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**AALCO Asian-African Legal  
Consultative Organization**

**Forty-Fifth Session  
3 – 8 April 2006  
Headquarters, New Delhi  
(Republic of India)**

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**SUMMARY REPORT  
OF THE FORTY-FIFTH GOLDEN  
JUBILEE HEADQUARTERS SESSION**

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

**3 – 8 April 2006**

**1. Introduction**

1.1 The following 39 Member States participated in the Forty-fifth Golden Jubilee Headquarters Session of the Asian-African Legal Consultative Organization (hereinafter "the Session"): Arab Republic of Egypt, Bahrain, Bangladesh, Brunei Darussalam, People's Republic of China, Cyprus, Ghana, India, Republic of Indonesia, Islamic Republic of Iran, Japan, Jordan, Republic of Kenya, Democratic People's Republic of Korea, Republic of Korea, State of Kuwait, Lebanon, Libyan Arab Jamahariya, Malaysia, Myanmar, Kingdom of Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, Republic of Yemen, State of Qatar, Kingdom of Saudi Arabia, Senegal, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, Uganda and United Arab Emirates.

1.2 The following Regional Arbitration Centres of AALCO were also present: Kuala Lumpur Regional Centre for Arbitration, Lagos Regional Centre for Arbitration and Tehran Regional Arbitration Centre.

1.3 Permanent Observer present: New Zealand.

1.4 In accordance with Rule 18 of the present Statutory Rules of the Asian-African Legal Consultative Organization, the following observers were admitted to the Session:

(1) Representatives of the following non-Member States: Argentina, Burkina Faso, Bulgaria, Cambodia, D.R. Congo, Cote d'Ivoire, Greece, Holy See, Italy, Laos, Morocco, Russian Federation, Spain and Vietnam.

(2) Representatives of the following regional, inter-regional and international organizations, specialized agencies and subsidiary bodies: Commonwealth Secretariat, International Law Commission (ILC), International Committee for the Red Cross (ICRC), International Organization for Migration (IOM), League of Arab States, International Tribunal for the Law of the Sea (ITLOS), United Nations Office for Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR), World Health Organization (WHO) and United Nations University (UNU).

**2. Inaugural Session**

2.1 The Session commenced on 3rd April 2006 with the opening remarks by **Hon'ble Mr. Amos Wako, Attorney General** Republic of Kenya and the President of the Forty-Fourth Session of AALCO.

2.2 **His Excellency Ambassador Dr. Wafik Z. Kamil**, Secretary-General

of the Asian-African Legal Consultative Organization (AALCO) welcomed all the delegates to the session and thanked the people and the Government of India for hosting the Organization since its inception in 1956. He said that the Organization, a tangible outcome of the historic Bandung Conference gave a unique message to the world and highlighted whatever may be the differences in the political, economic or legal systems the States of the Asian-African regions were inextricably linked together as a common identity. This lasting message of Bandung had provided a magical effect in bringing together the countries of these two regions in various world fora. He briefly traced the history and the topics, which had been dealt with by the AALCO over the period of fifty years. He said that over the next six days, besides the nine deliberated items on the Agenda, three half-day special meetings would be convened in cooperation with the UNHCR, ICRC and the IOM. In conclusion he hoped that on the occasion of the Golden Jubilee the Member States of AALCO should resolve to rekindle the Bandung spirit of commonness and brotherly cooperation, which would lead to a better future.

- 2.3 **Hon'ble Mr. Amos Wako, Attorney General of the Republic of Kenya** and the President of the Forty-fourth Session, on behalf of AALCO, made an opening statement, wherein he outlined that the year 2006 assumes historic significance for AALCO since it would be celebrating its Golden Jubilee. On this occasion he thanked the Government of India for their generosity in hosting the Organization since the beginning as well as for gifting the Permanent Headquarters

Building to the Organization. He outlined some of the activities undertaken by the Organization during the last year and commended the Secretariat for bringing out special studies on some topics. He informed the meeting that Malaysia would shortly be holding a Special Meeting on Human Rights in Islam as mandated by the Forty-Fourth Session. It would be held in Kuala Lumpur from 15-19 May 2006. In conclusion he stated that AALCO was a unique Organization that could further strengthen Asian-African cooperation and through this unique forum, the voice of these two continents could be heard at other international fora.

- 2.4 **Hon'ble Mr. H.R Bharadwaj, Union Minister of Law and Justice, Government of India** very graciously inaugurated the Golden Jubilee Session on the 3<sup>rd</sup> April 2006. In his inaugural address he recalled that AALCO had been rendering useful services in providing a platform for exchange of ideas and objective discussions on the issues of international law of common concern to its Member States, which by nature were influenced by diverse political approaches and international political climate. Its membership had gradually increased from the seven founding Member States to currently forty-seven Member States. He emphasised that India was deeply committed to the development of international relations and law suitably reflecting the special needs, interests and aspirations of Asia and Africa and was honoured to host the Permanent Headquarters of AALCO.

- 2.5 He stated that international law was fast changing from its traditional

mode and dealing with diverse subjects particularly related to the development of law through the United Nations and its codification and progressive development. He commended the services of AALCO for the past fifty years in providing the common platform for the Asian African States and particularly the role it had played in the United Nations Conference on the Law of the Sea. He also mentioned that in today's dynamic world AALCO had a challenging role to play and should focus on priority areas of direct and immediate concern to two continents such as International Terrorism, Right to Development of the developing countries including receiving equitable benefit from International Trade, Electronic Commerce and should ensure greater interaction through its fora among the legal community of the Asian African world. He suggested that AALCO could prepare for its Member States in fashioning their responses to the ongoing dialogue in the international community on different aspects of international law. In conclusion the Minister was happy to note that the agenda for the session had covered some of the most important subjects of international law and was in no doubt that the deliberations over the next six days would prove highly productive and the Asian- African community would acquire further insight over these issues and greater commonality of positions.

2.6 **Mr. Eddy Pratomo**, Director General of Legal and International Treaties, Department of Foreign Affairs and on behalf of **H.E. Mr. Awaludin Hamid, the Minister of Law and Human Rights of the Republic of Indonesia** and the President of the Forty-third

session of AALCO provided vote of thanks. He thanked the Hon'ble Minister of Law and Justice for his approval to personally grace and inaugurate the Forty-fifth session of the AALCO and for the inaugural address which had set the tone and given guidelines for useful deliberations during the session. He also thanked the Government of India for providing AALCO with its permanent headquarters as well as further warm hospitality and excellent preparations made for the stay of delegates in the beautiful city of New Delhi. He also thanked all the Hon'ble Ministers, the Ambassadors, Delegates and Observers who had travelled long distances to participate in the Annual Session and was confident that it would result in fruitful exchange of views and experiences. Last but not the least he thanked the Secretary-General of AALCO, the Deputy Secretaries-General as well as the officials of the AALCO who had tirelessly worked hard to prepare the basic documents as well as wonderful arrangements for the session and also the back up and support provided by them during the sessions for preparation of documents.

### **3. First and Second Meetings of the Delegations of AALCO Member States**

#### **3.1 Agenda:**

The following agenda was adopted for the Forty-Fifth Session:

#### **I. Organizational Matters**

1. Consideration and adoption of Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Report of the Secretary-General

on the Work of the AALCO.

5. Report on the Work of the AALCO's Regional Arbitration Centres
6. Report on the AALCO's Centre for Research and Training (CRT)
7. Report on the matters relating to the construction of the AALCO Headquarters Building.
8. Venue of the Forty-Sixth Session.

**II. Matters under Article 1(d) of the Statutes: Matters relating to the International Law Commission.**

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

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

1. International Terrorism.
2. Law of the Sea
3. Status and Treatment of Refugees
4. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949.
5. Human Rights in Islam.
6. Establishing Cooperation Against Trafficking in Women and Children.

**IV. Matters under Article 1(b) of the Statutes: Matters of Common Concern having Legal Implications.**

1. An Effective International Legal Instrument Against Corruption
2. Expressions of Folklore and its International Protection

**V. International Trade Law Matters**

WTO as a Frame work Agreement

and Code of Conduct for the World Trade.

**VI. Three Half day Special Meetings on the topics:**

1. Legal Identity and Statelessness (AALCO-UNHCR)
2. Universal Jurisdiction and its Role in the Enforcement of International Humanitarian Law (AALCO-ICRC)
3. International Migration Law (AALCO-IOM)

**VII. Any Other Matter**

- 3.2 *Election of President and Vice-President:* Normally the President for the Session was one of the high-ranking officials from the host country. However, this being a Headquarters Session the Secretary-General outlined that there were three choices which could be exercised: (a) The Current President and Vice President to continue for another year; (b) To share the Presidency with the host country; and (c) President from the host country. **His Excellency Hon. Amos Wako, the Attorney-General of the Republic of Kenya**, declined the offer to continue for another year and graciously proposed the nomination of **Mr. Narinder Singh, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India** as President of the Forty-Fifth Session. The nomination was seconded by the Leader of the delegation from People's Republic of China, and was unanimously elected. The Leader of the delegation from Japan proposed the nomination of the **Mr. Vincent Lyimo, Permanent Secretary and Deputy Attorney General of United Republic of Tanzania** as Vice-President of the Forty-Fifth Session. The proposal of the nomination was

seconded by the Leader of the delegation from Uganda, and was unanimously adopted.

**The President of the Forty-Fifth Session, Mr. Narinder Singh, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India** in his statement after his election, *inter alia*, outlined the contribution of the outgoing President of the Forty-Fourth Session and thanked him for a job well done. He assured guidance to the Secretary-General, and he would do his best to live up to the expectations of Member States in the Golden Jubilee Year and rekindle the spirit of Bandung. He welcomed all the participants to the Meeting.

3.3 **Admission of Observers:** The Admission of Observers to the Session, pursuant to Statutory Rule 18(1), was unanimously approved.

3.4 **Report of the Secretary-General on the Work of AALCO:** The Secretary General gave his report on the work of AALCO, and while emphasizing upon the work of the Organization for the past 50 years fondly remembered the founding fathers and expressed sincere gratitude for their far-sighted vision which had enabled the voice of Asia and Africa to be heard in the more effective manner in various inter-governmental fora. He thanked for the generosity and magnanimity of the host of the organization the Government and people of India who had provided the organization with its Permanent Headquarters. He then provided the meeting with the brief overview of the activities of the organization over the last one year and stated that rationalisation of the agenda which began in 2003 during the Seoul Session has been followed since then. He then briefly highlighted

the developments on the non-deliberated items which included: Extra-territorial Application of National Legislation: Sanctions imposed against third parties; Jurisdictional Immunities of States and their Property; International Criminal Court: Recent Developments; Environment and Sustainable development and Report on the Work of the UNCITRAL and other International Organizations in the field of International Trade Law. The Secretary-General stated that this being the Golden Jubilee year of the Organization, he had received many requests from International Organizations which were willing to co-operate in holding the customary one-day Special Meeting. However, departing from the past practice it was decided that on this occasion three half day Special Meetings be convened in co-operation with the UNHCR, ICRC and IOM. Thereafter he recalled that the meetings, which had been attended by the AALCO over the past one year including the ILC, the Legal Advisers' Meeting and other meetings the details of which were provided in the Secretary-General's Report. He also re-emphasised the importance of having co-operative arrangements with International Organizations, the result of which would be seen after moving to the new Headquarters Building in the form of training seminars for officials of AALCO Member States.

