sup> formed the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Nearly two-thirds of the ocean lies outside any country's national jurisdiction or control.

In a letter from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly titled "Outcome of, and Co-Chairs' summary of, Discussions" revealed that several delegations highlighted the need to complement, respect and avoid duplication with existing instruments, in particular the UNCLOS.

The Ad Hoc Committee found that they should build on the Agreement relating to the Implementation of Part XI of the UNCLOS and the Agreement for the Implementation of the Provisions relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as other relevant treaties, to provide a uniform regime for biodiversity beyond areas of national jurisdiction.

Following the work done by the Ad Hoc Committee, the General Assembly<sup>117</sup> decided to convene an Intergovernmental Conference, under the auspices of the UN, to consider the recommendations of the Preparatory Committee established by resolution<sup>118</sup> on the elements and to elaborate the text of an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a view to developing the instrument as soon as possible.

The resolution 72/249 further provided that the international legally binding instrument under the UNCLOS will address the topics identified in the package agreed in 2011, namely:-

- a) the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole,
- b) marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building, and
- c) the transfer of marine technology.

The Preparatory Committee recommended to the General Assembly elements (contained in Sections A and B of its Report) for consideration with a view to the development of a draft text of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

These recommendations note stressed the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and recommended that the General Assembly decide to develop an international legally binding instrument under UNCLOS under the following issues:

- a) Biodiversity sustenance,
- b) Governance,
- c) Conservation,
- d) Access to Genetic Resources & Benefit-sharing,
- e) Protected Areas,
- f) Sustainable Use,

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<sup>116</sup> UN A/69/780 General Assembly Distr., Sixty-ninth session Agenda item 74 (a) Oceans and the law of the sea

<sup>117</sup> in its resolution 72/249 of 24th December 2017

<sup>118</sup> No. 69/292 of 19<sup>th</sup> June 2015

- g) Oceans & Coasts,
- h) International Negotiations.

The first session of the Intergovernmental Conference on an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) follows an organizational session<sup>119</sup> and the conclusion of the fourth and concluding session of the Preparatory Committee (Prep Com) on the elements of a draft text of an International Legally Binding Instrument (ILBI) on the conservation and sustainable use of marine BBNJ under UNCLOS, was held in July 2017 and other meetings followed.

### Conclusion

Freedom of navigation provides an avenue where the powerful States of the World can have their military marine vessel pass through the EEZ of coastal States or the internationally maritime passable straits in pursuance of fighting or aiding destabilization of other nations.

The ability of coastal States to economically utilize resources in the EEZ yet they cannot interfere with military vessels from other nations passing through under the freedom of navigation is an implorable situation where the security of coastal states may be put in jeopardy.

In order to have better maritime security for coastal States this calls for the concept of innocent passage to be made applicable in the EEZ of coastal States. All military vessels passing through the EEZ must be known and permission must be obtained prior to passage.

The regional maritime security patrols of national navies of coastal States (e.g. in East African Community (EAC) and South African Development Community (SADC)) can best be achieved if innocent passage concept is used in the EEZ instead of freedom of navigation.

It is our humble submission that The Asian-African Legal Consultative Organization (AALCO), being an intergovernmental organization formed since 1956, can advise member states that for maintaining peace in the oceans it is much better if the doctrine of Innocent Passage be adopted in the EEZ of coastal States, leaving freedom of navigation in the high sea beyond EEZ. In this way no neighbour can cause a foreign military ship to pass through her waters to attack another member State.

The Intergovernmental Conference on an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) was scheduled to meet from 19<sup>th</sup> to 30<sup>th</sup> August 2019.<sup>120</sup> It is our recommendation that Members of AALCO should use this meeting to discuss various matters in the draft of the ILBI.

Thank you very much.

**President:** Captain Bendera, thank you very much indeed, for this very deeply researched, informative, analytical and forward-looking presentation. It is really going to guide us in our discussions. Unfortunately, we may not have much time. There is a very impressive list of speakers which shows the interest in and importance of this topic. In view of the limited time, I will allow few speakers. We have to stop at 06:15 PM sharp. May I now invite the distinguished delegate from the United Arab Emirates, please.

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<sup>119</sup> held in April 2018

<sup>120</sup> [https://www.un.org/depts/los/reference\\_files/calendar\\_of\\_meetings.htm](https://www.un.org/depts/los/reference_files/calendar_of_meetings.htm)

**The Delegate of United Arab Emirates<sup>121</sup>:** Thank you. UAE, the Gulf region and sea Oman has witnessed dangerous violations threatening international peace and security and established rules of international law in the form of recent attack on commercial vessels near Al-Fujairah shore of Emirates on May 12, 2019. Similarly oil carriers have been attacked in Gulf of Oman June 13, 2019, in addition to attacks suffered by Saudi Oil Carriers in the red sea on April 03, 2018 and July 25, 2018 west of Al-Hadida port.

Mr. President, the serious threat to the freedom of navigation has increased considerably in recent times. The freedom of navigation demands full respect to Principles of International Law and relevant conventions, and complete respect of the established rules of International Law relating to navigation in high sea and international waters and straits, as well as the respect of rights of coastal states.

We reiterate the need to send a strong message from this platform to ensure freedom of navigation in high sea and full respect to the freedom of navigation in international waters and straits, and necessity to evolve clear international position to safeguard freedom of navigation under the provisions of International Law to preserve international peace and security and ensure respect for established norms of International Law in general and Law of the Sea in particular.

We reiterate the importance of making international efforts and taking a firm position and storm measures to check the threats to the international and regional peace and security, and freedom of navigation and trade as well in the straits and waters which may have serious repercussions for supplying of energy and stability of the global oil markets.

Mr. President, We hope that the paragraph which the UAE has submitted will be adopted and included in the outcome document of this Conference, and we are open to any observations and additions that delegations may want to include in the paragraph to reach a clear picture and final decisions to maintain the security and stability. Thank you Mr. President.

**President:** I thank the distinguished delegate from the United Arab Emirates. The next one is Indonesia.

**The Delegate of Republic of Indonesia:** Thank you. Mr. President, Distinguished Delegates, Ladies and Gentlemen, first of all, on behalf of my Delegation I would like to express our gratitude for the opportunity to comment on this important issue that is Law of the Sea.

As we all witness, our ocean world is continuously facing emerging challenges such as climate change, IUU Fishing, sustainable and responsible, marine exploration, along with the progress and sophistication in technology in almost all aspects.

We need to assure that marine management, resource exploration and exploitation be more sustainable and responsible. These challenges may have strong influence in the implementation of UNCLOS. Therefore, Indonesia is of the view that the issue of law of the sea should continue to be a priority discussion in AALCO.

Mr. President, Distinguished Delegates, with regards to the current discussions related to the Law of the Sea, Indonesia welcomes the ongoing process taking place in the third session of Intergovernmental Conference (IGC) BBNJ in the UN Headquarters on 19-30 August 2019. Indonesia appreciates the work that has been done by the IGC Secretariat, among others,

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<sup>121</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.



preparing the zero draft. Indonesia looks forward for the fourth IGC in 2020 at the UN Headquarters.

The zero draft that has been prepared by the President of IGC has served as a positive instrument for negotiation. It is expected that State Parties could communicate intensively to find out doable and agreeable solutions in the upcoming negotiation process before the convening of the fourth session of IGC BBNJ. In this regard, Indonesia is of the view on the importance of the establishment of international norms based on the sui generis principle and responsible use of BBNJ and ABNJ management. This should cover not only the High Seas but also the Area.

There are several important issues that needs to be discussed and agreed by State Parties, as follows:

1. The scope of Marine Genetic Resources (MGR) should be formulated in future agreements. In this regard, Indonesia is of the view that fish should be considered as a source of MGR within the provisions governing MGR, since for example certain kind of fishes are also an important source of medicines and cosmetics. There is also a need for further discussions whether derivatives of MGR will become one of the objects of the BBNJ provisions, especially in relations with access and benefit sharing.
2. On the issue of capacity building and transfer of marine technology, Indonesia encourages the establishment of mandatory mechanism for capacity building and transfer of marine technology. With regards to the mechanism for benefit sharing, it should cover the monetary scheme and non-monetary benefit.
3. Concerning Area-Based Management Tools (ABMT) and Environmental Impact Assessment (EIA), Indonesia believes that the adoption of adjacency principle in this provision is important. The facts have shown that the negative impact of MGR management in area beyond national jurisdiction (ABNJ) will adversely impact the coastal waters of the nearby states. In this regard, nearby states need to have an opportunity to participate actively in the ABMT and EIA decision making process.
4. Indonesia is of the view that archipelagic states have special characteristics and therefore should be prioritized in the benefit sharing scheme and capacity building.

Mr. President, Distinguished Delegates, another issue we would like to raise, relates to the Freedom of Navigation/sail in the International Waters and Straits.

1. As an archipelagic state, Indonesia has provided Archipelagic Sea Lane Passages (ALKI) in line with the provisions of UNCLOS 1982.
2. Indonesia's examples of best practices based on provisions under part three of UNCLOS 1982, as of:
  - Malacca strait patrol (MSP) between Indonesia, Malaysia, and Singapore
  - Tripartite Technical Expert Group (TTEG) Mechanism, Cooperation Forum (CF), and Project Coordination Committee (PCC)
  - Indonesia views on the importance of international cooperation in preventing and combating on board slavery as well as other crimes.

On the issue of IUU Fishing, Indonesia highlights the importance of international and regional cooperation in preventing and combating Illegal, Unreported, and Undocumented Fishing (IUU Fishing). IUU Fishing threatens the fisheries sector that becomes the livelihood of millions of the people in the world. Every year, it is estimated that 26 million metric tons fish worth of 23,5 million US dollars are lost due to IUU Fishing.

IUU Fishing hinders sustainable development. It accelerates the depletion of fish stock, place food security at risk, creates unfairness, injustices, and violation of international law particularly with regard to national territorial jurisdiction.

IUU Fishing also degrades marine ecosystem, environment, mangrove and coral reefs.

- Therefore Indonesia calls for strong regional and international collaboration to prevent and combat IUU Fishing.
- This may include collaboration among coastal states, flag states, port states, and market states.
- Against this backdrop, we underline the importance of setting requirements for vessels to be authorized to fish, together with other measures such as monthly catch reporting systems.
- Vessel registration, licensing, monitoring, control and surveillance
- Strict domestic regulations and effective law enforcement
- Capacity building
- Law enforcement cooperation

We note that international communities increasingly pay serious attention on addressing the IUU Fishing. The issue of IUU Fishing has become an important agenda in ASEAN, East Asia Summit, ARF, UN Ocean Conference, Our Ocean Conference, World Ocean Summit, UN Congress on Crime Prevention and Criminal Justice (UN CCPCJ), G20, APEC, EU, etc. The Commission on Crime Prevention and Criminal Justice recognized the importance of addressing fisheries-related crime.

Some global networks have been established to support global action such as Friends of Ocean Action, Friends of Fisheries, High Level Panel for a Sustainable Ocean Economy, Fisheries Transparency Initiative.

There are a number of important initiatives or instruments that have been taken in various regions and forums such as:

1. ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain,
2. APEC Roadmap on Combating IUU Fishing, the Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region,
3. FAO Port State Measures Agreement (PSMA).

With the above consideration Mr. President, Indonesia is of the view that AALCO needs to play an important role on the issue of preventing and combating IUU Fishing through the international law, rules and regulations setting to assure sustainable and responsible fisheries, sustainable development.

Mr. President, Distinguished Delegates, finally, we look forward to a productive and substantive exchange of views among the distinguished representatives on this issue. Thank you.

**President:** I thank the presentation by the distinguished delegate from Indonesia, which was thorough, long, useful, informative. Thank you very much indeed. Now I call upon the distinguished delegate from the Arab Republic of Egypt.

**The Delegate of Arab Republic of Egypt<sup>122</sup>:** Thank you. Mr. President, Ladies and Gentlemen, with regard to this important point, Egypt reiterates that freedom of navigation in the Straits is a universally recognized principle in accordance with the principles of international law, and therefore all States must ensure that this principle is respected.

To this end, it is essential to safeguard the freedom of international navigation and freedom of sailing in the Straits, based on international laws and customs, as the current challenges that threaten to impede navigation through international corridors and straits require serious collective action to reduce these challenges and their harmful effects, in compliance with the provisions of international law and in the common interests of the international community, ensuring the safety and security of shipping routes and international trade. Thank you.

**President:** I thank Egypt for this intervention. Now I call upon India, please.

**The Delegate of Republic of India:** Thank you Mr. President. On behalf of the delegation of India, I thank the Secretary-General for the introductory remarks on the topic.

We commend the AALCO Secretariat for its very useful brief on law of the sea with focus on on-going negotiations on an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national-jurisdiction (BBNJ).

Indian Delegation wishes to briefly touch the on-going BBNJ process.

India had participated the negotiations all through including in the recently concluded third intergovernmental conference on the instrument. Indian delegation emphasizes the necessity of having a legal regime on BBNJ so that there are clarity and clear guidance over the procedures to access the resources of ABNJ. We believe that this will not only help conservation efforts but also augment scientific investment on the exploration of innumerable species from ABNJ region before they become extinct. More importantly, the use of the resources will become transparent and thereby conservation efforts will be feasible.

Indian delegation is of the view that while IGC effectively discharge its duty as per the mandate of UNGA resolution 72/249 of 2017, as envisaged in the Resolution, the work and results of IGC should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea. It should not undermine existing relevant legal instruments, frameworks and relevant global, regional and sectoral bodies.

Indian Delegation supports meaningful discussions in developing the text of the proposed implementing agreement, taking into consideration the 2011 package, deliberations and outcomes of the earlier processes, including the report of the Prepcom established by UNGA resolution 69/292.

My delegation wishes to briefly deal with each of the topics in BBNJ process.

On the topic Marine genetic resources, including sharing of benefits, India delegation is of the view that the scope of the instrument must cover every aspects of the marine genetic resources in the Area and high seas without prejudice to the relevant provisions of the UNCLOS and other relevant instruments. The proposed regime has to be fully consistent with the provisions of the UNCLOS which guarantees rights and jurisdictions of coastal states in

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<sup>122</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

their maritime zones including the extended continental shelf beyond 200 nm, where applicable.

Indian delegation is of the view that right to access MGR is crucial to the advancement of science and technology development leading to its sustainable use.

In the case of regulating access to MGR, it is pertinent to note that the genetic material required for bio-prospecting is very less and hence it is desirable to regulate access to MGR without prejudice to the regime on Marine scientific research provided under UNCLOS.

Indian delegation also is of the view that there should be a monitoring mechanism to establish traceability of MGR for meaningful sharing of benefits.

As regards the objectives of benefit sharing, my delegation supports the application of the principle of Common Heritage of Mankind as the underlying principle of benefit sharing.

On the issue of Benefit-sharing modalities Indian delegation is of the view that sharing of benefit shall be done at different stages. At the research level, sharing shall be making the information about the research outcome publically available, whereas the stage when the research outcome has led to commercial venture the sharing could be even at monetary level.

On the question of what existing instruments and framework will be applicable, Indian delegation is of the view that we can take guidance from the existing instruments, however keeping in mind the fact that the resources of ABNJ are different from land resources.

As regards the Environment Impact Assessment (EIA), the UNCLOS provides guidance in part XII of the Convention particularly under Articles 192, 204, 205 and 206. Considering the delicate nature of marine biodiversity and marine environment in ABNJ, activities in the ABNJ require ETA provided there is no duplication or it does not undermine the existing framework or regulations provided in the other relevant instruments. The present state of scientific understanding on the possible impacts on marine biological diversity is not adequate and hence EIA plays a critical role on the protection of the marine environment and achieving the objectives of the implementing agreement.

From a practical perspective, it may be difficult to set minimum threshold of impact as it could vary amongst ecosystems and especially when our scientific knowledge on biodiversity of such ecosystems in ABNJ region are limited. However, it is desirable to have a minimum threshold of impact based on ocean based/ sound scientific principles as the basis for the EIA studies.

EIA activities carried out by the proponent state and report submitted by them be reviewed by a competent scientific and technical body as in case of ISA. This competent body may update the guidelines on EIA. The EIA regime provided in the Madrid Protocol on environmental protection to the Antarctic Treaty and International Seabed Authority could be explored as models for this implementing agreement.

On the Topic Area Based Management Tools (ABMT), including MPAs, Indian delegation is of the view that there is a need for institutional mechanism to coordinate ABMTs, on the basis of a sound science-based approach, ecosystem uniqueness, application of precautionary principle, transparency and accountability and due regard to Coastal States involved in the process. At the same time, we should also ensure that position of any existing MPAs under similarly placed instruments is not undermined. Management of MP As should ensure conservation and sustainability as this being the main focus of this instrument.

While there is an obligation under UNCLOS to protect and preserve marine environment and for States to cooperate with each other in the conservation of living resources in the areas of the high seas, we believe that rights of other States, including freedoms of the high seas, are equally important and the challenge would be to arrive at an effective balance so that these rights are not restricted due to employing ABMTs and declaration of MPAs. Therefore, procedure to establish due diligence in identification of ABMTs and MPAs, consultation process through regional cooperation and institutional mechanism for final adoption are important components that need to be discussed.

On Capacity building and Transfer of Technology, Indian delegation is of the view that capacity-building should be need-based and country driven. Indian Delegation supports the view that enhancing and developing the capacity and ability of developing countries is very crucial to create a well informed and knowledge based society that would enable to assume its responsibility and obligations under the new instrument leading to conservation and sustainable use the marine biological diversity both within the jurisdiction of coastal state and in ABNJs. Indian delegation emphasis the support for international cooperation, specifically through establishment of national and regional marine scientific and technological centres which are important from the perspective of training and education of nationals of developing States and others.

Mr. President, as regards the AALCO Open ended Working Group on BBNJ, Indian delegation is of the view that working group may be a forum for deliberations and capacity building exercises and it shall avoid any duplication of the process underway at the United Nations. Thank you Mr. President.

**President:** I thank the delegation of India for the very detailed inputs in this debate. Now I call upon the next delegation, the distinguished delegate of the Republic of Korea.

**The Delegate of Republic of Korea:** Thank you Mr. President. My delegation would like to comment on BBNJ. The Republic of Korea would like to thank the Division for Oceans Affairs and the Law of the Sea of the Office of Legal Affairs of the UN for their hard work and excellent insight in putting together the draft text based on the discussions of the past IGCs (Intergovernmental Conference).

