



AALCO
Asian-African Legal Consultative Organization
Fifty-First Annual Session
18 to 22 June 2012
Abuja, Federal Republic of Nigeria

SUMMARY REPORT
OF THE FIFTY-FIRST ANNUAL SESSION
OF THE
ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

1. Introduction

- 1.1 26 Member States of the Asian-African Legal Consultative Organization (the AALCO) participated in the Fifty-First Annual Session (hereinafter "the Session") namely, **Arab Republic of Egypt, People's Republic of China, Ghana, India, Republic of Indonesia, Republic of Iraq, Islamic Republic of Iran, Japan, Republic of Kenya, Democratic People's Republic of Korea, Republic of Korea, State of Kuwait, Malaysia, Myanmar, Nepal, Nigeria, Pakistan, Palestine, Kingdom of Saudi Arabia, Republic of South Africa, Democratic Socialist Republic of Sri Lanka, Syria, United Republic of Tanzania, Thailand, Uganda and Republic of Yemen.**
- 1.2 Representatives of the following Regional Arbitration Centres of AALCO were also present: Kuala Lumpur Regional Centre for Arbitration (KLRCA), and Regional Arbitration Centre for International Commercial Arbitration, Lagos (RCICAL).
- 1.3 In accordance with Rule 18 (1) of the Statutory Rules, the following observers were admitted to the Session:
- (i) Representatives from the following non-Member States: Morocco and Russia
 - (ii) Representatives of the following International Organizations: International Committee of the Red Cross (ICRC), International Tribunal for the Law of the Sea, and United Nations Office for Drugs and Crime (UNODC).

2. Inaugural Session

- 2.1 The Session commenced on 18 June 2012 with the Master of Ceremonies welcoming all the Delegations to the Federal Republic of Nigeria for the Fifty-First Annual Session.
- 2.2 **His Excellency Prof. Dr. Rahmat Mohamad, Secretary-General of the Asian-African Legal Consultative Organization (AALCO)** welcomed all the delegates to the Session and thanked His Excellency Mr. Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria, and the people of Nigeria for hosting the Fifty-First Annual Session of AALCO. He stated that Nigeria joined the Organization in 1970 and since then had actively contributed to the work of the AALCO. He said that it was the third time AALCO had the honour to hold its annual session in Nigeria. The earlier occasions were when Nigeria, after joining AALCO in 1970, immediately hosted the AALCO's *Thirteenth* annual session in 1972 at Lagos. That was a period when more and more African States realized political independence and joined the AALCO. He recalled the extraordinary role that Taslim Olawale Elias, a distinguished jurist of Nigeria had played towards the cause of the Third World. He said that Mr. T. O. Elias, who was not only a Judge of the Supreme Court of Nigeria, but was also the President of the International Court of Justice from 1981-1985, had played a stellar role in highlighting Africa's contributions to the international legal discourse.
- 2.3 Further, the relationship between Nigeria and the AALCO was further strengthened by the decision of the Government of Nigeria to host the AALCO's Regional Centre for Arbitration and the signing of the Headquarters Agreement facilitating such establishment in 1999. Active involvement of the Government of Nigeria in AALCO's activities was when Nigeria hosted the Forty-First Annual Session of AALCO in Abuja. He recalled the role played by Nigeria as one of the Africa's leading voices and also as a prominent member of the international community. In that regard, Nigeria had played a very active role in global governance in different international organizations and bodies such as the Commonwealth, the Non-Aligned Movement, the G-77, Organization of Petroleum Exporting Countries (OPEC), etc. At the global level Nigeria had chaired the Non-Aligned Movement, the G-77 and importantly the UN Special Committee on Peacekeeping Operations.
- 2.4 The fact that the Fifty-First Annual Session was the third Annual Session hosted by Nigeria demonstrated her continued interest and commitment to the AALCO's objective of increasing the Afro-Asian influence in the progressive development and codification of international law. He then briefly listed out the deliberated items and the topics of the three Half-Day Special Meetings that would be deliberated during the Session.
- 2.5 **Hon. Mr. Rauff Hakeem, Minister of Justice of the Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session** in his address thanked the Government and People of the Federal Republic of Nigeria for the warm hospitality extended to the delegates and for the excellent arrangements and facilities. He expressed his deep appreciation to the Secretary-General of AALCO and the AALCO Secretariat for the preparations and arrangements made for the Session. He also expressed his sincere

