

**SUMMARY RECORD OF THE  
SECOND GENERAL MEETING  
HELD ON TUESDAY, 1<sup>st</sup> JULY 2008,  
AT 10:00 AM**

**His Excellency Mr. Narinder Singh,  
President of the Forty-Seventh Session, in  
the Chair**

**A. General Statements**

1. The **Leader of the Delegation of United Arab Emirates**<sup>1</sup> congratulated Mr. Narinder Singh and Mr. Wanjuki Muchemi on their election as President and Vice-President of the Forty-Seventh Session of AALCO. The Delegate stated that UAE appreciated the positive role played by the AALCO in according legal consultation to its Member States. He said that the international legal principles in whatever area should be intended to serve humanity and therefore, the agenda items of AALCO were important for the international community at present. Terrorism has been a very important phenomenon that affected the whole region and countries across the national boundaries.

2. The Delegate said that his country had taken all efforts in relation to combating terrorism and had been involved in the International Committee on Terrorism- set up in 2004. Further, it was also necessary to note that international terrorism has a close connection with money laundering and combating it effectively was the aim of UAE and the national legislation of the UAE could be a model law to all other countries trying to regulate and combat those crimes. An internationally recognized definition of terrorism was the key element and taking that into consideration UAE had signed the Rome Statute to establish International Criminal Court. His delegation hoped for success in drafting a definition on terrorism. He said that UAE was within its

commitments to combat transnational organized crime, in order to penalize those who were combating organized crime, trafficking in human beings, illicit trafficking in narcotics drugs, and that affected all the regions. Supporting victims through entering into bilateral agreements with neighbouring countries was one of the measures to combat. UAE had also ratified the United Nations Convention against Corruption as a means to fight against corruption.

3. His delegation was of the view that there was a need to distinguish between permanent labourers and migrants. At the national level, different laws that protect human rights relating to labourers were in place. The agenda item Environment and Sustainable Development formed a very important aspect for development for future generations and climate change was an important area wherein for the future generations environment should be free of carbon emissions. He also cited example as to how the companies were taking measures to reduce carbon emission. Under international law, protection of civilians needed to be guaranteed and hence, thousands of civilians were being killed during armed conflicts, especially in Palestine and such practices were in flagrant violation of international humanitarian law. The Delegate urged Member States of AALCO to condemn such acts directed against Palestinians and accord them different humanitarian assistance.

4. The **Leader of the Delegation of the People's Republic of China**, on behalf of the Chinese delegation, congratulated Mr. Narinder Singh on his election to the Presidency of the Forty-Seventh Annual Session of AALCO. She also extended, on behalf of the Chinese government, sincere congratulations to Prof. Dr. Rahmat Mohamad on his election as the Secretary-General of AALCO for the next tenure. Her delegation posed their confidence in the new Secretary-General on upgrading the

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

important role played by AALCO in promoting studies and cooperation in international law among Asian and African countries. In addition, the delegate also expressed their deep appreciation to Madam Minister Brigitte Sylvia Mabandla, President of the Forty-Sixth AALCO Session; to Amb. Dr. Wafik Z. Kamil, the outgoing Secretary-General of AALCO and his colleagues in the Secretariat for the excellent work they had done for the present Session and also appreciated the Indian government for their strong support towards the development of AALCO and for their warm hospitality extended towards all AALCO delegates.

5. The Delegate reiterated the outstanding contributions made by Amb. Dr. Kamil, to promote the development of AALCO and the cooperation in the field of international law among Member States since he took office in the year 2000 and wished him every success and happiness in his future work and life.

6. The Delegate expressed on behalf of her government, gratitude towards those Asian and African countries which had extended their sympathy and condolences when their country was struck by natural disasters during this year very recently.

7. Reiterating the significant role played by AALCO as an important intergovernmental organization for Asian and African countries, in terms of conducting consultation and cooperation on legal affairs, she said that AALCO had made sincere efforts to address issues of common interest of the Member States through participation in international legal practices. Promoting the development and codification of international law and through enhancing the exchanges and cooperation among its Member States, AALCO had proved to be an essential legal institution for countries of these regions. The delegate also congratulated the AALCO on having a new Permanent Headquarters Building, and mentioned that in order to facilitate the

smooth functioning of AALCO Secretariat; the Chinese government had gifted the Secretariat with some office equipments like computers, laptops, video camera and digital camera.

8. The Delegate stated that in the course of economic globalization, international community was confronted with increasing common issues, such as security, traditional and non-traditional, poverty alleviation, environmental challenges, public health, disaster control, etc. In order to cope with those common challenges it not only needed political dialogues, but also required legal exchanges among States. She opined that in the new era, one could witness that the fundamental principles of international law and traditional international legal regimes were frequently being challenged and international law had become more and more fragmented. Since, Asian and African countries, shared many common interests and concerns in their social and economic development, AALCO should encourage and facilitate its Member States to take more active part in international law-making and in this regard, the Bandung Spirit of "peace, friendship and cooperation" should continue to guide AALCO in its work despite the change of the times.

9. The Delegate stressed that the Member States of AALCO placed great expectations on this important legal forum, through this forum its Member States hoped that views and opinions were generally shared by Asian and African countries in coping with global challenges and would be more effectively taken in international law. AALCO's cooperative relations with UN General Assembly, ILC, Sixth Committee also plays a significant factor in terms of raising the issues of the Member States on international law topics at such forums. Her delegation was of the opinion that AALCO should continue its efforts in developing international legal expertise for Member States and promoting education and research

dissemination of international law in Asia and Africa. The Delegate appreciated the initiatives taken by AALCO like holding a series of international law seminars and workshops on various topics in international law in recent years. Her delegation also encouraged AALCO to develop network with academic societies, research institutions and other regional legal organizations to further enrich its research work. She also wished that more Asian and African countries would have the opportunity to send their international law officers and scholars to participate in AALCO's activities and get updated with the latest development of international law.

10. While attaching great importance to the work of AALCO, her delegation highly appreciated its achievements scored over the years, and reiterated the continued support to its activities, and contribute to the principles and purposes of AALCO for peace and development of the world. Finally she wished the Forty-Seventh Annual Session AALCO a great success.

11. **The Leader of the Delegation of Japan**, on behalf of the Government of Japan, congratulated Mr. Narinder Singh on his election as President of the Forty-Seventh Annual Session of AALCO. He extended his heart-felt gratitude to the government of India for their warm welcome to all delegates as a host country. He also expressed deep appreciation to the government of Republic of South Africa for their gracious hospitality at the previous Annual Session in Cape Town and also to Amb. Dr. Wafik Kamil, Secretary-General of AALCO and all staffs of the Secretariat for their efforts in organizing this meeting.

12. The Delegate also congratulated the newly elected Secretary-General Prof. Dr. Rahmat Mohamad and profoundly expressed his belief that AALCO would continue to play a big role to promote the rule of law in the international community under his new leadership.

13. The Japanese delegation said that this year was very special for Japan in terms of strengthening the cooperation with Africa since 1993 when Japan initiated the Tokyo International Conference on African Development (TICAD). He reiterated that since then, TICAD was organized every five years, which was called the "TICAD process". The delegate stated that in May this year, Japan had successfully held the TICAD IV wherein top leaders and high-ranking delegates of Japan and 51 African countries, together with representatives from other countries and international organizations concerned, met in Yokohama, Japan and adopted the Yokohama Declaration with the theme of "Towards A Vibrant Africa." Alongside appreciating the initiatives of the TICAD process, he said that it had been serving as an indispensable bridge between Africa on the one hand and Japan and Asia on the other, through which the Asian development experience can be shared with Africa. He said that Japan had been placing great importance on the rule of law in its foreign policy. In such context, he drew the attention of the delegates from the Member States to three important events that took place since the last Annual Session for Japan namely; (i) the referral of the cases on two arrested Japanese fishing vessels to the International Tribunal for the Law of the Sea (ITLOS), (ii) a political agreement with China regarding cooperation for oil and gas development in the East China Sea, and (iii) Japan's accession to the ICC.

14. The Delegate pointed out that Japan had filed applications at the ITLOS for the two arrested Japanese fishing vessels, the 88<sup>th</sup> *Hoshinmaru* and 53<sup>rd</sup> *Tomimaru* last July. The two judgments have made significant contribution to peaceful and just settlement of conflict between the two countries and led them to further cooperation. Japan appreciated the contributions of the ITLOS in that regard.

15. Briefing about the second development, the delegate said that two

weeks ago, Japan and China announced that the two countries had reached a political agreement on how and where to cooperate for oil and gas development in the East China Sea where a sea boundary between the two countries had not been delimited. While the issue of delimitation remained unsolved, that agreement was achieved on the basis of principles of mutual benefit without prejudicing their respective legal position on various issues concerning the law of the Sea and that showed the decisive willingness of both countries to make the East China Sea a “Sea of Peace, Cooperation, and Friendship”.

16. Adding to this, the delegate said that Japan's accession to the Rome Statute of the International Criminal Court last year had a significant importance as it was not only contributing to the ICC through the financial resources as the largest donor, but also through the human resources, notably by presenting Ms. Fumiko SAIGA, former Ambassador in charge of Human Rights, as a judge of the ICC, who was elected in November last year. Further, she would be the first female judge from Asian region, who would make a significant contribution to the ICC as she filled another judge's vacancy in the last elections; she had only one year's term which was due to end in March 2009. The delegate requested support from Member States to support her candidature as judge from 2009 onwards.

17. The Delegate stated that his delegation looked to the deliberations at this Session again over all those agenda items in the field of international law which bore great significance and importance to the international community at the present juncture. On agenda item Environment and Sustainable Development, particularly that of climate change was one of the most critical issues which the whole world was now confronting with, and have to work together to solve, no matter where they stood individually in terms of development stage of nation-building. The Yokohama

Declaration and Action Plan adopted at the above-mentioned recent TICAD IV had also included some important references to the joint efforts on the climate change and other environmental questions.

18. In conclusion, the delegate discussing about the financial problems of AALCO, said that the existing arrears of the contributions prevented the Secretariat from providing Member States with sound administration. Hence, the suggestion that the Japanese delegation consider appropriate was the streamlining and reform of the Organization by way of cutting unnecessary expenditures, making the period of the annual session shorter, introducing an external auditing system for sound financial management. But his suggestion however, was not directed towards reducing the scope of AALCO's activities. He strongly believed that this Session would be as successful as ever and AALCO would continue to play a significant role as one of the very active international fora in Asian-African region and beyond.

19. The **Leader of the Delegation of Ghana** formally congratulated the newly elected President Mr. Narinder Singh and Vice-President Mr. Wanjuki Muchemi of the Forty-Seventh Session. He also congratulated Prof. Dr. Rahmat Mohamad on his election as the new Secretary-General of AALCO. The Ghana Delegation associated itself with the comments made about the positive contributions by the former Secretary-General to the AALCO over the eight year period that he served as the Secretary-General of AALCO. They wished Amb. Dr. Wafik Z. Kamil, the very best in your future endeavours. It also extended their warm greetings from the Government and People of Ghana to the Delegates gathered on the occasion of their Republic day which fell on 1<sup>st</sup> July.

20. The Delegate expressed his heartfelt condolences to those Member States of

AALCO that had to suffer due to natural disasters that has shattered such countries.

21. The Delegate quoted their first President, Osagyefo Dr. Kwame Nkrumah, wherein he declared that the independence of Ghana was meaningless unless it was linked up with the total liberation of the African continent. He stressed that fifty-one years on, Africa was politically free but its voice was still hardly heard in international matters. Ghana looked forward to working in close cooperation with other countries from the African continent in order to achieve political stability and economic growth on the continent. Ghana had often been described as the Beacon of Hope in Africa.

22. Addressing his deep concern regarding the situation in the Gulf region especially Iraq, he said that it was a matter of peace and security and Iraq was still volatile as a result of the constant suicide bombings. On behalf of his delegation, he urged Member States that border Iraq and which could play crucial roles in preventing the extremists from causing mayhem in Iraq to join forces to bring peace and security to Iraq. Coming to the International Relations in the Middle East in the past year, was still a matter of grave concern. He said that the Roadmap for Peace in the Middle East appeared to be virtually dead. There had been skirmishes between Israel and certain Palestinian question or Israeli security. The Delegate observed that it was in this vein that his delegation welcomed the recent ceasefire between Israel and Hamas which had brought some semblance of normalcy to the Gaza strip.

23. The Delegate stated that the stand-off between the US and her allies on one side and Iran on the other on Iran's nuclear programme was of grave concern to them. The Government of Ghana believed in the sovereign right of every country to harness its human and material resources to develop its economy, but they also believed in the

use of nuclear energy for peaceful purposes. Hence, each State had the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

24. The Government of Ghana, therefore, believed that to ensure international security, nuclear facilities should be made accessible to the international community, and especially the UN watchdog agency, the International Atomic Energy Agency (IAEA), to ensure that nuclear energy was developed only for peaceful purposes. Again, they welcomed the denuclearization programme currently taking place in North Korea.

25. The Delegate raised concern about the effect of human trafficking, particularly those involving women and children in Member States of AALCO. To stop this illegal and inhuman practice, the Government of Ghana had enacted legislation which was the Human Trafficking Act in order to make the law effective to check this trade which is fast gaining grounds in the West African sub-region, the Government of Ghana had urged the law enforcement agencies that is the Police, Customs, Excise and Preventive Service and Ghana Immigration Service to collaborate their efforts in the fight against trafficking. The Government had also called on the Attorney General's Department and the Police to undertake swift and effective prosecution of human traffickers.

26. To conclude, on behalf of the Ghana delegation, he thanked the Government of India for hosting this important Session.

27. The **Leader of the Delegation of Nepal** congratulated Mr. Narinder Singh of India and Mr. Wanjuki Muchemi, CBS, of the Republic of Kenya on their becoming the President and the Vice President respectively, of the Forty-Seventh Annual Session of AALCO. He expressed hope that the inborn talent and wisdom of the

President would ensure the great success of the Session.