Despite the continued efforts of all participating States and other stakeholders, gaps remain wide. If we are to deliver a legally binding instrument that can be widely accepted and contribute substantially to the conservation and sustainable use of BBNJ, we need to work together to come up with an instrument that is feasible and practical while not undermining the existing regime of the law of the sea, as already agreed upon.

The Republic of Korea will actively engage in the current IGC with other States and stakeholders to build upon the draft text and expand the common ground for discussions on key BBNJ issues. Thank you Mr. President.

**President:** Thank you, delegate from the Republic of Korea. With this last intervention from the Republic of Korea, we should break and be on time for the dinner invitation from Japan. The secretariat will guide us where the dinner is going to be, it is within the building. Tomorrow we are going to continue with the interventions on this subject. We still have Tanzania, Kenya, Japan, Iran, Viet Nam and China. We should seek to finish these discussions tomorrow by midday, before lunch. I am proposing whether we should start a little bit earlier, instead of 9 o'clock. May be we can start at around 08:30 AM. If you think that is too early, let me know. What are your views?

**XVII. VERBATIM RECORD OF THE FOURTH  
GENERAL MEETING (CONTD.)**

**XVII. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)  
HELD ON THURSDAY, 24 OCTOBER 2019, AT 08:45 AM**

**AGENDA ITEM: LAW OF THE SEA (CONTD.)**

**His Excellency Dr. Augustine Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, the President of the Fifty-Eighth Annual Session of AALCO in the Chair.**

**President:** Now we continue with the interventions from the Member States on the Agenda Item “Law of the Sea”. The delegation of United Republic of Tanzania, you have the floor.

**The Delegate of United Republic of Tanzania:** Under a principle of “Freedom of the Seas” of the United Nations Convention on the Law of the Sea (UNCLOS), States have a freedom of navigation, over flight, the laying of submarine cables and pipelines, the construction of artificial islands or installations, fishing and conduct of scientific research in Areas Beyond National Jurisdiction (High Seas) (ABNJ). As a result, ABNJ is increasingly becoming particularly more vulnerable to human activities. It is therefore imperative that all states must adhere to a legal obligation under Articles 192, 194.5 and 197 of UNCLOS for the protection and preservation of the marine environment and to cooperate for this purpose.

It should be noted that the ABNJ comprise about 64% of total ocean surface area which is very important in provision of critical ecosystem services. There are scientific evidence that demonstrate ecological connectivity between ABNJ and the coastal zones in the sense that ABNJ and the coastal waters are tightly connected. The activities in the ABNJ are impacting the coastal zone, particularly where communities living along the coastlines depend on marine resources for their food security and livelihood. ABNJ fishing other activities affect the habitat and may cause degradation or genetic disturbances.

The United Republic of Tanzania therefore moves a motion that, indirect negative impacts of the ABNJ fishing, industrialization and pollution, communicated via oceanographic, cultural and ecological connectivity to the coastal waters of the developing countries should be of concern to all AALCO Member States and others.

From this perspective, Tanzania recommends the following:

1. AALCO member states should support to the ongoing UN negotiations to establish an international legally-binding instrument for the conservation and sustainable use of marine biological diversity within Areas Beyond National Jurisdiction (ABNJ) as approved by the UN Assembly to ensure that sectoral activities in ABNJ are managed equitably.
2. AALCO member states should support the position of G77 Group and China and African Group in ensuring that developed countries enable developing countries on capacity building, transfer of technology and funding in order to utilize the area equitably.
3. AALCO member states should work together and identify the areas of the ABNJ that are in the most urgent need of protection on the grounds of the strength of their potential downstream impacts on the coastal populations.

The United Republic of Tanzania calls upon all AALCO member states to support this cause of action and share experiences on how best to achieve the objectives of the UN Resolution on Permanent Sovereignty over Natural Resources passed in 1962 whose Article 1 states about “The right of peoples and Nations to permanent sovereignty over their natural wealth

and resources must be exercised in the interest of their national development and wellbeing of the people of the state concerned”. Thank you for your attention.

**President:** Thank you. I now invite the delegate of Republic of Kenya.

**The Delegate of Republic of Kenya:** Thank you Mr. President. I thank you Mr. President for the great opportunity to make the following statement on behalf of the Republic of Kenya on this agenda item.

Mr. President, Kenya is fully conscious about the potential of the ocean and is fully committed to ensuring that ocean resources are fully utilized in a sustainable manner in accordance with agenda 14 of the Sustainable Development Goals (SDG). Furthermore, the development and utilization of ocean resources require states to implement measures to safeguard the health of the oceans. To this end, Kenya is actively participating in the sessions of the Intergovernmental Conference on the establishment of an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ).

Distinguished Delegates, Kenya welcomes the efforts by the United Nations Committee in the development of a new treaty regime for the governing of marine biodiversity beyond national jurisdiction. This treaty is expected to answer the questions regarding the sharing of benefits, area based management tools and marine protected areas, environmental impact assessment and marine technology transfer.

Mr. President, we reiterate that progress made in regulation of exploration and exploitation of marine resources should be in consonance with the strengthening of the institution that is expected to participate in the commercial exploitation of these resources for the benefit of the rest of all parties. This is in line with the principle of ensuring that the benefits accruing from these activities benefit not a few but mankind as a whole.

We take this opportunity to thank the Secretariat for establishing the Open-ended working Group on BBNJ and Kenya looks forward to working closely with the group. We trust that through this forum Member States can articulate their positions on this very important topic. I Thank you Mr. President.

**President:** Thank you. I now invite the delegate of Japan.

**The Delegate of Japan:** Thank you Mr. Chairman. On behalf of the delegation of Japan, I would like to underline the importance of the law of the sea. This is evident from the fact the many representative made reference to the law of the sea in their general statement at the outset of this session.

Three issues are identified in the agenda; namely, (1) biological diversity of areas beyond national jurisdiction (BBNJ), (2) the freedom of navigation in international waters and straits, and (3) Illegal, Unregulated and Unreported fishing. I will refer to these in turn.

As a maritime nation, Japan attaches great importance to the role played by the intergovernmental conference (IGC), established by the UNGA Resolution 72/249, to elaborate the text of an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity. Japan is pleased to engage actively in the first text based negotiations at the last IGC in August.



I would like to take this opportunity to briefly highlight key elements we should place importance. First, as confirmed in the related UN resolutions, implementing agreement on BBNJ should be fully consistent with UNCLOS. Second, it should not undermine relevant global, regional and sectoral bodies, but rather, it should cooperate with them. Third, conservation and sustainable use of BBNJ should be effective and universal for the benefit of the international community as a whole; for this, science based discussions are essential.

Mr. Chairman, I will turn to the freedom of navigation in international waters and straits.

Japan recognizes the importance of passage in the straits that are used for international navigation. While coastal states have the primary responsibility in ensuring safety of such navigation, States which benefit from navigation should also contribute, where appropriate. It is our hope that such contribution is not misunderstood, and is aimed at securing common interests for both the coastal and navigating States.

There are views that question the precise content of transit passage under relevant provisions of UNCLOS. In this respect, accumulation of State practice will give us a clearer picture in the future. At the same time, recognizing transit passage is not the only way to ensure free navigation in international straits. A State may limit its territorial water to, for example 3 nautical miles, thereby leaving high sea in the middle of the strait. Japan understands that several States employ such a method to ensure free navigation in the straits.

Finally, I refer briefly to the IUU fishing. The IUU fishing is a serious threat in many regions and G20 expressed its commitment to end it in Osaka in June this year. Japan stresses the importance of cooperation within regional organizations and capacity building in combating the IUU fishing. I thank you, Mr. Chairman.

**President:** Thank you. I now invite the delegate of Islamic Republic of Iran.

**The Delegate of Islamic Republic of Iran:** Mr. President, on BBNJ, in the beginning, I would like to thank the Secretariat for the report on the first item of “The Law of the Sea”, namely, Marine biological diversity of Areas beyond national Jurisdiction. The continuous consideration of the topic by AALCO can contribute to the existing discussion on law of the sea issues currently on the agenda of the international forums, particularly the United Nations.

On the issue of access and benefit sharing, and the possible role of intellectual property in this regard, we believe that the IGC should utilize the guiding principles put forward by CBD and the Nagoya Protocol on Access and Benefit-sharing, namely prior informed consent (PIC) as well as fair and equitable benefit sharing. In our view, the best way to guarantee effective implementation of these principles is Mandatory Disclosure of the source of Biological resources. In other words, the patent applications related to BBNJ inventions shall disclose the origin of the source of biological resources to ensure effective tractability of prior informed consent requirement and companies while applying for the patents, particularly in pharmaceutical products, should reveal the source of MGRs utilized in the process of inventing the new product. In fact, the two guiding principles which most of the countries supported to be included in this protocol namely transparency and common heritage of mankind uphold the inclusion of mandatory disclosure requirement in the new protocol.

With respect to transfer of technology, the new instrument should define general obligations in promoting cooperation to develop capacity and transfer of marine technology while recognizing the special needs of developing countries. The needs and priorities for capacity

building should be identified and constantly reviewed by an advisory or decision-making body under the new instrument. It is also essential to ensure an adequate, predictable and sustainable funding mechanism for projects on the conservation and sustainable use of marine biological diversity of ABNJ. The idea of a clearing-house mechanism and a capacity-building network could be developed and the experience of the CBD and the UNFCCC could be instrumental in this regard.

Mr. President, Article 136 of the United Nations Convention on the Law of the Sea has determined that “the Area and its resources are the common heritage of mankind”. Based on this Article the abiotic creatures have considered a part of common heritages of mankind. But also we are of the view that biological creatures in the area are part of resources which has been addressed in this Article of the United Nations Convention on the Law of the Sea.

At the end, we believe that the success of the new instrument in conservation and sustainable use of BBNJ depends on effective participation of all countries and this goal is not feasible without effective capacity building and transfer of marine technology. They are closely linked and they are both fundamental to remove imbalances between countries so as to enable developing countries to access and benefit from BBNJ. Needless to say that effective capacity-building and technology transfer requires institutional capacity, concrete legally binding obligations while recognizing the special needs of developing countries and sustained and adequate funding. Thus, all countries, including all AALCO Member States, have a shared responsibility toward protecting seas, conservation, sustainable use and sharing equitable benefit deriving from BBNJ.

Mr. President, turning to the other sub-item, I would like to express my gratitude to the Secretariat for preparation of the report on this issue and its observations on the limitations of freedom of navigation. However, while we are admitting the points referred to, concerning sovereign rights of the coastal States in its territorial sea, we are of the view that there is no vacuity in this field of international law of the sea.

Mr. President, the Islamic Republic of Iran is of the view that ensuring freedom of navigation in high seas and innocent passage in straits as a customary rule are global responsibility of states and should be respected in all international waters and straits.

In this regard and as it was referred to in the Secretariat report, freedom of navigation has some considerable limitations. Freedom of navigation cannot overcome the well-established principles of international law enshrined in the United Nations charter and 1970 declaration on principle of International law, in particular principle of sovereign equality of States and non-intervention in internal and external affairs of States. As such, freedom of navigation cannot lead to disregarding sovereignty of coastal State on its sovereign rights over its territories.

As regards our region, it shall be noted that navigation in Hormuz Strait due to its nature that is a shared strait between the Islamic Republic of Iran and the Sultanate of Oman and are under exclusive sovereignty of these states must be interpreted in line with concept of innocent passage which has been affirmed in the provisions of 1958 convention on the territorial sea and the contiguous Zone, especially when consider the right to innocent passage in international straits in Article 16(4). Besides, the foreign vessels shall observe laws and regulation of coastal States, as well as its peace, good order or security. Thus, under existing international law, coastal States have the rights to take necessary steps to protect the international waters and straits. In this vein, still, the domestic laws and regulations of the coastal States shall be respected by the ships intended to pass through the Strait.

In fact, the Hormuz Strait is the vital vein of Iran's economy to the extent that almost ninety percent of Iran's commercial activities pass through this Strait. Historically and traditionally, the Islamic Republic of Iran was responsible for ensuring the security and safety of the Strait. Even during the eight-year war imposed against my country, Iran was successful in ensuring the security of navigation in the Strait.

Nowadays, and in light of the increasing transit of goods through the Hormuz Strait which made it the most important watercourse in transiting of oil of the world, we see it necessary to take more precise activities for protecting security and safety of the strait as well as free of navigation through the strait.

Here again, I would like to add this point that the Islamic republic of Iran always was the target and victim of terrorist, radical and illegal activities. During last months, some of Iranian oil tankers targeted by some countries in different regions. In one of the latest events, two Iranian oil tankers were targeted while passing through Red Sea near the ports of a coastal State. In this connection, while we are of the view that the existing international law are ripe enough for ensuring a safe passage through watercourse, we invite all States especially members of AALCO to implement international law concerning the innocent passage from international straits and guarantying a safe and secure passage for all ships.

Mr. President, as we highlighted in our general debate statement, in light of recent developments in the region and based upon the historical responsibility of my country in maintaining security, peace, stability and progress in the Persian Gulf region and Strait of Hormuz, President Hassan Rouhani outlined Hormuz peace Endeavor, (Hope initiative) in United Nations General Assembly during 74th session, as an initiative for promoting dialogue, freedom of navigation, energy security, non- aggression and non-intervention, confidence building measures, military contacts, and the conclusion of a non-aggression pact, bearing in mind that the countries of the region are capably in a position to guarantee the safety and the security of this body of sea and the strait of Hormuz and they don't need the foreigners who have been the main source of instability in the region. We have proposed Hormuz Peace Endeavour (HOPE) to all littoral states of the Persian Gulf in a bid to reduce tensions in the strategic waterway. Thank you Mr. President.

**President:** Thank you. I now invite the delegate of Sultanate of Oman.

**The Delegate of Sultanate of Oman<sup>123</sup>:** Mr. President, AALCO has been instrumental in setting rules contained in the 1982 Convention on the Law of the Sea. The most important of which are those dealing with the exclusive economic zone, and Archipelago States, the rights of land-locked States: and this Convention is a constitution of the sea in the full sense of the word, and the general legal framework governing all activities related to the seas and their uses.

In continuation of this positive and commendable role, and in support of international efforts and endeavors aimed at creating frameworks and regulations complementing the provisions of the Convention on the Law of the Sea, aimed at preventing illegal, unregulated and unorganized fishing, and regulating exploration and exploitation of natural resources in the Region, and to preserve biodiversity in marine areas not subject to the national jurisdiction of the coastal State, and to prevent marine pollution. It is natural that our Organization, in accordance with its competence, has an active role to play in this regard, and to make the voices of Member States heard on these important issues on international forums. My country

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<sup>123</sup> The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

gives immense importance to the environment and its elements - whatever their type, nature, their way of uses may be-, where a special ministry has been assigned to take care of it. The necessary legislation has been enacted in addition to joining many regional and international organizations, as well as international conventions and agreements in this area.

With regard to the topic of “freedom of navigation and sailing in international straits and waters”, over the last two days we have addressed important topics, particularly those relating to the principle of the rule of law, respect for international law and cooperation between States, and the peaceful settlement of disputes. In this spirit, my country calls on – as we reiterated in general statement - all States to refrain from escalating the international water straits, to respect the navigational separation lines in accordance with the United Nations Convention on the Law of the Sea, and to resolve disputes through diplomatic means in order to avoid any consequences that may have serious repercussions on the freedom of Navigation, freedom of international trade, the global economy as whole. It considers that the international community and stake holder States should seek peaceful and consensual solutions for the optimal means of maintaining stability, the safety of maritime navigation, as they are more secure and effective than any other means and arrangements, while affirming - in the light of their national sovereignty and international responsibilities - on its continuous supervision over the Strait of Hormuz, whose corridors are within the territorial waters of Oman to ensure the safety of navigation, and to ensure the safe traffic of ships passing through this vital Strait. Thank you, Mr. President.

**President:** Thank you. I now invite the delegate of Socialist Republic of Viet Nam.

**The Delegate of Socialist Republic of Viet Nam:** Mr. President, the Vietnamese Delegation would like to express our gratitude and appreciation to the Secretariat for the informative report. As a coastal state, Viet Nam attaches importance to deliberations on the law of the sea at multilateral fora with a view to understanding and ensuring better compliance with the United Nations Convention on the Law of the Sea.

Mr. President, concerning BBNJ, Viet Nam has been actively participating in the Intergovernmental Conference since its preparatory meeting. In this regard, I would like to make the following brief observations:

- First, the definition of technology and transfer of marine technology should be drafted broadly to the interest of developing countries. Capacity building and transfer of marine technology should be mandatory and linked with the access to MGRs and exploitation activities.
- Second, Viet Nam reiterates our consistent position that marine genetic resources in areas beyond national jurisdiction shall be considered as “common heritage of mankind”, and therefore, the “freedom of high seas” regime should not apply to access *in situ* to marine genetic resources. Benefits from BBNJ should be shared in an equitable manner.

To freedom of navigation, Viet Nam as coastal state attaches the great importance and requests respect for this right of all states, whether coastal or landlocked, as stipulated in UNCLOS.[...].

Finally, we would like to address the newly added item on our agenda relating to Illegal, Unreported and Unregulated fishing (IUU fishing). Viet Nam has long acknowledged the severity of IUU fishing, as well as the urgent need to take actions against problem.

It is the policy of Viet Nam to promote sustainable fishing based on international law. While combating IUU fishing, it is crucial that we take into consideration the livelihoods of fishermen, upholding humanitarian core values and refrain from unnecessary and inappropriate threat or use of force against fishermen.

Concerning the criminalization of IUU fishing, Viet Nam calls for caution because IUU fishing as such not necessarily a crime. The notion of “fisheries crime” requires further research and examination. Furthermore, the problem of IUU fishing may be addressed more effectively by other measures, for instance, the economic ones.

Viet Nam has taken remarkable steps to prevent IUU fishing, first of all by strengthening the domestic legal system. We have adopted the new Law on Fisheries in 2017, which contains a chapter on IUU fishing; and have been enhancing the law enforcement at sea. This year, Viet Nam has acceded to 2 key instruments against IUU fishing, namely the Port State Measures Agreement and the UN Fish Stocks Agreement. The National Steering Committee on IUU fishing prevention has also been established.

From our perspective, the prevention of IUU fishing calls for international cooperation and interactions. Therefore, we look forward to hearing insights from other state members.

I thank you Mr. President.

**President:** Thank you. Now I invite the delegate of People’s Republic of China.

**The Delegate of People’s Republic of China:** Mr. President, China would like to share our views on the various emerging issues in this area of the law of the sea.