gratitude to all the Member States of AALCO, the Secretary-General and the Secretariat for the support and cooperation extended to him during his tenure as the President of the Fiftieth Annual Session. He stated that during the session, there would be deliberations upon certain important agenda items like the Palestinian issue, unilateral sanctions imposed against third parties through extraterritorial application of national legislations, the International Criminal Court (ICC) and environment and sustainable development. He also said that the Half-Day Special Meeting on ILC was pursuant to the mandate given at the Fiftieth Annual Session. In that regard, an inter-sessional meeting of legal experts to discuss matters relating to the ILC was convened at AALCO Headquarters in April this year. In conjunction with the Fifty-First Annual Session, there would be three Special Half-Day Meetings on contemporary global challenges like international terrorism, piracy at Sea, protection of persons in the event of disasters and immunity of State Officials from Foreign Criminal Jurisdiction.

- 2.6 He recalled what H. E. Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka who was the Chief Guest of the Inaugural Session of the Fiftieth Annual Session held last year, observed at the General Debate of the Sixty-Sixth Session of the UN General Assembly; the core concern for developing countries would be the challenges that they face from terrorism, dumping of commercial and industrial goods manufactured in developed countries that imperils the economies of many Asian and African countries, disproportionate pollution of the environment by industrialized countries and so on. Simultaneously, G 20 Leaders are meeting in Mexico and the Rio Summit was also taking place in Brazil, where world leaders were meeting to resolve current contentious issues pertaining to the world economy, with the resurrection of the Eurozone crisis and going beyond the Durban deadlock.
- 2.7 He also said that, as the current President he had visited the AALCO Headquarters in New Delhi. He thanked AALCO for the opportunity provided to Sri Lanka to host the milestone 50th Annual Session of the Organization in Colombo in June 2011 and recalled the role and contribution of AALCO in the international legal arena with reference to the law of the sea, concept of archipelagic states, Bangkok Principles on the status and treatment of refugees, law related to trafficking of women and children etc., which were ground-breaking. He appreciated the initiatives taken by the AALCO Secretariat to conduct training programmes and workshops for the benefit of the Member States. He also informed the delegates about the convening of the 2nd Meeting of the AALCO-Eminent Persons Group which was constituted at the Fiftieth Annual Session, under the chairmanship of Dr. A. Rohan Perera, former Member of the ILC from Sri Lanka. In that regard, he urged Member States of AALCO who were in arrears to take a firm decision to place AALCO on a sound financial footing. He said that could happen only when Member States fulfill their financial obligation towards the Organization and nurture the Organization as their own institution that had in the past and has the potential of being the voice of Asia and Africa in future. He appreciated the Secretary-General and the Staff for their continued efforts in serving the Organization with utmost sincerity.