28. While extending his heartfelt congratulations to Prof. Dr. Rahmat Mohamad on his becoming the new Secretary-General of AALCO, he also recognized the significant contributions of the outgoing Secretary-General Amb. Dr. Wafik. Z. Kamil to the cause of AALCO. He further added that the importance which India attached to the activities of AALCO could be realized from the very fact that Forty-Seventh Annual Session was inaugurated by His Excellency, Hon'ble Minister for Law and Justice of the Republic of India.

29. Commenting on the substantive agenda items of the AALCO, he opined that they were of contemporary relevance and of common concern to all the Member States of AALCO. He expressed hope that the deliberations that were due to take place during the Session would go a long way in helping the progressive development and codification of international law.

30. Commenting on the issue of transnational organized crime, he stated that, it was assuming dangerous dimensions and that urgent measures were needed to tackle that menace. He further stated that the heinous crimes of terrorism, corruption and trafficking in human beings posed a serious threat to international peace, security and development. He added that these three notorious problems had started to negate whatever achievements had been accomplished to the rule of law, promotion of democracy, and the protection of human rights in their region. They also posed strong barriers to good governance and development.

31. Commenting on the political transformation that had taken place in his own country, he opined that his country had been converted into a Federal Democratic

Republic and was in the process of framing a new Constitution.

32. The **Leader of the Delegation of Uganda** congratulated the President and Vice-President on their election. He also congratulated Mrs. Brigitte Sylvia Mabandla and Amb. Dr. Wafik Z. Kamil for successful discharge of duties. He hoped that AALCO would always be their professional home. He thanked the Indian Government for hosting the Session and also for hosting the Secretariat.

33. The Delegate expressed his expectations about AALCO. His expectations of AALCO were broad and he was confident of a bright future. He emphasized and quoted from Winston Churchill (then Prime Minister of the United Kingdom) from a statement that he made 100 years ago when he visited Uganda; upon his return: *my journey is at an end, the tale is told, and the reader who has followed so faithfully and so far, has a right to ask what message I bring back. It can be stated in three words "concentrate upon Uganda". But it is alive by itself. It is vital; and in my view...it ought in the course of time to become...perhaps the "financial driving wheel of all this part of the world". My counsel plainly is "concentrate upon Uganda!"...Uganda is from end to end "one beautiful garden", where the staple food of the people grows almost without labor. Does that not sound like a paradise on earth? It is the Pearl of Africa.*

34. The Delegate urged that, on recognition of the tremendous changes and developments that had taken place in the world in the areas of trade and investment, to return and formulate a program to carry out studies aimed at identifying areas that require attention in order for Member States to cope with and benefit from liberalized cross-border trade, free capital flow and regional integration. This challenge required certain legal and institutional reforms to create an enabling environment. In addition,

some of the reforms already undertaken legislatively or through policy measures at national and international levels, might had, with the passage of time, become irrelevant hence warranting further changes.

35. There were a number of countries in the AALCO membership which were success stories and which other members could emulate through smart partnerships.

36. The Leader of the Delegation stated that he wished AALCO may particularly study the following broad areas on both policy and technical levels and formulate model instruments:

1. The legal and institutional reforms that may be instituted following some members accession to International Organizations such as WTO and regional trade bodies to achieve managed liberalization.
2. Legal and administrative reforms necessary for the realization of best practices in investment promotion and facilitation.
3. A legal framework that promotes liberalization while guaranteeing transfer of technology and sustainability and allowable protection of domestic industries.
4. The practical role of government in investment promotion and retention beyond fiscal or financial incentives.
5. An appropriate legal framework for checking the adverse effects of trade liberalization, particularly dumping and stifling of domestic industry.
6. And, other related areas.

37. He appreciated the Secretary-General elect Prof. Dr. Rahmat Mohamad for his training and experience in these and other areas of international law and was confident that he was well suited for the task and would make his prayers a reality.

38. He briefly highlighted the current security situation in Northern Uganda that has returned to normalcy. People in the Internally Displaced Camps were returning to their homes and Kony and his rebel groups were in the final stages of concluding a comprehensive peace agreement with the Government of Uganda. He informed that Uganda had bid to host the ICC Review Conference slated for 2010. He implored AALCO and its entire membership to support Uganda's bid.

39. The **Leader of the Delegation of Thailand** expressed his happiness to participate in the Forty-Seventh Annual Session of the Asian-African Legal Consultative Organization. On behalf of the Thai delegation, he extended his sincere congratulations to H. E. Mr. Narinder Singh, Joint Secretary and Legal Adviser of the Ministry of External Affairs of the Republic of India, on his election as the President and also to H. E. Mr. Wanjuki Muchemi, Solicitor General of the Republic of Kenya, as the Vice President of the Session. The delegate believed that under his able leadership the Session would be a complete success. In addition, he thanked the Government of the Republic of India for the warm and cordial welcome and excellent arrangements made for the Session.

40. The Leader of the Delegation expressed their appreciation and deep gratitude to H. E. Dr. Wafik Zaher Kamil, the outgoing Secretary-General of AALCO for his great efforts and contribution in steering effectively the activities of AALCO during his tenure as the Secretary-General of AALCO. He was certain that his outstanding work done in the past years would long be remembered and appreciated by all AALCO's Members. He also conveyed their profound congratulations to Professor Dr. Rahmat Mohamad for being elected as the new Secretary-General of AALCO. With his expertise and wide range of experience, he strongly believed that he would take AALCO to a new height and guide AALCO

towards the ever closer cooperation between the Asian and African countries while continuing AALCO's pivotal role in shaping the direction of the international law development in the two regions.

41. It had been well recognized among the Asian and African countries that AALCO had actively been an advisory body to its Member States in the field of international law and a forum for Asian-African cooperation in legal matters of common concern. Thailand, like other Member States, had attached great importance to the work of AALCO since their first participation in the Organization in 1961. Thailand appreciated the endeavour of AALCO in developing mutual legal policies and positions for Asian-African countries. Thailand valued the efforts of AALCO to establish the Center for Research and Training to organize the training programmes, seminars and workshops to strengthen the international law expertise of the Member States. The Leader of the Delegation also commended the interaction of AALCO with the United Nations, its agencies and other international organizations, which voice their mutual concerns and bring the cooperation in the field of international law to the new level.

42. Various international law topics in the Agenda during that Session were of great interest and common concern of their regions as well as the world, in particular the issue of "International Terrorism" and "An Effective International Legal Instrument against Corruption," to which Thailand had always given priority. Moreover, the One-day AALCO-ICRC Special Meeting on International Humanitarian Law was appropriately included in that meeting to reflect the current focus of the world. They looked forward to a fruitful exchange of ideas on those items of the Agenda.

43. The Delegate congratulated AALCO on the completion of the new Permanent Headquarters building in New

Delhi. The project could not be successful without the hard work of AALCO Secretariat and the assistance and cooperation from all Member States, particularly from the Government of the Republic of India. While the new Permanent Headquarters, the new home of AALCO, had already been completed, the Leader of Delegation urged that all the members to continue to support and make contribution to AALCO so that the AALCO Secretariat could duly maintain this new home and fulfill its function and operation at the Office, to achieve the efficiency and the sustainability of the Organization. In conclusion, the Leader of Delegation extended his deepest appreciation to the AALCO Secretariat and its staff for their effort and the preparation made for that Session.

**His Excellency Mr. Wanjuki Muchemi,  
Vice-President of the Forty-Seventh  
Session, in the Chair**

44. The **Leader of the Delegation of the Republic of Indonesia** at the outset congratulated Mr. Narinder Singh on his worthy election as the President of the Session. The Delegation was confident that under his leadership and with his great wisdom and guidance, the Forty-Seventh Session of the AALCO would achieve copious of expected success by its deliberations on every subject matters in its great agenda. The Leader of the Delegation also seized the opportunity to convey to the honorable gathering and extend his profound gratitude for the invitation extended to the Government of Republic of Indonesia to participate in the Forty-Seventh Annual Session of the Asian-African Legal Consultative Organization. He also expressed his appreciation to the Government of India for the warm welcome and gracious hospitality accorded to all delegates, including the Indonesian delegation. The Leader of the Delegation also conveyed deep appreciation to Secretary-General of AALCO and the



Secretariat for the well-organized preparation of the Session including the early dissemination of documents for discussion.

45. On behalf of the Government of the Republic of Indonesia, the Delegate conveyed profound appreciation to H. E. Amb. Dr. Wafik Z. Kamil who chaired the Secretariat of AALCO for the last eight years. He stated that during his chairmanship, AALCO had developed to be a more prestigious body that had made significant contributions to international law. Also, on behalf of the Government of the Republic of Indonesia, the Leader of the Delegation congratulated Dr. Rahmat Mohamed, from Malaysia on his worthy election as the Secretary-General of AALCO for the next four years. He was convinced that under his leadership and with his great wisdom and guidance, AALCO would continue to enhance its contributions to achieve its goals as enshrined in its Statute.

46. The Leader of the Delegation reiterated its continued support and assured contributions to AALCO so that AALCO would always play a significant role as an advisory body to discuss issues on international law and as a forum to strengthen the ties of Asian-African cooperation in legal matters in which members could express their aspiration to achieve the goal of progressive development of international law.

47. The Leader of the Delegation was of the view that in spite of continuing discussions on items that had been on the agenda, it was of paramount importance that AALCO could identify other topics in international laws especially those that become common concerns of AALCO Member States that require attention and response. Moreover, AALCO could hold meetings or seminars to discuss further these matters.

48. The Leader of the Delegation proposed that AALCO could hold another event to discuss recent emerging issues on the United Nations Convention on the Law of the Sea and also to discuss the implication of this Convention to the application of other international law instruments. His delegation was of the view that AALCO could discuss the possible amendment of Article 2 of the Convention on International Civil Aviation signed in Chicago on 7 December 1944 regarding the definition of the territory of a state so that the provision of this Article would be in line with the provisions of the United Nations Convention on the Law of the Sea.

49. While reiterating the deliberate consideration on the resolution of RES/46/S-14 on the issue of Expression of Folklore and its International Protection that was taken into consideration on the Forty-Sixth Annual Session of AALCO, the Delegate urged the Secretary-General to organize an expert meeting in cooperation with WIPO, to facilitate the exchange of views by Member States on the issues of international protection of expressions of folklore including the Draft Agreement for the Protection of Expressions of Folklore prepared by the International Bureau of WIPO. His Delegation strongly supported a joint AALCO-WIPO seminar on folklore matters to consolidate the position of Asian-African countries on the substantive aspects of the future international instrument for the protection of folklore.

50. The **Leader of the Delegation of the Islamic Republic of Iran**, at the outset, extended to President, his warm congratulations on his election as President of the Forty-Seventh Annual Session of the Asian-African Legal Consultative Organization. He also expressed his appreciation to H. E. Mrs. Brigitte Sylvia Mabandala, Minister for Justice and Constitutional Affairs of the Government of Republic of South Africa and President of the AALCO's Forty-Sixth Session. He

congratulated Prof. Dr. Rahmat Mohammad on his election as Secretary-General of AALCO and wished him the best success during his term in office. The delegation also expressed its appreciation to Amb. Kamil, former Secretary-General of AALCO for his contributions.

51. The Islamic Republic of Iran was of the view that international law had a major and indispensable role in preserving and promoting peace and security, economic development and social progress; and human rights for all and the rule of law. Accordingly, the main aim of international law was to establish an equitable and just world order, an order that was meant to serve the interests of all the peoples of the world without discrimination, on the basis of sovereign equality among all States and respect for their independence and territorial integrity. In that context, UN Member States should renew their commitment to defend, preserve and promote the UN Charter and implementation of international law, with the aim of making further progress to achieving full respect for international law.

52. Recognizing the serious danger and threats posed by the actions and measures which sought to undermine international law and international legal instruments, as well as, affirming their previous point of views on the significance of AALCO in enhancing exchanges and cooperation among Asian and African countries in the legal field, especially on the new dimensions of international law, the Leader of the Delegation was of the opinion that AALCO may have a concrete contribution in identifying and pursuing measures that may contribute towards achieving a peaceful and prosperous world as well as a just and equitable world order based on the UN Charter and international law.

53. The Delegate also briefly highlighted on Iranian nuclear programme. The Islamic Republic of Iran had planned and started activities in the field of peaceful

uses of nuclear energy since 1957. In that context, the Islamic Republic of Iran had constantly complied with its obligations under the NPT and the Statute of the International Atomic Energy Agency (IAEA) and had never had any prohibited activities; hence, its inalienable rights under the NPT should not be violated by any means. Irrational opposition of few certain countries to Iran's exercising of its inalienable rights to peaceful uses of nuclear technology, and their instrumental manipulation of the international institutions in order to put pressure on the Board of Governors and the Security Council to deprive the Iranian nation of its established and legal rights have constituted a situation in which international law and the United Nations Charter had been seriously violated.

54. Involvement of the Security Council in the Iranian peaceful nuclear program was in full contravention with the organizational, statutory and safeguards requirements governing the IAEA practices and procedures. Furthermore, the substantive and procedural legal requirements, that were necessary for engaging the Security Council in the issues raised by the Agency, had been totally ignored in that regard.

55. The right of Iran to peaceful uses of nuclear technology was a clear example of the realization of "the right to development", "permanent sovereign right over natural resources" and "right to self-determination". Such rights were among the fundamental rights of nations and their breach entailed international responsibility for those who have violated them vis-à-vis the nation whose rights had been violated and also towards the international community as a whole.

56. The Security Council, as a UN organ created by Member States, was subject to legal requirements, and was obliged to comply with the same international normative rules that the Member States were bound to. The Council

should observe all international norms, in particular the UN Charter and the peremptory norms of international law, in the process of its decision making and in its taking actions. Needless to say that any measure adopted in contradiction to such rules and principles would be void of any legally binding effects. Likewise, as the International Court of Justice had held in its 1971 Advisory Opinion, the Member States were required to comply with Security Council decisions only if they were in accordance with the United Nations Charter.