On the issue of biological diversity in areas beyond national jurisdiction, China has been actively participating in the negotiation under the UN. This negotiation is one of the most important international rules-making process in the field of the Law of the Sea.

China is of the view that the topics identified in the package agreement included in the resolution of the General Assembly in 2011 should be advanced as a whole in a package. We should balance the regulation of access to marine genetic resources (MGRs) and safeguarding the freedom of the high seas, the sharing of benefits, respecting the intellectual property rights and the rights of marine genetic material holders. Area-based management tools should focus on marine biodiversity while maintaining a reasonable balance between the conservation and sustainable use. The threshold to trigger environmental impact assessment (EIA) should be consistent with UNCLOS and be state-driven. China attaches great importance to the capacity building and transfer of marine technology to the developing countries. AALCO Member States should enhance coordination on issues concerning BBNJ, and contribute to this important rules-making process in the area of the law of the sea.

With respect to freedom of navigation, this is a concept widely recognized by the international community. China upholds this principle, and objects using it as an excuse to infringe upon the legitimate rights and interests of littoral states. China, together with many other countries, are of the view that while warships enjoy freedom of navigation on the high seas, their passage in the territorial waters of another sovereign state, according to the convention, should not be prejudicial to the peace, good order or security of the coastal States, and may be subject to necessary restrictions from the laws and regulations of the coastal States adopted pursuant to the convention.

With respect to IUU fishing, China has conducted extensive work in respect of domestic legislation and governance, international cooperation and implementation of international obligations in fighting IUU fishing. China is of the view that IUU fishing, in essence, is a matter of law enforcement in the process of fishing management. Within the framework of law enforcement against IUU fishing, we should adhere to the existing definition of IUU fishing by FAO and caution against expanding the scope of the definition for other purposes.

China is of the view that we should exercise caution with the use of term such as *fishing industries-related crime*. The meaning of the so-called *fishing industries-related crime* is not clear. Crimes like smuggling, drug trafficking and money laundering could be committed in various industries including fishing, however, the nature of crime is not relevant to fishing industries, we should not identify them with each other so as not to pose challenges to the implementation of existing mechanisms and provisions. Thank you, Mr. President.

**President:** Thank you delegates for your interventions on this long-standing Agenda Item of AALCO. The Meeting is adjourned hereafter.

**The Meeting was adjourned thereafter.**

## **XVIII. VERBATIM RECORD OF THE THIRD MEETING OF THE DELEGATIONS**

**XVIII. VERBATIM RECORD OF THE THIRD MEETING OF THE DELEGATIONS  
OF THE AALCO MEMBER STATES HELD ON THURSDAY, 24 OCTOBER  
2019, AT 09:20 AM**

**AGENDA ITEM: REPORT OF THE WORK OF THE REGIONAL ARBITRATION  
CENTRES**

**His Excellency Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, President of the Fifty-Eighth Annual Session in the Chair.**

**President:** Good morning delegates, ladies and gentlemen. I am aware that we were supposed to take up for deliberation our next Agenda Item “International Trade and Investment Law”. However, as some of the experts on the topic have not yet arrived, we shall proceed to discuss the item “Report on the Work of the Regional Arbitration Centres”. I give the floor to the Secretary-General to deliver the introductory remarks.

**Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Mr. President, Honourable Directors of AALCO’s Regional Arbitration Centres, Excellencies, Distinguished Delegates and Ladies and Gentlemen. It is my pleasure to present to you the reports of AALCO’s Regional Arbitration Centres as contained in the Secretariat Document AALCO/58/DAR ES SALAAM/2019/ORG 3 that comprises of the reports of the Asian International Arbitration Centre, the Cairo Regional Centre for International Commercial Arbitration, the Tehran Regional Arbitration Centre, and the Nairobi International Arbitration Centre. The report on the Regional Centre for International Commercial Arbitration-Lagos, is also presented to you contained in a separate document which has also been circulated to all delegations present at the annual session.

The AALCO Regional Arbitration Centres, it may be recalled, were the result of the AALCO’s Scheme for the Settlement of Disputes in Economic and Commercial Transactions and the decision to establish Regional Centres for International Commercial Arbitration at the Doha Session in 1978. In accordance with the scheme, the Regional Centres for Arbitration at Kuala Lumpur, Malaysia for Asia and at Cairo, Arab Republic of Egypt for Africa were established in 1978 and 1979 respectively.

Later two more such Centres were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. AALCO also concluded an agreement with the Government of the Republic of Kenya in 2007, to establish its Fifth Regional Arbitration Centre in Nairobi to cater to the needs of East and Southern Africa.

Mr. President, over the years the Regional Arbitration Centres have made a marked difference in the arbitration culture within the region, and have been successful in promoting the use of alternate dispute resolution. Their progress and efforts to fulfil their mandate and effectively perform their task of functioning as a seat for international commercial arbitration is commendable. It leaves no room for doubt that the arbitration centres have over the years achieved the objectives outlined in the scheme, established a reputation for excellence and are recognised as among the most popular arbitral institutions in the world for the business community.



In fact, it is a distinct honour for us to have these Regional Arbitration Centres under the auspices of AALCO as these Centres are among the most successful undertakings of the Organization. I would like to take this opportunity to express our heartfelt congratulations to the Directors and thank the Governments for hosting these Centres and all other Member States for supporting and assisting the Centres. AALCO strongly believes that the Centres' success would not have been possible without the active support and cooperation of the Host Governments. May I extend our warm welcome to the Honourable Directors of the Regional Arbitration Centre who are present with us today. I thank you all.

**President:** Thank you Secretary-General. I now invite the Director of the Nairobi Centre for International Arbitration to deliver his speech.

**Mr. Alex Mwaniki, Senior Case Counsel, Nairobi Centre for International Arbitration (NCIA):** Mr. President, H.E. Dr. Augustin Mahiga, Mr. Vice President, H.E. Mohammed Shalaldeh Secretary General, Prof. Dr. Kennedy Gastorn, Distinguished delegates, Observer States, International Organizations and Agencies, Ladies and Gentlemen. Permit me Mr. President to echo the sentiments of delegations that have spoken before me to congratulate you and the Vice President on your election to steer the Fifty-Eighth Annual session of AALCO.

I also wish to appreciate the Secretary General and the AALCO Secretariat for the excellent preparatory documents and organization of this session and the support to the activities of the Regional Arbitration Centres during the last Session. As one of the five Regional Arbitration Centres, we are privileged to be invited to report on our activities at this session. We thank the Government of the United Republic of Tanzania for the very warm and friendly welcome and hospitality extended to us in this historic city of Dar es Salaam.

Mr. President, it may be recalled that during the Forty-Fifth Annual Session of AALCO held at New Delhi (Headquarters) on 3 April 2006, the then Secretary-General of AALCO and the Attorney General of the Republic of Kenya signed the Memorandum of Understanding for the establishment of the Regional Centre for Arbitration in Nairobi, Republic of Kenya.

In pursuance to the MoU, an Agreement Establishing the Nairobi Regional Arbitration Centre for Arbitration was signed between the then Secretary-General of AALCO and the Attorney General of the Republic of Kenya during the Forty-Sixth Annual Session of AALCO held at Cape Town, Republic of South Africa from 2-6 July 2007.

During the Fifty-Fourth Annual Session in Beijing (China, 2015) the Head of Delegation of the Republic of Kenya noted that the Government of Kenya had shown its commitment to establishing a regional centre by enactment of the Nairobi Centre for International Arbitration Act No. 26 of 2013 to establish the Nairobi Centre for International Arbitration (NCIA).

Mr. President, distinguished delegates, in fulfilling the ideals of AALCO Regional arbitration Centres, I wish to highlight key activities that were undertaken by the Nairobi Centre for International Arbitration during the just concluded Fifty-Seventh Session.

On the national front and in keeping with the mandate of AALCO regional arbitration Centres to promote the practice of international commercial arbitration and other forms of dispute resolution, the Centre held four sectoral breakfast round table meetings to engage NCIA Arbitration Rules users with a view to improving the efficacy of the Case

Administration process. The meetings were held on a monthly basis from March to June 2019.

The Centre participated in the 6th Devolution conference held on fourth to sixth March 2019. Participation in the conference provided an opportunity for the Centre to create awareness on our lead role on intergovernmental dispute resolution reiterate its role in creating an enabling environment towards the achievement of the Sustainable Development Goal 16.3 on access to justice for all.

In the region the Centre participated in the first Annual International Arbitration conference from 3-4 April 2019. The conference organized by African Arbitration Association, was held at the Kigali Convention Centre in Kigali, Rwanda. The Centre was part of a panel in the conference discussing “The Use of African Arbitral Institutions: The Pan African Investment Code Paves the Way” The conference provided an opportunity for the Centre to create awareness of its services for participants to learn about emerging issues in the realm of arbitration.

The Centre also took part in the China Arbitration Summit from 16-18 September 2018. The Summit was co-hosted by the Supreme People's Court of China (SPC), United Nations Commission on International Trade Law (UNCITRAL), China Council for the Promotion of International Trade (CCPIT) and China International Economic and Trade Arbitration Commission (CIETAC). Participation afforded an opportunity for business. development through Sino- Africa dispute resolution, assessment of the e-tech case management model and progress discussions with CIETAC for purposes of collaboration.

Later in the year the Centre participated in the AALCO Seminar dubbed "Reviewing International Reforms to the Investment Regime and to the Investor-State Dispute Settlement Mechanism: Perspectives from the Asian- African Regions" from 19 - 21 November 2018 at the Arusha International Conference Centre in Arusha, United Republic of Tanzania.

The Centre participated in the Chartered Institute of Arbitrators (Kenya) Branch international conference from 8-9 November 2018 at Diani, Kenya with discussions on Challenges and Opportunities ADR presents in the resolution of disputes at domestic and international levels. On Collaborations Mr. President, the Centre continues to collaborate with the Judiciary of the Republic of Kenya in the development of a National Alternative Dispute Resolution Policy in Kenya. This collaboration has culminated in national alternative dispute resolution stakeholder forums to discuss the proposal for a National Alternative Dispute Resolution Policy in Kenya. The forums were held in April and July 2019.

The Centre signed a Memorandum of Understanding with our sister AALCO regional Centre the Cairo Regional Center for International Commercial Arbitration (CRCICA) to deepen the mutual knowledge and understanding of our respective institutions and develop a positive and mutually beneficial relationship in different fields. It is our hope that similar platforms will be concluded with the other AALCO Centres in the near future.

On Educational Activities Mr. President, the Centre organized its first ever Regional Investment Arbitration Moot Competition on the thirtieth to thirty-first May 2019 dubbed “Preparing the Future Today.” The competition brought together law faculties from the East African region. Tile competition pitted the best law schools against each another with each team bringing their A game in a friendly and competitive environment. More than twenty (20) teams were registered with participants drawn from Universities from Kenya, Tanzania,

Uganda and Rwanda. I am pleased to report that University of Dar es Salaam from Tanzania participated in the event amongst others. The judges were also drawn from top law firms within the region with a view to ensuring fairness and impartiality.

This is easily the singular platform that currently promotes healthy competition among young lawyers in Kenya whilst fine tuning their advocacy skills. The Centre is always seeking to nurture and support young lawyers through such initiatives and plans to go bigger and organize an All Africa Moot Arbitration Competition are underway.

On Administration of Disputes Mr. President, the year 2018-19 has continued to record a growth in reference of disputes for administration by the Centre. The disputes totaled in value at US dollars 2.9 million and varied in nature of disputes from supply and delivery, construction and other commercial agreements.

In promoting diversity and neutrality, the Centre in the year 2018-19 empaneled arbitrators drawn from different nationalities. Arbitrator selection for the panel was undertaken throughout the year according to the panel listing standard criteria that includes qualifications, training, and experience in arbitration.

On the Planned activities for the NCIA Mr. President, the Centre plans to conclude the process for formulation of an Alternative Dispute Resolution Policy through consultative forums by November 2019.

Mr. President, the Centre is scheduled to hold its Second NCIA International Arbitration Conference and we take this opportunity to extend our invitation to the delegates and dispute resolution fraternity in our respective countries to join us for the 2nd International Arbitration and ADR Conference, to be held in the beautiful coastal city of Mombasa on 4th to 6th March 2020.

In conclusion, Mr. President, we as a Centre remain at the service of our Countries and call upon members to take advantage of the Centres within the region. Thank you, Mr. President.

**Secretary-General:** The Director for the Nairobi Centre for international Arbitration gave a detailed report on the activities of his centre. For example, the signing of the Agreement with other AALCO Regional Arbitration Centres and its genesis with its agreement with AALCO were referred to. The reports from the arbitration centres are included in our brief. However, it is our practice to listen to the Directors and to see if they have any recommendations which can be worked upon.

**The Meeting was adjourned hereafter.**

**XIX. VERBATIM RECORD OF THE FOURTH  
GENERAL MEETING (CONTD.)**

**XIX. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)  
HELD ON THURSDAY, 24 OCTOBER 2019, AT 10:00 AM**

**AGENDA ITEM: INTERNATIONAL TRADE AND INVESTMENT LAW**

**His Excellency Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, President of the Fifty-Eighth Annual Session in the Chair.**

**Secretary-General:** Now we shall take up the next Agenda Item “International Trade and Investment Law”. However, we only have one expert with us today.

**President:** A very good morning to all of you, ladies and gentlemen. I invite the Secretary-General to deliver his introductory remarks.

**H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO:** Excellencies, Distinguished Delegates, Ladies and Gentlemen. AALCO’s engagement with the topic “International Trade and Investment Law” could be traced back to the times when these topics were dealt with separately. The antiquity of AALCO’s tryst with WTO law dates back to the time when the topic “WTO as A Framework Agreement and Code of Conduct for the World Trade” was placed on the agenda of AALCO at its thirty-fourth session held in Doha, State of Qatar in 1995, the same year that the Uruguay Rounds of Negotiation were completed leading to the establishment of the WTO.

As regards the work on International Investment Law, although the topic is of recent interest to States, AALCO has had a long-standing association with it since the days of the New International Economic Order and the nascent days of the development of the field of law as we know it today. Although the topic did not receive stand-alone consideration, it featured in the program of work titled as ‘The Treatment of Aliens’ and was a prominent part of the topic ‘Regional Cooperation in the Context of the New International Economic Order.’ The topic “Promotion and Protection of Investment on a reciprocal basis” was first discussed at the Twenty-First Annual Session of AALCO held in Jakarta, Indonesia, in 1980.

The topics “World Trade Law” and “International Investment Law” were considered together in the same general meeting, and dealt with in the same brief as a combined topic having common concerns and synergies in discussion, for the first time at 57<sup>th</sup> Annual Session of AALCO in 2018. At the current Annual Session, three issues have been identified for focused deliberations, namely, WTO Reforms, Investment Disputes Mechanisms Reform Initiative, and Mediation in Investment Disputes.

Out of the 48 Member States of AALCO, 39 are members of the WTO, and 7 are observers. The multilateral trading regime institutionalized in WTO, which was engendered to liberalize trade, and the dispute settlement mechanism of the WTO, often referred to as the “crown jewel” of the system, is presently facing unprecedented crisis. It is now plagued by political divisiveness and malaise; and the threat of return of a power-based world economic order, which allows big players to act unilaterally and use retaliation to get their way, looms large. In view of this, the Secretariat’s Report has attempted to decipher the sources of the current impasse. It has been proposed that the best solution to the current crisis appears to be constructive discussion and negotiations on chalking out the way forward, and AALCO could be an apposite platform for such deliberation. Moreover, emerging economies, which have

long standing concerns about the WTO rules limiting the national policy space, may utilize negotiations to bargain for more favourable rules that address the domestic political challenges and ensure greater freedom to use trade remedy laws and WTO exceptions as sociopolitical escape valves to help address social dislocations.

As regards the topic “Investment Disputes Mechanisms Reform Initiative”, Working Group III of the United Nations Commission on International Trade Law (UNCITRAL) had been granted a mandate to propose reforms to the Investment Dispute Settlement Mechanism in 2017. Since then it has deliberated on a number of concerns that States have raised in relation to more than 900 cases of investment claims that have been filed by investors against them alleging a violation of treaty protections. The Secretariat has observed in the Report that the topic holds an important place in the contemporary discourse on international investment law. Keeping with its mandate, the process of reform taking place in the Working Group III of the Commission is a government-led process with inputs from other stakeholders, and as such captures all the relevant concerns that have been raised in relation to the prevailing system of resolution of investment disputes. While the Secretariat observes that the Commission has agreed to restrict the scope of deliberation only to procedural issues, further reform of substantive provisions are also needed as emphasized by some States in the Working Group. Further, the grouping of concerns in the schedule form along with some of their solutions as proposed is a positive development as it focusses the deliberations on streamlining the solutions so that consensus on the final work product can be achieved in a timely manner.

The AALCO Secretariat requests Member States of AALCO to contribute to the deliberations and submit their positions so that the views of all States in particular developing States may also be taken due note of by the Commission, and the final outcome achieved is agreeable to all States. The pressing need for this topic to attain finality at the earliest cannot be emphasized further, especially in light of the recent issues faced by States in defending a plethora of investment claims filed against them.

Finally, the perusal of the topic “Mediation in Investment Disputes” in the Secretariat Report comprises of a study of the benefits of the application of mediation to investment disputes saving time and costs for both parties to an investment dispute. Although the study recognizes that not all investment disputes are capable of being mediated, the benefits that mediation has provided to disputes dealing with other subject matters can equally yield dividends in this field. The uniqueness of the solutions that mediation offers has been recognized as seminal in maintaining the crucial commercial relationship between the parties, which assumes utmost importance in investment disputes that usually concern long term commitments. The signing of the United Nations Convention on International Settlement Agreements resulting from Mediation, 2019 (‘the Singapore Convention’) has also provided a regime for the cross-border enforcement of mediated settlements, providing further legal security to private investors looking to recover sums from host governments. The Report delves into all aspects of the application of mediation to investment disputes and how the same may be promoted bringing benefits to all stake holders. The major challenges to popularizing resort to meditation in the settlement of investment disputes have also been addressed.

During the Fifty-Eighth Annual Session of the Organization this year, I request the delegates to focus their deliberations on the three topics proposed for this purpose. Allow me to close this statement by wishing us all fruitful deliberations on this item on the agenda of the Fifty-Eighth Session and a successful outcome. Thank you.

**President:** Thank you Secretary-General. Now I invite Dr. Aniruddha Rajput, Member of the International Law Commission to make his presentation on the Agenda Item.