- 2.8 **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria**, the incoming President of the Fifty-First Session in his inaugural address, welcomed all the delegates attending the 51st Annual Session of AALCO to Abuja, Nigeria and said that as the host government they were grateful for AALCO and its Secretariat for the unique opportunity to host the 51st Annual Session. He extended profound gratitude towards various delegations and participants, and stated that it clearly demonstrated their commitment to the ideals of AALCO and commitment to ensure that the objective for which the Organization was established has been attained. He said that it was in that regard that Nigeria's resolve was to effectively harness the resource base of the Organization for socio-political and economic development as well as strengthening of the bonds of friendship between the people of both continents.
- 2.9 He said topics that would be discussed during the Annual Session were very important and essentially the ones which many developing countries were finding it difficult to deal with them. The issues like piracy, International terrorism, and so on. The focus on the topics like International Criminal Court (ICC) and International Law Commission (ILC) would be beneficial to Member States of AALCO and indeed to the entire global community. He said that large numbers of Members from the African continent (33) were State Parties and yet the relationship between ICC and the African Union (AU) were not satisfactory. On those lines, it was essential for ICC to engage Africa constructively in the global effort to end impunity.
- 2.10 He also mentioned that the work of the ILC should mirror the interest of the developing world. As a member of the ILC, he appreciated AALCO for taking up selected items on the agenda of the ILC for deliberation at the Half-Day Special Meeting. He observed that the ever increasing relevance of AALCO in the competitive and complimentary world was a matter of pride as AALCO offers a useful platform for developing close and enduring partnerships among countries for sustainable development and global stability. He also placed on record the immense support his Ministry received from the Federal Government of Nigeria, under the leadership of President His Excellency Mr. Goodluck Ebele Jonathan, GCFR, towards hosting the Session. He expressed his gratitude towards AALCO Secretariat and the Local organizing Committee for their tireless efforts. He wished a memorable stay for the delegates in the city of Abuja and officially inaugurated the Fifty-First Annual Session of AALCO.
- 2.11 **Mr. Nixon Ntimbwa, Assistant Director of Constitutional and Human Rights Affairs, Office of the Attorney-General, United Republic of Tanzania on behalf of Hon. Mathais Neinrad Chikawe (MP), Minister of Justice and Constitutional Affairs, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO** proposed a Vote of Thanks on behalf of the Member States of AALCO to the Government of the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO. He said that the Annual Session of AALCO was a unique platform where one witnessed the essence of mutual cooperation and support extended among Member States of the Asian and African countries. The Organization's role in bringing together nations from the two prominent continents, in order to address

international legal matters which have serious implications in international relations was commendable. He also extended whole-hearted support and cooperation to the incoming President His Excellency Mr. Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria who was also a Member of the ILC for inaugurating and the Organizing Committee for all their efforts in conducting the Fifty-First Annual Session of AALCO. He also thanked his predecessor Honourable Celina Ompeshi Kombani, who had discharged her responsibilities as President of the Forty-Ninth Annual Session of AALCO till recently.

- 2.12 He also thanked Honourable Mr. Rauff Hakeem, Minister of Justice of Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of AALCO for successfully guiding the activities and works of AALCO during his term in the last one year. He also congratulated him for ably conducting and presiding over the meeting of AALCO Legal Advisors which was held on the sidelines of the Sixth Committee of the Sixty-sixth session of the United Nations General Assembly in New York at the end of the year 2011. He recalled the significant role played by the Secretary-General His Excellency Professor Dr. Rahmat Mohamad during his term especially in relation to revitalizing the Organization. He commended the Secretary-General and his Secretariat officials and staff for their untiring efforts in discharging their duties and carrying out the objectives of AALCO. He urged Member States of AALCO to take necessary action to protect and promote AALCO by ensuring that it was financially sound for an effective functioning of the Secretariat and in conducting its activities as well. As the President of the Forty-Ninth Annual Session of AALCO and on behalf of the Government of Tanzania and its people, he extended their gratitude towards the Organization for having given them an opportunity to hold the position in the year 2010.

3. First Meeting of the Delegations of AALCO Member States

- 3.1 **His Excellency Mr. Rauff Hakeem, Minister of Justice, Democratic Socialist Republic of Sri Lanka and President of the Fiftieth Annual Session, called the Meeting to order.**

3.2 Agenda:

The meeting adopted the following agenda for the Fifty-First Annual Session:

I. Organizational Matters

1. Consideration and Adoption of the Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Re-appointment of the Secretary-General
5. Report of the Secretary-General on the Work of AALCO
6. Proposed Budget for the Year 2013
7. Report on the Work of the AALCO's Regional Arbitration Centres

8. Report of the Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters
9. Report of the Chairman on the Second Meeting of AALCO-EPG
10. Report on the AALCO's Centre for Research and Training (CRT)
11. Venue of the Fifty-Second Session

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

1. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949
2. Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties

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

1. The International Criminal Court: Recent Developments
2. Environment and Sustainable Development

VI. Three Half-Day Special Meetings

1. Special Meeting on "Selected Items on the Agenda of the International Law Commission"
2. Special Meeting on "Law of the Sea – Responses to Piracy: International Legal Challenges"
3. Special Meeting on "International Terrorism"