57. Iranian delegation was of the view that terrorist acts constitute the most flagrant violations of international law, including international humanitarian and human rights law, in particular the right to life, leading to the lack of the full enjoyment of human rights and fundamental freedom of peoples, and that such acts endangered the territorial integrity and stability of States, as well as created adverse consequences on the economic and social development and cause the destruction of the physical and economic infrastructure of States. Terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group, and that those attributions should not be used to justify terrorism or counter-terrorism measures that include, *inter alia*, profiling of terrorists and intrusion on individual privacy. Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for whatever purposes, wherever, by whomever, against whomsoever committed were, in any circumstance, unjustifiable, whatever the considerations or factors that might be invoked to justify them.

58. Condemning terrorism in all its forms and manifestations, the Islamic Republic of Iran, a victim of that menace for decades and had put fighting terrorism in a top priority. The Islamic Republic of Iran was of the view that the United Nations had an indispensable role to play in any action

against terrorism and cooperation of the international community was vital to win the fight against the scourge. The role of the United Nations in addressing that menace was of great magnitude and the important contribution that could and should be made to tackle that problem deserved recognition and appreciation. The United Nations counter terrorism mechanisms were embodiment of their joint forces under the umbrella of the United Nations in order to eradicate the menace of terrorism, and have thus far had commendable achievements. Yet, the international community's efforts to eradicate terrorism had been facing some hurdles along the way that needed to be addressed appropriately. For instance, an opposing unilateralist trend has, from the very beginning of that effort, ran the risk of arresting the momentum and shattering the universal consensus, and thus undermining the overall and effective fight against terrorism.

59. One of the AALCO topics, which were placed first on the agenda of the Thirty-Sixth Session at Tehran, 1997, was "Extra-Territorial Application of National Legislation: Sanctions Imposed against Third Parties." The unilateral sanctions and extraterritorial measures against other countries were not admissible under international law and flagrantly constituted direct interference with the ability of the third States to cooperate with others and carry out their foreign trade. From legal point of view, it violated various principles of international law, *inter alia*, non-interference in internal affairs, sovereign equality, freedom of trade, and presented a serious threat to world peace and security, the fact had been repeatedly reflected in the numerous resolutions of the different organs of the international community, particularly in the resolutions adopted by the UN General Assembly and ECOSOC. Unilateral sanctions were in contradiction with the United Nations Charter. Article 2, Paragraph 4 obliges all UN Members to refrain in their

international relations from the threat or use of force.

60. The Delegate, highlighted that since the emergence of Zionist regime, the Israeli war machine had continued to be brutally and relentlessly at work, shattering the lives and livelihoods of the defenseless Palestinian people. The Israeli criminal acts against the Palestinians and other peoples in the region were the gravest threat currently posed to regional as well as international peace and security.

61. Those appalling crimes of extrajudicial killings and targeted assassinations have continued to be unabatedly been committed by the Israeli regime while other Israeli crimes such as: the destruction of homes and infrastructure as well as agricultural lands, illegal expansion of settlements, the detention and imprisonment of thousands of Palestinians, construction of the expansionist Wall and the imposition of collective punishment on the entire Palestinian population, had continued persistently. According to the numerous UN reports, due to the Israeli practices "the whole Palestinian population has been terrorized, their properties had been destroyed, and a humanitarian crisis had been imposed on a whole population". The United Nations Rapporteurs had rightly described those Israeli brutal practices and policies as "ethnic cleansing" and in violation of International Humanitarian Law.

62. The frequent resorts to all these practices by the Zionist regime were the violation of rights proclaimed in the various International Human Rights Instruments and the most fundamental rules of international humanitarian law, The Security Council should be held accountable for its repeated failures to act against the real threats to international peace and security, like those of the Zionist Regime against Palestinian and Lebanese people. As an organ of an international organization created by states,

the Security Council was bound by law, and Member States had every right to insist that the Council keep within the powers they had accorded to it under the Charter, and they should be exercised in conformity with the purposes and principles of international law.

63. The **Leader of the Delegation of the Arab Republic of Egypt**<sup>2</sup> congratulated the President and Vice President on their election and congratulated Dr. Rahmat Mohamed for his appointment as the Secretary-General. He also thanked Amb. Dr. Wafik Zaher Kamil for his contributions to AALCO, including increasing the Membership from 42 to 47 in the last 8 years and having cooperation agreements with different international organizations.

64. The Delegate stated that, Israel was not serious about the peace process and there was absence of political will to have serious negotiations with Palestine. Israel was engaged in collective punishment and committing atrocities in the Occupied Territory. Israel was trying to change the demography of the OPT and deporting Palestinians under security allegations. The Leader of Delegation highlighted that peace in the Middle East was Egypt's priority and it encouraged talks between Israel and Palestine to promote peace in the Middle East. Israel was not respecting the resolutions of the UN Security Council and General Assembly. The Leader of Delegation also highlighted the problems posed by the new settlement, particularly in the East Jerusalem.

65. Egypt strongly condemned terrorism and had participated in drafting the Strategy on Terrorism in 2006. Egypt was a party to all major international instruments against terrorism. Political will and sincere cooperation by international community was necessary to tackle terrorism and just cannot be considered as security issue alone.

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<sup>2</sup> Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

Globalization of terror was not related with any religion or nationality. A new definition on terrorism needs to be formulated. Liberation movements had to be respected. Egypt was in favour of all religion and belief. It is not possible to impose strange customs on any nation.

66. Regarding the International Criminal Court (ICC), Egypt was of the view that the ICC should be committed to Statute and not political considerations. Egypt had ratified the Convention on Corruption and took national measures including legislations.

67. The Delegate congratulated the new Secretary-General of AALCO and also congratulated India for gifting the AALCO its Permanent Headquarters Building.

68. **The Leader of the Delegation of the Republic of Korea** congratulated the President of the AALCO and extended his governments' full support to the President and the other Members of the Bureau. He expressed his confidence and hoped that the Forty-Seventh Session would prove to be a resounding success, not only in exchanging views on key issues in contemporary international law, but also in forging and nurturing friendship between the peoples of Asia and Africa.

69. The Leader of the Delegation extended his heartfelt appreciation to Ambassador Dr. Wafik Z. Kamil, for his devotion and great contributions for the AALCO during his tenure. He also thanked the Secretariat for their hard work in making the Session a memorable and successful event. Moreover, he also congratulated Prof. Dr. Rahmat Mohamad, on his election as the new Secretary-General of AALCO.

70. With respect to the organizational matters, the Leader of the Delegation recalled that the Forty-Sixth Session held in Cape Town adopted resolution on Organizational Matters (RES/46/ORG/6

JULY 2007) which requested the Secretary-General to study and report the possible measures for the rationalization of AALCO's Work Programme. He also re-emphasised that the efforts for implementation of such rationalization should be continued. In that regard, he was of the opinion that the number of items deliberated should not be overly expanded, and that the Secretariat, based on the Report of Secretary General on that matter (AALCO/47<sup>th</sup>/HEAD QUARTERS (NEW DELHI) SESSION/2008/ ORG 1), should consider much more specific measures to rationalize the AALCO's work programme.

71. With regard to the Report on work of the International Law Commission at its 59th Session, his country believed that the conduct of international relations was unthinkable without the basic instruments, first drafted by the International Law Commission, such as the Conventions on Diplomatic and Consular Relations, the Law of Treaties and the Law of the Sea. The Commission's success was further marked by the frequency with which States had accepted the codification conventions as declaratory of customary international law long before the Conventions entered into force. His delegation firmly believed that the ILC had been central to specific "legislative" process of the contemporary international community and continued to be the only permanent body entrusted with the codification and development of international law within the framework of the United Nations. His delegation believed that the Forty-Seventh Session of the AALCO would greatly contribute to further discussions about some of the important topics before the Commission.

72. The Delegate said that the United Nations Convention on the Law of the Sea (UNCLOS) was widely accepted by the international community. Given the centrality of UNCLOS for the governance of oceans and seas, his country attached great importance to a coherent, integrated and

equitable approach to the sustainable management and conservation of the oceans and their resources in accordance with the spirit of UNCLOS. He informed that the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS) and the Commission on the Limits of the Continental Shelf had been playing an important role in implementing the Convention effectively. He said that his country had demonstrated its commitment to UNCLOS by actively participating in the work of the ISA, ITLOS and the Commission on the Limits of the Continental Shelf. The Delegate was of the view that the oceans and seas were invaluable to the welfare of humanity, providing living and non-living marine resources and a vital avenue of transportation. However, the world continued to be troubled by piracy and the degradation of marine resources. He stressed that Maritime safety and security was a serious concern for many seafaring States. In that context, he informed that the Government of Republic of Korea was pleased to note the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea focused its discussions on maritime security and safety.

73. The Delegate said that his country had been an active and enthusiastic supporter of the International Criminal Court since its inception. He was of the opinion that the aims of the Rome Statute to end impunity of the gravest international crimes and to guarantee enforcement of international justice were not easy to achieve. He praised the progress of the Court and informed that the positive achievements had included the rapid and wide acceptance of the Rome Statute, the actual initiation of investigations and trials under the Statute, and demonstration of willingness by States Parties to cooperate with the Court in various areas. He also informed that the National Assembly of the Republic of Korea passed legislation implementing the Rome Statute at the end of 2007, which entered into force at that time.

74. In conclusion, the Delegate reaffirmed his Government's commitment to AALCO. He said that his Country had been an active and ardent supporter of AALCO since becoming a full member in 1974. He informed that his Government was honoured to host the Annual Session of AALCO twice in Seoul, in 1979 and, more recently, in 2003. He also informed that his Government took great pride in the accomplishments of the two previous Sessions it hosted, and was happy to see that the various initiatives, taken along with the AALCO Secretariat at that time, continue to contribute to more productive and efficient AALCO Sessions.

75. The **Leader of the Delegation of the Democratic People's Republic of Korea** congratulated the President of the Forty-Seventh Session and also congratulated Prof. Dr. Rahmat Mohamad for being elected as AALCO's new Secretary-General. He expressed his expectation that the new Secretary-General would lead the AALCO activities vigorously in the interests of Member States with rich experience and knowledge.

76. He also extended his sincere appreciation and thanks to the Government of India for its assistance rendered to the AALCO activities and for the conveniences provided to the delegations for attending the Session.

77. He acknowledged that AALCO being an inter-governmental legal consultative Organization which exchanges views not only among the Member States on important legal issues, but also had made significant contribution to the codification process of international law. He appreciated the activities of AALCO for the progressive development of international law and also assured his country co-operation with AALCO in the future too.

78. The Delegate was of the view that it was high time to actively seek practical legal measures to prohibit actions that threatened

the people's right to live and retard social developments due to imposition of unilateral sanctions and blockade by individual countries by applying domestic laws over other States especially to the selected States in violation of the well established principles of international law, i.e., the principles of respect of sovereignty, non-interference in others internal affairs and equality and mutual benefits.

79. His delegation believed that due attention would be given to establish an international legal regime demanding responsibility from some countries who were imposing unilateral sanctions or executing the use of force against other independent countries under the name of "counter-terrorism" or other unjustified excuses while pursuing politically motivated purposes.

80. His delegation also expressed that due attention must be paid to forming an international legal framework that cares for the compensation for the infringement of interests of developing countries arising in the areas of the Law of the Sea and the Environment and Sustainable Development.

81. The Delegate also informed that under the wise guidance of Kim Jong II, social stability and harmony were fully and legally guaranteed in his country. He thanked for the existence of a legal system that reflect the requirements and the will of the working masses and that served their rights and interests, as well as the high display of law-abiding spirit in all aspects of social life.

82. The Delegate informed that the features of a law-governed country were well instituted in his country, as it had advanced constitution of the state embodying the Juche idea that centered on the masses of people as well as other sectoral domestic laws based on the constitution had been fully enacted.

83. In conclusion, he assured that in order to build a just and peaceful world his government would actively exert every effort in the future too that the principles of established international laws aimed at mutual relations among States were well respected and strictly abided.

84. The **Leader of the Delegation of Myanmar** congratulated H. E. Mr. Narinder Singh, on his election as President of the Forty-Seventh Session of AALCO. He also expressed his appreciation to the outgoing President Her Excellency Mrs. Brigitte Sylvia Mabandla, Minister of Justice and Constitutional Development, Republic of South Africa, for the excellent job she had done over the Forty-Sixth Session.

85. The Leader of the Delegation expressed deepest appreciation for the work of the AALCO and that contributed to serve as an advisory body to its Member States in the field of international law and as a forum for Asian-African cooperation in legal matters of common concern, to consider and deliberate on issues related to international law. He also congratulated the new Secretary-General of the AALCO, Professor Dr. Rahmat Mohamad of Malaysia. On behalf of the Government of Myanmar, he conveyed deepest appreciation to the former Secretary-General H. E. Amb. Dr. Wafik Z. Kamil for his able stewardship during his tenure as the Secretary-General and wished him all the best for his future endeavour.

86. The Leader of the Delegation said that the topics mentioned in the Agenda were of great interest and his delegation was keen to participate in most of the topics. His delegation hoped that the results of the discussion would be shared by the wider views of Member States. He also emphasized the importance of cooperation between the AALCO and other international organizations. For that reason, his delegation was convinced that the AALCO would continue its important role as an

indispensable forum in the Asian and African region.

87. He informed about the natural disaster in Myanmar between 2<sup>nd</sup> and 3<sup>rd</sup> May, 2008. He said that such force and velocity of a storm was never experienced by his country. Thousands of casualties had occurred and thousands were still missing. The material damage was also enormous and thousands were homeless. On behalf of the Government of Myanmar, he thanked all overseas and domestic donors. He informed that his Government was sparing no efforts to help the victims of the Cyclone in saving them, helping them and settling them. He also conveyed all donors, his heartfelt gratitude for help rendered to his Government, for their timely help when it was badly needed. At that juncture, he recalled the proverb "A friend in need is a friend indeed".