**Dr. Aniruddha Rajput, Member, International Law Commission,** as an expert, made a presentation on mediation in investment arbitration as an under- explored option of alternative dispute resolution which might be resorted to in the cooling off period. The advantages of mediation over arbitration were emphasized and the form such mediation clauses could take were explained.<sup>124</sup>

**President:** Thank you Dr. Rajput. I now invite the delegate of the Republic of Indonesia to make his intervention.

**The Delegate of the Republic of Indonesia:** Mr. President, distinguished delegates, Ladies and Gentlemen, first of all, I would like to thank you for the allocated time. On behalf of the Indonesian Delegation, allow me to deliver our intervention for the issue of International Trade and Investment Laws.

As we all are aware, recent development depicts the increase of uncertainty in international trade. This is due to, among others, the non-favorable development of global trade, marked by the rise of protectionist measures, trade wars, and actions to debilitate the multilateral trading system.

In this regard, Indonesia strongly believes that an open, non-discriminatory, and rule-based multilateral trading system must be maintained and strengthened to make the market more effective and balanced. The international communities are obliged to maintain strong commitments to ensure the well-functioning of WTO.

Mr. President, distinguished delegates, with the Appellate Body in the WTO approaching collapse in 2019, Indonesia shares the view that resolving this issue should be prioritized to salvage the whole system within WTO.

The WTO Dispute Settlement Mechanism is crucial in maintaining order in the international trade. In this regard, more than 500 dispute cases are submitted by the member countries, many of those cases are still pending, among others, due to the limitations of the existing WTO Dispute Settlement Mechanism.

Mr. President, distinguished delegates, several members of the WTO have provided proposals on how to resolve this issue. Indonesia welcomes and appreciates the efforts being made by many WTO members to reform the dispute settlement system through the submission of different proposals. With intensive discussions in Geneva is still going on, Indonesia is open to discuss the elements of the proposals, including exploring the "fallback position", should there be any failure. Thank you.

**President:** Thank you. I now invite the delegate from the People's Republic of China.

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<sup>124</sup> In the absence of a written statement submitted to the Secretariat, as well as the unavailability of the A/V recording of the statement delivered, this portion is extracted from the Summary Report of the Proceedings of the 58<sup>th</sup> Annual Session, which have been approved by the Member States.

**The Delegate of the People's Republic of China:** Mr. President, I thank the distinguished speakers for their informative presentation. China have two parts of comments on the relevant issues regarding international trade and investment law.

At its fiftieth session in July 2017, the United Nations Commission on International Trade Law (UNCITRAL) decided to authorize its Working Group III to discuss the problems existing in the investor-State dispute settlement (ISDS) mechanism, as well as the need and potential proposals for reforming it.

China welcomes the reform initiative proposed by Working Group III. The present ISDS mechanism plays an important role in protecting the rights and interests of foreign investors and promoting transnational investment. It also helps to build the rule of law into international investment governance. China believes that the ISDS mechanism is one that is generally worth maintaining. However, it has also created many problems in practice, namely, arbitral awards lack stability and predictability, arbitrators' professionalism and independence are questioned, third-party funding affects the balance between parties' rights, and the time frames are overly long and costs overly high.

Besides, China supports the stipulation of transparency discipline for third-party funding. The parties involved should disclose related funding on a continuous basis and avoid direct or indirect conflicts of interest between arbitrators and third-party funders. The legal consequences to be borne by the parties involved for failure to fulfil their disclosure obligations should be made clear.

Mr. President, The rules-based multilateral trading system, with the World Trade Organization (the WTO) at its core, is the cornerstone of economic globalization and free trade. It has made significant contributions to promoting international trade, economic growth and sustainable development. Since its accession to the WTO, China has been a staunch supporter of the multilateral trading system, advocating for the WTO to play a greater role in global economic governance, and taken firm position against protectionism.

At a time when the world economy is undergoing profound changes and the multilateral trading system is severely undermined by rising unilateralism and protectionism, China supports necessary reform of the WTO, in order to enhance its authority and efficacy, to build an open world economy, and to pursue a community with a shared future for mankind.

To this end, China has put forward three basic principles and five suggestions on WTO reform. The three basic principles are as follows: Firstly, the WTO reform shall preserve the core values of the multilateral trading system. China believes that non-discrimination and openness are the most important core values of the WTO.

Secondly, the WTO reform shall safeguard the development interests of developing members.

Thirdly, the WTO reform shall follow the practice of decision-making by consensus. The five suggestions are as follows:

Firstly, the WTO reform should uphold the primacy of the multilateral trading system.

Secondly, the priority of the reform is to address the existential problems faced by the WTO. China proposes that the reform should take up and resolve the issue of Appellate Body member appointment blockage as soon as possible.



Thirdly, the reform should address the imbalance of trade rules and respond to the latest developments of our time.

Fourthly, the reform should safeguard the special and differential treatment for developing members.

Last but not least, the reform should respect members' development models.

Mr. President, China is willing to continue the discussion on these issues within the framework of AALCO with all member states. Thank you Mr. President.

**President:** Thank you. I now invite the delegate from the Socialist Republic of Viet Nam.

**The Delegate of the Socialist Republic of Viet Nam:** Mr. President, First of all, our delegation would like to thank the AALCO Secretariat for the informative report on the topic “International Trade and Investment Law.” Concerning the WTO and ISDS reforms, first and foremost, we would like to express our utmost support for the attempts made by international community to improve the transparency and efficiency of the WTO and ISDS mechanisms.

Since becoming a member of the WTO in 2007, Viet Nam has made extensive efforts to make the most of the multilateral mechanism. Viet Nam recognizes that free trade, integration and economic alignment on regional and international levels would continue to be the dominant trend. In such context, the WTO maintains its central role for providing states with fora and tools to facilitate international trade and settle trade disputes. However, the alarming crisis in this system, mostly caused by protectionism and trade friction, and particularly in the dispute settlement mechanism as the report has elaborated, should not be overlooked. And Viet Nam is willing to cooperate with other states to accelerate the reforms of the WTO, especially of the dispute settlement mechanism.

During recent years, Viet Nam has experienced a tremendous rise in foreign investment, signing various bilateral and multilateral treaties on investment protection and promotion. It calls for a wide range of changes, from establishing new domestic regulations to promoting sustainable development and environmental protection. However, foreign investment has brought about not only opportunities and prosperity but also challenges that involve the investor-state disputes. At various fora, especially the United Nations Commission on International Trade Law and United Nations Conference on Trade and Development, Viet Nam has frequently voiced its concerns and support for reform of the investor-state dispute settlement (ISDS) mechanism. On this occasion, our delegation would like to share our view on this process.

First, Viet Nam is of strong view that relevant parties should try to seek every possible solution to the disputes before resorting to arbitration mechanisms. Mediation allows both states and investors an ample amount of time for cooling-off and finding a solution acceptable to both sides. However, we don't associate with the opinion requiring mediation or good-office as a mandatory step before arbitration. Unless conducted in “good faith”, the process of mediation would end up burdening parties, hindering them from arriving at a solution. Therefore, mediation before arbitration should not be obligatory.

Second, Viet Nam would like to approach the question of third-party funding in a cautious manner because of the possible abuse. This has been our consistent position at the Working

Group III of the UNCITRAL. In case third-party funding is accepted, it should be: (i) limited to certain claims to avoid frivolous and bad faith claims; (ii) upholding transparency by requiring fully disclosure of funding terms; (iii) conditioned with security for cost; and (iv) containing remedies for non-compliance.

To expand our perspectives, Viet Nam expect to hear from other AALCO member states as well as legal experts on this matter. I thank you, Mr. President.

**President:** Thank you. I now invite the delegate from the United Republic of Tanzania.

**The Delegate of the United Republic of Tanzania:** Tanzania is part to International Trade Legal Instruments including WTO. While implementing these international obligations for investment and business opportunities in many areas for investors, we are also obliged to ensure we protect our resources and ensure that they are used for the benefit of all Tanzanians. In that regard, in 2017 we enacted two most celebrated pieces of legislations. One is the Natural Wealth and Resources (Permanent Sovereignty) Act No. 6 of 2017 which provides measures intended to ensure that the natural wealth and resources of the United Republic are used for the greatest benefit and welfare of the people of United Republic by ensuring that all arrangements made by the Government protect and secure the interests of the people. More so, the Act requires disputes arising out of investment or engagement in natural wealth of resources be resolved using dispute resolution institutions available in the country. These institutions could be those related to negotiations, mediation, conciliation, arbitration and litigation.

Realizing that in the past many agreements were made without considering the interest of the people, the Government enacted a second legislation, The Natural Wealth and Resources Contracts (Review And Renegotiation of Unconscionable Terms) NO.6 of 2017. This law gives the National Assembly powers to review arrangements or agreements made by the government relating to natural wealth and resources and where it finds any unconscionable term, it may advice the government to initiate re-negotiation of the arrangement or agreement with a view of rectifying the terms.

It is our belief that these legislations will work for the benefit of Tanzanians and investors in creating a win-win situation in accordance with international order and rule of law.

The United Republic of Tanzania calls upon all AALCO Member States to support this course of action and share experiences on how best to achieve the objectives of the UN Resolution on Permanent Sovereignty over Natural Resources passed on 1962 whose Article 1 states that:

“The rights of peoples and the nations to Permanent Sovereignty over their natural wealth and resources must be exercised in the interest of their national development and well being of the people of the state concerned.” Thank you for your attention.

**President:** Thank you. I now invite the delegate from the Republic of India.

**The Delegate of the Republic of India:** Thank you Mr. President. On behalf of the Indian delegation, I take this opportunity to thank the AALCO Secretariat for the preparation of a detailed background document on the topic and the introductory statement made by the Secretary-General. We also commend the panelists for their very useful presentations.

On the topic Investor-State Dispute Settlement (ISDS), the Delegation of India has the following comments: India has entered into Bilateral Investment Promotion and Protection Agreements (BIPPAs)/BITs with over 80 countries since 1994. However, India terminated the BIPPAs/BITs with countries with whom the initial duration of 10/15 years of the said agreements was already over and which allowed for such a termination. With respect to remaining countries, a request of a Joint Interpretative Statement was issued. Currently, India is in the process of renegotiating with partner countries on a new BIT based on India's new model text. India is also a signatory to FT As with many partner countries. India's BITs and model BIT do contain provisions on settlement of Investor State Disputes. However, none of the Investment Agreements nor the Model BIT provide for permanent courts or tribunals as such. However, under Article 29 of India's new model BIT, it does mention about developing an institutional mechanism with an appellate body in future for investment treaty disputes. On the question of mediation in investment treaty disputes, all Indian investment treaties provide for a cooling off period of six months and welcomes mediation as a mode of settlement of disputes.

Mr. President, on the reforms to ISDS, India has been of the considered view that, it is important to start with a blank canvas to devise a more fair, a more legitimate, and a more self-contained system of ISDS with internal checks and balances to ensure a good quality of decision-making. This new system of dispute resolution should also be one which can seamlessly be merged into the current landscape of enforcement of decisions- with possibly one or two tweaks to facilitate better and quicker enforcement

One of the drawbacks of the current landscape of BIT arbitrations is the number of inconsistent or even contradictory awards- for instance, on the proper interpretation of umbrella clauses, the effect of an MFN clause, whether the Fair and Equitable Treatment (FET) standard only requires the minimum standard under Customary International Law (CIL) or if it is more expansive. Critics have also pointed to the CME and Lauder cases against the Czech Republic where the same facts led to two different decisions by two arbitral tribunals.

Mr. President, One of the most critical areas in designing a permanent investment court relates to its composition, structure and certainty. The legal and practical challenges to establishing a investment court should not be underestimated. These have been quite exhaustively dealt with under WG-III of UNCITRAL. It is also a welcome to have an opt in clause unlike in the Mauritius Convention on Transparency in ISDs where India had raised the issue with the opt out clause. India welcomes the move to have discussions and deliberations on the proposals for both structural and systemic reforms and further.

Mr. President, on the Topic of WTO Reforms our delegation has the following intervention to make Marrakesh Agreement establishing the WTO recognizes that international trade is not an end in itself, but a means of contributing to certain objectives including ensuring that developing countries and LDCs secure a share in international trade commensurate with the needs of their economic development. In order to be widely acceptable, discussions on WTO reform should be premised on the principles of inclusivity and equity, and not serve to widen existing asymmetries in the covered agreements. The core value and basic principles of the multilateral trading system must be preserved and strengthened, particularly with a view to building trust among Members.

Mr. President, a functioning, independent and effective dispute settlement system is indispensable for preserving the rights and obligations of all WTO Members and for ensuring that the rules are enforced in a fair and even-handed manner. Without such a system there would be little incentive to negotiate new rules or to undertake reforms. Therefore, resolution of the Appellate Body (AB) impasse needs to precede other reforms.

Mr. President, India reaffirms the centrality of Special and Differential Treatment (S&O) as a non-negotiable, treaty-embedded right for developing Members and LDCs. It is essential to preserve S&D for allowing developing Members the space to formulate their domestic trade policy, in a way that helps them to reduce poverty, generate employment and integrate meaningfully into the global trading system.

In the ongoing fisheries subsidies negotiations also, the disciplines should be fair, equitable and balanced. It is imperative to have an effective and appropriate special and differential treatment for developing countries providing them with adequate policy space to address their needs of development.

To conclude Mr. President, Any reforms in the WTO must be development centric, preserve the core values of the system, strengthen the provisions of special and differential treatment in existing and future agreements and preserve the multilateral character of WTO. Thank you Mr. President

**President:** Thank you. I now invite the delegate from Japan.

**The Delegate of Japan:** On behalf of the delegation of Japan. I would like to underline the importance of the International Trade and investment Law.

Three issues are identified in the agenda; namely, (1) WTO Reforms, (2) Mediation in Investment Disputes, (3) Investment Disputes Mechanisms Reform Initiative. I will refer to these in turn.

First, on the WTO reforms, many States benefit from the free trading system. If the WTO has some problems, the right strategy is not to abandon the framework of the WTO but to reform it.

While law making remains to be important, maintenance of legal framework is gaining greater significance. Dispute Settlement System is now a central element of the WTO. The Appellate Body, particular, plays a pivotal role in the system. However, problems related to functions of the Appellate Body have been pointed out by many members. Finding a durable solution is in interest of all the Members.

Second, I will turn to the Mediation in Investment Disputes. Mediation has been an effective tool to solve investment disputes, and Japan believes it will continue to be so. At the same time, Japan recognizes that the concerns such as the cost and duration of international arbitration have been raised and, in this regard, the effectiveness of mediation are being reconsidered recently.

As we discuss use of mediation, we should bear in mind the existing frameworks. Provisions of the Free Trade Agreements, Bilateral Investment Treaties and Investment Contracts are based on the outcomes of negotiations among Parties to these legal instruments, and dispute

settlement procedures are not an exception. Specific procedures, including arbitration, are chosen and stipulated for solving disputes. While mediation can add possible method of dispute settlement, it will be unrealistic to attempt to replace existing procedures with mediation.

Having said so, Japan would like to continue to consider the possibility of mediation as one of the options regarding the investment dispute settlement mechanisms through actively contributing to the discussions such as on the ICSID rules amendment.

Finally, I refer to the Investment Disputes Mechanisms Reform Initiative. Japan considers that Investor-State Dispute Settlement mechanism needs a balance between protection of investment and States' right to regulated it. Japan recognizes the trends in international discussions that the current ISDS mechanisms should be reformed. Japan intends to fully engage in the Working Group II discussion of the UNCITRAL so that the discussions on appropriate reforms will be conducted without prejudice to the outcome and will be appropriately address actual concerns. Thank you, Chairman.

**President:** Thank you. I now invite the delegate from the Islamic Republic of Iran.

**The Delegate of the Islamic Republic of Iran:** In the Name of God, the Compassionate, the Merciful.

Mr. President, my delegation would like to thank the secretariat for its reports on International trade and investment Law which contain various. issues on this topic. I also commend the briefs presented by experts especially the brief presented on mediation by prof. Rajput.

Mr. President, we take note with appreciation the progress made in the different working groups of the United Nations Commission on International Trade Law (UNCITRAL). The Commission has finalized three texts that could assist Member States to use them in line with their specific needs and circumstances.

We appreciate the work of UNCITRAL on expedited arbitration which is less expensive and faster than standard arbitration, and seems to be more satisfactory for parties to disputes. It is important to increase efficiency of this procedure through ensuring its quality, due process and fairness.

We are also interested in the deliberations on Working Group III and its three- phase mandate concerning reform of investor-State dispute settlement. We expect that this working group address the concerns of states and investors with respect to new generation of investment regime through enhancing consistency, access to justice and fairness. The working group III shall come up with concrete recommendations to address the defects of the current system and devise holistic and comprehensive solutions with respect to protection of the rights of people affected by foreign investment, responsibilities of the multinational corporations on human and labor rights as well as environmental protection and affected individuals and communities. It is also important to ensure full and effective participation of developing countries in this process, taking into consideration their limited capacities and resources.

Mr. President, the critical importance of identity management in facilitating trustworthy e-commerce and other online activities and its legal aspects is now globally well- recognized.

Islamic Republic of Iran attaches great importance to this topic which is currently on the agenda of Working Group IV (Electronic Commerce) and takes note with appreciation the work of the Secretariat in preparing a revised draft on the cross-border recognition of identity management and trust services. In this regard and given the important role of government and public authorities in development and deployment of IDM systems and the provision of IDM and trust services, it seems premature to neglect the function of public authorities in this field and ignore its efficiency, particularly in enforcing laws and preventing risks and abuses. Furthermore, in preparing the draft provisions particular attention should be given to the different levels of economic as well as information and communications technology development of the member states. It is also important to pay duly attention to challenges and concerns of developing countries in cyberspace, specially the subject of privacy.

Mr. Chairman, with regard to the judicial sale of ships, my delegation takes note the work of the Secretariat in preparing a revised draft instrument incorporating the outcome of the deliberations of the Working Group VI. The new draft should address the concerns expressed by Member States on the draft text prepared by the Cornite Maritime. In this regard, we emphasize that in providing the new draft, following crucial points need to be taken into consideration, without prejudice to the final form of the instrument, whether be a guideline or model law.

First, right to access to justice including right preferred creditor not being prejudice by provided solutions such as extinguishment of rights by issuing the sale certificate;

Second, necessity of acquiring judicial approval for foreign judicial decisions so that administrative enforcement can take place internally;

Third, there should be a contractual link between claimant and the ship, for the pursuance of the judicial sale;

and fourth, it is imperative to exclude state ships from the scope of the draft text.