VII. Any Other Matter

- 3.3 ***Adoption of the Provisional Agenda and Tentative Schedule of Meetings:*** The President placed for consideration the Provisional Agenda and Tentative Schedule of meetings during the course of the Fifty-First Annual Session of AALCO. There being no comments and observations from the participating delegations, the same were declared adopted.
- 3.4 ***Admission of Observers:*** The Admission of Observers to the Session, pursuant to Statutory Rule 18, was unanimously approved.
- 3.5 ***Election of President and Vice-President:*** The President of the Fiftieth Annual Session, His Excellency Mr. Rauff Hakeem invited the Member States to propose candidates for the posts of President and the Vice-President of the Fifty-First Annual Session of AALCO. The **Leader of the Delegation of the People's Republic of China** proposed the name of **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria** to be the **President** of the

Fifty-First Annual Session of the AALCO. The proposal was seconded by the **Leader of the Delegation of Ghana**. With regard to the position of **Vice-President**, the **Leader of the Delegation of United Republic of Tanzania** proposed the name of **Mr Thiha Han, Director, Ministry of Foreign Affairs of the Union of Myanmar**. The proposal was seconded by the **Leader of Delegation of Japan**. The Member States unanimously elected with acclamation, **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria** and Mr. Thiha Han of the Union of Myanmar, respectively as the President and the Vice-President of the Fifty-First Annual Session of AALCO.

- 3.6 ***Re-appointment of the Secretary-General of AALCO:*** The President in his statement introduced the agenda item, ‘Reappointment of the Secretary- General’. He referred to Paragraph 20(1) of the AALCO’s Statutory Rules regarding appointment and re-appointment of the Secretary- General. Further, the President mentioned the following Member States: Syrian Arab Republic; Singapore; State of Qatar; United Republic of Tanzania; Union of Myanmar; Japan; Republic of Mauritius; Sultanate of Oman; and Republic of South Africa which positively responded to letters of support sent by the Attorney General of Malaysia and the Secretariat for the reappointment of the current Secretary- General Prof. Dr. Rahmat Mohamad and opened the floor for further deliberations.
- 3.7 **The Leader of Delegation of Malaysia** recalled that during the 50th Annual Session of AALCO in the Democratic Socialist Republic of Sri Lanka, the Malaysian delegation announced its intention of seeking H.E. Professor Dr. Rahmat Mohamad’s reappointment as the Secretary-General of AALCO for a further 4-year term (2012 - 2016). He announced that Professor Dr. Rahmat Mohamad’s re-appointment had the full support of the Government of Malaysia. A mandate pertaining to this re-appointment had been obtained as early as 30 March 2012 by virtue of a Malaysian Cabinet decision. This mandate clearly showed the support and confidence that the Government of Malaysia has in Professor Dr. Rahmat to continue his duties and responsibilities as the Secretary-General for a second term.
- 3.8 He further added that, during the 48th Annual Session of AALCO held in Putrajaya, Malaysia in 2009, the “Putrajaya Declaration on Revitalizing and Strengthening AALCO” was adopted whereby the Member States of AALCO reaffirmed their faith in the Organization and recognized its vital contribution in the progressive development and codification of international law. Significantly, the Declaration symbolizes the mandate that AALCO had given Professor Dr. Rahmat to not only revitalize and strengthen AALCO, but to also transform the organization.
- 3.9 He noted with satisfaction that it was undeniable that for the past four years, Professor Dr. Rahmat Mohamad had successfully served the given mandate by leading and transforming AALCO to meet the challenges of the new century. He had enlarged the scope of activities to ensure AALCO’s relevance within both the Asian and African communities, while balancing the regional peculiarities of the 47 Member States of AALCO.