Emphasizing on the useful contribution made by the open-ended Drafting Committee established every year during the last three sessions, which has since become an integral part of the work of the Session, would also be established during this Session. The role of the Committee was the preparation of the Summary Report, Resolutions and any other

documents prepared for adoption by the session.

He then briefly outlined the important inter-sessional activities as well as meetings attended by himself and other officials of AALCO during the past year. Important amongst those were the two-day seminar on 8<sup>th</sup> and 9<sup>th</sup> December 2005. For the release of the study on ICRC Customary International Humanitarian Law wherein many member States participated. He also recalled his visits to the Arab Republic of Egypt and his meeting with H.E. Mr. Ahmed Aboul Gheit, the Minister of Foreign Affairs, on 9<sup>th</sup> February 2006 and his meeting with H.E. Chief Bayo Oja, San Minister of Foreign Affairs, Republic of Nigeria with whom he discussed ways and means of strengthening the ties between the respective countries and AALCO. He also inaugurated the establishment of the Advisory Committee of the Regional Centre for international Commercial Arbitration on 7<sup>th</sup> February 2006 at Lagos.

Thereafter he praised the Secretariat's initiative in restructuring and revitalizing the publications which was very well received by the Member States. The Yearbook of the Asian-African Legal Consultative Organization, the monthly Newsletter and the AALCO Quarterly Bulletin now enjoy the reputation amongst international publications. The Special studies on some of the topics namely, Corruption, International Terrorism as well as Statelessness: an Overview from the Asian-African and Middle East perspective would be shortly released.

Once again expressing gratitude to the people and Government of India for providing the AALCO with its Permanent Headquarters, he briefed

the Member States of the events beginning with the laying of the foundation stone of the building on 14<sup>th</sup> April 1998, the commencement of the construction work in 2002 and some technical hurdles which had delayed the completion of the building and it would nevertheless be soon ready for occupation.

- 3.5 **Budget:** The Secretary-General introduced the Budget for the year 2007 which had been approved by the Liaison Officers during their 290<sup>th</sup> Meeting held on 28<sup>th</sup> February 2006 and placed for adoption at this meeting. He stated that the deficit in the Budget was mainly due to the fact that the AALCO Secretariat is in the process of shifting to its new Headquarters Building. The Secretary-General also referred to the magnitude of arrears and urged Member States to consider, on an urgent basis, to pay their contributions and emphasized that serious attention should be paid to place the AALCO's financial position on sound footing. Thereafter, the Budget for the year 2007 was unanimously adopted.

The Secretary-General stated that Somalia had informed him of the serious financial difficulties being experienced by it in the present times, because of which it was unable in defraying its arrears as well as further financial contributions. He said that Somalia had very humbly requested all the Member States to take a decision to waive from Somalia, the arrears and to dispense it from paying contribution till Somalia would start resuming its activities and start being able to pay. The Secretary-General suggested that the Member States might consider granting such a waiver.

- 3.6 **Report on AALCO's Centre for Research and Training (CRT):** Mr.

Motokatsu Watanabe, Deputy Secretary-General of AALCO while introducing the item stated that in accordance with the mandate, the website of the AALCO had been significantly modified and upgraded in order to make it more user-friendly, interactive and informative. In this regard he requested the Member States to provide the AALCO Secretariat with their e-mail addresses and URL of the Ministry and officials in charge of AALCO. Further, the work on establishing a web-link, 'Legal Study-Guide', is underway, which intends to provide useful information on the topics on the Work-Programme of AALCO, including special studies on various topics and convening inter-sessional conferences. In pursuance of the key objectives of the Centre to impart training to the officials from the Member States, he said that the Centre is resolved to organize training workshops and refresher courses with greater zeal once the organization moves to the Permanent Headquarters Building where adequate facilities for conducting such training would be made available. However, he emphasized that the working of the Centre has faced with serious shortage of funds for which the Member States could consider establishing a "Research and Training Fund".

- 3.7 ***Signing Ceremony of the Memorandum of Understanding for the Establishment of AALCO's Regional Arbitration Centre at Nairobi, Republic of Kenya:*** At the Thirty-Third Session of the Organization held in Tokyo, Japan (1994), the Heads of Delegations of Member States had adopted a proposal for the establishment of additional Arbitration Centre in Nairobi. The Government of Republic of Kenya, through the office of the Attorney General, expressed their desire of

establishing the fifth Regional Centre for Arbitration in Nairobi, Kenya. Pursuant to this, the Secretary-General of AALCO and Attorney General of the Republic of Kenya signed, before the plenary session of Member States, a Memorandum of Understanding (MOU) for the Establishment of the Regional Centre for Arbitration in Nairobi.

#### **4. First and Second General Meetings**

- 4.1 Delegations from the following Member States made statements during the first and second General Meetings: State of Kuwait, People's Republic of China, Japan, Tanzania, Sudan, Republic of Korea, Pakistan, Thailand, Bahrain, Malaysia, Arab Republic of Egypt, Nepal, Republic of Indonesia, Ghana, Myanmar, Islamic Republic of Iran, Republic of Kenya, United Arab Emirates, Syrian Arab Republic, Republic of India, Republic of Yemen and Sri Lanka.
- 4.2 The Observer Delegation from the Holy See also made its statement.
- 4.3 Many delegations expressed their sincere gratitude to the Hon'ble Mr. H.R. Bhardwaj, Union Minister for Law and Justice, Republic of India for his inspiring address, wherein he recalled the historic background and growth of the organization over the last fifty years, which provided ample guidelines for the deliberations during the Forty-fifth session. They also expressed their appreciation for the excellent arrangements made by the AALCO Secretariat for hosting the Golden Jubilee Headquarters Session in the historic city of New Delhi.
- 4.4 Several delegations recalled that AALCO was a tangible outcome of the historic Bandung Conference in 1955, the first of its kind to be convened independently by the Asian-African countries and stressed that it

was the Bandung spirit, the core of these principles being unity, friendship and co-operation that provided for shared aspirations of the people of the Asian African regions and provided a common vision for the countries of Asia and Africa, which brought them together in several international fora. This Session was being convened on the occasion of the Golden Jubilee of the Organization and it was being celebrated in a manner which commensurates with the growing status of the Organization that is now firmly placed as an important inter-regional Organization. They shared the view that despite the challenges to contemporary international law, the basic principles of international law, including the Five Principles of Peaceful Co-existence, have been widely accepted by international society, and are playing an increasingly important role in maintaining world peace and promoting common development.

- 4.5 Many delegations profoundly thanked the Government of India for hosting the Organization since its inception and for gifting to it the Permanent Headquarters building located in one of the most prestigious area in the Diplomatic Enclave of Chanakyapuri in New Delhi, which would be inaugurated in the presence of all the delegations of Member States during this Session. Delegations welcomed with applause the announcement by the Chinese Delegation of a gift, on behalf of the Government of the People's Republic of China, in the form of a tapestry depicting the Great Wall of China, to AALCO for its new Headquarters Building. The Delegation of State of Kuwait proposed that the AALCO Secretariat should draft a letter of appreciation and thanks to the Government of India for hosting the Organization with its Permanent Headquarters and also the

delegation of Kuwait suggested that the Conference hall in the building be named in the Memory of the Father of the Nation, Mahatma Gandhi. However, due to some technical problems in the completion of the Permanent Headquarters building shifting to the Permanent Headquarters would be delayed and in this context one delegation suggested that a "Technical Committee" comprising of the Member States, the Host Government and the AALCO Secretariat be established in order to resolve these impediments at the earliest.

- 4.6 Various delegations expressed satisfaction at the growth of AALCO and highlighted its importance as the only international legal consultative body in the Asian African region. They emphasized the need to increase efforts to expand the membership of AALCO. One delegation emphasized the need to strengthen the AALCO's financial basis and expressed its hope for an early solution to the problem of arrears in contribution. They stressed on the increasing importance of the role of AALCO as a forum to exchange views on issues of mutual interest, and the need to work closely with the United Nations and other International Organizations. Against this background AALCO had signed Cooperation Agreements and Memorandum of Understanding with seventeen intergovernmental institutions and is in the process of doing so with many other important organizations. The fruits of these co-operative agreements would be further strengthened and prove more useful for the officials from the Member States who could attend the training courses under the auspices of the AALCO's Centre for Research and Training. Diplomas would be awarded to the participants after the completion of the training courses.



- 4.7 Many delegations expressed approval of the topics on the agenda for deliberations during the three half day special meetings namely, Legal Identity and Statelessness (AALCO-UNHCR), Universal Jurisdiction and its Role in the Enforcement of International Humanitarian Law (AALCO-ICRC) and International Migration Law (AALCO-IOM) and noted the significance of these topics and the need for in-depth consideration of these issues.
- 4.8 While recalling the important work on various agenda items over the last fifty years, several delegations highlighted its role in the UN Convention on the Law of the Sea particularly the concept of the Exclusive Economic Zone and Delimitation of the Continental Shelf, an area which could once again be explored in view of the new developments in this field.
- 4.9 Several delegations reflected upon the contemporary problems faced by the Member States, particularly mentioning the situation in the Middle East and the gross violations of international law principles by the Israeli occupying power in the Palestinian land. On this occasion one delegate drew attention to the situation in Darfur contrary to its reflection in the UN Security Council Resolutions and its referral to the ICC and the steps being taken to normalise the situation in that region. A delegation stated that another issue of serious concern was the nuclear capability for the peaceful uses of nuclear energy, which was being dealt with in an absolutely unjust manner by the some Members of the UN Security Council and in this regard it was suggested that AALCO places on its agenda a new item "Security from International Law Perspective".
- 4.10 Member States also drew attention to the phenomena of corruption in the Asian-African region, the increase of Organised Crimes, particularly, Trafficking in Women and Children, International Terrorism, a scourge that adversely affected the life and property of millions of innocent people in the world, including Asia and Africa. They suggested that the International Conventions on these topics be ratified. Another topic of great concern of the Member States was Human Rights in Islam. Many of the delegations highlighted that human rights were firmly entrenched in Islam and were widely respected and recognised. In this regard some delegation condemned the mass media of some countries for its disrespect to Muslims faith by the insult to the prophet of Islam and requested the respect for others and which ever pertained to religions and believes. The Delegation of State of Kuwait also suggested the consideration of drafting a Convention, Charter or Declaration of Human Rights in the Asian African region in accordance with the International Conventions. They also thanked the initiative of the Government of Malaysia which would host a meeting of international experts on Human Rights in Islam from 15<sup>th</sup> to 19<sup>th</sup> May 2006 for which invitations were extended to eminent jurists in Islamic Law from round the world including those from Member States of AALCO. .
- 4.11 Delegations also underscored the importance of an Asian-African common stance at the meetings of the World Trade Organization, which could adequately reflect their concerns in international trade law in the globalizing world.