Mr. President, last but not least, it would be remiss of me if I do not mention successful adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation, called as Singapore convention in 2018. convention This convention will assist member states and their judicial authorities to settle disputes with increased efficiency, particularly in commercial disputes in which the parties seek stability and reliability. The Islamic Republic of Iran signed this Convention on 7 August 2019 at a ceremony hosted by Singapore along with other 45 countries.

Finally, we would like to commend the efforts of UNCITRAL's Member States and Secretariat in continuing to promote the development, harmonization and modernization of international trade and commercial law. My delegation remains committed to productive and constructive engagement with the Commission in coming year. Thank you.

**President:** Thank you. I now invite the delegate from the Republic of Kenya.

**The Delegate of the Republic of Kenya:** Thank you Mr. President, It is with great honour that I have this opportunity to give the following remarks on behalf of the Republic of Kenya on this agenda item.

Distinguished delegates, the World Trade Organization (WTO), is at the heart of the global trading system, to which Kenya is a part of. The WTO is the only international organization that deals with the global rules of trade between nations. The three functions of the WTO; which are administering multilateral trade rules, serving as a forum for trade negotiations and providing a mechanism to settle trade disputes; are facing challenges that may necessitate reform:

The Dispute Settlement Mechanism provides a rules based process to adjudicate over trade disputes, with all WTO Members falling under its jurisdiction. Kenya has not actively participated in or utilized is the Dispute Settlement Mechanism. This is the case for most of the Developing and Least Developed Countries. The main reason for this is the limited technical and financial capability to access this Mechanism.

Mr. President, in the recent past the dispute settlement system has encountered challenges including the constitution of the Appellate Body. Should this persist, the Appellate Body will not have members to hear cases when the terms of two remaining members come to an end in December. This would therefore render the WTO dispute settlement system less effective. Kenya recognizes and acknowledges the efforts being made by AALCO to address this challenge and find a solution so as the have the Appellate Body of the WTO Dispute Settlement Mechanism function as was envisaged. We also recognize and support all efforts under the AALCO banner in collecting views towards reforming the WTO.

Distinguished delegates, Kenya also recognizes the challenges that abound in the handling of investment dispute settlement which were highlighted at the just concluded UNCITRAL Working Group III. These include;

Lack of consistency, coherence, predictability of arbitral decisions by Investor State Dispute Settlement (ISDS) tribunals;

Concerns pertaining to cost and lengthy proceedings and the lack of a mechanism to address frivolous or unmeritorious cases;

Lack of transparency and regulation on third-party funding and the impact it has on different aspects of ISDS, for instance increase in frivolous claims, costs of ISDS and security for costs.

Distinguished delegates, these are indeed some of the challenges that were recently experienced by Kenya during the prosecution of the Investor State Arbitration cases that Kenya was party to. Mediation as a mechanism of Investment dispute settlement should be encouraged with a view to addressing the challenges stated above.

We thank the AALCO Secretariat for creating a platform for Member States to discuss these challenges and propose possible solutions. Thank you Mr. President.

**President:** I thank the delegates for their statements. With this we come to the end of our discussions on this agenda item. We will have a 15 minutes break now and resume at 12:30 PM for the closing session.

**XIX. FIFTH GENERAL MEETING AND  
CONCLUDING SESSION**



**XIX. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND CONCLUDING SESSION HELD ON THURSDAY, 24 OCTOBER 2019, AT 12:30 PM**

- Adoption of Message of Thanks to the President of the United Republic of Tanzania
- Venue of AALCO's Fifty-Ninth Annual Session
- Adoption of Documents and Summary Report of the Session
- Votes of Thanks

Closing Remarks by President of the Fifty-Eighth Annual Session of AALCO

**President:** Welcome back for the last and closing session. As you will notice, that the Secretariat has distributed the Summary Report of the 58<sup>th</sup> Session for the consideration of Member States. I congratulate the Secretariat for a good job done. I will give you 15 minutes to read the report. If there are any points, please raise those.

Now we take up for adoption the message of thanks to the President of the Republic of Tanzania, and this message will be read out by Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO.

**His Excellency Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO:**

Your Excellency,

On behalf of all the Delegations of the Member States and Observers attending the Fifty-Eighth (2019) Annual Session of the Asian-African Legal Consultative Organization (AALCO), I would like to extend the following vote of thanks as a token of our heartfelt gratitude and admiration for the President, Government and People of Tanzania.

I take this opportunity on behalf of all participants of the Fifty-Eighth Annual Session and the Secretariat to place on record our deep sense of appreciation to the President of Tanzania and the Government of the United Republic of Tanzania for facilitating the organization of this Annual Session. H.E. John Magufuli, President of Tanzania and the Government of the United Republic of Tanzania have been among AALCOs' strongest supporters and we remain committing to strengthening your vision of Asian-African unity and fraternity. Your support to AALCO has in no small measure been instrumental to the success of this Annual Session.

This was the third time Tanzania was hosting an Annual Session and all of us appreciate the arrangements and facilities made in this regard and the generous hospitality extended to us. Tanzania has always been a strong motivator for AALCO, encouraging the Organization for the success of all matters, organizational and substantive. Given an opportunity, all of us would be keen to come back to this beautiful country again for an Annual Session.

On a personal level, I am extremely happy that the Annual Session was organized in my home country and its success affords a great deal of personal satisfaction for me.

This Annual Session saw a number of significant topics being discussed. International Law in Cyberspace, Law of the Sea, Selected matters on the agenda of the ILC, International Trade and Investment Law, Violations of International Law in Palestine and other Occupied territories by Israel and other International Legal Issues related to the Question of Palestine,

Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties and Peaceful Settlement of Disputes. Each of these topics is of utmost importance to international law and I am extremely happy that our Member States look to continue their strong engagement with international law in the times ahead.

As I mentioned in my Welcome Address, our goal should be make the session a success in the vision of the great Julius Nyerere, the champion of Afro-Asian bonhomie and camaraderie and a friend, philosopher and guide to the people of these two mighty continents. As we draw to a close, I can state with utmost confidence and conviction, our Member States have kept up the legacy of AALCO in the true spirit of Nyerere's aspirations.

Your Excellency, please accept the assurances of our highest respect and consideration and may the Almighty God bless the endeavours of this great nation. Thanking you!

**President:** Thank you Secretary-General. This message of thanks will be duly communicated to the President of the United Republic of Tanzania. Are there any comments on the Summary Report?

**The Head of Delegation of the Republic of Indonesia:** Thank you Mr. President. I thank the Secretariat for the well-prepared Summary Report. We appreciate the efforts of the positive response from all the Member States on our proposal of including IUU Fishing. However, the same has not been mentioned in paragraph 7.11, and I believe it is important in accordance with our discussions to reflect it appropriately.

**The Head of Delegation of the United Arab Emirates:** We request the addition of the paragraph we had proposed in the Summary Report. The paragraph reads as follows:

“AALCO Member States reiterate the need to work for preserving the freedom of international navigation and freedom of movement in straits based on international treaties and conventions. We also reiterate that present challenges threatening to impede navigation through international straits and passages require us to work collectively to curb these challenges and their harmful effects in implementation of the provisions of international law and realization of common interests of the international community that would ensure safety of routes of navigation, international trade and security.”

**Secretary-General:** The proposed comment from UAE is very important, and it will be fully reflected in the verbatim record of the session.

**The Head of Delegation of People's Republic of China:** I thank the Secretary-General and his team for preparing this wonderful Summary Report. We have several proposals on page 4, which we have submitted to the Secretariat.

**Secretary-General:** It has been noted. Are there any comments on the message of thanks?

**The Head of Delegation of People's Republic of China:** As regards the venue for the 59<sup>th</sup> Annual Session of AALCO, we are pleased to announce that China would be delighted to host the event.

Responding to the comment from the Head of Delegation of the UAE, we agree with the Secretary-General that the document circulated by the secretariat is a summary of the statements and we hope that the Secretariat does not draft it in the manner of a Resolution as china does not think that we are globally facing any challenges on this issue.

**Secretary-General:** Indeed the Summary Report will include the language in the general spirit of discussions, and not as views of a particular Member State. The Summary Report is a neutral document without raising any particular points raised in the Session.

**President:** My feeling is that the Member States can recommend that the AALCO Secretariat take careful note of views and recommendations expressed during this Annual Session as in the summary report. Member States are also reminded that the work plan of the AALCO Secretariat for the coming year will be prepared, in accordance with the AALCO Statutory Rule, paying due regard to the recommendations expressed during this Annual Session, with close consultations with Liaison Officers of Member States, also bearing in mind available resources.

Now we come to the adoption of the Resolutions on Organizational Matters, the Chairman's Report of the Fourth Meeting of the Open-Ended Working Group on International Law in Cyberspace and the Summary Report of the 58<sup>th</sup> Session.

Resolution AALCO/RES/58/ORG 1, Report of the Secretary General on Organizational, Administrative and Financial Matters, is deemed to be adopted.

Resolution AALCO/RES/58/ORG 2, AALCO's Budget for the year 2019, is deemed to be adopted.

Chairman's Report of the Fourth Meeting of the Open-Ended Working Group on International Law in Cyberspace, is deemed to be adopted.

Resolution AALCO/RES/58/ORG 3, Report on AALCO's Regional Centres for Arbitration, is deemed to be adopted.

Now, we come to the last part of the proceedings, which is the vote of thanks. On behalf of the Asian States, the Head of Delegation of Iran will make a statement.

**The Delegate of the Islamic Republic of Iran:**

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

As we approach the end of this Fifty-Eighth Annual Session of AALCO, I deem it a great honor and privilege to propose the Vote of Thanks on behalf of Asian Member States of AALCO to H.E. Dr. Augustine Mahiga, the President of Fifty-Eighth Annual Session of AALCO and H.E. Mohammed Shalaldehy , the Vice President of the Fifty-Eighth Annual Session for successfully steering and conducting the proceedings of this Annual Session.

Mr. President, the successful conclusion of the Session can be directly attributed to your invaluable guidance and wisdom. Your planning, critical insight and timely interventions not only broadened the scope of our discussion, but also helped us gain better perspectives on the issues under consideration. I would also like to express my heartfelt gratitude to the

Government of the United Republic of Tanzania (the abode of peace) for their warm and exceptional hospitality that has been bestowed on us. Without your commitment and relentless cooperation this Session would not have been a success.

I would like to thank the other organizers for making this Session such a worthwhile experience. An event like this takes months of planning and attention to meticulous details. Keeping this mind, I have no hesitation in mentioning that the Session was organized and carried out in a commendable manner. We indeed owe a special gratitude to you.

I would also like to extend my warm appreciation to the Secretary-General of AALCO, His Excellency Prof. Dr. Kennedy Gastorn, for his vision, commitment, thought provoking ideas, as well as his immense contribution towards attaining the objectives of AALCO. Under his leadership we see a stable and balanced future for AALCO. Similar sentiments are also due to the deputy Secretaries-General of AALCO.

I also wish to express my deepest regard and appreciation to the staff of the Secretariat of AALCO who were not even able to attend the dinners with us but working tirelessly in preparing the documents and making them readily available for our perusal and deliberations every day. The interpreters also deserve our heartfelt appreciation for carrying out their job with utmost care and great efficiency. Finally, Mr. President, the success of this Annual Session would not have been possible without the goodwill, cooperation, active participation and understanding of all the delegates and participants, I extend my sincere thanks and praise to all of them.

Thank you, Mr. President.

**President:** Thank you, delegate from the Islamic Republic of Iran. I now invite the Head of Delegation of Republic of Kenya to deliver the vote of thanks on behalf of the African States.

**The Head of Delegation of Republic of Kenya:** Thank you Mr. President.

Mr. President, Hon'ble Ministers, Attornies-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

As we come to the end of our Fifty-Eighth Annual Session of AALCO, I deem it a great honour and privilege to propose the vote of thanks on behalf of the African Member States of AALCO to the host government. I express my profound gratitude and sincere appreciation to H.E. Dr. Augustine Mahiga, the President of the Fifty-Eighth Annual Session of AALCO for inviting us to this historic city of Dar es Salaam to attend AALCO's Fifty-Eighth Annual Session. I express my heartfelt gratitude to the government and the people of this great country the United Republic of Tanzania for the warm and exceptional hospitality that you have bestowed on us. We indeed felt at home throughout.

Mr. President, you commend our heartfelt applause for the articulate manner in which you have admirably guided and conducted the proceedings of this Annual Session. The successful culmination of this Session owes much to your wit, guidance and wisdom.

By the same token, I would also like to express our very sincere gratitude to the Vice-President of the Fifty-Eighth Annual Session of AALCO H.E. Mohammed Shalaldeh for his

cooperation and leadership which has inspired all of us. The comments and interventions that both of you had made were indeed critical and insightful.

An event like this cannot take place overnight. The wheels start rolling months before. It requires meticulous planning and an eagle's eye for details. We have been fortunate enough to be backed by the Members of the host Government who have made all the possible efforts and worked with great dedication to make this Session a resounding success. We, indeed, owe a special gratitude to you.

I also would like to extend my warm appreciation to the Secretary-General of AALCO Prof. Dr. Kennedy Gastorn for his vision and commitment which has been steering AALCO in the right direction. We sincerely believe that he would make a significant contribution towards attaining the objectives for which AALCO was set up. In any such endeavor, we stand ready to work closely with you and your team.

I also wish to express my deepest regard to the staff of the Secretariat of AALCO for working so hard and earnestly to produce a lot of documents which were very useful for our debates and deliberations. The interpreters also deserve our heartfelt appreciation for the way they have done their job with utmost care and great efficiency.

Finally, the success of this Annual Session would not have been possible without the goodwill, cooperation and understanding of all our delegates and participants. Praise, is therefore, due to all of you. Thank You.

**President:** Thank you very much. Now I invite Dr. Aniruddha Rajput to deliver the vote of thanks on behalf of international organizations.

**Dr. Aniruddha Rajput, Member, International Law Commission:**

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

With immense pleasure, I present the vote of thanks on behalf of the international organizations which have had the honour to participate in the Fifty-Eighth Annual Session of AALCO. We appreciate the invitation extended to all of us by AALCO to deliberate on the topics in the agenda item for this year, to interact with the AALCO Member States on international law issues of relevance to our organizations, in furtherance of our institutional mandates. I am sure I speak for all invited International Organisations here when I say that we will continue our commitment to collaborate, assist and support, as appropriate, the work of the Member States here to effectively implement both at national and regional levels their international commitments and obligations.

It has been observed that international organizations assume that there is yet another world, one that is produced by forces that cut across national frontiers. These forces create networks of shared interests and concerns that go beyond national interests and concerns.<sup>125</sup> Nowhere is that network of shared interests more conspicuous than in the conception and journey of AALCO. It has been a wonderful experience to participate in the Annual Session of an intergovernmental organization that strives to partake in the progressive development of international law by providing consultative assistance to its Asian-African membership. We

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<sup>125</sup> Akira Iriye (2004), *Global Community: The Role of International Organizations in the Making of the Contemporary World*, University of California Press: Berkeley, 6.

thank the Secretariat of AALCO, headed by Prof. Dr. Kennedy Gastorn, for finely orchestrating the event. We are convinced that forums like the Annual Session will contribute to increased awareness and respect for international law. We would be pleased to be given further opportunities to take part in the discussions within AALCO forums.

The vote of thanks would remain incomplete if I don't express the gratitude we feel towards our gracious host, the Government of the United Republic of Tanzania. We thank our host for the amazing hospitality and the logistical arrangements.

Finally, we express our gratitude towards the President and the Vice-President for their excellent leadership throughout the week, which has facilitated the work of this meeting.

Thank you.

**President:** With this, we come to the end of the 58<sup>th</sup> Annual Session of AALCO. Thank you all for your active participation.

**The session was thereafter adjourned at 01:30 PM.**

**XX. TEXT OF THE DOCUMENTS ADOPTED AT  
THE FIFTY-EIGHTH ANNUAL SESSION**

## **A. SUMMARY REPORT**



**SUMMARY REPORT**  
**27 November 2019**



**AALCO**  
**Asian-African Legal Consultative Organization**  
**Fifty-Eighth Annual Session**  
**21 to 25 October 2019**  
**Dar es Salaam, United Republic of Tanzania**

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**SUMMARY REPORT**  
**OF THE FIFTY-EIGHTH ANNUAL SESSION OF THE**  
**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**

**1. Introduction**

- 1.1. 25 Member States of the Asian-African Legal Consultative Organization (AALCO) participated in the Fifty-Eighth Annual Session (hereinafter “the Session”) namely, **Arab Republic of Egypt, Kingdom of Bahrain, People’s Republic of China, Republic of Ghana, Republic of India, Republic of Indonesia, Islamic Republic of Iran, Republic of Iraq, Japan, Republic of Kenya, Government of Nepal, Federal Republic of Nigeria, Sultanate of Oman, Islamic Republic of Pakistan, Republic of Philippines, State of Qatar, Republic of Korea, Kingdom of Saudi Arabia, Democratic Socialist Republic of Sri Lanka, State of Palestine, Syrian Arab Republic, United Republic of Tanzania, Republic of Turkey, United Arab Emirates and the Socialist Republic of Viet Nam.**
- 1.2. Representatives of the following Regional Arbitration Centres of AALCO were also present: **Regional Centre for International Commercial Arbitration, Lagos (RCICAL)** and the **Nairobi Centre for International Arbitration (NCIA).**
- 1.3. In accordance with Rule 18 (1) of the Statutory Rules, the following Observers were admitted to the Session:
  - I. Representatives from the following Non-Member States: **Islamic Republic of Afghanistan, Republic of Belarus, Federal Republic of Germany, Kingdom of Morocco and the Russian Federation.**
  - II. Representatives of the following International Organizations: **African Institute of International Law (AIIL), Committee of Legal Advisors on Public International Law (CAHDI), International Court of Justice (ICJ), International Committee of the Red Cross (ICRC), International Criminal Court (ICC), The Saudi Fund for Development (SFD), and the United Nations Environmental Program (UNEP).**

## **2. Inaugural Session**

- 2.1. The Fifty-Eighth Annual Session of AALCO commenced on 21 October 2019.
- 2.2. **Hon. Prof. Palamagamba John Kabudi, Minister for Foreign Affairs and East African Cooperation of the United Republic of Tanzania** warmly welcomed the delegates to the United Republic of Tanzania and the historic city of Dar es Salaam. He elaborately discussed the tryst of AALCO with the United Republic of Tanzania, recollecting that the Forty-Ninth and the Twenty-Fifth Annual Sessions of the Organization were hosted in the country in the years 2010 and 1986 respectively. He noted that it was a great honour to the country and to the Faculty of Law, University of Dar es Salaam that the present Secretary-General is an alumnus from the prestigious institution. Several AALCO seminars and workshops have also been hosted in the country. Apprising the gathering of the country's commitment towards international law, he observed that his Ministry, as an overseer of all ratified international instruments in the country would continue to ensure that the State fulfils its obligation under various international and regional instruments ratified so far. The State's commitment to the welfare of AALCO was underlined, the Secretariat was thanked for the cooperation extended, and the State's inclination to continue to work with other AALCO Member States in rendering support to the Organization was registered.
- 2.3. **H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of the Asian-African Legal Consultative Organization (AALCO)** welcomed all the delegates to the United Republic of Tanzania, highlighting the importance of the Annual Session of AALCO. Pursuant thereto he pointed out the challenges faced by Asian-African States expressing the need for multilateral engagement in addressing these challenges. Expressing satisfaction at the conduct of the Annual Session in his home country, Secretary-General referred to the iconic contributions of the First President of the country, Julius Nyerere. Urging the Member States of AALCO to strengthen the organization, he hoped that the Fifty-Eighth Annual Session would pave the way for a deeper engagement of the Member States with the substantive dimensions of international law. In addition, it was noted that while there are numerous challenges to the international rule of law, it is only while facing these challenges that opportunities for growth and progress can be realized.
- 2.4. **H.E. Amb. Koji Haneda, Member of AALCO and Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of Philippines** representing **H.E. Mr. Masataka Okano, Assistant Minister and Director-General of the International Legal Affairs Bureau of the Ministry of Foreign Affairs of Japan and the President of the Fifty-Seventh Annual Session**, in his address welcomed all the delegates to the Fifty-Eighth Annual Session of AALCO. Highlighting the historical origins of AALCO, he stated the strong role played by the United Republic of Tanzania in promoting the values of AALCO. H.E. Amb. Koji Haneda highlighted the important activities of the organization during the last one year of Japan's presidency and appreciated the close working relationship of AALCO with the United Nations and the International Law Commission.
- 2.5. **Hon. Yuji Iwasawa, Judge, International Court of Justice** appreciated AALCO for the role the Organization has been playing to further strengthen and promote the rule of law in the international community. He focused his statement on the increasing

importance of individuals as subjects of international law since the end of the Second World War. The increasing recognition of rights and duties of individuals under international law was illustrated by citing the recent trends in the fields of international human rights law, international economic law and international criminal law. He also highlighted the specific contribution to international law made by Julius Nyerere.