88. The **Leader of the Delegation of the Republic of South Africa** congratulated H. E. Professor Dr. Rahmat Mohamad for his appointment as the new Secretary-General of AALCO. He assured his country's co-operation and assistance in any manner possible in steering the AALCO towards achieving its goals. He also thanked the former Secretary-General Amb. Dr. Wafik Z. Kamil for his outstanding leadership through the eight years that he had been at the helm of the Organization. He recalled the Forty-Sixth Session of AALCO held in Cape Town, South Africa and hoped that the Member States had gained tremendously from the deliberations at the Cape Town Session.

89. The Delegate thanked the Government of India for gifting to AALCO the Permanent Headquarters Building and the Secretary-General's Residence in the prestigious Diplomatic Enclave of Chanakyapuri, with excellent facilities.

90. He said that the Forty-Seventh Session of AALCO took place at a time

when the world was experiencing economic depression of food and inadequate energy supplies. These had a negative impact on the resolutions of the Millennium Development Goals, particularly the alleviation of poverty in Asia and Africa. He was of the opinion that Asian and African countries and all the developing countries of the other parts of the world should unite in the resuscitation of the Doha rounds talks in the World Trade Organisation (WTO). Agriculture was the key issue in addressing the challenge of food shortage and escalating food prices. Therefore, he urged for finding a way to deal with the issue of tariff removal, which acted as a barrier for trade in agriculture and a major factor for the collapse of the Doha rounds.

91. With regard to Terrorism, the Leader of the Delegation said that it was an area which continued to be a concern for the international community. He informed that his Government unequivocally condemned acts of terrorism and had pledged its support for the global campaign against terrorism within the framework of the United Nations. Whilst his government acknowledged that the challenge in the area of terrorism was to find global consensus on the definition of terrorism, ways would also be found to prevent and punish those who commit terrorism. He stressed that lack of global consensus must not create room for impunity.

92. The Leader of the Delegation said that armed conflict and violation of human rights were of serious concern to mankind, and continued to threaten peace and security in the world. The International Criminal Court was created to address that particular problem. He informed that his Government took part in the negotiations leading to the establishment of the Court. He said that his Government supported the Court and urged Member States who had not yet ratified or acceded to the Rome Statute to do so.



93. In conclusion, the Leader of the Delegation shared the view that the work of AALCO should be reviewed, especially some of the present agenda items so as to make an impact. He said that the agenda of AALCO must be flexible and should not only be driven by standing agenda items but regional and global topical issues. He suggested that some agenda items must give way to other topical issues within the appropriate period, for example after two or three Sessions of AALCO. Furthermore, AALCO should have more qualitative exchanges within the context of its inter-sessional activities, which should inform discussions and outcomes of its Sessions. During those inter-sessional activities, there should be focus on topical issues such as the definition of the Crime of Aggression and the role of the UN Security Council ahead of the 2010 Review Conference of the Assembly of States Parties to the Rome Statute of the International Criminal Court. He also said that his Government would like to play an active role in the AALCO inter-sessional activities such as seminars and workshops.

94. **The Leader of the Delegation of the Federal Republic of Nigeria** congratulated H.E. Mr Narinder Singh and H. E. Mr. Muchemi on their election as President and Vice-President respectively of the Forty-Seventh Headquarters Session and for the very able manner they had been handling the Session. He also expressed deep appreciation to H. E. Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session. The Leader of the Delegation noted with immense satisfaction, the excellent work of the Secretariat of AALCO under the esteemed leadership of H.E. Amb. Dr. Wafik Z. Kamil and thanked him for the commitment and dedication he brought to bear on the work of the Secretariat during his tenure. He hoped and expected that Amb. Dr. Wafik Z. Kamil would continue to be of service to AALCO, even out of office.

95. The Delegate congratulated and welcomed Professor Dr. Rahmat Mohamad for his selection as new Secretary-General. He also expressed confidence in the leadership of Dr. Rahmat and hoped that he would be able to bring his deep knowledge, amiable personality and commitment to bear on the work of the Secretariat and improve on the gains already recorded by his predecessor.

96. The Delegate informed that his Country had been involved with the work of the AALCO for many decades and appreciated the work and contributions of the Organisation in global affairs particularly in the area of progressive development and codification of international law as evidenced by its contributions to the work of the International Law Commission and the Sixth Committee of the United Nations General Assembly.

97. The Delegate informed that his country was well aware of the negative impact of corruption on development, a fact which had for become a global concern of all nations. Thus, apart from ratifying the United Nations Convention against Corruption in 2004, his country had taken steps to internally put in place, the necessary legal and institutional framework for combating corruption. Of particular significance was the establishment of the Independent Corrupt Practices and Other Related Offences Commission (I.C.P.C.) and the Economic and Financial Crimes Commission (E.F.C.C.).

98. He said that although, far from being won, the war against corruption had been re-invigorated in line with Government's policy of zero-tolerance for corruption. Consequently, the number of prosecution of corruption cases had been on the increase and major convictions had been recorded. With renewed efforts in combating private sector corruption and strengthening of the Public Procurement Process in order to make it transparent in line with global

trends and practices, the delegation was confident that significant success would be recorded in the near future.

99. On International Terrorism, the Leader of the Delegation noted that terrorism constituted one of the most serious threats to peace and security of all nations and peoples. He informed that his country was committed to fight against terrorism in its entire ramification and had taken necessary steps by signing and ratifying the International Convention on the Suppression of the Financing of Terrorism, 1999; the Convention on the Prevention and Combating of Terrorism, 1999 in addition to other Conventions and Protocols relating to Terrorism. He also informed that his country realised the imperative of a comprehensive international convention to combat terrorism and expressed its support for the Draft Comprehensive International Convention to Combat Terrorism.

100. The Delegate said that his country noted the effect of anti-terrorism legislation on the promotion and protection of human rights. The concerns of national security occasioned by acts of terrorism had taken the centre stage in global discourse to the detriment of human rights concerns. He informed that his country's position was that more efforts would be made to strike a delicate balance between legitimate national security concerns and respect for human rights in the legislative and enforcement measures adopted to combat terrorism.

101. On the domestic front, the government of Nigeria was at an advanced stage in finalizing the Draft Bill for an Act to provide for Measures to Combat Terrorism and Other Related Matters. The Bill sought to provide for measures for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and

the Convention on the Suppression of the Financing of Terrorism.

102. As part of the measures at establishing cooperation against Trafficking in Women and Children, the Leader of the Delegation informed that his country had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

103. He also informed that the Protocol was domesticated into local legislation called Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003 as amended in 2005. This Law apart from creating offences with stiff penalties ranging from one year imprisonment to life imprisonment depending on the gravity of the offence also established an institutional framework known as "The National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), empowered to implement the Act with a view to stemming the tide of this modern day slavery.

104. Finally, the Leader of the Delegation informed that his country was at a critical stage of her national development where vital State institutions were being re-invigorated. Consequently, on-going reforms in virtually all sectors of the economy in line with the policy objective of repositioning the country to meet the challenges of the 21st century. The enthronement of the rule of law in all facets of national life was being championed by the Government of the day. In tackling those challenges, the Government of Nigeria would continue to rely on the contributions and assistance it had enjoyed from AALCO over the years and especially the capacity building programmes being initiated by the Secretariat.

105. The **Leader of the Delegation of Brunei Darussalam** congratulated the outgoing Secretary-General Amb. Dr. Wafik Zaher Kamil and conveyed his appreciation for the excellent work done by him during his tenure as the Secretary-General of AALCO. He also congratulated Mr. Wanjuki Muchemi, CBS, of the Republic of Kenya and Mr. Narinder Singh of India on their becoming the Vice-President and the President respectively, of the Forty-Seventh Annual Session of AALCO.

106. While conveying his heartfelt congratulations to Prof. Dr. Rahmat Mohamad on his appointment as the new Secretary-General of AALCO, he opined that his delegation was confident that, under his leadership the role of AALCO in the progressive development of international law would further be enhanced. He also appreciated the Government of India and the AALCO Secretariat for the smooth organization of the Forty-Seventh Annual Session.

107. While commenting on the substantive items on the agenda of AALCO, he opined that they were of immense contemporary value and that the comments, proposals and exchange of views among Member States on all the topics would benefit all the Member States. On the matter of corruption he stated that, Brunei Darussalam had adopted the policy of zero tolerance towards all corrupt practices in whatever form. He further added that Brunei Darussalam had stepped up awareness on corrupt practices and its implications by including it as part of the national curriculum at all levels of education including at tertiary level.

108. With regard to trafficking in women and children, he appreciated the work done by the Secretariat which had managed to identify the causes, its consequences, the interface between trafficking with other international problems such as migration and other related matters. He added that

Brunei Darussalam looked forward to learn from the experiences of Member States of AALCO that had started to address this important issue through their domestic legislation and their involvement and commitment with other regional and international organizations.

109. With regard to the protection of the Environment he stated that Brunei Darussalam had made great achievements in creating awareness about the need to preserve the environment and in particular through Brunei Darussalam's initiative in the heart of Borneo. He added that, in the year 2007, Brunei Darussalam, had acceded to the United Nations Framework Convention on Climate Change (UNFCCC), and the Convention on Biological Diversity (CBD). He further added that Brunei Darussalam was currently in the process of finalising a legislation on the protection of the environment.

110. Commenting on the topic of international terrorism, he mentioned that Brunei Darussalam was committed to combat international terrorism in all its manifestations. They had enacted the Anti-Terrorism Financial and Other Measures Order in 2002. He further added that the order, amongst other things, enabled the freezing of funds or financial assets of any individual suspected of using it for the commission of any terrorist activity. He added that besides 'the Order' there were other laws which supplemented those measures; such as the Money Laundering Order 2000 and Criminal Conduct of (Recovery of Proceeds) Order 2000. These legal instruments complemented the other legislation that could be relied upon to combat international terrorism.

111. Commenting on the Secretary-General's Report on the Budget of AALCO for 2009 he was confident that the new Secretary-General would come up with innovative strategies to try and address the issues related to the budget so as to

encourage early payment of annual subscriptions and the recovery of arrears from the Member States.

112. The **Leader of the Delegation of the Republic of Yemen**<sup>3</sup>, after congratulating the outgoing Secretary-General Amb. Dr. Wafik. Z. Kamil expressed hope that under the leadership of the new Secretary-General Prof. Dr. Rahmat Mohamad the Organization would conquer greater heights. He assured that the Republic of Yemen would extend all the possible support to AALCO.

113. Commenting on the importance of the substantive issues found in the agenda of the Organization, he opined that they were of immense importance to all the Members States, of AALCO and that cooperation of the Member States was indispensable in achieving the objectives of AALCO.

114. Commenting on the efforts that his country had taken to combat corruption, he explained that, after ratifying the UN Convention on Combating Corruption, Republic of Yemen had established a national body to combat corruption.

115. Commenting on the subject of the International Criminal Court, he stated that the Rome Statute that established the International Criminal Court was being deliberated in their Parliament in an effort to transform that into domestic law.

116. Commenting on the way how Republic of Yemen treated Women, he opined that they were treated on par with men and gender equality was very much prevalent in their country.

117. Commenting on the issue of terrorism, he stated that the evil of terrorism needed to be eradicated in all its manifestations and that, this required among other things, cooperation on the part of international community in general and

Asian African states in particular and, the urgent need to ratify the relevant international legal instruments on the issue of terrorism.

118. He concluded his comments by thanking the Government of India for giving the Organization a wonderful building which he believed would enhance the work of AALCO considerably.

119. The **Leader of the Delegation of the Republic of India** at the outset congratulated Mr. Narinder Singh of India and Mr. Wanjuki Muchemi, CBS, of the Republic of Kenya on their becoming the President and the Vice President respectively, of the Forty-Seventh Annual Session of AALCO. While recognizing the commendable work done over the years by the outgoing Secretary-General Amb. Dr. Wafik. Z. Kamil in various capacities, he congratulated the newly elected Secretary-General, Dr. Rahmat Mohamad of Malaysia, and hoped that the latter would carry forward the good work done by his predecessors.

120. Commenting on the nature of AALCO, he opined that the main objective of AALCO was to examine and analyze the issues relating to various subjects of international law for the use and benefit of the Member States of the Organization. He further stated that it went without saying that, international law and policy go hand in hand at the international level and that AALCO should continue to focus on the legal aspects of international issues. While dwelling on the achievements of AALCO, he stated that its achievements on various international legal issues made the Member States proud. Among the examples that he gave to substantiate his comment, were the work of AALCO on the Law of the Sea. He added that the United Nations Convention on the Law of the Sea 1982 has attained universality in view of the fact that it had 155 State Parties to it, including India. He added that the institutions established by that Convention, namely, the Tribunal, the

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<sup>3</sup> Statement delivered in Arabic. Unofficial translation from interpreter's version.

International Sea Bed Authority and the Commission for the Limits of the Continental Shelf were of immense significance to the developing States.

121. While explaining the importance of Asian-African solidarity in the present era, he stated that, the traditional Asian-African legal camaraderie was very much prevalent in the context of the negotiations that had taken place in the UNCITRAL Working Group, to develop a new Convention on the Carriage of Goods by Sea, of which he was also a part. He held that when the developed Countries wanted to have stringent liability for shippers as opposed to carriers that was successfully watered down to a considerable extent by the Asian-African solidarity.

122. Commenting on the dangers posed by the phenomenon of terrorism, he urged that the international community should cooperate with each other to root out the evil. He also opined that corruption and transnational organized crime too deserved urgent response from the Member States of AALCO. While concluding his comments, he declared that India attached great importance to the work of AALCO and had been contributing as well as benefiting with regard to many areas related to the work of AALCO.

123. The **Observer Delegate from the League of Arab States**, welcomed and congratulated H. E. Mr. Narinder Singh and Mr. Wanjuki Muchemi, on their being elected as the President and the Vice-President of the Forty-Seventh Annual Session of AALCO, and opined that the Session would be a huge success under their leadership. He expressed his heartfelt congratulations to Prof. Dr. Rahmat Mohamad on his becoming the new Secretary-General of AALCO. He also commended the former Secretary-General Ambassador Dr. Wafik Z. Kamil for his valuable contribution to the cause of AALCO over the years and stated that under

his principled leadership AALCO had reached new heights.