### **Third General Meeting**

#### **5. Agenda Item III: Law of the Sea**

5.1 While introducing the Secretariat Report on the Law of the Sea, the Deputy Secretary-General Mr. Motokatsu Watanabe highlighted the important role played by the AALCO in the elaboration of the United Nations Convention on the Law of the Sea (UNCLOS or the Convention), 1982 and subsequent to its entry into force in following up the developments in the institutions created by the Convention, namely the Meeting of Parties, International Seabed Authority, International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf and since the establishment of the United Nations Informal Consultative Process on Oceans and the Law of the Sea by the UN General Assembly in 1999. He stated that the present Secretariat Report also contained an introductory note on the "Delimitation of Maritime Zones Particularly the Exclusive Economic Zone and the Continental Shelf" which *inter alia* highlighted the rich jurisprudence of the International Court of Justice. In view of the historical and well-recognized role of AALCO on the topic, he proposed to the Member States, to consider the feasibility of holding an open-ended Experts Group Meeting of Experts nominated by Member Governments on the Law of the Sea.

5.2 Judge Hugo Caminos, Observer of the International Tribunal for the Law of the Sea in his statement commended the contribution of AALCO to the strengthening of the rule of law in international relations. In his elaborate statement, he highlighted upon the work of the Tribunal, which was a specialized judicial body established by the UNCLOS. He stated it was one of the options available to the parties to the Convention under Article 287, for the

compulsory settlement of disputes concerning the interpretation or application of the Convention. The jurisdiction of the Tribunal was also open to International Organizations, which were entitled in accordance with Annex IX of the Convention to become Parties to it. He emphasized that independence of the freedom of choice of procedure by the Parties to the Convention, the Tribunal had compulsory jurisdiction in two legal proceedings which required urgent action: provisional measures and prompt release of vessels and crews. Judge Caminos highlighted the judicial work done by the Tribunal over the years and how it had made a substantial contribution to the development of the international law.

5.3 Delegations from People's Republic of China, India, Japan, Republic of Indonesia, Arab Republic of Egypt, Pakistan, Republic of Yemen, Malaysia and the Republic of Korea made statements on the agenda item. Several delegations recalled the important contribution made by the AALCO in development of the UNCLOS and hoped that the Organization would continue to remain active on this very important agenda item. The Secretariat proposal for convening a meeting of an AALCO open-ended Group of Experts on the Law of the Sea also drew support from some of the delegations. A delegation highlighted three issues that it felt were of particular importance in strengthening the implementation of the Convention: first, the implementation of the provisions pertaining to the protection and conservation of the marine environment, research in marine science and the development and transfer of marine technologies; second, the capacity building of developing countries to enable them to effectively use marine resources;

third, the strengthening of cooperation and coordination among relevant international organizations and mechanisms in addressing ocean issues.

5.4 Another delegation suggested that AALCO could possibly consider taking up the identification of emerging legal issues originating from certain perceived gaps in the UNCLOS 1982 and other post UNCLOS developments in cross-cutting fields such as the Convention on Biological Diversity. A delegation was of the view that AALCO should continue to show strong interest in the interpretation of the UNCLOS, and it could play an objective and constructive role in promoting discussion on the interpretation of the provisions of UNCLOS related to maritime delimitation. In the context of delimitation of maritime boundaries, a delegation noted that the drawing of boundaries was essentially a task for the States involved. As such, States may conclude bilateral agreements establishing such boundaries as provided for under UNCLOS. However, due to geographical diversity and differing views as to what equity requires, such agreements were not easily concluded. One delegation mentioned that the Secretariat in its Report had pointed out that the text of the UNCLOS “gives little guidance on the applicable substantive rules or the factors that are to be taken into consideration except by way of a reference to “international law as referred to in Article 38 of the Statute of the ICJ” and suggested that under such circumstances, a State has little choice but to rely on the jurisprudence of international courts in order to determine the methods to achieve an “equitable solution”.

5.5 Another delegation drew attention to the issue of maritime security and in this regard called for addressing the important issue of having a proper definition of piracy. A delegation called for the extension of time-limit for filing the claims pertaining to extended Continental Shelf, by a further period of five years. Filing of such claims was, the delegation stated, difficult for developing countries due to lack of scientific, technical expertise and financial resources. A delegation highlighted the issue of the protection of living resources on the High Seas and drew attention to the Review Conference on the 1995 United Nations Fish Stocks Agreements, scheduled to be held at the UN headquarters from 22<sup>nd</sup> to 26<sup>th</sup> May 2006, and hoped to see cooperation on this issue between the Asian and African countries, more strengthened so that their voices could be heard in the Review Conference.

## **6. AALCO-UNHCR Half day Special Meeting on “Legal Identity and Statelessness”**

6.1 AALCO-UNHCR joint Special Meeting on “Legal Identity and Statelessness” was held in the morning Session on 6<sup>th</sup> April 2006.

6.2 **Ambassador Dr. Wafik Zaher Kamil, the Secretary-General of AALCO**, in his welcome address traced the long standing relationship between AALCO and UNHCR since 1963 when the topic Status and Treatment of Refugees was introduced on the agenda at the reference of the Arab Republic of Egypt. The present meeting had been organized to understand the various nuances of Statelessness a phenomena which was not much debated. He stated that the problem of statelessness remained one of the central issues in international

relations today. The international community had witnessed several situations of mass displacement that involved questions of statelessness in the post cold war era. Though international legal instruments proclaimed a right to have nationality to everyone, how this right is to be realized remained unclear. The importance of this legal attribute of nationality, indispensable to the enjoyment of fundamental human rights, found reflection in the saying that it provided a “right to rights”.

6.3 The Secretary-General stressed that international law stipulates that it was for each State to determine, by operation of national law, who are its citizens. However, it had also been noticed that international law does place some limitations on State sovereignty in this regard with the result that the legislative competence of States in matters of nationality was not without limitations. It was emphasized by the Permanent Court of International Justice (PCIJ) as early as the year 1923 that “the question whether a certain matter is or is not solely within the jurisdiction of a State was essentially a relative question; and depended upon the development of international relations”.

6.4 He emphasized that international law, therefore, established certain criteria as to the enactment of national legislation and practice in the area of statelessness. However despite developments in international law and practice relating to nationality, the international community faced many situations of statelessness and inability to establish a nationality. The problem arose in connection with State succession and adoption of nationality legislation by newly independent States. Those affected mainly included life-long residents of a State, and ethnic minorities. The problem of

Statelessness harshly affected women and children more than it affected others. The harsh consequences that lack of nationality entailed for women could be realized from the fact that many States in the world still adhered to the long standing principle of the “Unity of Nationality” according to which a woman who married a foreigner automatically acquired his nationality losing that of her own. Similar was the situation of children who lost their nationality due to the loss of their father’s nationality.

6.5 The international legal regime on the issue of statelessness primarily revolved around two instruments namely, the Convention Relating to the Status of Stateless Persons 1954, and the 1961 Convention on the Reduction of Statelessness. The former establishes minimal rights for stateless persons and obliges the State Parties to treat stateless persons no less favourably than aliens generally. The focus of the latter was the reduction of future cases of statelessness and the eventual elimination of the occurrence of statelessness.

6.6 He also informed the delegations that a joint AALCO-UNHCR study on “Statelessness: An Overview from the African, Asian and Middle Eastern Perspective” was underway and would be released shortly.

6.7 **Dr. Carol Batchelor, the Chief of Mission UNHCR, New Delhi**, in her introductory statement on “Legal Identity and Statelessness: The Link to Displacement” stated that AALCO remains an appropriate forum best suited to review the problem of statelessness from a legal perspective. She informed the gathering that UNHCR had been concerned with the problem of statelessness for many years. While tracing the problem she

opined that though the 1951 Convention on the Status and Treatment of Refugees had a Protocol on Statelessness attached to it when it was drafted originally, the drafters subsequently opted for much broader and more specific approach than that required for refugees.

- 6.8 Dr. Batchelor reiterated the view that the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness still remain the international legal reference points on matters related to statelessness.
- 6.9 While describing the possible situations that could trigger the situations of statelessness, she held that though *jus soli* (citizenship according to birth) and *jus sanguinis* (citizenship according to parentage) are generally accepted as the legitimate standards for the granting of nationality, conflict between these two approaches could result in a situation of statelessness. She also pointed out the fact that dissolution of States, as it occurred in the case in Czechoslovakia, former Soviet Union and former Yugoslavia, could prove to be disastrous for individuals because in these cases the people did not move out from their country, instead their national borders around them disappeared.
- 6.10 She also reiterated that the problem of statelessness could be a root cause of displacement, refugee flows, forced migration and many a host of related problems. She succinctly described the perennial need for the individuals to belong to a community or society.
- 6.11 **Mr. Virendra Dayal, the former Under Secretary-General of the United Nations**, the Chairperson of the meeting, while setting the tone for the panel discussion congratulated Dr.

Carol Batchelor for her lucid and comprehensive introduction to a topic which touched the lives of millions of people around the world. He went on to add that the meeting would be divided into two parts. In the first part the legal dimension of the problem and its various aspects would be discussed, which would be followed by the exploration of possible solutions to the problem.

- 6.12 Mr. Dayal stated that the issue of statelessness remained largely misunderstood and an unacknowledged subject. He further added that the fact that only 59 States were Parties to the 1954 Convention on the Status of Stateless Persons and 31 to 1961 Convention on the Reduction of Statelessness was not indicative of the desire of States to find solutions. He compared these instruments with that of the 1989 Convention on the Rights of the Child which had been ratified by 189 Member States of the United Nations.
- 6.13 He referred to the specific provisions of those treaties, which had bearing on the situation of stateless persons, viz, the 1966 International Covenant on Civil and Political Rights, 1979 Convention on the Elimination of all forms of Discrimination against Women, the 1965 Convention on the Elimination of Racial Discrimination, and the 1989 Convention on the Rights of the Child. He stressed the need for an already existing treaty body engaged in this regard by focusing exclusively on the protection of stateless persons.
- 6.14 **Justice Sujata Manohar, formerly Judge Supreme Court of India and Member of the National Human Rights Commission**, in her presentation stated that since the problem of statelessness remained unacknowledged and unrecognised to

a great extent, resolving its various dimensions could be extremely difficult. She brought home the importance of resolving this problem by citing an opinion of the Supreme Court of India in the *Chakmas v. The State of Arunachal Pradesh* in which the Court considered the question of granting nationality to illegal migrants over a period of time. She also highlighted the case of a woman considered by the Supreme Court of Botswana as a positive precedent.