- 3.10 Under his helm, he had undertaken various initiatives to revitalize and strengthen AALCO, including the creation of the AALCO Eminent Persons Group (EPG), the initiation of the AALCO Lecture Series and the adoption of various measures to improve the financial situation of AALCO. Through his efforts in fostering ties with the United Nations, International Court of Justice and the International Law Commission, among others, and through the collaboration with international organisations such as the International Committee of the Red Cross, AALCO's standing and presence in the international community has been enhanced. This is an attestation of Professor Dr. Rahmat Mohamad's efforts and success in fulfilling his mandate by the AALCO Member States.
- 3.11 Therefore, to allow for the continuation of the remarkable work he has done for AALCO and its progress, Malaysia sought the support and endorsement of the Governments of Member States of AALCO for the reappointment of Professor Dr. Rahmat Mohamad, as provided under Article 3 of the AALCO Statute.
- 3.12 He concluded that he was confident that Professor Dr. Rahmat was in the best position to continue the fulfilment of the mandate of the Secretary-General. His task was now to move into the second phase of revitalizing and transforming AALCO. Therefore, Malaysia urges Professor Dr. Rahmat to ensure that AALCO remains as one of the most important legal regional intergovernmental organization, and not a political one.
- 3.13 In light of the support of the Member States mentioned above, the President concluded by endorsing the reappointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for one further term (2012-2016).
- 3.14 Thereafter, the Leaders of Delegations of the following Member States namely: Islamic Republic of Iran, People's Republic of China, India, Ghana, Indonesia, State of Kuwait, State of Palestine, Republic of Kenya, Federal Republic of Nigeria, Kingdom of Saudi Arabia, Republic of Yemen, and Thailand also acknowledged the efficient and effective work done by Prof. Dr. Rahmat Mohamad, Secretary-General in his first term and lent him their unanimous support for his re-appointment for another term of four years (2012-2016).

Prof. Dr. Rahmat Mohamad was re-appointed Secretary-General by acclamation.

- 3.15 The Outgoing President, **His Excellency Mr. Rauff Hakeem** in his farewell remarks thanked the Member States for the co-operation extended to him in the discharge of his duties as the President of AALCO. He also expressed gratitude to the Secretary-General of AALCO and the Secretariat staff members for faithfully observing the mandate entrusted to them by the Fiftieth Annual Session of AALCO. The outgoing President called upon the Member States to render full support to the Secretariat so as to enable it to perform the responsibilities entrusted to it in an efficient manner. Commending the electees for the posts of the President and Vice-President, the outgoing President stated

that there could not have been a better choice than those elected for those positions.

3.16 Thereafter, the **newly elected President and the Vice-President assumed their positions on the dais.**

3.17 The newly elected President Mr. Mohammad Bello Adoke, SAN, CFR, in his opening Statement thanked the Member States for the support extended to him in his election to the post of President of the Fifty-First Annual Session. He congratulated the outgoing President, H.E. Mr. Rauff Hakeem, and the Minister of Justice of the Democratic Socialist Republic of Sri Lanka, for the very successful completion of his tenure and the exemplary leadership and commitment which he brought to bear on the work of the Organization. On assuming the mantle of leadership of the Organization, he assured the Member States that he would work conscientiously with the Secretariat to consolidate the gains recorded during the outgoing President's tenure. His Excellency appreciated the agenda of the Fifty-First Annual Session and hoped that with the co-operation of the participating delegations, the deliberations would be conducted in a friendly spirit to achieve consensus. The President noted with immense satisfaction the excellent work of the AALCO Secretariat under the dynamic leadership of Prof. Dr. Rahmat Mohamad and congratulated him on his reappointment. He also warmly welcomed the delegates to Abuja. He reaffirmed that in the characteristic spirit of candor and objectivity of deliberations in AALCO, he was optimistic that the Fifty-First Annual Session would achieve its objectives and thereby lay the foundation for greater cooperation and partnership among Member States in the years to come.

4 First and Second General Meetings

4.1 The Delegations from the following Member States made General Statements during the First and Second General Meetings: **Malaysia, Japan, State of Kuwait, Republic of Korea, People's Republic of China, Kingdom of Saudi Arabia, Thailand, Democratic People's Republic of Korea, Islamic Republic of Iran, Republic of Indonesia, Kenya, Republic of Yemen, Democratic Socialist Republic of Sri Lanka, United Republic of Tanzania, India, Nepal, Myanmar, Republic of South Africa and Republic of Iraq.** The Observer delegations from the **International Committee of the Red Cross (ICRC)** and **Russian Federation** also made general statements.