124. Commenting on the significance of AALCO, the observer delegate stated that the Arab League Secretariat had been closely associated with AALCO for long years since it valued the Organization for its role in bringing together experience and expertise from Africa and Asia for finding adequate solutions to the problems that plagued Member States of AALCO. He added that his Organization worked with AALCO on some important topics like Terrorism and Corruption.

125. Dwelling upon the strategies needed to tackle the evil of terrorism, he stated that there was an urgent need for increased international co-operation on the part of international community. He added that the Arab Countries were committed to combating terrorism which threatened the global peace. He emphasized that terrorism was religion-blind and that the root causes of terrorism be it economic, cultural, social or political needs to be identified and redressed.

126. Commenting on the steps that the Arab League had taken in that context, he explained that many Arab Countries had ratified the Arab Convention on Fighting Terrorism and had hence mutually agreed to continue their coordination with other States and regional groups. He also stressed the acute need to enhance the preparation for the adoption of a Comprehensive Convention against Terrorism under the aegis of UN which included the definition of terrorism. The need to make a clear distinction between terrorism and the right to self-determination was also highlighted by him. He vehemently supported the International Strategy of Combating Terrorism adopted by the General Assembly in its resolution A/RES/60/28 on 20/9/2006. Commenting on the role of his Organization, in this area, he mentioned, that fostering co-operation between League of Arab States and various

regional and International Organizations working in that field in general and the Counter-Terrorism Committee (CTC) formed by the Security Council's Resolution 1373 (2001), were part of the agenda of his Organization. He also added that cooperation with the UN Office on Drugs and Crime and the Security and Cooperation Organization in Europe was also an important part of their agenda.

127. He emphasized the prominence of the two important documents that had been concluded in this regard, namely the Arab Agreement on Combating Terrorism and the Draft Agreement on Turning the Middle East into a Zone Free of WMD. Commenting on the subject of corruption, he stated that it undermined the fairness, stability and the efficiency of a society and its ability to deliver sustainable development to its members. He added that corruption, if not checked effectively, could threaten the viability of democratic institutions and of market economies and as a consequence, the legitimacy of the State in the eyes of ordinary people would be compromised.

128. Dwelling upon the seminar that had been convened on the UN Convention against Corruption by the Arab League in 2006, he stated that it was very successful and that it had come out with many important recommendations in that regard. Among these were the need to develop national laws in Arab States to criminalize all actions of corruption, to protect the whistle blowers and to promote security and legal cooperation among the Arab States.

129. Commenting on the issue of Refugees, he stated that the situation of refugees in some parts of the world was precarious which also included the plight of Palestinian refugees. However, he deeply appreciated the role of AALCO in that area. While concluding his comments, he thanked the Government of India for graciously gifting AALCO a Permanent Headquarters.

**His Excellency Mr. Wanjuki Muchemi, Vice-President of the Forty-Seventh Session, in the Chair.**

**B. Report on Matters Relating to the Work of the International Law Commission at its Fifty-Ninth Session**

130. **Amb. S. R. Tabatabaei shafiei, the Deputy Secretary-General (DSG) of AALCO** at the outset, conveyed through the representative of the international law commission, Dr. Rohan Perara, and other distinguished Members including President Mr. Narinder Singh, and Amb. Madam Xue Hanqin, AALCO'S congratulations to the international law commission on its sixtieth anniversary. He asserted that ILC in this period has established its credibility as a highly professional and dedicated body of international lawyers and its contribution to the progressive codification of international law had been monumental. He noted that the ILC and AALCO had also been cooperating in their respective spheres of work and over the years had been able to forge excellent working relationship.

131. He then introduced the Secretariat's '**Report on Matters Relating to the Work of the International Law Commission at its Fifty-Ninth Session**' contained in the Document AALCO/47<sup>th</sup>/HEAD QUARTERS (NEW DELHI) SESSION/2008/S 1. The document also contained summary of views expressed by the AALCO Member States on the topic in the Sixth Committee of the UN General Assembly at its Sixty-Second Session (2007). There were six topics on the agenda of the Fifty-Ninth Session of the Commission. These were: 1) Shared Natural Resources; 2) Responsibility of International Organizations; 3) Reservation to Treaties; 4) Effects of Armed Conflicts on Treaties; 5) The Obligation to Extradite or Prosecute (*aut dedere aut judicare*); and 6) Expulsion of Aliens.

132. He noted that the Commission also decided to include in its current programme of work two new topics, namely 1)

Protection of Persons in the Event of Disasters and 2) Immunity of State Officials from Foreign Criminal Jurisdiction and appointed Special Rapporteurs for these topics. It also established a Working Group on the Most-Favoured Nation clause to examine the possibility of considering it as a topic. After considering the report of the Working Group, it decided to refer it to the Planning Group.

133. Amb. Tabatabaei then drew the attention of delegates to the information requested by the Commission on other agenda items. The information provided by States would be of significant help to the Commission in formulating its work. The feedback and information on State practice of AALCO Member States could be of immense help in enabling the Commission to take into consideration the views of different legal systems. Therefore, he requested the delegates to submit specific comments and observations on the agenda items to facilitate the work of the Commission.

134. **Dr. Rohan Perera, Representative of the International Law Commission (ILC)** firstly, conveyed the best wishes of the Commission for a successful AALCO Session. He congratulated the Secretary-General elect and appreciated the outgoing Secretary-General.

135. The Representative noted that the ILC attached great importance to its cooperation with other bodies concerned with the progressive development of international law and its codification. In that regard, the engagement between the AALCO and the ILC, an important item of that Session was dedicated to the work of the Commission, was to be particularly commended. In addition, the Secretary-General of AALCO had also briefed the ILC on the current work of the Organization and participated in an interactive dialogue with Members of the Commission. This mutually beneficial interaction would serve as a

model for other regional organizations and UN geographical groups. He felt that the ILC would stand to benefit by a wider discussion of the substance of its work and suggestions concerning various topics before it.

136. The Representative noted that the 2008 session of the Commission, meeting in Geneva from 5 May to 6 June and again from 7 July to 8 August 2008, was of historical significance. This was the Sixtieth Anniversary Session of the Commission, since the first session at Lake Success in 1948. To mark the anniversary a special event was organized on 19 and 20 May 2008, consisting of a solemn meeting and a one-and-half-day meeting with Legal Advisers of Member States. The meeting was addressed by Mr. Sergei Ordzhonikidze, Director-General of the United Nations Office at Geneva, Her Excellency, Ms. Micheline Calmy-rey, Federal Counselor of the Swiss Confederation, and Mr. Nicolas Michel, the Legal Counsel of the United Nations. His Excellency Mr. Srgian Kerim, President of the General Assembly of the United Nations delivered a message and Her Excellency Judge Rosalyn Higgins, President of the International Court of Justice delivered a keynote address.

137. The meeting with legal advisers on 19 and 20 May 2008 was dedicated to the work of the Commission under the overall theme: "The International Law Commission: Sixty Years... and now?" Several panel discussions were convened which dealt with such issues as the role of the International Law Commission in the 21<sup>st</sup> Century. Other issues discussed included whether its membership as a body of independent experts was ideally constituted for the achievement of its purposes, particular attention being paid to the question of striking the right balance between the academia and the legal practitioner; methods of work of the Commission and how it could best achieve its mandate, as well as the prospects for the future for the Commission.

138. The overall focus was on practical matters concerning the Commission and its cooperation with Member States in the progressive development of international law and its codification. The need for a greater frequency of meetings with representatives of States, including the introduction of more informal meetings was particularly stressed in that regard. A Panel discussion on "Sharing Experiences with other Bodies" engaged in an overview of recent meetings with other bodies such as AALCO and the impact of the dialogue on the work of the Commission. The discussions proceeded on the basis of the Chatham House rules and no record was prepared of the meeting. That work was still in progress and it was hoped that the Commission would be able to draw a few lessons from the rich and open discussion, which would be subject of reflection in its annual report.

#### **Current Agenda**

139. He then outlined the current agenda of the Commission, outlining developments covering the 59<sup>th</sup> Session and the first segment of the Sixtieth Session of the Commission.

140. The current agenda of the Commission had 8 substantive topics. The oldest was Reservations to Treaties and the newest topics included last year were Immunity of State Officials from Foreign Criminal Jurisdiction and Protection of Persons in the event of Disasters.

141. Thus far, during the first segment, the Commission had dealt with five topics, namely: (a) Shared Natural Resources, (b) Effects of Armed Conflicts on Treaties, (c) Reservations to Treaties, (d) Responsibility of International Organizations, and (e) Expulsion of Aliens. ILC would take up the remaining topics, namely: (a) Immunity of State Officials from Foreign Criminal Jurisdiction; (b) Protection of Persons in the Event of Disasters; and (c) The Obligation

to Extradite or Prosecute, at the next session. It was anticipated that the Commission would commence its consideration of the topic "Immunity of State officials from Foreign Criminal Jurisdiction" on the basis of the preliminary report of the Special Rapporteur, Mr. Roman Kolodkin, as well as a study prepared by the Secretariat. Similarly, it was anticipated that the Commission would commence its consideration of the topic "Protection of Persons in the Event of Disasters", on the basis of the preliminary report of the Special Rapporteur, Mr. Eduardo Valencia-Ospina, as well as a study prepared by the Secretariat.

142. Moreover, the representative felt that there were still issues that needed to be dealt with in respect of Effects of Armed Conflicts on Treaties, Reservations to Treaties, Responsibility of International Organizations; and Expulsion of Aliens, which would be taken up during the second segment, in July-August 2008.

#### **Shared Natural Resources**

143. The Commission had so far examined five reports presented by Ambassador Yamada, Special Rapporteur on the topic of Shared Natural Resources. In 2006, it adopted on first reading 19 draft articles, together with commentaries thereto, on the Law of Transboundary Aquifers. In 2007, on the recommendation of the Special Rapporteur the Commission agreed to proceed to a second reading of the draft articles and treat the law relating to aquifers independently of any future work by the Commission on oil and gas.

144. During the first part of the 2008 session, the Commission examined the fifth report of the Special Rapporteur, containing a set of 20 draft articles on the Law of Transboundary Aquifers for the consideration of the Commission on second reading. Thus far the Commission had already adopted on second reading a set of



19 draft articles on the law of transboundary aquifers. These cover issues such as the Principle of Sovereignty of Aquifers States, the Principle of Equitable Utilization, factors relevant to equitable and reasonable utilization, obligation not to cause significant harm to other aquifer States, general obligation to cooperate, regular exchange of data and information protection and preservation of ecosystems and the prevention, reduction and control of pollution.

145. The Commission did not consider it appropriate at that stage to include a draft article 20, on relationship with other agreements, as proposed by the Special Rapporteur since it considered that issues concerning the relationship with other instruments were linked to questions concerning the final form of the draft articles. The Special Rapporteur in his fifth report had recommended that a two-step approach be followed with regard to the final form of draft articles, consisting in, the General Assembly (a) taking note of the draft articles, to be annexed to its resolution and recommending that appropriate action by States be taken; and (b) deciding at a later stage on the possibility of convening a conference to examine the draft articles with a view to concluding a convention on the topic. The content of the recommendation that the Commission would make on this subject would be dealt with during the second segment of the current session.

#### **Effects of Armed Conflicts on Treaties**

146. The Commission had so far examined four reports presented by the Special Rapporteur Professor Ian Brownlie.

147. The work this year was undertaken on the basis of the fourth report of the Special Rapporteur as well as a paper prepared by the Chairman of the Working Group, Prof. Lucius Caflich on the Effects of Armed Conflicts on Treaties. Both documents were considered directly in the

Working Group, which subsequently made several recommendations for referral of draft articles to the Drafting Committee. The draft articles, would apply to the effects of an armed conflict in respect of treaties between States, where at least one of the States was a party to the armed conflict. Draft articles 3-5 form the core of the draft articles on the topic. Draft article 3 on "Non-Automatic Termination or Suspension" was an expository provision which remains central to the entire set of draft articles and laid down the principle that "the outbreak of an armed conflict does not necessarily terminate or suspend the operation of treaties as:

- between the States Parties to the armed conflict;
- a State Party to the armed conflict and a third State thus enshrining the principle of stability of treaty relations in times of armed conflict.

148. Draft Article 4 on Indicia of susceptibility to termination, withdrawal or suspension of treaties, and draft Article 5 on the operation of treaties on the basis of implication of their subject matter constitute a supportive base for the principle enshrined in draft Article 3.

149. Draft article 4 provided that in order to ascertain whether a treaty was susceptible to termination, withdrawal or suspension in the event of an armed conflict, resort shall be had to (a) Articles 31 and 32 of the Vienna Convention on the Law of Treaties (general rules of interpretation/supplementary means of interpretation) and (b) the nature and extent of the armed conflict, the effect of the armed conflict on the treaty, the subject matter of the treaty and the number of Parties to the treaty.

150. The Representative noted that some of these aspects had been the subject of exclusive comment by the Member States

during the Forty-Sixth Annual Session of AALCO in Cape Town, 2007.

151. Draft Article 5 on the operation of treaties on the basis of implication from their subject matter, provides that in the case of treaties the subject matter of which involves the implication that they continue in operation during armed conflict, the incidence of an armed conflict will not as such affect their operation.

152. An annex to the draft Articles will set out a list of categories of treaties the subject matter of which involves the implication that they continue in operation in whole or in part during an armed conflict. While an extensive discussion on the possible identification of categories of such treaties which are backed by substantial State and judicial practice, such as treaties creating permanent boundary regimes, human rights treaties, and treaties relating to international humanitarian law took place during the first segment, this matter was expected to be further examined and finalized during the second segment.

### **Reservations to Treaties**

153. It had been generally acknowledged that the Commission's consideration of issues concerning the formulation and withdrawal of acceptances and objections to reservations and the procedure for acceptance of reservations and its elucidation of guidelines relating to various aspects of the 'objects and purpose' of a treaty, shed light on several important procedural questions relating to reservations to treaties.