- 6.15 While dealing with the harsh consequences that lack of nationality entailed for women and children, she lamented the fact that still many countries in the world adhered to the age old principle of unity of nationality, according to which a woman acquired the nationality of her husband after marriage.
- 6.16 She expressed deep concern that the Palermo Protocol of 2000 which dealt with Trafficking in Persons particularly Women and children does not deal with the issues of nationality of trafficked persons.
- 6.17 She further said that in order to reduce the incidence of statelessness, it was deemed necessary for States to adopt international legal norms on the granting and the determination of nationality at the national level.
- 6.18 **Dr. Ajay K. Dubey, Professor in African Studies, Jawaharlal Nehru University**, in his presentation on the problem of statelessness in the African region, particularly Eastern Africa and the Horn of Africa, informed that though no specific data was available on the exact numbers of stateless persons, a sizeable number of them were found in Africa.
- 6.19 He drew particular attention to the two kinds of people who suffer this

problem. The first category of people belonged to the historical group, which include those tribes living in Congo and Uganda, who despite of long-term stay had not been conferred citizenship. The second category of people was the ethnic groups belonging to the heterogeneous African Community, but not having any nationality. In this regard he cited the examples of Ethiopia and Somalia.

- 6.20 He was of the firm opinion that the definition of a "Stateless Person" should be expanded so as to include those persons who were denationalised on ethnic or minority grounds.
- 6.21 While stressing upon the importance of the distinction between *de facto* and *de jure* stateless persons, he opined that though the former were considered nationals of their States, theoretically they were not sufficiently integrated into the mainstream so as to ensure protection of their human rights. While stressing the importance of democratic governance in the context of Africa, he opined that the establishment of democracy would go a long way in integrating the marginalized and *de facto* stateless persons into the mainstream.
- 6.22 After the above presentations, Dr. Carol Batchelor, while dwelling on the results that emanated from the Questionnaire from UNHCR, on the situation of stateless persons, indicated that 84% of the States had adopted some solutions to the problem of statelessness and 54% of States had created mechanisms to identify Stateless Persons on their territory. She added that the identification of stateless persons was essential in order to find solutions to their problems.
- 6.23 In her view the issue of statelessness represented a strange legal concept

- since an individual was found to have no legal identity through a legal definition. Moreover, in a world composed of States, a Stateless person had no practical place to exist under international law.
- 6.24 While trying to identify the possible solutions to the problems related to statelessness, she held that active cooperation among States on sharing of information could be very beneficial in this regard, and highlighted the importance of both legal solutions and practical approaches.
- 6.25 A question and answer session followed thereafter. Delegations from Pakistan, Oman, Bangladesh, Kuwait, India, Qatar, People's Republic of China and Islamic Republic of Iran posed very important and comprehensive questions touching upon the various aspects of the issues discussed which included, the interface between refugee movements and statelessness, the international and regional efforts undertaken to address the problems of stateless persons, the question of the rights of non citizens, interface between trafficking of women and children, illegal migration and statelessness, the need and possibility of becoming parties to the 1954 and 1961 Conventions related to Statelessness and its consequent obligations on State Parties.
- 6.26 Some delegations also posed questions on the protection of the rights of aliens, the status of second and subsequent generation of migrants as well as the paradox, which existed in the State efforts to identification of stateless persons, and their unwillingness to cooperate in that process for the fear of being deported from that country.
- 6.27 Some delegations came out with very constructive and useful suggestions to deal with the issues related to statelessness, which included, the need to active cooperation among States as well as active cooperation between various international organizations. It was also suggested that UNHCR could take the lead in this regard and AALCO could carry forward the entire deliberations and discussions to chalk out a new course of action in the future, as well as consider the possibility of convening another meeting of experts to make an indepth study on the issue.
- 6.28 While summing up the presentations from the experts, deliberations and suggestions received from the Member States, Dr. Carol Batchelor highlighted the most important points derived from the discussions and possible course of future action that could be undertaken by both UNHCR and AALCO on the issue of statelessness. She noted that though UNHCR has a particular mandate concerning Statelessness, and has assisted both States and Stateless persons. She agreed with the observations made by the participants that the problems of refugees and statelessness do overlap and require different legal treatment. She pointed out the lacuna existing in the international legal regime in that, there is no comprehensive international convention dealing with all the components of nationality. She also stressed upon the need to address the problem of statelessness by using the age-old principle of burden sharing. She called for international and regional cooperation not only between States but International Organizations concerned with this problem. Finally, she highlighted the need to take the next step forward based on the guidance and wisdom of today's discussions and deliberations.

7. **AALCO-ICRC Half Day Special Meeting on "Universal Jurisdiction and its Role in the Enforcement of International Humanitarian Law"**

7.1 **Amb. Dr. Wafik Z. Kamil**, Secretary General of AALCO welcomed the delegates and the experts. The Secretary General recalled AALCO's long-standing association with the ICRC. While focusing on the topic for the discussion he said that the principle of universal jurisdiction allowed any State to prosecute individuals who were believed to have committed certain international crimes, even if the prosecuting state had no link to the crime in question other than the bonds of common humanity. However, he also pointed out certain issues like double jeopardy, the lack of uniform legal standards both in procedural rights as well as in sentencing, and the retrospective effect of legislation on crimes committed in the past, on which international community should have common understanding. He hoped that the distinguished panelists would focus on some of the significant issues involved in the application of universal jurisdiction

7.2 **Mr. Vincent Nicod**, Head of the Regional Delegation, ICRC, New Delhi, in his welcome address, congratulated the AALCO Member States on the Golden Jubilee of AALCO and thanked the Organisation for giving the opportunity to ICRC to take part in the Session. While recalling the Seoul resolution on the "Relevance of International Humanitarian Law in Today's Armed Conflicts" he expressed the hope that AALCO, with its growing number of Member States would be well equipped to help the ICRC fulfill its role as custodian of international humanitarian law. He stated that a

scrutiny of the evolution of conflicts in the last few years suggested a shift in the nature of armed conflicts and international humanitarian law was being challenged by the nature of these new types of conflicts. However, he underlined that international humanitarian law had been under constant refinement and change to meet the new challenges.

7.3 **Mr. Yves Daccord**, Director of Communications, ICRC, Geneva, spoke on the topic entitled "Difficulties Facing International Humanitarian Law (IHL) Compliance in Modern Conflicts". He stated that the international community had given the ICRC a mandate to act in situations of armed violence through international humanitarian law treaties and other legal instruments. Beyond identifying specific tasks for the ICRC to carry out, this mandate fixes the characteristics of the organisation's specific approach: impartial, neutral, and independent. In carrying out its mandate, the ICRC was confronted with increasingly complex operational realities and ICRC delegates operate in very polarised environments. Thus ICRC needs to conduct operations in impartial, neutral and independent way. He said that IHL set up a system for repressing violations centred around the obligation of States to try persons accused of grave breaches in their national courts regardless of the location of the crime or the nationality of the perpetrator. This concept of universal jurisdiction was a key element in ensuring the effective repression of grave breaches. Beyond national jurisdictions, different international criminal tribunals had been set up since the early 1990s, which supplement the mechanisms provided for in the core IHL treaties. Even with the establishment of international institutions with jurisdiction over certain violations of



IHL, States retained the primary role in the prosecution of alleged war criminals and national courts remained the cornerstone of the IHL enforcement framework. Nothing in the statutes of these international criminal tribunals released States from their obligations under existing instruments of IHL or under customary international law. In the IHL system, preventive and remedial action – the work of the ICRC and other humanitarian organisations– and punitive action – the work of States and international criminal tribunals – were complementary means of regulating violence in armed conflict and ensuring respect for the law.

7.4 On the role of the ICRC, he said that the ICRC stopped short of playing a punitive role in response to violations and it did not have the mandate to establish criminal responsibilities. It was the obligation of States and the international community to perform that role. Humanitarian action and the pursuit of justice were not an "either-or" proposition; both were essential to the functioning of the envisaged IHL system. While concluding his presentation he observed that the IHL system was predicated upon effective preventive and remedial action as well as effective punitive action. The ICRC and States were both essential actors in this system – the ICRC for its role in providing protection and assistance to victims of armed violence, and States for their pivotal role in repressing violations of IHL.

7.5 **Dr. Iskander Ghattas** spoke on the “Responsibility of States for the Implementation and Enforcement of IHL”. He stated that IHL was not just based on Conventions but also contained certain standards, which were imperative norms of international law. These norms at present were part and parcel of

customary international law, which States should observe. He pointed out three important steps to be taken by States for the implementation and enforcement of IHL. These were: responsibility to ratify or accede to Geneva Conventions and other instruments; responsibility to disseminate IHL; and enforcement of IHL.

7.6 He said that when the United Nations Charter prohibited war some argued that since there was prohibition on war there was no need for IHL. However, it was soon realised that there were not only conflicts between States but non-State actors were also involved. While pointing out the significance of the IHL he said that establishment of national commissions on IHL would help the governments in the implementation of IHL. He said that there was no contradiction between various cultural and religious values and the obligations of IHL. He also referred to the complementary jurisdiction of the International Criminal Court. He suggested that the Member States and the Secretariat of AALCO give special attention for legislative action at the domestic level. He also suggested that they could bring out a legal guide to facilitate the implementation of IHL. He also underscored the significant contribution being made by the ICRC in the implementation of IHL.

7.7 **Prof V.S.Mani** presented a paper on ‘Individual Criminal Responsibility for War Crimes and the Duty to Prosecute’. He spoke about the history of grave breaches regime of International Humanitarian Law from the Leiber Code to the efforts of Henry Dunant and the establishment of ICRC. He said that the International Criminal Law began to take shape only after the Second World War and the experiences of

Nuremberg tribunal and that until then the focus was on amelioration of the victims of war. He pointed out that there seemed to be confluence now between grave violations of IHL and grave violations of human rights and glaring evidence in this regard was the 2005 guidelines by the Human Rights Commission, which were endorsed by the UN General Assembly. He spoke about the interface between the international criminal jurisdiction and national jurisdiction. He emphasized on the duty of States to 'extradite or prosecute', which began with anti-terrorism treaties. He said that the principle of 'extradite or prosecute' appeared in Hague and Montreal Conventions and in subsequent other treaties, but these conventions did not say about direct prosecution but submit the case for prosecution. He referred to some scholarly writings, which were emphasizing on the *jus cogens* and obligations *erga omnes* for the prohibition of violations of IHL. He emphasized on the duty to prosecute as an absolute obligation, which would need international cooperation for securing the evidence and arrest of the accused. He also stressed on the need to carry out the investigation in good faith. He expressed his doubts as to whether we could prosecute a criminal any where in the world for offences committed any where in the world. He was vary of justifying unbridled right of universality under international criminal law.