4.2 The delegations congratulated His Excellency Mr. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria on his election as President of the Fifty-First Annual Session of the AALCO. Delegations also congratulated His Excellency Mr. Thiha Han, Director, Ministry of Foreign Affairs of the Union of Myanmar, on his election as the Vice-President of the Fifty-First Annual Session of the AALCO. The delegations also thanked the Government of the Federal Republic of Nigeria, its peoples and the AALCO Secretariat for their warm hospitality and the excellent preparations for the meeting.

4.3 The **Leader of Delegation of Malaysia** at the outset thanked His Excellency the President of the Fifty-First Annual Session of AALCO Mr. Mohammed Bello Adoke, the

Secretary General of AALCO Prof. Dr. Rahmat Mohamad, the Host Country, Nigeria and the AALCO Secretariat for making all the arrangements to conduct the Session in an effective manner. While pointing out that his Delegation would take part in the deliberations of the topics placed on the Agenda during the next few days of the Meeting, he shared with the distinguished gathering some of the initial reactions of Malaysia vis-à-vis those topics that it considered most important.

- 4.4 Commenting on the topic of Deportation of Palestinians¹, he noted that this issue had been one of the important topics placed on AALCO Annual Session agenda since 1988, and that AALCO has been discussing this topic continuously for the past 24 years. As regards the outcome of the deliberations that have been happening on this item over these years, he raised a number of pertinent questions. He opined that the delegates needed to ask themselves honestly as to what had been the tangible outcome of the discussion and that whether their views had been conveyed to the relevant parties. He stated that it was time that the delegates asked these questions with a view to proceed further in this issue. He also suggested that if we wanted to retain the topic of Palestine in the Agenda of our Annual Sessions, we should stop our rhetoric and come out with concrete plans.
- 4.5 Dwelling on the legal issues involved in the topic, he pointed out that the fundamental rights of the Palestinian people to self-determination and a sovereign State as provided in Article 1 of the Montevideo Convention² remained unrealized for more than four decades despite Palestine's efforts to be recognised as a sovereign Palestinian State. Drawing attention to the numerous Resolutions adopted by the General Assembly and the Security Council on the establishment of an independent State of Palestine and for the right of the Palestinian people to self-determination, he brought attention to two of the Resolutions adopted by UN bodies; the first one was the Security Council Resolution 1397 (2002) which affirmed a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders and the second one was the General Assembly

¹ The item "Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories" was taken up, at the AALCO's Twenty-Seventh Session, held in Singapore (1988), at the initiative of the Government of the Islamic Republic of Iran. The Government of Islamic Republic of Iran, after a preliminary exchange of views had submitted to the AALCO Secretariat a Memorandum, and the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from occupied territories. At the Thirty-Fourth Session held in Doha (1995) the Organization, *inter alia* decided that this item be considered in conjunction with the question of the Status and Treatment of Refugees. At its Thirty Fifth Session (Manila, 1996) after due deliberations the Secretariat was directed to continue to monitor the developments in the occupied territories from the view point of relevant legal aspects. At the subsequent Sessions, the scope of the item was enlarged, *inter-alia*, to include, at the Thirty-Seventh Session, "Deportation of Palestinians and other Israeli Practices", and the item "Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in the Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949" was placed on the agenda of the Thirty-Eight Session (Accra 1999). At the Thirty-Ninth (Cairo, 2000) Session, it was decided to further enlarge the scope of the item and the Secretariat was directed to monitor the developments in (all) occupied territories from the viewpoint of relevant legal aspects. The item has since been seriously discussed at the successive Sessions of the Organization as part of its Work Programme.

² Article 1 of the Montevideo Convention on the Rights and Duties of States provides the requirements for a "State": (a) permanent population, (b) a defined territory, (c) government and (d) capacity to enter into relations with the other States.

Resolution 54/152 (1999) which reaffirmed the right of the Palestinian people to self-determination, including the option of a State.