154. The Commission had so far examined 12 reports by the Special Rapporteur Alain Pellet and provisionally adopted 85 draft guidelines and the commentaries thereto.

155. During the first part of the current session, the Drafting Committee had before

it 37 draft guidelines referred to it by the Plenary at last year's session, on the basis of the eleventh and twelfth reports by the Special Rapporteur, which dealt with the formulation of objections; withdrawal and modification of objections to reservations and acceptances of reservations. Therefore, so far it had adopted 25 draft guidelines on formulation of objections, withdrawal and modification of objections.

156. The Commission would consider during the second part, the thirteenth report of the Special Rapporteur dealing with reactions to interpretative declarations.

### **Responsibility of International Organizations**

157. The Commission had so far examined six reports presented by the Special Rapporteur Prof. Giorgio Gaja and had provisionally adopted 53 draft articles, together with commentaries in respect of 45 draft articles. The Commission was expected to complete the first reading of the draft articles next year.

158. During the first part of the 2008 session, the Commission examined the sixth report of the Special Rapporteur, dealing with issues relating to the invocation of the responsibility of an international organization, including counter-measures. The Commission provisionally adopted eight draft articles, dealing with the invocation of the responsibility of an international organization, including a draft article on Admissibility of claims which refers to the rules on nationality of claims and exhaustion of local remedies. Taking into account the fact that the question of diplomatic protection and the related conditions for the exercise of that right arises essentially in relation to State Responsibility, in the context of relations among States, the Commission, after much discussion, adopted a two-track approach in Draft Article 48 on Admissibility of claims.

159. Thus applicable rules relating to nationality of claims would arise only where an injured State invokes the responsibility of an international organization. Draft Article 48(1) accordingly provided that “an injured State may not invoke the responsibility of an international organization if the claim is not brought in accordance with any applicable rule relating to nationality of claims.” On the other hand, Draft Article 48(2) provided that when a rule requiring the exhaustion of local remedies applies to a claim, an injured State or an international organization may not invoke the responsibility of another international organization, if any available or effective remedy provided by that organization had not been exhausted. The commentaries on these draft articles would be adopted during the second segment.

160. The issue of countermeasures was being examined by a Working Group established by the commission at the current session, under the Chairmanship of Mr. Enrique Candioti. The working group had extensive discussions on the question of elaborating draft articles on countermeasures. It was pertinent to note in this regard that the subject of countermeasures had been much debated in the Commission in the context of the draft articles on State responsibility. While noting the lack of state practice in this regard, the working group nevertheless recognized the usefulness of having some safeguard provision on countermeasures.

161. It was currently examining the draft articles proposed by the Special Rapporteur in his Sixth Report with a view to making appropriate recommendations to the Plenary regarding the possible content of draft articles on countermeasures in the relations between States and international organizations or between international organizations. The Working Group was expected to complete its work and to report to the Plenary during the second part of this session.

### **Expulsion of Aliens**

162. The Commission had so far examined four reports presented by the Special Rapporteur Mr. Maurice Kamto. The first report was preliminary in character and contained an outline for the future treatment of the topic by the Commission. The second report dealt with, and proposed two draft articles on, the scope of the topic and the definition of some key terms. The third report considered general principles governing the expulsion of aliens and proposed five draft articles. Therefore, so far seven draft articles had been referred to the Drafting Committee.

163. During the first part of the current session, the Commission examined the fourth report of the Special Rapporteur, dealing with the question of the expulsion of dual or multiple nationals, forming a *sui generis* category, as well as the issue of denationalization of a dual national, as a possible prelude to expulsion. The Special Rapporteur did not propose any draft article on these issues. The Special Rapporteur took the view that the principle of non-expulsion of nationals should not be extended to cover dual nationals unless it results in statelessness, and the denationalization was not arbitrary or discriminatory.

164. Certain Members of the Commission however, differed from some of the Special Rapporteur's conclusions with regard to the questions covered by the fourth report. They were of the view that the Commission should elaborate draft articles on the question of the expulsion of dual or multiple nationals and/or on denationalization in relation to expulsion. They expressed the view that the prohibition in international law against expulsion of nationals must apply with equal force in respect of dual nationals, except in very special circumstances and that the prohibition of expulsion of nationals cannot lead to expulsion of dual nationals after denationalization. The view was further

expressed that there was a need for a minimum safeguard to ensure that a State should not denationalize if it results in the statelessness of individuals.

165. After an intense debate, the Commission decided to establish a Working Group under the Chairmanship of Mr. Donald McRae to deal with these issues. The precise mandate of the working Group will be decided by the Commission during the upcoming second part of the current session.

#### **Obligation to Extradite or Prosecute**

166. The obligation to extradite or prosecute was aimed at combating impunity, by ensuring that persons accused of serious international crimes be denied safe haven and be brought to trial for their criminal acts. Among the issues currently under consideration by the Commission were:

167. The customary character of the obligation, i.e., whether the obligation was only based on treaties or whether the obligation had acquired customary status at least for the most serious international crimes or that it would soon attain such status in respect of such crime (need for careful and solid state practice).

168. The scope and content of the obligation including the relationship between the two options and/or the alternative character of the obligation.

169. Relationship with the principle of universal jurisdiction i.e., extend to which universal jurisdiction should be dealt with in any future draft article only to the extent necessary for the study of the obligation to extradite or prosecute – (requires an exclusion of mutual relationship/interdependence of the two concept).

170. The issue whether the topic should also cover the so-called “triple alternative”

i.e., surrender of an alleged offender to an international criminal tribunal.

171. These issues would receive further attention during the 2<sup>nd</sup> segment of the Commission, when the 3<sup>rd</sup> Report of the Special Rapporteur Mr. Zdzislaw Galicki would be taken up for consideration.

172. The **Delegate of the People's Republic of China**, firstly, wished to take that opportunity to express her gratitude to AALCO for its continuous interests in the work of the ILC. The documents prepared by the Secretariat were instrumental and useful for the members of the Organization to fully appreciate the current efforts by ILC in progressive development and codification of international law. Being a Member of the Commission, she felt honored to participate in the Forty-Seventh AALCO Annual Session in presenting her government's position on that topic. She then shared with the delegates some observations on the work of ILC.

173. In 2008, the ILC was celebrating its Sixtieth anniversary. During the first half of the session, a special symposium was held in Geneva. Apart from the current and former Members of ILC and some international jurists including judges from international courts, about forty legal advisors and their representatives attended the occasion. She pointed out that Members continued to attach great importance to the work of ILC and emphasized the link between ILC and the Sixth Committee of the General Assembly. Although the working method of ILC had been gradually improved during the course of its work, it remains essential for the Commission to get feedback in time from State governments on its drafting work. In that respect, she mentioned that with the new web-site of ILC, States now could easily get access to the latest development of ILC's work, which offered more time for States to digest the substances of the draft articles produced by the Commission. Her delegation hoped that

through this valuable forum of AALCO for the exchange of views on the ILC's work among the African and Asian countries, there would be more lively discussions on the ILC's work in the Sixth Committee and more direct feedbacks from African and Asian countries to ILC.

174. On the work of ILC, among the current topics was the item on the **Law of Transboundary Aquifers**, in other words, the law on transboundary underground waters. In 2006, under the guidance of the Special Rapporteur, Ambassador Yamada, ILC finished its first reading of the draft articles, which was submitted to State governments for comments. Her delegation appreciated it very much that the Special Rapporteur took the initiative to seek technical expertise from specialized agencies and water experts to facilitate its work. In the first half of ILC session in 2008, ILC conducted further deliberations on the draft articles, taking into account the comments received from States as well as international organizations and completed its drafting work on second reading. The draft articles in many aspects resemble the 1997 Convention on Non-Navigational Uses of International Watercourses, but much more restrictive in terms of environmental protection and international cooperation. During the upcoming General Assembly session, the Sixth Committee of UN General Assembly would consider the ILC's report together with the draft articles and decide what to do next with the ILC's draft work. China was of the view that given the importance of groundwater as the main source of fresh-water for human society as well as for ecological systems, ILC's work was an extremely commendable effort. She highly appreciated the great contributions made by all sides, particularly the Special Rapporteur. She positively believed that such articles would provide useful guidance for States in planning utilization and conservation of their groundwater resources. In regard to the final form of the draft articles, however, China takes a cautious

approach and does not consider it appropriate to adopt them in the form of a convention. It recommends instead a declaration of non-binding nature with a view to facilitating aquifer States to make proper plans for their aquifer resources. For the time being, her delegation do not feel it proper for the Commission to take up oil and natural gas as its second area for legal drafting under the current topic, because they present quite complicated legal issues and in State practice had been handled differently from groundwater.

175. On the topic of **Responsibility of International Organizations**, ILC had considered the sixth report presented by the Special Rapporteur during that session, including draft articles 46-53. That part mainly concerns the implementation of responsibility by international organizations. Although in content they are not far from the terms under State responsibility, they pose a series of questions in practice. Lack of empirical basis constituted part of the challenges to the draft articles, and more importantly were the policy considerations regarding the conduct of international organizations and the relations between Member States and non-Member States and the internal rules of the relevant organizations. While waiting for the commentaries to these articles, she maintained strong reservation to the clauses on counter measures.

176. On **Reservation to Treaties**, her delegation appreciated the work done by the Special Rapporteur and endorsed his approach to be in conformity with the terms of the Vienna Convention on the Law of Treaties. The draft guidelines, detailed as they were, were useful for State practice, but their precision should be kept within a reasonable range. She noted that the Chinese delegation looked forward to see more progress with the work.

177. With regard to the topic on **Effects of Armed Conflicts on Treaties**, she agreed

with the general framework of the draft as so far adopted by the Commission. The presumption embodied in draft article 3, namely, treaties do not automatically cease to operate in the event of an armed conflict, should be taken with care. Despite the fact that armed conflicts, international or internal, had changed in many aspects in contemporary international affairs, effects of armed conflicts on treaties may vary greatly from case to case, as relations between States concerned were no longer under normal conditions and their capacity to carry out the relevant international obligation was thus affected. In providing security and predictability of treaty relations, she noted with appreciation the draft articles on suspension, termination and separability. Her delegation was also pleased to see that the issue of legality of use of force was also being dealt with. Although the draft work of ILC on the item was still at its preliminary stage, it had given rise to stimulating and fruitful discussions.

178. On one of the last of the topics that had been considered during the first half of 2008 session, the Special Rapporteur, Mr. Kamto, delivered his fourth report on the specific issue of dual and multiple nationalities in regard to expulsion of aliens. She recognized that expulsion of aliens was a complicated issue, to a large extent involving both domestic laws and international practice. China took note of seven articles adopted by ILC so far and would like to emphasize that in implementing its national laws on the control of its territory and nationals, a State should pay due respect to the rights and interests of aliens that were found in its territory, whatever legal status they may possess.

179. In view of great contributions made by ILC to the progressive development and codification of international law, it was highly recommended that AALCO organize a symposium to commemorate the Sixtieth anniversary of the legal institution, as some

other regional legal organizations had already done. The occasion may focus on one of the topics that was currently under the deliberations of ILC and were most interesting to AALCO members.

180. The Chinese government also appreciated the efforts made by AALCO in disseminating and promoting international law and would continue its support to the close cooperation between AALCO and ILC.

**His Excellency Mr. Narinder Singh, President of the Forty-Seventh Session, in the Chair, at 02.45 PM**

181. The **Delegate of the Islamic Republic of Iran** congratulated the International Law Commission for the important achievements in its Fifty-Ninth session. His delegation commented on the report of the Commission on its work during the session as follows:

#### **Reservation to Treaties**

182. The Delegation recognized the importance of reservation to treaties in international law and inter-States contractual relations. He deemed it imperative that the Commission should proceed with its work on that topic without altering the flexible regime established in the 1969 and 1986 Vienna Conventions. He noted with satisfaction the progress made by the Commission in drafting new guidelines and commentaries.

183. The Delegate noted that Iran concurred with the Commission in Draft guideline 2.6.3 that a State or an international organization member of a treaty has the freedom to formulate an objection to a reservation made by another Member State or international organization. He reiterated their position that an objection to a reservation should be formulated in conformity with the principles of international law, including the principle of sovereignty of States. An objection to a

reservation was, like the reservation itself, a unilateral act, in nature, and as such, could not override the latter's legal effect.

184. His Delegation believed, however, that only States or international organizations that were parties to the treaty were entitled to object to a reservation. Given that, his delegation held that draft guideline 2.6.5, paragraph (ii) should be revisited; non-parties would be able to oppose a reservation, if and when they expressed their consent to be bound to the treaty in question. His delegation was of the view that reservation and objection thereto create bilateral legal relations between the reserving State and the objecting State in respect to their treaty obligations arising from the treaty. Accordingly, only parties to a treaty were entitled to formulate an objection to a reservation made to that treaty.

185. The above mentioned argument was also based on the principle that there should be a balance between the rights and obligations of States. Non-parties were not entitled to make an objection to a reservation because they do not have full obligation to that treaty either. Even a signatory State had a minimum negative obligation to refrain from acts which would defeat the object and purpose of a treaty, and, as such, it was not legally bound to implement the obligations arising from the treaty.

186. Moreover, reservations and objections thereto may vary in a wide range, from substantive issues to purely procedural aspects of the treaty. Therefore, it does not seem legally reasonable to give a signatory State, let alone a non-party, the right to make objection to reservations while its overall obligation vis-à-vis the parties to the treaty was limited to refraining from acts which would defeat the object and purpose of the treaty.

187. In regard to the time period for formulating an objection, they agreed with a 12 months time limit recommended in draft guideline 2.6.13, which was in line with the relevant provision of the Vienna Conventions (Article 20 (5)).