- 7.8 **Mr. Larry Maybee**, ICRC Regional Legal Adviser for South Asia, spoke on the "The Concept of Universal Jurisdiction in IHL". He stated that effective implementation of IHL obligations was required to ensure the proper enforcement of IHL rules and this would be accomplished, in part, through the effective investigation and prosecution of offenders. To this end,

IHL treaties required States to enact, where necessary, domestic legislation, making war crimes as offences against the domestic law. It also included measures to provide the national courts with the ability to exercise jurisdiction over offenders, whatever their nationality, and bring them to trial. Given the nature of war crimes as among the most serious crimes of international concern, States should give their courts the widest possible jurisdiction to permit them to accomplish this goal.

- 7.9 While speaking about the concept of jurisdiction, he stated that States exercise jurisdiction over criminal acts in national courts by virtue of five principles, namely: Territorial jurisdiction; Active personality (nationality of suspect) jurisdiction; Passive personality (nationality of victim) jurisdiction; Protective jurisdiction; and Universal jurisdiction. While speaking on universal jurisdiction he said that it originally developed as an exception to the general principle of territorial jurisdiction. It involved the assertion of jurisdiction over offences regardless of the place where they were committed or the nationality of the perpetrator. Under universal jurisdiction, a State was entitled or even required to bring proceedings with respect to certain serious crimes, irrespective of the location of the crime, the nationality of the perpetrator or the victim. This principle only applied to a limited number of crimes – those which were considered the most serious crimes under international law. These crimes, which States had historically exercised universal jurisdiction over, include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against humanity; (5) crimes against peace; (6) genocide; and (7) torture. The universality principle was based on

the assumption that some crimes were so universally condemned that the perpetrators were considered the enemies of all people and, therefore, any State, which had the custody of the perpetrators might punish them according to its law applicable to such offences.

7.10 He also spoke on the application of universal jurisdiction over war crimes in situations of both international and non-international armed conflicts. While focusing on the national legislation on universal jurisdiction he underlined that States adopt different approaches. The difficulty with State practice in the area of universal jurisdiction over war crimes was that there did not appear to be a coherent approach in this area. Limitations and restrictions that were frequently imposed by States in their national legislation were not legally required under international law. These restrictions unnecessarily restrict the universal jurisdiction provided for under the IHL treaties – specifically the Geneva Conventions – the provisions of which were quite broad. He also spoke about the jurisdiction of the International Criminal Court.

7.11 He underlined that ICRC did not advocate any single law or model for States to follow in establishing universal jurisdiction over war crimes under their domestic laws. Although the ICRC had developed a model implementation law for Commonwealth States, it was merely offered to provide assistance to States, where required. In terms of approach, however, the ICRC did encourage States to adopt all measures (legislative or otherwise) that were necessary to permit them to satisfy their IHL obligations to effectively prosecute war crimes, wherever they occur. This included providing their

national courts with the widest possible jurisdiction, covering the widest number and category of offences – including treaty-based as well as customary law violations of IHL – to enable them to accomplish this goal.

7.12 **Justice Madan B. Lokur, Judge, Delhi High Court**, India presented a paper on “Practical Aspects of the Exercise of Jurisdiction Over War Crimes by States”. In this, he discussed the criminal justice delivery system, legislative measures, relevant case law and also international responses. He said that a liberal interpretation of the four Geneva Conventions of 1949 laid the foundation for universal jurisdiction over war crimes. He said that these Conventions were universal and were of a mandatory nature. With regard to criminal justice delivery, he said that the two primary aims of any criminal justice delivery system were to secure justice and to make the criminal accountable for the crime. He questioned whether states would be able to exercise universal jurisdiction and investigate war crimes or crimes against humanity.

7.13 He cited the example of a few European States that had enacted laws for the exercise of universal jurisdiction. He gave the example of the 1993 Belgium law, enacted to deal with grave breaches of the 1949 Geneva Conventions including Additional Protocols I and II, which was amended with effect from 1<sup>st</sup> August, 2003 and made far more restrictive. A suspect could now be tried only if he was a Belgian or had primary residence in Belgian territory or if the victim was a Belgian or if Belgium was required by treaty to exercise jurisdiction over the case. He cited a few cases in Spain to show the instances of the trial of an individual

who was in the country trying him and whose acts were not State sponsored. He also spoke about war crime or a crime against humanity, which were State sponsored and the accused were not within the jurisdiction of the Court trying them. Here he said the question that would arise before the Court would relate to the quality and veracity of evidence placed before it.

7.14 With regard to the international responses relating to universal jurisdiction he cited the example of the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY) and the cases decided by it on the punishment for the crime of genocide. Dealing with these cases he also cited that the practical problems faced by the court regarding the proceedings and consequent delays in disposal of cases, due to the voluminous records, insufficient evidence, witness protection and expenses involved in the running of the Tribunal. He emphasized that the lessons from the Tribunals set up in the recent past have to be taken in the working of the international criminal court. Summing up he said that the international community is alive and so international co-operation is needed.

7.15 While summing up, he said there were problems of definition of crimes on which universal jurisdiction could be invoked. He also pointed out the difficulties with collection of evidence, involvement of high profile suspects and witness protection. He favored the establishment of civilian tribunals rather than military tribunals. He also spoke about the practical aspects of the exercise of universal jurisdiction in India. He informed that in the Information Technology Act of 2000 the universal jurisdiction principle had been incorporated and

made punishable an offence committed by any person of any nationality anywhere in the world, if his act affected any computer or computer network situated in India.

7.16 During the discussions that followed the presentations one delegate wanted to know from the panelists as to why there were double standards in the application of international law. He also asked that despite wide spread condemnation of terrorism by all why was there no definition of terrorism. Further he also asked the panelists certain countries were forced to become parties to treaties and thus forced to comply with the obligations while others evade these obligations in the pretext of not being a party to such conventions? In reply, one panelist opined that there were double standards not only in international law but there were double standards in international relations also. He said that India had tabled a Draft Comprehensive Convention on Terrorism in 1996 and he would look forward to the adoption of a definition of terrorism. Regarding crimes in the occupied territories he said that they should be condemned unequivocally as crimes against humanity. Another Delegate asked whether a State could justify its action of prosecution of criminals as *jus cogens*. Responding to this query, one panelist said that it was too far an extension of the concept of universal jurisdiction to argue that any body in the world could be prosecuted for acts done anywhere in the world by any country.

## **8. AALCO-IOM Half day special meeting on "International Migration Law"**

**8.1** **Amb. Dr. Wafik Z. Kamil**, Secretary General of AALCO welcomed the delegates to the meeting

and introduced the experts from the IOM. Secretary General recalled the long-standing cooperation between AALCO and IOM in the field of international migration law. He said that the issue of management of migration assumes immense importance for many countries because of the role of the migrant workers in the economies of these countries. While informing the role of AALCO in the field of migration law, he emphasized on the “Revised Draft Model Regional Co-operation Agreement Between States of Origin and States of Destination/Employment Within AALCO Member States”. While concluding his remarks he underlined that the comments and inputs of Member States were extremely important for the early adoption of the Agreement and reiterated that Member States communicate their comments and suggestions to the Secretariat as early as possible.

- 8.2 **Ms. Jillyane Redpath**, Senior Legal Officer, IOM, spoke on “Introduction to International Migration Law”. She began her presentation with a brief introduction of IOM and its mandate to work among migrants, refugees and displaced people. She said that the membership of the IOM has grown over the years, which was the evidence of the Organization’s relevance in the present context. While explaining international migration law she said that there was no one comprehensive international instrument dealing with migration. There was also no central framework where all sources of law come together. There were also not many attempts to relate each other field. State sovereignty plays a significant role in the migration issues. Diversity and disparity of norms on migration posed a major challenge to international migration law. There was

a diversity of views on the contents of international migration instruments. She informed that IOM had established a department on International Migration Law. The tasks of this department included: compilation of documents related to migration law; dissemination of migration law; and organizing training programmes on migration related issues.

- 8.3 She focused her presentation on the principle of State sovereignty in the context of migration. Under State sovereignty, States have the authority to regulate movement of people in their territories. She however said that this was not an absolute authority as it should be in accordance with international obligations. She said that admission policies of many States vary from State to State and many countries refuse admission on the basis of financial considerations. She pointed out that there were very few restrictions under international law on the authority of States to decide on who should enter into their territories and who should not. She explained these restrictions, which were enshrined in various international legal instruments. These were; the principle of non-refoulement, under Article 33 of the Refugee Convention; Article 3 of the Torture Convention; the concept of best interests of the child under the Convention on the Rights of the Child, and concept of ‘family unity’ as contained in Article 17 of the ICCPR. In addition to these substantive restrictions, she also pointed out certain procedural restrictions like Article 13 of the ICCPR, which talks about the procedural issues to be followed while expelling a person. She also underlined various instruments that prohibit mass expulsion of people. She also underscored other relevant issues like sovereign right of a State to

protect its security, authority of States to grant nationality, and issue of dual nationality. While concluding her presentation she said that a vital component of State sovereignty was the respect for international human rights and these two were not contradictory.

8.4 **Mr. Vassiliy Yuzhanin**, Training/Project Officer, IOM, Geneva, also spoke on "Introduction to Migration Law". He described the subjects of IML, main actors of IML and the relations that IML would regulate. He pointed out certain peculiar features of IML, which included; there was no worldwide legislation; it was compiled from various branches of international law; and different instruments apply depending upon context. He pointed out the various sources of IML, which included human rights law, migrant workers law, refugee law, international humanitarian law and other sources including law of the sea. The human rights provisions that were relevant for migration movements were enshrined in various human rights instruments that included freedom of movement, freedom to seek asylum, right to nationality and the protection of the family. One of the most important instruments of international migration law was the Migrant Workers Convention. This was relatively a comprehensive instrument covering various migration processes. Majority of the States that had become parties to this Convention were sending countries. He said that because of some misconception about this Convention States were not coming forward to become parties to it. One of such misconceptions was that this Convention provided more rights to irregular migrants. He however said that it was not true because these rights were already available in other instruments. The

other instruments that he focused on were the Convention against Transnational Organized Crime and its two Protocols dealing with smuggling of migrants and trafficking in women and children. He said that these instruments deal with criminal law aspects and were not human rights instruments.