- 2.6. **H.E. Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania** lauded the accomplishments of AALCO under the presidency of Japan and the leadership of the Secretary-General. He also congratulated the Secretary-General for his appointment as Ambassador. Recollecting the historical ties of the State of United Republic of Tanzania with States like China, India and Indonesia, he observed that the country presents a melting pot of a variety of cultures and civilizations, and that the travel to Tanzania to attend the Annual Session of AALCO might be deemed to be a home-coming of sorts for many delegates. By highlighting the achievements of AALCO, the President-incumbent of the Session asserted that the Organization has been striving to carry on the legacy of the Bandung Conference. The need to bring in new ideas, and to preserve consistency and unity in the quest to maintain the underlying principles of this Organization, was emphasized. The readiness of the State to partner with all Member States in realizing the objectives of AALCO was reiterated.
- 2.7. **H.E. Samia Suluhu Hassan, Vice-President of the United Republic of Tanzania and the Guest of Honour for the Fifty-Eighth Annual Session of AALCO**, expressed her gratitude to the Secretary-General for playing a major role in facilitating cooperation among the Asian and African Member States in the development of international law, and thanked the Member States for extending unqualified support to the Secretary-General. She encouraged the Member States to continue upholding the spirit of cooperation and engagement with a view to sustain international law in Asia and Africa. The commitment of the United Republic of Tanzania to the international rule of law and the work of AALCO was emphasized. The role of the State in peace building in the Great Lakes Region and peace keeping in different missions in the region and beyond, steps taken to ratify treaties against terrorism and international organized crime, and measures put in place to combat corruption were referred to. The States which have imposed sanctions were called upon, through the platform of AALCO, to lift those sanctions. The position of the State vis-à-vis the recent developments in the domains of law of the sea, international trade and investment law were accentuated. It was observed that through adherence to the rule of law, the United Republic of Tanzania has strived to advance all economic and social sectors development including health, education, infrastructure, agriculture among other key sectors.
- 2.8. **Hon. Prof. Adelardus Kilangi, Attorney-General, United Republic of Tanzania** delivered the vote of thanks. He expressed his deep gratitude to the Vice-President of the United Republic of Tanzania for officiating the inaugural session, the outgoing President of AALCO for his distinguished leadership, and the Secretary-General of AALCO for his service to the Organization. He also thanked the Secretariat of AALCO, the Ministry of Constitutional and Legal Affairs of the United Republic of Tanzania, the delegates and the sponsors and supporters.

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

3.1. **H.E. Amb. Koji Haneda** called the Meeting to order. The following agenda was adopted for the Fifty-Eighth Annual Session:

**3.2. Agenda**

**I. Organizational Matters**

1. Consideration and Adoption of the Agenda and Tentative Schedule of Meetings and Events
2. Election of the President and the Vice-President
3. Admission of New Members
4. Admission of Observers
5. Opening Speech of the President of AALCO
6. Report of the Secretary-General on the Work of AALCO
7. Release of AALCO Publications
8. Presentation of Draft Budget for 2020
9. Report on the Work of the AALCO's Regional Arbitration Centres
10. Report of the Chairman of the Working Group on International Law in Cyberspace
11. Venue of the Fifty-Ninth Annual Session

**II. Substantive Matters**

1. Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties
2. Selected Items on the Agenda of the International Law Commission
3. International Law in Cyberspace
4. Law of the Sea
5. Peaceful Settlement of Disputes
6. Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine
7. International Trade and Investment Law

**III. Any Other Matter**

3.3. **Admission of New Members:** Republic of Philippines

3.4. **Admission of Observers:** The following Non-Member States were admitted as Observers to the Fifty-Eighth Annual Session: **Islamic Republic of Afghanistan, Republic of Belarus, Federal Republic of Germany, Kingdom of Morocco** and the **Russian Federation**. The following International Organizations and other organizations were also admitted as Observers: **African Institute of International Law (AIIL), Committee of Legal Advisors on Public International Law (CAHDI), International Court of Justice (ICJ), International Committee of the Red Cross (ICRC), International Criminal Court (ICC), The Saudi Fund for Development (SFD), Universiti Teknologi MARA (UiTM)** and the **United Nations Environmental Program (UNEP)**.

- 3.5. **H.E. Amb. Koji Haneda** invited the Member States to propose candidates for the posts of President and Vice-President of the Fifty-Eighth Annual Session of AALCO. The Head of Delegation of Republic of India proposed the nomination of **H.E. Dr. Augustine P. Mahiga, Minister for Constitutional and Legal Affairs of the United Republic of Tanzania** as the President of the Fifty-Eighth Annual Session of AALCO. The nomination was seconded by the Head of the Delegation of Republic of Kenya and the Arab Republic of Egypt, thereafter the President was unanimously elected. The Head of Delegation of the Republic of Ghana proposed the nomination of **H.E. Mohammed Shalalkeh, Minister of Justice, State of Palestine** as Vice-President of the Fifty-Eighth Annual Session. The proposal was seconded by the Head of Delegation of the Islamic Republic of Iran and thereafter the Vice-President was unanimously elected. Thereafter, **H.E. Koji Haneda** invited the President and Vice-President of the Fifty-Eighth Annual Session to assume their positions on the dais.
- 3.6. The newly elected President, **H.E. Dr. Augustine P. Mahiga**, in his opening statement vowed to follow the footsteps of his predecessors. Mentioning the role of the Bandung Conference in the history of AALCO, the President elucidated the work done by AALCO over the last year. He congratulated the Secretary-General of AALCO, H.E. Prof. Dr. Kennedy Gastorn for his leadership role in the organization, and welcomed the Republic of Philippines to the AALCO family. Soliciting an expression of solidarity, he called upon the Member States to support the Organization and the Secretariat.

#### **4. First General Meeting**

- 4.1. **Release of AALCO Publication:** The following AALCO publications were released: Yearbook of the Asian-African Legal Consultative Organization (2018, vol. XVI), AALCO Journal of International Law (2017 & 2018, vol. 6 & 7), Newsletters [vol. 11(2) and 12 (1)], and a Special Study titled “The Status of Jerusalem in International Law: A Legal Enquiry into the Recent Attempts to Disrupt the Status Quo.”

#### **Second Meeting of the Delegations of AALCO Member States**

##### ***Agenda Item: Report of the Secretary-General***

- 4.2. The **Secretary-General**, prior to presenting his report on the work of AALCO, expressed his deep gratitude to the President and the Vice-President of the Fifty-Seventh Annual Session of AALCO, the Member States for their confidence in him, and the Ambassadors/High Commissioners and the Liaison Officers in New Delhi. He thanked the Republic of India for its support, as the host country of the Secretariat, as well as the United Republic of Tanzania, his home country and the gracious host of the Fifty-Eighth session. The Member States were informed that the Report on the organizational matter was divided into seven sections, namely, 1. Consideration of Work Programme of AALCO at the Fifty-Eighth Annual Session; 2. Activities undertaken since the Fifty-Seventh Annual Session of AALCO; 3. Overview of the Secretariat; 4. Financial situation of AALCO and 2020 Draft Budget; 5. Steps taken to Revitalize and Strengthen the AALCO; 6. Future Work Plan; and 7. Strengthening the cooperation with the United Nations, its Specialized Agencies and other international organizations. Brief insights were furnished regarding each of the sections, and relevant suggestions provided. Finally, the Member States were encouraged to actively

participate in the activities of the Organization in its collective pursuit to ensure that Asian-African voices are heard in the making of international laws and norms.

***Agenda Item: Discussions on the Budget for 2020***

- 4.3. **The Deputy Secretary-General of AALCO** highlighted the details of the budget approved by the Liaison Officers for the years 2020. An amount to the tune of 631,540 USD, same as the previous year, was sanctioned for the year 2020. He highlighted the continuous efforts of the organization to harness the human and material resources available with it and the need to minimize operational costs. Due consideration would be accorded to increasing the annual budget of AALCO from 2021 onwards.

***Agenda Item: Report of the Chairman of the 4<sup>th</sup> Working Group on International Law in Cyberspace***

- 4.4. **H.E. Dr. Abbas Bagherpour Ardekani**, Head of Delegation, Islamic Republic of Iran and Chairman, AALCO Open-ended Working Group on International Law in Cyberspace briefly reported the proceedings of the Fourth Working Group Meeting (4WGM) held in Hangzhou, People's Republic of China on 2-4 September 2019. 10 Member States of AALCO participated in the 4WGM, and the topics "International Cooperation for Combating Cybercrime", "Application of the Principle of Non-Interference in Cyberspace", "Data Sovereignty, Transborder Data Flow and Data Security" and "Peaceful Use of Cyberspace" were discussed. Two reports, namely, the Summary Report and the Chairman's Report of the 4WGM were adopted. He recollected that two proposals were set forth in that context. Firstly, the Member States ought to be more active in responding to the questionnaire of the Rapporteur. Secondly, the Member States may seek the guidance of the Secretary-General to explore the drafting of a non-binding document clarifying the consensual basic principles of international law in cyberspace.
- 4.5. Pursuant to the first proposal, he remarked, the questionnaire had been recirculated by the Secretariat requesting responses. Pursuant to the second proposal, the Secretary-General's Proposal of the Consensual Basic Principles of International Law Applicable in Cyberspace had been drafted and circulated to the Member States. So far, comments have been received from four Member States and one observer. The Secretary-General's proposal and the comments received would be submitted to the next Working Group Meeting on International Law in Cyberspace for further in-depth discussions and possible adoption. It was further noted that at least one Working Group meeting will be convened before the next annual session in order to further deliberate upon the subject and the mandated tasks.

***Agenda Item: Signing of the Memorandum of Understanding (MoU)***

- 4.6. **Memorandum of Understanding with the Universiti Teknologi MARA (UiTM), Malaysia:** H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO and Emeritus Prof. Ir. Dr. Mohd. Azraai Kassim, Vice-Chancellor, Universiti Teknologi Mara (UiTM) signed a Memorandum of Understanding (MoU) between the two organizations.

## **5. Second General Meeting**

- 5.1. In the Second General Meeting on 21 October 2019 the following delegations presented their general statements on the theme for the Fifty-Eighth Annual Session “Multilateralism and the International Legal Order based on International Law”: **Sultanate of Oman, People’s Republic of China, Japan, Syrian Arab Republic, United Arab Emirates, Kingdom of Saudi Arabia, Republic of Philippines, Democratic Socialist Republic of Sri Lanka, Islamic Republic of Iran, and State of Qatar.**
- 5.2. All delegations congratulated the President and Vice-President on assuming their posts, and expressed confidence that the Annual Session would be conducted successfully under their leadership. All the delegations thanked the Government of the United Republic of Tanzania for hosting the Fifty-Eighth Annual Session of AALCO in the magnificent city of Dar es Salaam. They appreciated the warmth and hospitality of the Tanzanian government and wished the Annual Session a great success. They applauded the leadership of H.E. Prof. Dr. Kennedy Gastorn in leading the efforts of AALCO to further the cause of international law in Asia and Africa. The spirit and values of the Bandung Conference was reiterated and reaffirmed in today’s challenging times. They also thanked the President of the Fifty-Seventh Annual Session of AALCO and applauded the role of the UN and AALCO in encouraging multilateralism and a global order based on international law, in times when the world is facing the challenges of unilateralism and hegemonic influences. The Republic of Philippines was generally welcomed as a Member State of AALCO. Many States highlighted the violations of international law in the Occupied territories of Palestine and hoped that a multilateral world order would bring justice to the suffering of the Palestinian people. It was pointed that AALCO has a great potential and the activities undertaken by it in recent times are evidence of its significant role. It was echoed in the general statements of several States that they should extend full support and cooperation to AALCO in all its activities and work programme.
- 5.3. At the outset on 22 October 2019, certain procedural announcements were made by the **Secretary-General** relating to the previous day’s proceedings. It was recollected that two reports were adopted the previous day, namely, the Secretary-General’s Report on the Work of AALCO, and the Chairman’s Report of the Fourth Meeting of the Open-ended Working Group on International Law in Cyberspace. The delegations were requested to refrain from engaging in debates on contentious bilateral matters. The interventions ought to focus only on issues of common multilateral interest, and any reference to a bilateral contentious issue might be expunged from the proceedings pursuant to a communication to that effect to the Secretary-General, with the approval of the President.
- 5.4. At the Fifty-Eighth Annual Session of AALCO the following delegations made their general statements on 22 October 2019: **Republic of India, Government of Nepal, Republic of Korea, Socialist Republic of Viet Nam, Arab Republic of Egypt, Republic of Indonesia, State of Palestine, Republic of Turkey, Republic of Ghana, United Republic of Tanzania, Federal Republic of Nigeria and Republic of Kenya.**
- 5.5. Many delegations stated that international law and order were the prerequisites for international peace and security, and cooperative and effective multilateralism was

projected as the solution for all situations that emanate from unilateralism and protectionism. It was observed that for more than seven decades, multilateral arrangements have saved lives, expanded economic and social progress, upheld human rights and helped prevent a third descent into global conflagration. The relevance of the substantive agenda items earmarked for the Annual Session in affecting the collective and individual interests of the Member States was noted and their extensive deliberation in the interest of deepening Asian and African solidarity was appreciated. The need to share responsibilities to combat daunting borderless challenges, like climate change and threats to marine biological diversity, was accentuated. The pertinence of international rule of law was highlighted by most delegations. The havoc wreaked by violent extremism and terrorism was discussed, and instances of flagrant violations of international human rights and humanitarian law were cited. The issues pertaining to international law in cyberspace were pointed out by several delegations. In order to meet the emerging challenges, it was deemed necessary to explore the options to reform global governance structures. The need for States to make a more active contribution to the codification and progressive development of international law by actively providing inputs at international negotiating fora was emphasized. The significance of encouraging seminars and capacity building at domestic and regional levels was additionally underlined.

- 5.6. Thereafter, the Observer States, *viz.*, **Republic of Belarus, Federal Republic of Germany, Russian Federation and Islamic Republic of Afghanistan** presented their general statements. The Observer International Organizations, *viz.* **International Criminal Court (ICC), Committee of Legal Advisors on Public International Law (CAHDI), International Committee of the Red Cross (ICRC) and United Nations Environment Programme (UNEP)** also presented their general statements.

## **SUBSTANTIVE AGENDA ITEMS FOR DELIBERATION**

### **6. Third General Meeting**

***Agenda Item: Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties***

- 6.1. **The Secretary-General of AALCO** introduced the agenda item which was included as such in the agenda of AALCO in the year 1997 on the recommendation of the Islamic Republic of Iran, and highlighted the illegality of extraterritorial application of national legislations with the imposition of unilateral sanctions and its violation of fundamental human rights which include the right to food, health, medicine and education. He stated that in 2014 the AALCO Secretariat had prepared a Special Study entitled “Unilateral and Secondary Sanctions: An International Law Perspective”, which had looked extensively into the following aspects: (i) Extraterritorial application of national legislation and violation of the UN Charter; and (ii) Extraterritorial Application of National Legislation and Violation of Human Rights Obligations. He recalled the consistent assertions of the international community as regards the effect of extraterritorial application of national legislation and reiterated that sanctions imposed against third parties by extraterritorial application of national legislation violate international law. He stated that it is noteworthy that the brief prepared by the Secretariat on this topic for this year dealt with recent developments in the Human Rights Council and other organs of the United Nations concerning the item for instance



the appointment of the first rapporteur by the Human Rights Council and the recent ruling of the ICJ in the case entitled “Alleged Violations of the 1955 Treaty of Amity”. He recommended all parties to reconfirm the illegality of such sanctions and reiterate their commitment to taking affirmative steps, as Member States of AALCO to remove these sanctions which are grossly illegal under international law.