188. Regarding draft guideline 2.6.14, his delegation opposed the inclusion of "pre-emptive objection". He noted that it was not only a vague and imprecise notion but also contravened the principle of free consent of States to decide to accede or not to the treaties and dissuaded potential or future parties from acceding to international treaties. Eventually, it would compromise the universality of treaties and hinder the development of international law. Moreover, the notion "pre-emptive objection" alters the Vienna Conventions regime substantially, and causes legal uncertainty. Giving prior notice to the potential or future reserving State(s) may well serve to send political signals, but it would have no legal effect whatsoever either on the treaty or on the obligations arising from it. An objection, by its nature, may be made subsequent to a prior reservation. The Delegate thus suggested that the draft guideline 2.6.14 should be deleted.

#### **Shared Natural Resources**

189. Regarding the topic "Shared Natural Resources", the delegate highlighted the established legal principle according to which States have Permanent Sovereignty over their Natural Resources. This principle was enshrined, inter alia, in the 1962 General Assembly Resolution 1803(XVII).

190. The Delegate approved the recommendation made by the Special Rapporteur to focus solely on shared ground waters and proceed with the work on the law of transboundary aquifers with a view to completing its second reading. However, the Delegate did not deem it advisable that the Commission commence work on cross boundary oil and gas reservoirs. Oil and

natural gas were of great strategic economic and developmental importance for the owner States, and their management and exploitation had been done through bilateral cooperation and mutually agreed arrangements. The Delegate also emphasized that the Commission had no mandate to consider, under the present topic, the environmental aspects of fossil and hydrocarbon fuels.

191. The Delegate noted that Iran holds that principles or a legal regime developed to govern the exploitation and management of a specific natural resource, e.g. the transboundary groundwater aquifers, could not be applied to other types of shared natural resources.

#### **Expulsion of Aliens**

192. The Delegate reiterated its position that while making decision to expel aliens was a sovereign right of a State, it should exercise that right in accordance with the established rules and principles of international law, in particular the fundamental principles of human rights. In other words, distinction was needed to be made between the right and the way this right might be exercised, and in this regard, their delegation emphasized that:

1) Expulsion should be based on legitimate grounds, as defined in internal law, such as public order and national security, of the expelling State. The Delegate held that collective expulsion, being contrary to international human rights law and the principle of non-discrimination, should be avoided. Regarding the draft article 5 on non-expulsions of refugees; his delegation shared the view that the provisions contained in that draft article should be in conformity with the 1951 Convention on the Status of Refugees. The reference to undefined term "terrorism" in paragraph 1 of draft article 5 was redundant and should be deleted.

2) His delegation believed that expulsion by the State of its own nationals was absolutely prohibited. That should be duly reflected in draft article 4. With regard to the definition of "aliens", his delegation favored the term "national", which was more precise than "ressortissant".

#### **Effects of Armed Conflicts on Treaties**

193. The Delegate noted that the observance of the sanctity of international treaties was a recognized principle in international law, and any act inconsistent with the purposes and principles of the United Nations Charter would not affect the continuity and integrity of them. His delegation reiterated its position that the ILC's mandate in considering the effects of armed conflicts on treaties was supplementing the existing international instruments related to this issue.

194. With regard to draft article 1 (Scope of application), the Delegate noted that Iran did not favor the inclusion of international organizations within the scope of the draft articles, since it relates to other topics, particularly the topic of "Responsibility of International Organizations" which was currently under consideration in the Commission. Therefore, as recommended by the Working Group (paragraph 324 (1) (a) (ii), of the Report), decision on the expansion of the scope of the topic, i.e. the consideration of treaties involving intergovernmental organizations should be postponed until a later stage.

195. As for draft article 2 sub paragraph (b), the Delegate did not agree with the recommendation of the Working Group to include internal armed conflicts within the scope of application of the draft articles. His delegation reiterated its long-standing position that the topic should be exclusively restricted to international or interstate armed conflicts. Differences between international armed conflicts and non-international armed conflicts, on the one hand, and non-



feasibility of dealing with the two in the same manner, on the other hand, militate against broadening the scope of the term "armed conflict" to cover internal armed conflicts. The Delegate recognized that non-international armed conflicts might adversely affect the ability of the concerned State to fulfill its treaty obligations. However, that issue could be dealt with in accordance with draft articles on "Responsibility of States for Internationally Wrongful Acts", in particular under Chapter V (circumstances precluding wrongfulness).

196. The Delegate noted that there was general agreement that the outbreak of an armed conflict, as understood from the provisions of common Article 3 of the 1949 Geneva Conventions, could not affect the validity of treaties concluded between the parties to the conflict. The Delegate concurred with the members of the Commission (paragraph 290 of the ILC Report) that the doctrine of continuity and survival of treaties was central to the whole topic in question. Given the divergence over the term "*ipso facto*" and "necessarily", and in order to duly reflect that well established principle, the Delegate endorsed the suggestion that draft article 3 should be redrafted more affirmatively (paragraph 290).

197. The Delegate also believed that in the absence of an express reference in the treaty to the consequences of the outbreak of an armed conflict between the parties, the nature, i.e. the object and purpose of, the treaty in question was indicative of the intention of the parties whether it should continue or not to operate in time of war. Given that, the inclusion of "the nature and extent of the armed conflict" as the factors for determining the intention of the parties to a treaty relating to its susceptibility to termination or suspension, in draft article 4, seems to be *a posteriori* self-contradictory; the intention of the parties to a treaty at the time of the conclusion of the treaty was determinable in accordance with provisions

of Articles 31-33 of the 1969 Vienna Convention on the Law of Treaties, and, as such, the determination of such intention shall not be overshadowed by, and/or subject or subordinated to, subsequent circumstances, including an armed attack, which might occur at any time after the conclusion of the treaty. In other words, neither the armed conflict nor its extent or nature could logically be invoked as to explore the intention of the parties to the treaty in question. Therefore, paragraph (b) of draft article 2 should be deleted.

198. Concerning draft article 6 *bis*, his delegation favored the proposal of the Working Group that the draft article should be deleted because the application of human rights law, environmental law or international humanitarian law depended on specific circumstances which could not be subsumed under a general article.

199. The delegate agreed that draft article 7 was of key importance to the entire scheme of the draft articles (paragraph 301 of the ILC Report). They could go along with the suggestion to reexamine the enumerated categories of treaties with a view to identifying agreed upon principles/criteria for determining the treaties that should be continued in operation during armed conflict. A combination of the two approaches, i.e., a set of general criteria stated in generic term followed by an un-exhaustive list of categories of treaties which should continue in operation during armed conflict, might prove to be the most viable option at the end of the day. The Delegate continued to insist, however, that the draft article 7 should include treaties or agreements delineating land and maritime boundaries, whatever format the draft article may ultimately take.

200. The treaty which establishes a boundary belongs, by its nature, to the category of treaties creating permanent regime or status. Such treaties create objective *erga omnes* obligations to which

the international community as a whole, indeed all States, and not only the States parties to the treaty, were bound. As such, even a fundamental change of circumstances, armed conflict being one of them, may not be invoked as a ground for terminating or withdrawing from these treaties, as paragraph 2 (a) of Article 62 of the Vienna Convention on the Law of Treaties expressly prescribed. It was imperative to note the critical function of treaties establishing boundaries in maintenance of peace and security and prevention of armed conflicts in international relations. The recognition of the principle of *uti posseditis (juris)* in international law indicated the extreme importance States confer upon the continuity and stability of borders, even when they had been arbitrarily drawn by former colonial powers, in order not to endanger the fundamental mainstay of nation-state. Given that, it would not be convenient to keep treaties establishing boundary out of categories of the treaties unaffected by armed conflicts. The exclusion of treaties establishing boundary from the list of treaties which should continue in operation during an armed conflict, may have consequential implications and send wrong messages.

201. His Delegation supported the inclusion of treaties codifying rules of *jus cogens*, as well as those encompassing *erga omnes* obligations, in draft article 7. He felt that they should continue in operation during and after an armed conflict.

202. His delegation favored the inclusion of draft article 10. Clear distinction should be made between the situations of unlawful use of force by a State and that of self-defense. The Delegate noted that it had been their principled position that the State resorting to unlawful use of force must not be allowed to benefit from consequences of its unlawful act.

## Responsibility of International Organizations

203. The Delegate observed that although the Special Rapporteur had pointed out in his report, that the present analysis followed the general pattern adopted in the draft articles on "Responsibility of States" and had made much effort to premise certain commonalities in order to prove his main assumption regarding the obligation (or authorization) of States to cooperate for bringing to an end any breach of obligations *jus cogens*, it was necessary to distinguish, in general, between States' responsibility and that of the international organization. In situations where an international organization fails to honor its obligation to preclude breach of a preemptory norm of general international law (*jus cogens*), it would be more convenient to obligate Member States to take appropriate supportive measures for empowering the organization to discharge its responsibilities, rather than authorizing the Member States to take initiative in an arbitrary manner, which contradicted the principles and purposes of international organizations as well as its *raison d'etre*.

204. As to the question of compensation by the responsible international organization for its wrongful act, his delegation believed that financial scarcity cannot be invoked to absolve the organization of its responsibility under international law. In such situations the States parties should provide the organization with appropriate assistance to fulfill its obligations, in accordance with the internal rules of the organization. While in these cases the responsible organization, as a legal person, bears the responsibility to compensate for the injurious consequences of its act or omission, those Member States which, due to their role in policy-making mechanism of the organization or their position in overall structure of the organization, have contributed to injurious act, should bear the brunt of responsibility. Likewise, Member States should not bear

the financial consequences of an illegal or *ultra vires* measure of the organization or its constituent organs adopted under the influence of limited number of Member States which enjoy special discretionary power under the rules of the organization.

205. His delegation believed that cases in which an international organization authorizes its Member States to take a certain measure should be differentiated from those where the organization requests them to take the very similar conduct; by authorizing a Member State to take an action, the organization confers a *right* upon it to get engaged in a situation, e.g. to enforce a decision of that organization. In such cases, the Member State had the *right*, not the *obligation*, to take action. The authorized State was exercising its *right* and, consequently, its conduct should be considered as of its own rather than that of the organization.

#### **Obligation to Extradite or Prosecute**

206. The obligation to extradite or prosecute constituted an important part of the international criminal law machinery to put an end to impunity and to fight serious international crimes, such as crime against humanity, genocide and war crime as well as transnational organized crime, drug trafficking, corruption and terrorist crimes.

207. The Delegate observed, on the one hand, that making decision whether to extradite an alleged offender or to prosecute him/her in national courts was a matter of sovereign right of the territorial State. On the other hand, his Delegation shared the view that the obligation to extradite or prosecute was a treaty obligation and the territorial State had the ultimate jurisdiction and authority to decide on the appropriate course of action to discharge that obligation. The State in whose territory an alleged offender was found had the obligation, in accordance with the relevant treaty, either to surrender the alleged offender to its own

competent authorities for investigation and prosecution or to extradite him/her to a requesting State party which had jurisdiction, under the terms of the treaty, to prosecute that person.

208. The Commission's report, including the study on States' practices in that regard, do not maintain the existence of an international customary rule obligating States to extradite or prosecute outside treaties. The question arises as to the existence of such obligation with regard to very limited categories of international crime. The Delegate hoped that the Commission could find the answer by analyzing the States' practices. The recent judgment issued by the International Court of Justice (ICJ) on 26 February 2007 on *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, holds that "[t]he obligation to prosecute imposed by Article VI [of the 1948 Genocide Convention] is ... subject to an express territorial limit. The trial of persons charged with genocide is to be in a competent tribunal of the State in the territory of which the act was committed (cf. paragraph 442), or by an international penal tribunal with jurisdiction (paragraphs 443 ff)" (paragraph 184).

209. As far as Iranian legal system was concerned, the Extradition Act of 1960 provided that cooperation for extradition of alleged offenders and/or convicts should be conducted on the basis of bilateral extradition treaties or, when there was no such treaty, on the basis of reciprocity. A similar provision was inserted in almost all bilateral agreements on mutual legal assistance and extradition. The Delegate said that Iran was a party to a number of anti-drug and crime instruments and counter-terrorism Conventions and Protocols which contained the obligation *aut detere aut judicare*.

210. The **Delegate of Japan** firstly emphasized that it was important for the AALCO to make a timely input of their views regarding the work of the ILC. The Delegate wondered how they could make the contribution depended on the timing of an annual session of the AALCO. With all due respect and appreciation to the Secretariat which produced the wonderful document about the work of the Fifth-Ninth Session of the ILC, the Delegate felt that AALCO Members now should put forward their views on the Sixtieth Session. The Europeans have a similar organization to the AALCO, which was called the CAHDI. The CAHDI members have discussions among themselves about the ILC both before and after the ILC session was held, and then let the ILC know their views in a timely manner. This was a good working method.

211. Secondly, regarding the Sixtieth anniversary of the International Law Commission, which was held in Geneva on 29<sup>th</sup> May 2008, the Delegate noted that many legal advisors attended that meeting, including himself. The main topic of the discussion was the role of the ILC in the past and in the future.

212. Thirdly, the Delegate made succinct observations on some of the matters discussed during the first half of this year's session of the ILC:

1) Regarding "**Shared Natural Resources**," the ILC adopted the text of the draft articles on the law of transboundary aquifers on 4<sup>th</sup> June 2008. The Special Rapporteur Ambassador Chusei achieved that result with his tenacious work. The ILC would submit this text to the Sixth Committee of the UNGA, and would recommend that the General Assembly first approve the adopted texts as guidelines and then afterwards consider the feasibility of codifying the texts as a treaty sometime in the future. The Delegate noted that Japan

welcomed the adoption of the texts and supported the two-stage approach.

2) As for the "**Responsibility of International Organizations**" two issues were discussed; (i) the concept of the "exhaustion of local remedies," (ii) countermeasures. Lack of State practices made the discussion difficult but they hoped that the ILC would make progress during the second half of the Sixtieth session.

3) Concerning "**Reservations to Treaties**", the discussion of the ILC had focused on objections to reservations and had examined whether an "objection" raised by a State before it becomes a State Party to the treaty in question should be separated from an "objection" and instead be called a "declaration". His Delegation hoped that the hard work of Special Rapporteur Alain Pellet would be crystallized into a useful guideline soon.