8.5 **Ms. Jillyane Redpath**, in her second presentation, spoke on the topic entitled "Migration and State Security". She said that state security was one of the important dimensions of migration. States had the authority to take measures about state security. She however said that States were resorting to certain measures, which had larger implications. She focused her presentation one of such measures, that was the use of biometrics. She described the type of biometric applications available and how biometric systems function; potential biometrics provide for greater security in migration management; developments in the use of biometrics as a result of September 11 attacks; and the impact of the use of biometrics in the management of migration on the individual's right to privacy and ability to move freely and lawfully

8.6 The terrorist attacks of September 11, 2001 radically affected the manner in which States approach border security and international migration management. Since September 11 and subsequent terrorist attacks, national security and migration had been brought sharply into focus, heightening the concern that weak migration management systems could pose to the security and safety of the destination country and its population. A key component of reinforcing the security aspect of international migration was the planning for use of biometric systems in various areas of

migration management. Biometric applications were being conceptualized and progressively implemented to promote and ensure national security at the borders, and to increase the integrity of international travel documents and their issuance systems.

8.7 She said that biometrics could be defined as the automated means of identifying an individual through the measurement of distinguishing physiological or behavioural traits. Biometric scanning was the process whereby biometric measurements were collected and enrolled in a computer system with the purpose of using the measurements to either verify a person's identity or to search for his/her identity. Most biometric systems were based on mathematical formulae used to detect statistically significant correlations between a live capture biometric and biometric templates previously entered into the travel document or computer system. The main biometric techniques being used for verification and identification processes, in all sectors of society, included fingerprinting, iris scanning, facial imaging, hand geometry, speaker voice recognition and signature verification. Thereafter the biometric reading could be used to: (a) Verify that an individual is who s/he claims to be, and (b) Identify individuals when one-to-one verification is not possible or sufficient:

8.8 She said that while much discourse at the national and international levels had focused on biometrics as a tool for state security, such systems also had considerable impact on the rights of the individual, both nationals and non-nationals, which required a discussion of the implications, as had taken place in the use of biometrics in the general community. This was particularly

necessary in the context of its implications on the individual's right to privacy and the implications for the individual's ability to move freely and lawfully in the event of a problem in the biometric reading. The presentation also highlighted the increasing need for domestic and international frameworks to govern the use of biometric applications in the migration/security context, and proposed certain issues that such frameworks could address.

8.9 **Mr. Vassiliy Yuzhanin**, in his second presentation, spoke on "International Cooperation in Migration Management: Global and Regional Initiatives". He started his presentation with a brief introduction on the necessity to have cooperation at global, interregional and bilateral level to deal with the issues of migration. He discussed on why there is a need to cooperate since migration is interlinked with other crimes like trafficking and transnational criminal group. Hence, states need to give a transnational response to transnational problem. It needs the involvement of the sending, transit and receiving states. The cooperation among nations can be achieved by way of exchange of information between sending and receiving states. Data sharing and data collection is one of the methods through which the countries can exchange the information regarding the migrant workers. Elaborating on the necessity to have an integrated method of international cooperation on migration issues, he categorized them into four key levels, namely; (i) global cooperation, (ii) intergovernmental, (iii) regional and (iv) bilateral cooperation. Under the Global Cooperation, few initiatives were addressed like the Berne Initiatives, Geneva Migration Group (GMG) and Global Commission on International Migration.

8.10 He discussed in detail the importance of these initiatives stating that the Berne Initiative is a state owned consultative process, launched in 2001 to study international norms and migration, which resulted in compilation of the International Agenda for Migration Management. The heads of the UNODC, UNHCR, IOM, OHCHR, UNCTAD and ILO constitutes the Geneva Migration Group (GMG). The report of the Global Commission on International Migration was launched in October 2005. The High-Level dialogue on Migration and development would be placed before the United Nations General Assembly during its next session. Under the intergovernmental cooperation methods, he emphasized on the initiatives adopted by the Intergovernmental Consultations on Asylum, Refugees and Migration Policies (IGC) established in 1985. The Regional Consultative Process (RCPs) and the Puebla Process was mentioned. The main areas dealt by these processes were (i) migration policies and management; (ii) human rights of the migrant workers; and (iii) migration and development. Intergovernmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC) deals with trafficking and smuggling, irregular migration and the Bali Process. On initiatives at the regional level, the Colombo Process, Migration Dialogue for South Africa, 2000 (MIDSA) and Migration Dialogue for West Africa, 2001 (MIDWA) were discussed and substantiated. Thus, he highlighted the importance of cooperation at every level in order to solve the issues that arise out of migration and emphasized on according protection to the migrant workers.

8.11 In the discussion that followed the presentations, one Delegate pointed out that migration process involved vulnerable sections like women and children who needed special attention. He also suggested that pre departure information could be exchanged and provided to migrants. Another delegate pointed out the need to focus on the root causes of migratory movements. One Delegate pointed out the duty on migrants to respect local laws and cultural practices. Another Delegate suggested that the IOM could provide legal consultation mechanism for those migrants who were in need of legal assistance. One Delegate said that the concept of IML as proposed by Panelists was not agreeable to them because their proposals were putting together various principles into IML, like the right to seek asylum. The panelists explained their positions and described the activities being undertaken by the IOM

**9. *Inauguration of the New Permanent Headquarters Building of Asian-African Legal Consultative Organization***

9.1 The new Permanent Headquarters Building of the Asian-African Legal Consultative Organization was inaugurated by Hon'ble Mr. Anand Sharma, Minister of State for External Affairs, Government of India in the evening of 6<sup>th</sup> April 2006. Members of Delegations including several Senior Ministers of Law and Justice and Attorneys and Solicitors General of AALCO Member States and Members of the Diplomatic Corps based in New Delhi attended the inaugural function. Former Secretaries-General of AALCO Mr. B. Sen and Mr. Tang Chengyuan also graced the occasion.

**9.2 Hon'ble Mr. Sharma, the Minister of State for External Affairs,**



**Government of India**, in his address on the occasion stated that the Organization had emerged as a unique organization in the Asian-African region by providing a platform for the international lawyers of this region to discuss a wide range of international legal issues on which the Member States shared common concern and also to develop coordinated negotiating positions concerning a number of issues. He added that the new Permanent Secretariat building was in the midst of the diplomatic area of Chanakyapuri and the building was the manifestation of the importance that India attached to the Asian-African solidarity in many fields and more importantly in the creation of just and equitable international order based on rule of law. He also said that India was privileged to have been the host to the Organization since its inception. India was committed to the objectives for which the Organization was created. It would do everything possible to enhance the effectiveness of the Organization to work for the cause of developing Afro-Asian perspective of international law.

- 9.3 **Amb Dr. Wafik Zaher Kamil, the Secretary-General of the AALCO** on behalf of Member States and on behalf of the Secretariat thanked the Government and people of India for the warm gesture in providing to the Organization its permanent abode in its Golden Jubilee year. He stated that the Government of India had generously granted a plot of land in the prestigious Chanakyapuri Diplomatic Enclave and took charge of the expenditure involved in the full construction of the Headquarters building, which included the office premises as well as the residence for the Secretary-General. He hoped that this permanent seat of AALCO would ensure the Organization to function with greater efficiency from its new

Headquarters Building and contribute more to the activities relating to the Asian-African solidarity in international law matters, and requested on behalf of all the Member States H. E. the Minister to help solve the remaining points related to the Headquarters matters for the smooth and prompt shifting of the Secretariat to the New Headquarters building.

- 9.4 The Minister and the Secretary-General jointly released the Information Brochure of AALCO which provides a bird's eye view of the Organization's growth and work programme in 50 years of its existence.

#### **Fourth General Meeting**

#### **10. *Agenda Item II. International Law Commission***

- 10.1 **Amb. Dr. Wafik Z. Kamil, Secretary-General of AALCO** introduced the item. Professor Djamchid Momtaz, Chairman of the International Law Commission (ILC), reported and analyzed comprehensively the work of the ILC during the second part of its 57<sup>th</sup> session held in Geneva from 11 July to 5 August 2005. Prof. Momtaz highlighted the progress made on the following topics: Reservations to Treaties; Diplomatic Protection; Unilateral Acts of States; Expulsion of Aliens; and Fragmentation of International Law. While concluding his report Prof. Momtaz said that ILC was quite aware of its own important role in the global effort to ensure respect for international law in the age of interdependence and globalization. He said that ILC relied on the governments for advice as well as for providing the ILC with those practices that were not always accessible or open to the public. The ILC's success in codification on international law

therefore depended to a large extent on the support it received from governments. Amb. Chusei Yamada, Member of the ILC and Special Rapporteur on the topic 'Shared Natural Resources' presented a brief report on the work of the ILC on the subject of transboundary groundwaters.

- 10.2 Delegations from People's Republic of China, Islamic Republic of Iran, Malaysia, Kenya, Republic of Indonesia, India, Arab republic of Egypt, Pakistan and observer from Greece made statements regarding the work of the ILC. One Delegate indicated that his delegation was not in favour of the establishment of monitoring body for determining the nature or validity of the reservations to treaties expressed by States. Strict regime of reservations with a monitoring body at its apex would impair the objective of universality of participation in the treaty. On the topic of Diplomatic Protection, some Delegations welcomed the Special Rapporteur's conclusion that the clean hands doctrine should not be included in the draft articles of Diplomatic Protection. On the topic of Responsibility of International Organizations one Delegate observed that the whole exercise should not go beyond the extent where it would be inappropriate to draw analogies with regard to attribution and responsibility applicable to States in order to develop and articulate principles applicable to international organizations. On the topic of Shared Natural Resources, some Delegations appreciated the inclusion of draft Article 18 on scientific and technical assistance to developing States. On the topic of Effects of Armed Conflicts on Treaties, one Delegate observed that the draft article 2, sub paragraph (b) defined the term 'armed conflict' and by referring simply to 'a

conflict' rather than 'international conflict', the Special Rapporteur had broadened the scope of the term 'armed conflict' so that the internal armed conflicts would also be included. However, internal armed conflicts should not have any effect on treaties concluded between the States. On the topic of Expulsion of Aliens, some Delegations believed that the decision to expel aliens was a sovereign right of a State. However, the state should exercise this right in accordance with established rules and principles of international law, particularly fundamental principles of human rights.