- 4.6 While drawing attention to the recent decision of the Office of the Prosecutor of ICC not to commence investigation on Palestine's application on the ground that it was in no position to decide whether Palestine is a State or not, he remarked that the question of the statehood of Palestine had been discussed by the Committee on the Admission of New Members under the United Nations Security Council and the same had decided that it was unable to come to an agreement as there were contradicting views regarding whether Palestine have an effective government in control over the claimed territory and also its capacity to enter into relations with other States including the issue of recognition by other States.
- 4.7 While calling for AALCO to have a re-look at the deliberations by Member States on this topic, he stated that AALCO should look at the legal issues pertaining to the elements of determination of a State under the Montevideo Convention and the question as to who or which body had the ultimate determination to decide whether Palestine was a State. The AALCO Secretariat should be given a mandate to conduct a thorough legal research into this subject and prepare it for the deliberations by AALCO Member States. AALCO Member States should take the AALCO legal view for discussions at the UN General Assembly or such other bodies, he added.
- 4.8 On the topic of the on-going United Nations Conference on Sustainable Development or Rio+20 in Rio de Janeiro, he stressed that Malaysia continued to emphasise the importance of a green economy in the context of sustainable development and poverty eradication, and the institutional framework for sustainable development. He added that the Conference would result in the finalisation of the outcome document, namely "The Future We Want".
- 4.9 On the commitments in relation to global marine environment and global program of action for the protection of the marine environment from land-based activities etc., he clarified that, Malaysia was of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).
- 4.10 On the topic of "*Law of the Sea – Responses to Piracy: International Legal Challenges*", he stated that Malaysia's commitment to its role in support of, *inter alia*, numerous Security Council resolutions³ might be aptly demonstrated through both its operational contributions in the Gulf of Aden, and the current prosecution in Malaysia of the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman in Malaysia.
- 4.11 In this regard, he wanted the Member States of AALCO to recall that at the 50th Annual Session, Malaysia had urged the AALCO to come forward to provide the necessary

³Security Council Resolutions 1816, 1838, 1846, 1851, and 1897

technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Hence, Malaysia appreciated the willingness of the AALCO to play an integral role to develop a model legislation that could be used by its Member States. In that regard, he added that Malaysia hoped that the model legislation on piracy and other maritime security offences to be prepared by the AALCO could be completed and circulated for the consideration of all Member States in advance prior to the next Annual Session.. While welcoming the convening of the Half-Day Special Meeting on “piracy” under the rubric of the Law of the Sea, he noted that the incidents of piracy, especially in the Gulf of Aden and Indian Ocean had greatly affected the safety and security of navigation as well as the international shipping community as a whole.

- 4.12 On the topic of “International Terrorism”, he informed that Malaysia had made great strides in countering terrorism by adopting very stringent domestic laws and also in cooperation with other States. He added that the commitment of Malaysia in adhering to the rule of law and fundamental freedoms could be realized from the fact that Malaysia had repealed its Internal Security Act 1960 (‘ISA’), a preventive law which previously was the main legislation that was used to detain suspected terrorists.
- 4.14 While acknowledging the grave risks that are presented to the internal security and public order by threat of terrorism, he informed that in order to replace the ISA, the Security Offence (Special Measures) Act 2012 had been drafted. In his view, the process under the Act provided the balance between the responsibility of the State to ensure peace and security with the rights of the accused person to fair trial and due process of law. Careful consideration based on international norms and standards in relation to the period of detention and the total autonomy of the executive to allow detention without trial had been addressed in the Bill, he added. He further added that Malaysia wished to highlight that the period of 30 days detention for purposes of investigation was subject to a sunset clause, where this provision will be revisited every 5 years. A Special Review Committee, chaired by the former Chief Justice and with members including the Attorney General, the Inspector General of Police, Chairman of the Malaysian Human Rights Commission, had also been established for purposes of reviewing the implementation of the law every six month, he added. He clarified that Malaysia wished to reiterate that the new law only allow detention for purposes of investigation and not detention without trial.
- 4.15 As regards the need to have international cooperation in fighting terrorism, he stated that within the Southeast Asian region, Malaysia found the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (‘ASEAN MLAT’), to be highly valuable in efforts against transnational crimes, including terrorism. Malaysia reiterated its view that an intra-regional Asian-African legal instrument on the same matter would be highly beneficial in that such instrument would facilitate the implementation of a harmonised mutual assistance in criminal matters among AALCO Member States with both common law and civil law systems. While recalling the decision of the 49th AALCO Annual Session vide Resolution AALCO/RES/49/S8, he informed that Malaysia looked forward to the constitution of an