213. The **Delegate of the Republic of Indonesia** said that Indonesia, as the member of AALCO and the International Law Commission (ILC), closely followed the deliberations of the topics under consideration by the ILC. He highlighted Indonesia's positions on the topics concerning Shared Natural Resources, Reservation to Treaties and the Obligation to Extradite or Prosecute (*aut dedere aut judicare*) as presented before the Sixth Legal Committee of the United Nations General Assembly at its Sixty-Second Session in 2007.

214. With regard to topics concerning "**Shared Natural Resources**", the Delegate said that Indonesia felt the need to re-examine some of the drafts articles on transboundary groundwater to fill existing gaps in the 1997 Convention on Use of Non-Navigational International Watercourses.

215. As for the topic of "**Reservation to Treaties**", his delegation asserted that it was the right of any sovereign State to make a

reservation to a treaty; however, the reservation made should be conducted in accordance with the objective of securing the treaty integrity. Therefore, the principle of reservation embodied in the 1969 Vienna Convention on the Law of Treaties shall always be the guidance in the deliberation of this topic.

216. Referring to the topic of “**The Obligation to Extradite or Prosecute**” (*aut dedere aut judicare*), the delegate pointed out that Indonesia was of the opinion that extradition is a treaty-based obligation for providing judicial cooperation. The obligation to extradite or prosecute should not be construed in preferential terms. The implementation of this obligation rested with the discretion or good judgment of a concerned State. There was need for caution in the approach to the study of the topic and should not be mixed with universal jurisdiction.

217. The Delegate noted that one of statutory obligations of AALCO was to examine the subject under consideration of the ILC and to forward views of AALCO to the ILC. Records showed that AALCO had contributed concepts and principles on topics under deliberation of the ILC that now enshrine in some international law instruments. AALCO continues to forward views to the ILC on topics under deliberations of the ILC. The Delegate said that Indonesia believed that AALCO's views on the topics that were being discussed in the ILC would certainly contribute and fasten the conclusion of the ILC deliberations on the topic. In that line, Indonesia was of the opinion that it was important that AALCO Member countries could agree on principles on the discussed topics to consolidate the position of AALCO's common concern.

218. The Delegate said that Indonesia was of the opinion that it was timely that AALCO and the ILC were to enhance their cooperation. In that regard, AALCO could

play a more active role in searching for new emerging issues. Inputs provided by AALCO would be valuable to the ILC in identifying particular issues outside the main topics already considered by the ILC.

219. Article 1 (b) of AALCO Statutes, states that the function and the purpose of AALCO were to exchange views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary. Article 1 (c) states the function and the purpose of AALCO was to communicate, with the consent of the governments of the Member States, the view of the Organization on matters of international law referred to it, to the United Nations, other institutions and other international organizations. In that regard, the Delegate encouraged AALCO Member States to exchange views, experiences and information on new emerging issues that are of common concern. Thus, the delegate said that AALCO Member States could unite their common position on the issues. In turn, AALCO could make recommendation and forward its legal position on the issues to the ILC.

220. The Delegate said that contemporary issues of international law have developed very fast and sometimes left behind the established law. In that condition, AALCO and the ILC must follow the development of states interaction in order to identify contemporary issues of common concern on international law that need to be further studied. AALCO and the ILC must proactively cooperate to address the issues.

221. Furthermore, AALCO could enhance cooperation with the ILC in the sense of strengthening the work of ILC by working more closely by holding a joint meeting/seminar in order to provide a forum of both bodies as well as other bodies to identify and solve the most pressing legal problems encountered by them in the contemporary world.

222. The delegate of Malaysia said that during the last Sixth Committee session of the Sixty-Second session of the United Nations General Assembly in November 2007, Malaysia had participated in the discussion of the agenda item pertaining to the report of the international law commission on the work of its Fifty-Ninth session.

223. In relation to the topic “**Shared Natural Resources**”, the Delegate said that Malaysia took note that the Special Rapporteur, Mr. Chusei Yamada had recommended that the ILC proceed with and complete the second reading of the draft articles on transboundary groundwaters independently of any future work on oil and natural gas. Malaysia supported the recommendation of Mr. Chusei Yamada that it was prudent for the present work to be solely concentrated on the law of transboundary groundwaters, and that the Commission could take up the issue on oil and natural gas only after the work on transboundary groundwaters was finished.

224. The Delegate informed that Malaysia recognized that oil and natural gas were important resources for a country's economic and social development, but they were not essential for life as there were various alternative resources. Oil and natural gas could not categorically be called a vital human need, although they were of strategic economic importance and necessity to States. The Delegate agreed with Mr. Chusei Yamada that the consideration of the political, economic and environmental aspects of oil and natural gas on the one hand, and groundwaters on the other, revealed differences that required the two to be treated separately. Malaysia acknowledged the complexity of taking up oil and gas, and concurred with the point that such resources could have a transboundary component and parts thereof may fall under the jurisdiction of another State.

225. However, based on Articles 77 and 81 of the United Nations Convention on the Law of the Sea (UNCLOS), the exploration and exploitation of the natural resources in the continental shelf of a coastal State was within the sovereign rights and exclusive jurisdiction of the coastal State concerned. He also highlighted that a coastal State shall have the exclusive right to authorize and regulate drilling on its continental shelf for all purposes as provided for in Article 81 of UNCLOS 1982. The relevant coastal State had also the duty to enter into provisional arrangements of a practical nature which included, *inter alia*, an agreement to explore and exploit national resources in the continental shelf pending its final delimitation. Such provisional arrangements were the sole prerogative of the coastal State concerned and should not be subjected to international regulation.

226. Pursuant to that, Malaysia was of the view that the Commission should take up the matter regarding oil and gas only after it had completed the second reading of the law of transboundary groundwaters, including deciding whether or not oil and gas should be considered at all.

227. Regarding the final form of the draft articles, the Delegate reiterated Malaysia's position that this question should be approached with caution in light of the differing views expressed by States. Malaysia suggested that the question of the final form be deferred until the second reading of the draft articles was accomplished. Malaysia also noted that the present draft articles do not include provisions of dispute settlement, final clauses and any article which might prejudice the issue of final form.

228. Malaysia appreciated that this was a difficult and complex topic and the task of accommodating the needs of all countries in the articles was a daunting one.

229. On the topic “**Responsibility of International Organizations**”, the Delegate informed that Malaysia’s position on the three issues raised for focused consideration as enumerated in paragraphs 76, 77(a) and (b) of the AALCO Paper Session/2008/S 1, had been provided to the Sixth Committee of the Sixty Second Session of the United Nations General Assembly and Malaysia reiterated that position.

230. On the topic of “**Reservation to Treaties**”, Malaysia noted that the Special Rapporteur was preparing his presentation on the issues of problems posed by the invalidity of reservation. For this purpose the Special Rapporteur had raised some questions for the response of State. The Delegate said that Malaysia was currently compiling reservation to treaties which Malaysia had made for purposes of addressing the questions posed by the Special Rapporteur. Malaysia would be providing its comments on the questions raised by the Special Rapporteur in due course after in-depth study and consideration had been made to the questions in relation to Malaysia’s practice.

231. In relation to the topic “**Effects of Armed Conflicts on Treaties**”, Malaysia reiterated its concerns and suggestions highlighted at the last Sixth Committee of the Sixty Second Session of UNGA for the further consideration of AALCO Member States and the AALCO Secretariat.

232. In relation to draft article 1, Malaysia noted the recommendation of the Working Group that in principle, the consideration of treaties involving international intergovernmental organizations should be left in abeyance until a later stage. Malaysia also noted that the Secretariat of the International Law Commission (ILC) had since circulated a note to international organizations requesting information about their practice with regard to the effect of armed conflict on treaties involving them and comments had

been received from the European Commission (EC) and the International Maritime Organization (IMO). Malaysia noted that the international organizations themselves do not appear to see the need for the extension of these draft articles to them. This supported the contention that the draft Articles should be confined to treaties between States. Malaysia also emphasized that this draft article should give due regard to the application of the draft articles to treaties that were being provisionally applied that could also be affected by an armed conflict.

233. In relation to draft article 8, Malaysia noted that the fourth report on the Effects of Armed Conflicts on Treaties by the Special Rapporteur entitled “Procedure for suspension and termination” was prepared in the form of an informal memorandum. This report contains useful reference to the legislative history of Article 65 of the VCLT and assisted in understanding the procedures that would be involved in the suspension or termination of a treaty in the event of an armed conflict. More importantly, the Report had identified at paragraph 39 two questions that would need further consideration in formulating draft Article 8. With regard to the question whether the regime of notice as presented by the various Special Rapporteurs, and in the provisions of Article 65 of the VCLT was feasible at all in relation to cases of armed conflict, Malaysia was of the view that notification should as a rule be required unless it was impossible to do so given the particular circumstances at the relevant time. In that event, the option of incorporating the doctrine of waiver as suggested in paragraph 40 of the Report may be further considered (Options 2 and 3). Malaysia also noted that the three options suggested in paragraph 43 of the Report were still under deliberation in the ILC and it eagerly awaited the full report of the Special Rapporteur for Malaysia’s further consideration.

234. Malaysia proposed that the AALCO Secretariat should facilitate the participation of AALCO Member States in the development of these draft articles through further collaboration with the ILC to enable the views of Member States to be forwarded thereto.

235. On the topic of “the obligation to extradite or prosecute”, the delegate said that Malaysia had also provided its input during the Sixth Committee of the UN General Assembly at its Sixty-Second session last November. Malaysia gave specific comments with regard to international treaties to which Malaysia was party to, the position under the domestic laws concerning that obligation, as well as Malaysia's practice reflecting the application of that obligation and crime or offences to which that obligation was applied under its domestic laws. Malaysia would like to reiterate its comments as expressed at the said sixth committee.

236. At the domestic level, Malaysia had incorporated the obligation to extradite or prosecute in section 49 of the Extradition Act 1992 [Act 479]. Section 49 of Act 479 provided that the determination of whether to grant the extradition request or to refer it to the relevant authority for prosecution lay with the relevant Minister. In doing so, the Minister would take into consideration the nationality of the fugitive offender and whether Malaysia had jurisdiction to try the offence committed.

237. Malaysia was also of the view that a fugitive criminal who was detained under its preventive detention laws were deemed to be prosecuted and Malaysia had taken this stand before when it made its declaration on several counter terrorism conventions it had acceded to.

238. With regard to the practice in carrying out that obligation, Malaysia had consistently maintained its commitment to provide the widest possible assistance in

combating crimes and to suppress impunity. Apart from the requirements of the law (*vis-à-vis*, the nationality of the fugitive offender and the issue of whether the Malaysian courts have the jurisdiction to try the offence), various considerations are taken into account, including international cooperation, the comity of nations, the seriousness of the crimes, the likelihood of obtaining the conviction and the interest of the States and the victims concerned.

239. With regard to the crimes to which that obligation was applied under the Malaysian law, Act 479 provided that it was only applicable to “extraditable offences” which was punishable under the laws of Malaysia with imprisonment for not less than one year or with death. As long as the crimes fulfill that threshold, Malaysia would regard it as an extraditable offence.

240. On the feedback requested by the ILC concerning States legislations and practices which related to the principle of universal jurisdiction, Malaysia stressed that it does not apply the principle of universal jurisdiction in its domestic laws or in its practices and on the issue of whether that obligation existed for international crimes which had universal jurisdiction, Malaysia found that the findings of the ILC was not conclusive and that further study on State practices was required.

241. As a general observation, Malaysia was of the view that at present, the obligation to extradite or prosecute arose from treaties and not a general obligation under customary international law and that such obligation did not exist for crimes which had universal jurisdiction.

242. In relation to the topic “**Expulsion of Aliens**”, Malaysia took note of the summary of views expressed by Malaysia during the Sixth Committee of the UN General Assembly Sixtieth Session at paragraph 216 of the AALCO Paper Session/2008/S 1 which was prepared by the



AALCO Secretariat. In that regard, the Delegate noted that Malaysia wished to clarify that in their country, there were only two main categories of migrants, namely documented (legal) migrants and undocumented (illegal) migrants. Undocumented migrants who entered Malaysia not in compliance with Malaysian Immigration Laws were punishable under the laws. Malaysian legal framework made no reference to refugees, stateless persons and asylum seekers. Based on all these considerations, Malaysia was of the view that draft articles 5 and 6 in their current forms were not applicable in our legal framework.

243. The Delegate noted that Malaysia was currently not a party to the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons, and was therefore under no legal obligation to provide such protection and rights available under the two treaties. Malaysia, however, had been treating the undocumented migrants with full respect to their dignity and based its actions on humanitarian grounds.

244. On the topic of “**Most-Favoured Nation Clause**”, he commended the International Law Commission (the Commission) for the establishment of an open-ended Working Group on the Most-Favoured Nation (MFN) clause under the chairmanship of Mr. Donald McRae to examine the possibility of including the topic MFN clause in its long-term programme of work. Malaysia was supportive of the establishment of such Working Group as it could play a useful role in providing clarification on the meaning and effect of the MFN clause in the field of investment agreements.

245. The Delegate said that Malaysia believed that the existence of a comprehensive model guideline and commentaries on MFN clause would serve

as a ready reference and be a useful guide not only to the Commonwealth Member States, but to Asian-African Legal Consultative Organization (AALCO) Member States as well.

246. The task of accommodating the needs of all countries with regard to MFN clause, taking into account the different systems of law being applied by countries and the diversity of practice implemented by the AALCO Member States was indeed a challenge. However, Malaysia was hopeful that the issues which would be addressed by the Working Group would serve as a way forward in this matter.

247. The **Delegate of India** said the two-third of the membership of the ILC consisted of AALCO Member States. Thus AALCO could play a very important role in identifying positions of the Member States. Such assistance would enable the Members to participate more effectively in the codification. The delegate also recommended that the AALCO Secretariat should send its officials to the ILC seminars.

248. The Delegate added that the topic considered by the ILC were very important for the AALCO Member States and suggested the need for organizing a meeting/seminar on issues or topics currently considered or that could be considered in future.

**The meeting was thereafter adjourned.**