**11. *Agenda Item III. Establishing Cooperation Against Trafficking in Women and Children***

- 11.1 **Mr. Motokatsu Watanabe, Deputy Secretary General** introduced the item and stated that the Secretariat report had explored the conceptual aspects and socio-economic reasons for trafficking, as well as the nature and scope of international obligations to prevent trafficking, to protect the victims of trafficking and to prosecute the perpetrators. Further he emphasized that a coordinated approach at a international and regional levels was required in order to devise an effective strategy to combat this growing menace and therefore, as a first step it was imperative for Member States to consider becoming parties to the international legal instruments, as any country or international organization alone cannot take measures to eradicate trafficking in human beings, especially women and children. As a first step it was imperative that a international legal instruments be universally ratified. The nature of the evil being severally affected, several regional and sub regional initiatives were taken and they are in operation at

various levels. Thus initiatives at AALCO level could gain considerably when undertaken with cooperation of other organizations like the Bali Process, IOM and OHCHR with whom AALCO had cooperation agreements. He also recalled the mandate given to the AALCO Secretariat to draft a model legislation against trafficking in persons especially women and children, the purpose of drafting the same was to come out with concrete suggestions reflecting their experiences. A first set of draft articles that were presented for consideration of Member States, he requested them to give their comments, suggestions and changes if any in the first set of draft articles.

Interventions were made by the following Member States, namely, Thailand, Malaysia, Myanmar, Arab Republic of Egypt, Republic of Indonesia, Nigeria, and People's Republic of China, Japan, Sri Lanka, State of Qatar, Bahrain and Sultanate of Oman. They primarily spoke regarding the following aspects, recognized that trafficking in persons, especially women and children was a serious multifaceted and multidimensional issue which violated the fundamental rights of individual, especially right to live with human dignity and security and freedom of movement. It was highlighted that human trafficking generated billions of dollars revenue and was closely connected with money laundering, drug trafficking, documents forgery and human smuggling. A distinction was sought to be drawn between genuine victims of trafficking and self/voluntary trafficked persons. It is imperative to exert efforts towards an international coordination to develop an effective strategy to combat this grave crime; highlighting the various domestic endeavours and seminars being conducted in some countries to

give more awareness above the problem and to search for solutions to curb it. The Member States reiterated the importance of becoming parties to the international legal instruments as well as enhance inter regional cooperation in this area. It was suggested by the Delegation of the Republic of Indonesia that in order to make the Protocol against trafficking in persons especially women and children more effective it was desirable that Member States while ratifying it do not make any reservations.

Some Member States gave concrete suggestions on how AALCO could play a more meaningful role in this area. It was suggested by some delegation that Secretary-General of AALCO could coordinate efforts with the Bali Process and other international initiatives to draft the AALCO model legislation without overlapping the exercise, the Delegation of Malaysia while acknowledging AALCO's effects in drafting the model legislation, stated that it should aim to enhance/build on the Bali Process Model Law, and that the AALCO Draft Model Law does not create inconsistent obligations as it would place the Bali Process countries in an untenable position.

The Delegation of Republic of Indonesia also requested the Forty-Sixth Session to initiate an in-depth discussion or workshop on the topic "The consequences of distinguishing the genuine victims of trafficking as defined in the Protocol and self/voluntary trafficked persons who consciously allow themselves to be trafficked to seek economic gain in destination countries" The Delegation from State of Qatar suggested that an "Asian-African Social Committee to Combat Trafficking in Women and Children" could be established with a

view to enhance Asian African cooperation in the field of combating trafficking in women and children. The Delegation of the Arab Republic of Egypt stated that the definition of trafficking could include all the criteria incorporated in the various International and regional instruments. He also suggested that AALCO could create a database of all national legislations, display them on its electronic website so that all Member States could benefit from the various national measures employed to combat this crime.

**12. Agenda Item IV. An Effective International Legal Instrument Against Corruption**

**12.1 Dr. Li Zhenhua, Deputy Secretary-General of AALCO** in his introductory statement recalled that during the Forty-Fourth Session in Nairobi, the AALCO Secretariat had released a Book "Combating Corruption: A Legal Analysis". As a follow-up, the Secretariat had further initiated another Special Study detailing the nature of obligations under the UN Convention against Corruption which would be released during this Session. He noted that the Convention entered into force on 14 December 2005 and 50 parties had so far ratified it. He hoped that the Member States would consider a strong implementing mechanism during the first Conference of States Parties to the UNCAC to be held in Jordan from 1st December 2006. He urged States to formulate a strategy for the implementation of the objectives enshrined in the instrument and felt that the United Nations Convention Against Transnational Organized Crime (UNTOC) has very similar provisions and strategy to deal with corruption and the implementation of these provisions by the Conference of Parties of the

UNTOC would complement the implementation of the UNCAC.

**12.2** Delegations from Thailand, Malaysia, Pakistan, Republic of Indonesia, People's Republic of China, Japan, Nepal and United Republic of Tanzania presented their views on the topic and Islamic Republic of Iran, Nepal and Myanmar circulated their statements to be reflected in the Report of the Forty-Fifth Session. All the Delegates highlighted the urgent need to combat corruption at the international level. The Delegates also welcomed the adoption and entry into force of the UNCAC and agreed that the Convention would certainly become a universal instrument in the fight against corruption. They also highlighted some of the salient features of the Convention. The Member States explained the efforts currently undertaken by them for the ratification of the Convention. Those States that had already ratified the Convention enumerated the efforts taken by them to incorporate the objectives of the Convention into their domestic laws, in order to effectively combat corruption. Some delegates urged Member States to ratify the Convention as soon as possible and proposed the establishment of mutual legal cooperation and assistance among the Asian and African countries.

**12.3** One delegate noted that some of the omitted provision in the UNCAC should be re-inserted in future Protocols and the ambiguities in the existing provision should be removed. Some delegate noted that they had already concluded bilateral agreements for extradition and mutual legal assistance to enhance their ability to combat transnational crimes, including corruption. One delegate proposed that the Secretariat initiate a consolidated study of issues among

AALCO Member States to be raised at the forthcoming and subsequent Conferences of Parties of both UNTOC and UNCAC. Another Delegation proposed that the Secretariat should establish a group of legal experts to prepare a model law in line of the UNCAC, so that the objectives of the Convention could be implemented at the national level. Most delegates expressed the need for establishing effective international cooperation for mutual legal assistance and asset recovery.

- 12.4 Thereafter, the Secretary-General released the AALCO Secretariat publication "Rights and Obligations Under the United Nations Convention against Corruption" and presented the first copy to the Vice-President of the Forty-Fifth Session.

**13. *Agenda Item III. Deportation of Palestinians and Other Israeli Practices Among Them The Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly The Fourth Geneva Convention Of 1949***

- 13.1 **Amb. Dr. Wafik Zaher Kamil, Secretary General of AALCO** in his introductory statement highlighted the major developments that have taken place in the Middle East since the Forty-Fourth Session of AALCO, namely, Israeli disengagement from Gaza; successful election to the Palestinian Legislative Council and swearing in of the cabinet led by *Hamas*; the deteriorating health of the Israeli Prime Minister Mr. Ariel Sharon; and recent Parliamentary elections in Israel in which the *Kadima* party has emerged as the winner. He emphasized that the Israeli government's plan to remove troops and Jewish settlements from the Gaza Strip would not end Israel's

occupation of the territory. Israel would continue to wield overwhelming power over the territory's economy and its access to trade. He highlighted the recent instance of the deterioration in economic and social conditions, resulting from the total closure imposed by the Israeli occupying forces.

- 13.2 He gave an account on the latest Israeli violation of its international legal obligations is the raid on the Jericho jail on 14<sup>th</sup> March and demanded that Israel, the occupying Power, must be compelled to fulfill its obligations under the provisions of the Fourth Geneva Convention of 1949 and the immediate release of the Palestinian prisoners and return them to Palestinian custody. He also said that any withdrawal by Israel should be carried out through a process of negotiations with the Palestinian Authority rather than unilaterally. Unilateral withdrawals would have dangerous consequences for the Middle East peace process. He also highlighted that Palestinian's democratic choice should be respected.

- 13.3 Delegations from Pakistan, Arab Republic of Egypt, Kuwait and the Republic of Indonesia presented their views on the topic. The Delegations of Malaysia and Islamic Republic of Iran gave their statements on the topic for inclusion in the Report of the Forty-Fifth Session. All the delegations expressed concern over the view that the Israel continued to illegally occupy Palestinian territory; killing innocent civilians and demolishing houses and villages as well as the Headquarters of the Palestinian Authority, was committing grave breaches of international law, particularly international humanitarian law particularly the Fourth Geneva

Convention of 1949. The Delegation of the Arab Republic of Egypt called for the denunciation of the Israeli practices in the occupied territories by the League of Arab States, Organization for Islamic Unity, Non Aligned Movement, and other international organizations, the delegation also called for separation of legal and political dimensions of the problem towards finding effective solutions. Some delegations expressed the view that Israel had not fulfilled its obligations under the Road Map of the Quartet and other international accords that had to be implemented for the creation of an independent Palestinian State. All delegations called for respect of democratic process in Palestine by the members of the international community and called for implementation of the United Nations General Assembly and Security Council resolutions, as that was the only way to bring about lasting peace and security in the region and the establishment of two independent States staying side by side. The Delegation from the State of Kuwait called upon AALCO to keep the item on its agenda as a mark of solidarity and as an expression of protest against such acts, which are condemned by the international community.

**14. Agenda Item III. International Terrorism**

14.1 **Dr. Li Zhenhua, Deputy Secretary-General of AALCO** while introducing the said that terrorism was a worldwide threat to the life and property of humankind and thus the international community attaches special importance to address this issue. He said that in an effort to prevent and combat this crime, the UN, international organizations and States had so far adopted 13 International Conventions, 9 Regional

Conventions, numerous UN Resolutions and Declarations. He observed that the discussion on the draft Comprehensive Convention on International Terrorism based on the draft circulated by India commenced in 2000 and the current discussions revolve around the main issues relating to the scope of application of the convention. He noted that it was clear further consultations were necessary to decide their feasibility. He informed that the AALCO Secretariat had also prepared a special study on terrorism for reference of the Member States.

14.2 Delegations from Thailand, Japan, Pakistan, India, Republic of Indonesia, People's Republic of China, State of Kuwait, State of Qatar, Nigeria, Bahrain, Republic of Yemen and Malaysia spoke on the topic. All the delegations unanimously condemned terrorism in all forms and manifestations. Many delegations reiterated their commitment to fight terrorism by implementing domestic legislations. Reference was made by a delegate on the draft definition of terrorism and opined that the definition of terrorism should be very practical and suggested that the definition should have clarity because matters like struggle for independence should not be considered as terrorism. One of the delegates proposed for establishment of a working team that would comprise of well-trained personnel to study the problems arising out of terrorist activities.