- 6.2. The following delegations presented their statements on the agenda item: **The United Republic of Tanzania, Islamic Republic of Iran, People’s Republic of China, Arab Republic of Egypt, State of Palestine and the Republic of Indonesia.**
- 6.3. The delegations, thanked the AALCO Secretariat for including the topic in the agenda of the Fifty-Eighth Annual Session. It was observed that State sovereignty, rule of law, non-intervention and the duty to cooperate are fundamental principles of international law, which stand to be violated when unilateral sanctions are imposed by States in addition to breaching the consensual and multilateral framework of international law. In all cases, unilateral sanctions violate Article 2 (4) of the UN Charter, which prohibits intervention in the internal affairs of a State. It was also highlighted that unilateral sanctions apart from being illegal serve no practical purpose as they seldom advance any substantive policy goal, increase costs of international trade and go beyond the scope of UN Security Council Resolutions adding tension to peaceful international relations between States. Such measures, being an improper exercise of extraterritorial jurisdiction adversely violate the human rights of the people of the State subject to unilateral sanctions posing a serious challenge to international peace and security in addition to affecting international cooperation between States. The work of the UN Special Rapporteur on the negative impact of unilateral coercive measures, the ILC Articles on State Responsibility and 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States were cited to highlight the illegal nature of unilateral sanctions and their consequences.
- 6.4. It was recommended that the AALCO Secretariat undertake a Special Study on the Illegality of Sanctions against Humanitarian and Human Rights Considerations.

***Agenda Item: Peaceful Settlement of Disputes***

- 6.5. **The Secretary-General of AALCO**, in his introductory statement highlighted the importance of the topic ‘peaceful settlement of disputes’ to the Afro-Asian community. Highlighting the emergence of the topic as a substantive agenda item on the work programme of AALCO in the Fifty-Seventh Annual Session, the Secretary-General elucidated the importance of topic in the context of Mahatma Gandhi’s 150th Birth Anniversary in 2019. Pointing out the focus of AALCO’s current engagement with aspects pertaining to ‘peaceful settlement of environment disputes’, the Secretary-General elaborated on the need and importance of protecting the environment in light of the hazards posed by climate change. He highlighted that a sound understanding of environmental dispute resolution is in the best interest of the Asian-African community and affirmed AALCO’s commitment to furthering our collective understanding on this subject. Mentioning the rise of new technologies and the imperatives of capital and human resources mobility across frontiers having increased the importance of environmental protection for Member States, Secretary-General appreciated the role of the latter in safeguarding the environment.

- 6.6. The following delegations presented their statements on the agenda item: **Islamic Republic of Iran, Japan, Republic of Indonesia, Republic of India, Socialist Republic of Viet Nam, People's Republic of China, United Republic of Tanzania and State of Qatar.**
- 6.7. All delegations emphasized the need to settle their disputes through peaceful means leaving the choice of the methods to the States themselves. The importance of Article 33 of the UN Charter was emphasized, which enumerates both bilateral and third party means of dispute settlement. Some delegations explained that the idea of sovereign equality is implied in the pacific nature of dispute settlement, and accorded priority to consensual methods of dispute settlement. It was also underscored that the consensual basis of jurisdiction of third-party dispute settlement must be borne in mind and that decision makers must conform to their respective mandates. Increasing popularity and utility of Alternate Dispute Resolution (ADR) mechanism was recognised. Taking note of the significance of pacific settlement of environmental disputes, the delegations expressed support for inclusion of the topic and appreciated the Secretariat for preparing the brief on the topic. Some delegations explained that the transboundary effects of climate change and environmental harm pose a major challenge to the international community wherein the need for pacific settlement of disputes necessarily arises. The necessity of dispute prevention and incorporation of non-compliance procedures in multilateral environmental agreements was underlined.
- 6.8. Observing the multiplicity of proceedings and the fragmentation of the regime of international environmental law, it was recommended that the Secretariat conduct further research to design an integrated effective approach towards pacific settlement of environmental disputes.

***Agenda Item: Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine***

- 6.9. **The Secretary-General of AALCO**, in his introductory statement highlighted AALCO's historical engagement with the subject over the years, stating the same to reflect the Organization's moral compass. He stated that since 1988, when the topic first came on the Agenda of the Organization, AALCO has consistently applied itself to every conceivable international law dimension concerning the historic land of Palestine and its people. Pointing out the mandate received by AALCO during the previous Annual Session to prepare a Special Study on the subject 'The Status of Jerusalem under International Law', the Secretary-General noted the Study was one of the first to comprehensively undertake a legal analysis of the subject in the wake of the US decision to shift the embassy of the country in Israel from Tel Aviv to Jerusalem and expressed happiness on the same. He hoped that the Study would bring clarity on the varied legal dimensions and US State practice on the subject and encouraged Member States to actively participate in the deliberations.
- 6.10. The following delegations presented their statements on the agenda item: **State of Palestine, State of Qatar, Republic of Indonesia, People's Republic of China, Arab Republic of Egypt, and Islamic Republic of Iran.**
- 6.11. It was observed by the delegations that the State of Palestine has been a victim of egregious violations of international law at the hands of the occupying power. The

violations of international humanitarian and human rights law were highlighted to point out the plight of the hapless people of Palestine who bear the brunt of the occupation in their daily lives. The delegations stressed the need to recognize East Jerusalem as the capital of the sovereign State of Palestine condemning all efforts to alter the *status quo*. The delegations condemned all measures to alter the legal status of *Al Quds Al Sharif*, and affirmed that, pursuant to numerous UN resolutions and international conventions those measures had no legal effect. Reference was made to various municipal legislations of the occupying power to highlight the point that all efforts were being made to crush the legitimate aspirations of the Palestinian people to their right of self-determination. Many delegations expressed the view that the conflict should be settled only by resorting to peaceful means and all efforts to unilaterally escalate the conflict should be discouraged. Insistence must be placed upon peace talks and international consensus ought to be achieved on the basis of the two-State solution. It must be ensured that the voice and propositions of the parties, especially Palestine are heeded to and Palestine is recognized as a State with full attributes of sovereignty. In this regard the need to respect UNSC and UNGA resolutions was highlighted. The delegations expressed their unwavering support to the legitimate aspirations of the State of Palestine and its people.

## **7. Fourth General Meeting**

### ***Agenda Item: Select Items on the Agenda of the International Law Commission***

- 7.1. **The Secretary-General of AALCO** provided a brief account of the six topics that had been deliberated at the seventy-first session of the International Law Commission (ILC): (1) Peremptory norms of general international law (*jus cogens*); (2) Succession of States in respect of State Responsibility; (3) Crimes against Humanity (4) Immunity of State Officials from foreign criminal jurisdiction; (5) Protection of the environment in relation to armed conflicts; (6) General principles of law. He encouraged the delegations to present their views on agenda items of the Commission in the seventy-second session as well.
- 7.2. The four experts, **Dr. Hussein A. Hassouna, Dr. Georg Nolte, Dr. Aniruddha Rajput, Dr. Chris M. Peter, Members of the International Law Commission (ILC)** delivered their presentations on the various items on the Agenda of the International Law Commission at its Seventy-First Session. Thanking AALCO for the invitation to participate in the Fifty-Eighth Annual Session of AALCO, they highlighted the working methodology of the ILC, hoping that Asian and African states get more involved in the relationship between the ILC and the Sixth Committee .. They stated that through its strong support to the Commission, AALCO can effectively contribute to the consolidation of an international legal order based on the rule of law. The experts apprised the Member States of the stages of completion that the various topics on the agenda of the Commission were currently at. It was recommended that AALCO take note of the new topics on the long-term program of work of the Commission.
- 7.3. The following delegations presented their statements on the agenda item: **Republic of Korea, Japan, Islamic Republic of Iran, People's Republic of China, Republic of India, Socialist Republic of Vietnam, Arab Republic of Egypt and the United Republic of Tanzania.**

- 7.4. The delegations expressed gratitude to the experts for their insightful presentations and appreciated the brief of the secretariat on the subject. The role of the ILC in facilitating the codification and progressive development of international law was lauded by the Member States. They also appreciated the role of Special Rapporteurs on the various topics. The delegations expressed their respective positions on the topics deliberated at the Seventy-First Session of the Commission, expressing optimism and pointing out areas of concern. The topics on which the delegations made their interventions included peremptory norms of general international law (*jus cogens*), State succession in respect of State Responsibility, Crimes against Humanity, Immunity of State officials from foreign criminal jurisdiction, Protection of the environment in relation to armed conflict and General Principles of Law. The Delegations stated that the Commission's future work should be based on careful selection avoiding conflict with existing international instruments and duplicity of ongoing international efforts. Delegations, in general, welcomed the inclusion of the topic Sea-level rise in relation to international law on the work programme of the Commission. The role of AALCO in facilitating interaction between the Commission and Member States was appreciated.
- 7.5. **Republic of Belarus** and the **Russian Federation** presented their statements on the agenda item as observer delegations.

***Agenda Item: International Law in Cyberspace***

- 7.6. **The Secretary-General of AALCO** in his introductory statement highlighted the importance of cyberspace for all States striding ahead on the path to rapid technological progress. Mentioning the history of AALCO's engagement with the topic since the proposal of the topic by the People's Republic of China as an agenda item for the Fifty-Third Annual Session of AALCO in Tehran (Islamic Republic of Iran) in 2014, the Secretary-General referred to the recently concluded Fourth Working Grouping Meeting on Cyberspace held in Hangzhou, China from 2-4 September 2019. Congratulating China for taking an active interest in the topic, the Secretary-General stressed the importance of peacefully using cyberspace and the importance of taking all possible efforts to tackle the menace of cybercrime. The Secretary-General highlighted that cooperation on matters pertaining to cyberspace between States has been forthcoming and encouraged States to further strengthen efforts on this front. The Secretary-General welcomed Prof. Huang Zhixiong the Rapporteur of the AALCO Open-ended Working Group on International Law in Cyberspace.
- 7.7. **Prof. Huang Zhixiong, Rapporteur of the AALCO Open-ended Working Group on International Law in Cyberspace** succinctly summarized the responses received from the Member States on the questionnaire on cybercrime, prepared pursuant to the mandate received at the Fifty-Seventh Annual Session of AALCO in 2018. Referring to the responses received from eleven Member States so far, the Rapporteur observed that there was consensus on the need for capacity building and technical assistance to combat cybercrime, and general agreement on the benefits of public-private partnership in that regard. Further inputs from Member States were requested on the topic. **Prof. Zakayo N. Lukumay, Senior Lecturer and Acting Principal of the Law School of Tanzania**, examined the applicability of international law principles to cybercrimes in his presentation, focusing on universal jurisdiction theory, relation between the Rome Convention and cybercrimes.

- 7.8. The following delegations presented their statements on the agenda item: **Republic of Kenya, United Republic of Tanzania, Government of Nepal, Republic of India, Republic of Korea, Islamic Republic of Iran, People's Republic of China, Republic of Indonesia, Socialist Republic of Viet Nam** and the **Sultanate of Oman**.
- 7.9. The relevance of the agenda item and AALCO's continued emphasis on the topic was appreciated by all the delegations. The efforts of the AALCO Secretariat in preparing the brief and the role being played by the Rapporteur of the AALCO Open-ended Working Group on International Law in Cyberspace were commended. The Secretary-General's Proposal of the Consensual Basic principles of International Law applicable in Cyberspace was well-received by the delegations, and further work under the Working Group on it was encouraged. Several delegations highlighted the legislative measures and policy responses adopted in their respective domestic jurisdictions in order to combat cybercrimes. The regional efforts to enhance cyber security were cited by some delegations. Several delegations took note of the ongoing multilateral, equitable and democratic negotiations under the auspices of the UN, the resolutions adopted by the Seventy-Third session of the UN General Assembly (UNGA), and the work of the UN Intergovernmental Expert Group in Vienna. In this regard, support was sought for a draft UNGA Resolution to establish an open-ended intergovernmental committee to elaborate a comprehensive international convention on combating cybercrime. Many delegations declared that they would submit their responses to the Rapporteur's questionnaire shortly.
- 7.10. The **Russian Federation** and the **International Committee of the Red Cross (ICRC)** presented their statements on the agenda item as observer delegations.

*Agenda Item: Law of the Sea*

- 7.11. **The Secretary-General of AALCO**, while delivering the introductory remarks on the agenda item, observed that the item "The Law of the Sea" was taken up for consideration by AALCO at the initiative of the Government of Indonesia in 1970. It was stated that the Secretariat's reports furnish a backdrop to the items proposed for deliberation, viz., (a) the Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ), (b) Issues Related to the Freedom of Navigation/Sail in the International Waters and Straits and (c) Preventing and Combating Illegal, Unregulated and Unreported (IUU) Fishing. As regards BBNJ, the Member States were encouraged to discuss the topic taking into account the pending constitution of the AALCO open-ended Working Group on BBNJ, whose terms of reference have been finalized. It was pointed out that the Secretariat shall shortly nominate the Chairperson, Vice Chairperson and the Rapporteur of the Working Group for approval of Liaison Officers on behalf of the Member States. The other item for consideration had been taken up pursuant to the proposal by the Government of United Arab Emirates. It was observed that freedom of navigation must not be used as a pretext to challenge the maritime boundaries of another State, and the principle of non-intervention must be abided by, especially by the State asserting freedom of navigation.
- 7.12. The expert **Captain Ibrahim Mbiu Bendera** from the **United Republic of Tanzania** in his presentation highlighted different aspects of the freedom of navigation in the International Waters and Straits and the regulation of BBNJ. He traced the history of the development of the concept of freedom of navigation and provided key insights on

jurisdiction of coastal states over ships plying in their internal waters and Exclusive Economic Zones highlighting salient features of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). Furthermore, he stated that freedom of navigation should exist only in the high seas limiting the doctrine of innocent passage to the EEZ.

- 7.13. The following delegations presented their statements on the agenda item: **United Arab Emirates, Republic of Indonesia, Arab Republic of Egypt, Republic of India, Republic of Korea, United Republic of Tanzania, Republic of Kenya, Japan, Islamic Republic of Iran, Sultanate of Oman, Socialist Republic of Viet Nam and People's Republic of China.**
- 7.14. Creating an efficient framework of ocean governance for safeguarding BBNJ is an imperative that needs to be taken seriously. The delegations supported international efforts to create a legally binding instrument for the conservation and sustainable use of BBNJ as a supplementary agreement to the UNCLOS, 1982. In this context, delegations highlighted their participation in the Intergovernmental Conference (IGC) established by the United Nations General Assembly to create an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity. It was emphasized that regulating access to Marine Genetic Resources (MGRs) in Areas Beyond National Jurisdiction (ABNJ) and technology transfer to developing countries is essential from the perspectives of the AALCO Member States. It was pointed out that AALCO Member States should coordinate efforts on all aspects pertaining to BBNJ and work towards strengthening the law of the sea framework at the international level. The importance of regulating Illegal, Unreported, Unregulated (IUU) fishing was noted by some delegations and the need for cooperation in this regard was called for.
- 7.15. Some delegations stated that the freedom of navigation in the high seas is an established rule of international law and it comes in tandem with the rights of Coastal States. The delegations reiterated the importance of preserving the freedom of international navigation in straits used for international navigation, based on international treaties and conventions. The need to work collectively for the realization of common interests of the international community that would ensure safety of routes of navigation, international trade and security was also emphasized.

***Agenda Item: International Trade and Investment Law***

- 7.16. **The Secretary-General of AALCO**, delivered an introductory statement on the topic explaining how it had been dealt with in AALCO over the years since its inclusion on the agenda. It was expressed that although a number of issues within the topic had gained contemporary relevance in the past year, due to time limitations only the most germane were selected for deliberation. The meeting was apprised that the following topics would be discussed: (a) WTO Reforms, (b) Mediation in Investment Disputes, and (c) Investment Dispute Mechanisms Reform Initiative. The Secretary-General also recalled the previous work of AALCO on the topics in particular on issues such as the treatment of aliens, regional cooperation in the context of the New International Economic Order as well as Promotion and Protection of investments on a reciprocal basis. In relation to the topic of WTO Reforms it was recalled that the topic dealing with WTO Law was first placed on the agenda of AALCO in 1995 the same year as the completion of the Uruguay Rounds of trade negotiations, and that since then out of 48

Member States of AALCO 38 are Members of the WTO whereas 7 have observer status.

- 7.17. **Dr. Aniruddha Rajput, Member of the International Law Commission**, as an expert, made a presentation on mediation in investment arbitration as an under-explored option of alternative dispute resolution which might be resorted to in the cooling off period. The advantages of mediation over arbitration were emphasized and the form such mediation clauses could take were explained.
- 7.18. The following delegations presented their statements on the agenda item: **Republic of Indonesia, People's Republic of China, Socialist Republic of Viet Nam, United Republic of Tanzania, Republic of India, Japan, Islamic Republic of Iran and Republic of Kenya**.
- 7.19. The delegations expressed gratitude to the Secretariat for preparation of the detailed brief on the agenda item and for creating a platform to discuss the challenges pertaining to the topic and to explore the options available. Acknowledging the centrality of the WTO in the multilateral regulation of international trade, the need to resolve the Appellate Body impasse prior to considering other existential crises to the system was accentuated. The pertinence of special and differential treatment provisions in the covered agreements of the WTO to enable the developing countries to integrate meaningfully to the world economic order was underlined. As regards the Investment Disputes Mechanisms Reform Initiative, the work of UNCITRAL in particular the Working Group III was appreciated. The legal and institutional challenges to the establishment of a permanent investment court were discussed and the nature and jurisdiction of such an institution were reflected upon. General support was expressed for mediation of investment disputes with a consensual basis.

***Agenda Item: Report on the Work of the Regional Arbitration Centres***

- 7.20. **The Secretary-General of AALCO**, presented an introductory statement providing a brief rendition of the work and success of the Regional Arbitration Centres, over the years. In his presentation he congratulated the Host Governments of the Regional Arbitration Centres for their support and cooperation and called upon all Member States to continue supporting their activities and work program. The Secretary General recalled the Scheme for the Settlement of Disputes in Economic and Commercial Transactions, which laid foundation for the establishment of the first AALCO Regional Arbitration Centre in Kuala Lumpur, Malaysia catering to Asia closely followed by second one catering to Africa in Cairo, Arab Republic Egypt. The statement also emphasized that the success of the arbitration centres led to the creation three other arbitration centres which have all been operationalized and received a steady flow of commercial disputes.
- 7.21. **Mr. Alex Mwaniki, Senior Case Counsel, Nairobi Centre for International Arbitration (NCIA)** presented the report of the Centre at the Annual Session. In their presentations he apprised the meeting of the volume, nature, and subject-matter of the disputes as well as other crucial statistics such as information about the parties and arbitrators. He also provided an overview of the scale of activities undertaken by the NCIA that ranged from workshops and training seminars to organizing other capacity building programs. A comprehensive outline of the activities of the arbitration centre

during the period of 2018-19 was provided and estimates about their growth and future plans were also shared with the meeting.