**15. Agenda Item III. Human Rights in Islam**

15.1 **Amb. Dr. Wafik Zaher Kamil, Secretary General of AALCO** in his introductory remarks stated that the report of the Forty-Fifth Session, in continuum of the Forty-fourth Session, attempted to analyze the

Islamic criminal procedural laws from a human rights perspective. He stated that if the Shari'ah allowed the investigator or the judge to place certain restrictions on the accused's rights to maintain the principle of the society's rights, it also placed restrictions on the power of the investigator, which represented guarantees to the accused. He emphasized that presumption of innocence; non-retroactivity of law; and equality and equal protection of laws were the cardinal principles of Islam. He explained that the rights of the accused included right against torture; protection of privacy and honour; principles of fair trial, which include, right to defense; right to engage counsel; right to keep quiet; right to retract confession; and right to compensation for mistakes in adjudication. He underlined that defamation of a particular religion or belief would contribute further to the misinformation campaign and would certainly affect the peaceful co-existence of various religious and ethnic groups. He also informed that in line with the decision taken at the Forty-Fourth Session the Government of Malaysia had decided to hold the "Meeting of International Experts on Human Rights in Islam" in collaboration with the Kingdom of Saudi Arabia and the AALCO Secretariat from 15-19 May 2006 in Kuala Lumpur.

- 15.2 Delegations from the Islamic Republic of Iran, Arab Republic of Egypt, State of Kuwait, United Arab Emirates, Malaysia, Somalia and Indonesia delivered their statements. All Delegations who took part in the deliberations highlighted the human rights principles enshrined in Islam. One delegation proposed to take up for the Forty-Sixth Session the ascertained principles and standards which had been set forth by the Rules

of procedure and Evidence of the International Criminal Court. One delegate highlighted that Islam guaranteed civil, political, social and economic rights, including equality, freedom of expression and opinion. Islam provided the right to choose religion, as there was no compulsion in Islam. One delegation reiterated their earlier proposal to map an agreement or convention or treaty under the auspices of AALCO comprising of human rights principles so that Member States could make commitment of the protection of human rights. The Delegates also extended full support for the Meeting of International Experts of Human Rights in Islam (MIEHRI) which is scheduled to be held in Kuala Lumpur from 15-19 May 2006. The Delegate of Malaysia elaborated the objective of MIEHRI was set to serve as a platform for experts from various fields to examine the Islamic principles of human rights with the main purpose to dissuade misunderstanding of Islam and the Muslims, predominately against the backdrop of the current tensions between the Muslim and non-Muslim worlds. Another delegation emphasized the importance of education on Universal Declaration on Human Rights taking place alongside the strengthening of religious belief and the teaching of moral standard, greater respect for and observance of the fundamental rights of human being.

#### **Fifth General Meeting**

16. *Agenda Item V. WTO as a Legal Framework Agreement and Code of Conduct for World Trade*
- 16.1 **Dr. Li Zhenhua, Deputy Secretary-General of AALCO** while introducing the topic observed that the Hong Kong Ministerial Conference

adopted a Ministerial Declaration, which as expected, did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, Ministers agreed only on some general parameters to guide the development of these 'full modalities' on agriculture and non-agricultural market access (NAMA). While highlighting the achievement of the Conference, he noted that in the negotiations on Agriculture, the WTO Members decided to eliminate all forms of export subsidies by the end of 2013. However, this was subject to an agreement on the modalities which should be completed by April 2006. In domestic support, it was agreed that greater cuts would be made in higher levels of subsidies. In NAMA the Members adopted the 'Swiss Formula' with unspecified number of coefficients. Regarding TRIPS and public health, the Conference approved changes to the TRIPS agreement making it easier for poorer countries to obtain cheaper generic versions of patented medicines. And finally, regarding the special and differential treatment for LDCs, Members agreed to provide duty and quota-free access for at least 97 percent of products originating from the least developed countries by 2008. He noted that the Hong Kong Declaration had brought fresh impetus to the Doha Development Round of Negotiations.

- 16.2 Delegations from Thailand, Malaysia, India, People's Republic of China, Republic of Indonesia, Somalia and Kuwait made their statements. Most of the delegates, while noting the importance of the WTO Agreements as a framework for international trade, said that Member States had undertaken huge commitment without understanding its implications. Some delegates noted that the Hong Kong Ministerial Declaration had reflected

some of their concerns, but much need to be done in the case of agriculture and services negotiations. Most Delegates noted that the most important issues for them were the developmental issues and special and differential treatment, which were crucial for developing countries. They said that the outcome of the Doha Development process should fully support the developmental goals of their respective countries. Most of the delegates gave their countries view on special differential treatment for developing countries; agricultural negotiations; market access for non-agricultural products; trade facilitation, trade related intellectual property rights; and WTO dispute settlement mechanism etc. Some countries also highlighted the unbalanced nature of the negotiations, especially for the least developed countries. All agreed that the Asian and African countries should have a common stand on issues of mutual interest. One delegate suggested the Secretariat to organize a seminar which could facilitate the exchange of views by Member States on issues currently under negotiations within the WTO, especially on dispute settlement understanding and services.

**17. *Agenda Item IV. Expressions of Folklore and its International Protection***

- 17.1 **Mr. Motokatsu Watanabe, Deputy Secretary-General of AALCO** in his introductory statement stated that establishing a strong international legal mechanism for the protection of folklore from exploitation, was of paramount importance to the Asian and African countries which were the custodian of majority of the world's Expressions of folklore and he recalled the inclusion of this item on the agenda of AALCO proposed by the Secretary-General at the Forty-



Third Session in Bali in pursuance to put forward the Asian and African views before the Intergovernmental Committee (IGC) and the same was approved by Member States. The IGC, which had so far convened eight sessions, made considerable progress in formulating a flexible policy objectives and core principles for the protection of traditional cultural expressions/folklore. He said that the important development in the protection of traditional cultural expressions was entering into force of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage on 20 April 2006. He observed that this Convention would be a step forward from the legal protection point of view as it provides for the general safeguard measures for the protection of intangible cultural heritage. However, the convention needed to be assessed in the light of the developments that might take place under other organizations like WIPO, the WTO Trade Related Intellectual Property Rights (TRIPS) Council and Biological Diversity Convention. He suggested that the developing countries, which were the owners of the resources, should agree among themselves on the best possible protection model to protect the expressions of folklore.

- 17.2 Delegations from People's Republic of China, Republic of Indonesia and Islamic Republic of Iran presented their statements. The delegates highlighted that the Folklore manifested civilization of human society and embodies diversity of world culture. They also expressed serious concern over the vast changes to their original cultural environment and its challenges due to the accelerating trend of globalization and modernization. They appreciated the UNESCO and WIPO's contribution in the area of folklore protection, by

adopting the UN Convention of Intangible Heritage Protection and drafting Joint Model Provisions of protection policy subjects and core principles for the protection of expressions of folklore. They said that the AALCO could provide an enabling forum for further discussion on the issue, with a view to expediting the negotiation and conclusion of a legally binding international instrument for the protection of expressions of folklore. The Indonesian delegation recommended that the AALCO should make an in-depth study on the exploitation of the intangible expansion of folklore and the Member States of AALCO should exchange information and carry out consultations with regard to the development of IPR's protection system of the expression of folklore, genetic resources and traditional knowledge.

**18. *Agenda Item I. Report on AALCO's Regional Centres for Arbitration***

- 18.1 The **Secretary-General** invited the Directors of the AALCO's Regional Arbitration Centres to present their report.
- 18.2 **Ms. Eunice R. Odirri, Director, Regional Centre for International Commercial Arbitration, Lagos**, presented her report on activities of the Centre in 2005-06.
- 18.3 The statement of **Mr. Dato' Syed Ahmad Idid, Director, Kuala Lumpur Regional Arbitration Centre**, highlighted his report for the year 2005-06 it was circulated to the Member States.

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

***Adoption of the Resolutions***

19.1 The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 8<sup>th</sup> April 2006:

RES/45/ORG 1 Report of the Secretary-General on Organizational, Administrative and Financial Matters

RES/45/ORG 2 AALCO's Budget for the year 2007

RES/45/ORG 3 Report on AALCO Regional Centres for Arbitration

RES/45/ORG 4 AALCO's Centre for Research and Training

RES/45/ORG 5 Inauguration of the Permanent Headquarters of the Asian African Legal Consultative Organization

RES/45/ORG 6 Venue of the Forty-Sixth Session

RES/45/S 1 Matters Relating to the Work of the International Law Commission at its Fifty-Seventh Session

RES/45/S 2 Law of the Sea

RES/45/S 4 The Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949

RES/45/S 6 Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties

RES/45/S 7 Jurisdictional Immunities of States and Their Property

RES/45/S 8 International Terrorism

RES/45/S 9 Establishing Cooperation Against Trafficking in Women and Children

RES/45/S 10 The International Criminal Court: Recent Developments

RES/45/S 11 Environment and

Sustainable Development

RES/45/S 12 An Effective International Legal Instrument against Corruption

RES/45/S 13 Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law

RES/45/S 14 WTO as a Framework Agreement and Code of Conduct for World Trade

RES/45/S 15 Expressions of Folklore and its International Protection

RES/45/S 16 Human Rights in Islam

RES/45/SP 1 Resolution of the Special Meeting on "Legal Identity and Statelessness".

RES/45/SP 2 Resolution of the Special Meeting on "Universal Jurisdiction and its Role in the Enforcement of International Humanitarian Law"

RES/45/SP 3 Resolution of the Special Meeting on "International Migration Law".

#### *Venue of the Forty-Sixth Session*

19.2 It was decided that the Forty-Sixth Session of AALCO would be held in Khartoum, Sudan, in accordance with Resolution RES/45/ORG 6.

#### **Adoption of Summary Report**

19.3 The Summary Report of the Forty-Sixth Session of the Asian-African Legal Consultative Organization was adopted.

19.4 The provisional Summary Records of the First and Second Meeting of the Delegations of AALCO Member States and the First to Fourth General Meetings were distributed. Member States were asked to review the Summary Records and submit their views and/or corrections to the Secretariat within the following two

months.

## **20. Sixth General Meeting**

- 20.1 The Sixth General Meeting was opened by the President, His Excellency Mr. Narinder Singh, Legal Adviser and Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India who summarized the accomplishments of AALCO and its Forty-Fifth Session and thanked all those who made the Session a success.

### **Closing Statements**

- 20.2 Several delegations, on behalf of the Member States, Observer States and International Organizations, expressed their appreciation to all the delegates, the President and Vice-President, the Secretary-General, the AALCO Secretariat for hosting the Headquarters Session.
- 20.3 Ambassador Dr. Wafik Z. Kamil, Secretary-General of AALCO, delivered a "Message of Thanks" addressed to His Excellency Dr. A.P.J. Abdul Kalam, President of India, which had been reviewed by the Drafting Committee. He also made a statement expressing his gratitude to all the delegates, the President and Vice-President, the Secretariat and all those involved with organizing and hosting the Session.
- 20.4 The President, His Excellency Mr. Narinder Singh, Joint Secretary and Legal Adviser to the Ministry of External Affairs, India closed the Forty-Fifth Session.