## **8. General Meeting and Concluding Session**

### ***Adoption of the Message of Thanks to the President of the United Republic of Tanzania***

**H.E. Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO**, presented a message of thanks on behalf of AALCO Member States to H.E. Dr. John Pombe Joseph Magufuli, the President of the United Republic of Tanzania.

### ***Venue of the Fifty-Ninth Annual Session***

8.1. The President informed the meeting that a proposal was made by the People's Republic of China to host the Fifty-Ninth Annual Session in the year 2020. The proposal was unanimously adopted.

### ***Adoption of Documents***

The following documents were adopted on 24 October 2019.

### **Organizational Matters**

1. AALCO/RES/58/ORG 1  
Report of the Secretary General on Organizational, Administrative and Financial Matters
2. AALCO/RES/58/ORG 2  
AALCO's Budget for the year 2019
3. Chairman's Report of the Fourth Meeting of the Open-Ended Working Group on International Law in Cyberspace
4. AALCO/RES/58/ORG 3  
Report on AALCO's Regional Centres for Arbitration

### ***Consideration and adoption of the Summary Report***

8.2. The draft summary report of the Fifty-Eighth Annual Session was placed for the consideration of Member States and thereafter adopted unanimously by all Member States. The delegations expressed their appreciation to the Secretary-General and the Secretariat for preparing a comprehensive and timely summary report.

### ***Vote of thanks***

8.3. A vote of thanks on behalf of Asian Member States was proposed by the Head of Delegation of the **Islamic Republic of Iran** and a vote of thanks on behalf of the African Member States was proposed by the Head of Delegation of the **Republic of Kenya**. A vote of thanks on behalf of the International Organizations was proposed by



**Dr. Aniruddha Rajput, Member of the United Nations International Law Commission.**

- 8.4. **H.E. Dr. Augustine P. Mahiga**, the President of the Fifty-Eighth Annual Session delivered the concluding remarks.

***The Fifty-Eighth Annual Session of AALCO was thereafter adjourned.***

## **B. RESOLUTIONS**

**AALCO/RES/58/ORG 1**  
**24 OCTOBER 2019**

**REPORT OF THE SECRETARY-GENERAL ON ORGANIZATIONAL,  
ADMINISTRATIVE AND FINANCIAL MATTERS**

*The Asian-African Legal Consultative Organization at its Fifty-Eighth Session,*

**Recalling** the functions and purposes of the Organization as stipulated in Article 1 of the Statutes of AALCO,

**Having considered** the Report of the Secretary-General on Organizational, Administrative and Financial Matters pursuant to Rule 20 (7) of the Statutory Rules as contained in Document No. AALCO/58/ DAR ES SALAAM/2019/ORG 1,

**Having heard** with appreciation the introductory statement of the Secretary-General on the Report of the Secretary-General on organizational, administrative and financial matters,

**Also having heard** with keen interest and appreciation the statements of the Heads of Delegations of AALCO Member States on the Report of the Secretary-General,

**Recognizing** the need to take forward the spirit of Bandung Conference in the current era which has witnessed many international legal challenges for the States of Asia and Africa,

**Appreciating** the efforts of the Secretary-General to enhance the activities of the Organization and to implement its work programme as approved at its Fifty-Eighth Annual Session held in Dar es Salaam, United Republic of Tanzania from 21 to 25 October 2019,

**Also appreciating** the continued practice towards the rationalization of its work programme, including consideration of the agenda items during its Annual Sessions,

**Reiterating** the mandate of the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization, and the Action Plan as explained in Document No. AALCO/ES (NEW DELHI)/2008/ORG.1 adopted by the Extraordinary Session of AALCO Member States held on 1 December 2008, in New Delhi (Headquarters), India,

**Welcoming** the efforts by the Secretary-General for revitalizing and strengthening AALCO,

**Noting with satisfaction** the increased co-operation between the Organization and the United Nations and its Specialized Agencies, other international organizations and academic institutions,

1. **Approves** the work plan of the Organization as set out in the Report of the Secretary-General and urges Member States to extend their full support to the implementation of that work plan;
2. **Encourages** Member States to make voluntary contributions to support the capacity building activities under the approved work plan of the Organization;

3. **Requests** the Secretary-General to continue his efforts and explore the ways and means to enlarge the Membership of the Organization in Asia - Africa, in particular, to increase the representation from the African States and Central Asian States;
4. **Also requests** the Secretary-General to discuss with African Member States to depute at least one senior official to the Secretariat as Assistant Secretary-General or Deputy Secretary-General;
5. **Further requests** Member States, in their bilateral relations to encourage non-Member States to join AALCO;
6. **Requests** the Secretary-General to take appropriate actions in accordance with the Action Plan adopted on 20 August 2009;
7. **Requests** the Secretary-General to exploring the possibility of establishing a Permanent Observer Mission of AALCO at the United Nations Offices at Geneva and Nairobi to strengthen AALCO's presence and activities in these nerve centres of the UN;
8. **Directs** the Secretary-General to take appropriate actions, in consultation with Liaison Officers, to ensure active participation of all Member States in the activities of AALCO, independent of their financial contributions; and
9. **Further requests** the Secretary-General to report on the activities of the Organization at its Fifty-Ninth Annual Session.

AALCO/58/RES/ORG 2  
24 October 2019

## AALCO'S BUDGET FOR THE YEAR 2020

*The Asian-African Legal Consultative Organization at its Fifty-Eighth Session,*

**Having heard** with appreciation the introductory statement of the (Deputy) Secretary-General on the Proposed Budget for the Year 2020 as contained in the Document No. AALCO/58/DAR ES SALAAM/2019/ORG 2,

**Taking note** of the comments of the Member States on the Proposed Budget,

**Noting further** that the Proposed Budget for the year 2020 was placed before the 346<sup>th</sup> and 347<sup>th</sup> Meetings of the Liaison Officers held on 13<sup>th</sup> December 2018 and 7<sup>th</sup> February 2019 respectively at the Headquarters, New Delhi, and was submitted to the Fifty-Eighth Annual Session for final approval,

**Considering** that the Proposed Budget for the year 2020 is a realistic budget depending on the actual contributions to be received,

**Acknowledging** the need to replenish the Reserve Fund of the Organization, with the objective of ensuring that it always has a six-month operational fund for the functioning of the Organization,

**Considering** all the above-mentioned reasons to place the Organization on a firm financial footing,

1. **Approves** the Budget for the year 2020 as proposed;
2. **Requests** Member States who have not paid their annual contribution for the year 2019, to do so at the earliest in order to ensure the effective functioning of the Organization;
3. **Strongly** urges Member States, who are in arrears, to fulfill their financial obligations in accordance with the Statutes and Statutory Rules of AALCO, in order to expeditiously clear the same and directs the Secretary-General to report on the status thereon in the next Annual Session;
4. **Encourages** Member States to make voluntary financial contribution in order to improve the financial situation of AALCO;
5. **Mandates** the Secretary-General to explore ways and means of raising funds by additional sources in accordance with the Statutes and Statutory Rules of AALCO; and
6. **Decides** to place this item on the provisional agenda of the Fifty-Ninth Annual Session.

**AALCO/RES/58/ORG 3**  
**24 OCTOBER 2019**

**REPORT ON THE AALCO'S REGIONAL ARBITRATION CENTRES**

*The Asian-African Legal Consultative Organization at its Fifty-Eighth Session,*

**Considering** the Report on the AALCO's Regional Arbitration Centres contained in Document No. AALCO/58/DAR ES SALAAM/2019/ORG 3,

**Noting** with appreciation the introductory remarks made by the Secretariat and the report of the Directors of the Regional Arbitration Centres,

**Reaffirming** the commitment by the Governments of the Member States towards enhancing the role of the Regional Arbitration Centres,

**Recalling** decision relating to the Integrated Scheme for the Settlement of Disputes in Economic and Commercial Transactions adopted at its Doha Session in 1978,

**Expressing satisfaction** over the increasing use of the facilities and the opportunities offered for both domestic and international arbitrations under the auspices of its Regional Arbitration Centres,

**Appreciating** the efforts and contributions of the Governments of the Malaysia, Arab Republic of Egypt, Federal Republic of Nigeria, the Islamic Republic of Iran, and the Republic of Kenya for hosting the respective Regional Arbitration Centres,

**Further appreciating** the promotional activities undertaken by the Directors of the Centres, including organization of seminars and training programmes, to promote international commercial arbitration in the Asian and African regions,

**Reiterating** the earlier decision of the AALCO on the necessity for the Governments of the Member States to promote and support the use of the Regional Arbitration Centres,

**Further reiterating** its proposal, after consultation with the Directors of the respective Regional Arbitration Centres, for the holding of International Arbitration Conference biennially, by rotation in each of the Centres, with the support of the Member States,

1. **Requests** the Member States to continue their support to the Regional Arbitration Centres and use the AALCO's Regional Arbitration Centres for resolving their disputes and in particular to consider in their contracts, the inclusion of the Arbitration Clause of AALCO's Regional Arbitration Centres;
2. **Urges** the Regional Arbitration Centres to consider to the extent possible, among themselves, the formation of a common system both administratively and financially between the Centres and common standards for the qualification of arbitrators;

3. **Directs** the Regional Arbitration Centres to meet at every AALCO Annual Session to enable an exchange of ideas and to report the outcome to the Organization; and
4. **Decides** to place this item on the provisional agenda of the Fifty-Ninth Annual Session.

**C. CHAIRMAN'S REPORT OF THE FOURTH  
MEETING OF THE OPEN-ENDED WORKING  
GROUP ON INTERNATIONAL LAW IN  
CYBERSPACE**





**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION  
CHAIRMAN'S REPORT OF THE FOURTH MEETING OF THE OPEN-ENDED  
WORKING GROUP ON INTERNATIONAL LAW IN CYBERSPACE  
2-4 SEPTEMBER 2019  
HANGZHOU, CHINA**

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The Fourth Meeting of the Open-ended Working Group on International Law in Cyberspace was held in Hangzhou, People's Republic of China on 2-4 September 2019. 10 Member States of the Asian-African Legal Consultative Organization (AALCO) participated in the Fourth Meeting of the Open-ended Working Group on International Law in Cyberspace, namely People's Republic of China, Islamic Republic of Iran, Republic of Iraq, Japan, Pakistan, State of Qatar, Kingdom of Saudi Arabia, Kingdom of Thailand, United Arab Emirates (UAE) and the Socialist Republic of Vietnam. Representatives of the International Committee of the Red Cross (ICRC) were also present as observer.

The Secretary-General of AALCO, H.E., Prof. Dr. Kennedy Gastorn, in his opening address highlighted the history and purpose of the Working Group Meetings held so far and welcomed all the delegates to the Fourth Working Group Meeting of International law in Cyberspace. He thanked the Provincial Government of Zhejiang Province and the Ministry of Foreign Affairs of China for hosting the meeting. He encouraged all delegates to actively participate in the proceedings and contribute their ideas so as to facilitate the progressive development of international law in cyberspace.

We began the programme by adopting the agenda and organization of work, which was done unanimously.

The first topic to be discussed was International Cooperation for Combating Cybercrime (issues relating to Member States' response to the questionnaire). The session began with the Special Rapporteur discussing the responses received from 11 Member States. The questionnaire, which was divided into 4 parts, was intended to be a reflection of State Practice of AALCO Member States on this subject. While there appeared to be broad normative similarities in the replies received from the countries, there were some differences on the actual application and practice of the law of cybercrimes.

Mr. Dong Hanfei, Official from Ministry of Public Security, People's Republic of China explained the approach of China to combating cybercrimes addressing various practical realities of the subject.

Mr. Chen Liang, Deputy Director for Political Affairs, Tencent Group highlighted the steps taken by the Tencent Group in cooperating with the Chinese government to fight against cybercrimes.

In the second session, which was concerned with Application of the Principle of Non-Interference in Cyberspace, Dr. Pavan Duggal, Advocate, Supreme Court of India and Chairman, International Commission on Cyber Security Law elaborated on the advent of new technologies like Artificial Intelligence, Internet of Things and Blockchain and the new challenges they present on the applicability of the principle of non-interference in cyberspace. He was clear that notwithstanding the universal nature of cyberspace and the possibility of viewing cyberspace as a “common heritage of mankind”, nothing precluded States from enacting laws regulating the use of cyberspace so as to protect and safeguard their sovereignty. Prof. Huang Zhixiong, the Rapporteur of the Working Group, thereafter, elaborated on the concept of non-intervention from an international law perspective, contextualizing it in the sphere of cyberspace.

The Second day saw the topics of Data Sovereignty, Transborder Data Flow and Data Security being dealt in detail by Dr. Hong Yanqing, Research Director, International Development Research Institution, Peking University and Mr. Albert Liu, Vice-President, Alibaba Legal Department. The distinguished panelists explained the legal, operational and technical nuances of data sovereignty, transborder data flow and data security.

The next session saw Dr. Pavan Duggal, explaining the challenges faced by States in regulating online harmful content. The last session, witnessed a discussion on Peaceful Use of Cyberspace. Ms. Margherita D’ascanio, Regional Legal Advisor and Head of Legal Department, ICRC East Asia and Mr. Du Yuejin, Vice Chairman of Chairman of Cyber Security Association of China, elaborately explained the application of IHL to cyber operations in the context of armed conflicts and the challenges being faced by States in dealing with cyberwarfare.

The delegations actively participating in the Working Group discussions, explained their domestic legislations on various aspects dealing with cybercrimes and were supportive of measures to develop the international law framework on cyberspace.

In light of the above, I would like to conclude that the discussions during the Working Group meeting indicated towards the continued relevance of the topic i.e., international law in cyberspace, especially for an intergovernmental organization like AALCO. There also seems to be a clear consensus in the meeting on the continued relevance of the Working Group and its Meetings, and that further in-depth discussions were required to finalize the way forward for the Working Group on this topic. In this context, I set forth a two-fold proposal:

1. That the Member States ought to be more active in responding to the questionnaire of the Rapporteur, circulated in furtherance of preparation of the Report on the “Special Need of the Member States for International Cooperation against Cybercrime”, as per the mandate received in the Fifty-seventh Annual Session of AALCO in Tokyo in 2018;
2. That the Member States seek the guidance and assistance of the Secretary-General to explore the drafting of a non-binding general document, a zero draft, clarifying the consensual basic principles of international law applicable in cyberspace.

I invited the views of the delegates of the Member States on the second proposal. Support was expressed by the delegate of the United Arab Emirates and Islamic Republic of Iran. The delegate of People’s Republic of China also expressed strong support, and

encouraged the Member States to provide guidance and assistance to the Secretary-General and the Secretariat, as needed, in the preparation of the document. Accordingly, the Chair's proposal was unanimously adopted.

## **XX. LIST OF PARTICIPANTS**

## **LIST OF DELEGATES AT THE 58<sup>TH</sup> ANNUAL SESSION OF AALCO**

### **MEMBER STATES**

1. Arab Republic of Egypt  
H.E. Mr. Mohammed Gabar  
Abulwafa (HOD)  
Ambassador  
Embassy of the Arab Republic of  
Egypt in Dar es Salaam, Tanzania  
  
Mr. Ahmed El-Ghoul  
Second Secretary  
Embassy of the Arab Republic of  
Egypt in Dar es Salaam, Tanzania
2. Kingdom of Bahrain  
Rania Al Sherooqi (HOD)  
Third Secretary  
Ministry of Foreign Affairs
3. People's Republic of China  
Mr. Haiwen WU (HOD)  
Counsellor  
Ministry of Foreign Affairs  
  
Mr. Xiangwen Kong  
Director  
Ministry of Foreign Affairs  
  
Mr. Kar Hei Suen  
Government Counsel  
Department of Justice  
Government of HKSAR  
  
Mr. Qiang Wang  
Second Secretary  
Embassy of China in Dar es  
Salaam, Tanzania  
  
Mr. Luyao Zhang  
Attache  
Ministry of Foreign Affairs  
  
Ms. Xiaoyuan Liu  
Third Secretary  
Ministry of Foreign Affairs
4. Ghana  
Justice Yaw Appau (HOD)  
Justice of Supreme Court  
Judicial Service of Ghana
5. India  
Ms. Uma Sekhar (HOD)

Additional Secretary  
Legal and Treaties Division  
Ministry of External Affairs

Mr. Mohammed Hussain  
Kunnumpurath Sulaiman  
Senior Legal Officer  
Legal and Treaties Division  
Ministry of External Affairs

6. Indonesia

Tudiono Tudiono (HOD)  
Director of Central Authority and  
International Law  
Ministry of Law and Human  
Rights of the Republic of  
Indonesia

Mrs. Susi Arlian Indira Dewi  
Assistant Coordination Deputy  
for International Law  
Coordinating Ministry for  
Political, Legal and Security  
Affairs

Mr. Heni Susila Wardoyo  
Assistant Coordination Deputy  
for Legal Matters  
Coordinating Ministry for  
Political, Legal and Security  
Affairs

Mr. Janiruddin Janiruddin  
Chief Bureau for General Affairs  
Coordinating Ministry for  
Political, Legal and Security  
Affairs

Mr. Victor Josef Sambuaga  
Deputy Director for International  
Conventions and Resolutions

Backy Krisnayuda  
Assistant Deputy Director of  
Economic Law and International  
Organization  
Ministry of Law and Human  
Rights of the Republic of  
Indonesia

Tomy Prihananto  
Head of Sub-section of Legal  
Assistance and Dispute  
Resolution  
State Cyber and Cryptography  
Agency of the Republic of  
Indonesia

Mr. Yudi Sutrasna  
Lecturer of Indonesia Defense  
University  
Indonesia Defense University

Setyo Horgiono  
Ministry of Foreign Affairs of the  
Republic of Indonesia

Zul Ahadi Rahmanika  
Legal Analyst  
Ministry of Law and Human  
Rights of the Republic of  
Indonesia

Mr. Puja Sumantri  
Analyst of Cooperation

Prabaswari Prabaswari  
Information Security Governance  
Analyst State Cyber and  
Cryptography Agency of the  
Republic of Indonesia

Mr. Nanda Fajar Aditya  
Head of Section for National  
Interests Protection Overseas

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|  | Mr. Alex Mwaniki<br>Senior Case Counsel |
| 2. Regional Centre for International Commercial Arbitration, Lagos | Hon. Wilfred Ikatari<br>Director        |

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|                              | Prof. Azizul Halim Yahya<br>CEO                       |
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