Open-Ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States in near future. For purposes of the study, on its part, he added, Malaysia was prepared to share its knowledge and experience on the negotiation and conclusion of an AALCO MLAT.

- 4.16 **The Leader of Delegation of Japan** expressed great appreciation to the Government of the Federal Republic of Nigeria for hosting the Annual Session, and extended his sincere congratulations to H.E. Mohammed Bello Adoke, Attorney General and Minister of Justice of the Federal Republic of Nigeria, for his election as President of the 51st Annual Session. He congratulated Mr. Thiha Han, Director International Law and Treaties of the Ministry of Foreign Affairs of Myanmar, for his election as Vice-President of this Annual Session. He also extended gratitude to Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO, Deputy Secretaries-General and all the staff for all of their hard work in preparing for the Annual Session.
- 4.17 He listed out the specific reasons as to why the Fifty-First Annual Session of AALCO holds a special significance because it was the first Annual Session after AALCO marked the 50th Annual Session of AALCO meeting which was held very successfully in Sri Lanka, and the Annual Session was held in the Federal Republic of Nigeria, most populous great nation rich in many resources in Africa. He said Africa was today one of the two most rapidly developing dynamic growth center regions of the world and through hosting the Annual Session, the Government of the Federal Republic of Nigeria has eloquently shown its support for the promotion of the rule of law in the international community, and dialogue among States in the two regions on various issues of international law. Thirdly, the AALCO was to undergo an important year in its history for further activities under the able leadership of Prof. Dr. Rahmat Mohammad who would start a second term as the Secretary General of AALCO when he was duly reappointed during the Session. He appreciated Prof. Dr. Rahmat Mohammad as Secretary-General who had a strong leadership towards re-vitalization of AALCO and had made some significant achievements: strengthening the financial basis by revising the scale of contributions of member states; contribution towards adoption of the “Putrajaya Declaration” at the Forty-Eighth Annual Session; collection of arrears; streamlining expenditure and at the same time implementing various seminars and workshops in partnership with member states and with other international organizations; establishment of the Eminent Persons Group, and so on. Fourthly, the Annual Session was held at a juncture of great importance in terms of development of international law.
- 4.18 He recalled that 2012 marked the thirtieth (30th) Anniversary of the opening for signature of the 1982 UN Convention on the Law of the Sea (UNCLOS). Considering the significance of AALCO’s contribution towards the law of the Sea, as UNCLOS has a total of 162 parties we could say that it has attained the status of “the constitution for the oceans”, serving as the core basis of international legal principles of the sea. Hence, it was quite timely that one of the three Half-day Special Sessions was devoted to the topic of the law of the sea and piracy issues. Environment and Sustainable Development was another topic on the agenda for the Annual Session which was deemed quite timely, as

the United Nations Conference on Sustainable Development, Rio+20, was currently being held in Rio de Janeiro.

- 4.19 He recalled the Great East Japan Earthquake and tsunami which claimed more than 15,000 lives last year and more than one year has passed, and the infrastructure and economy of the disaster-affected regions were steadily recovering. The production levels in the mining and manufacturing sector had now recovered to the levels prior to the disaster. He said that much of such reconstruction has only been made possible, thanks to the warm assistance extended from more than 160 countries and regions and over 40 international organizations, and he placed his appreciation on behalf of the people and the Government of Japan, for their kind support. He also said that the fight against nuclear accident was continuing, and that the Japanese Government was making every effort to ensure the rebirth of Fukushima. The Government of Japan would contribute to strengthening nuclear safety worldwide by sharing with the international community the lessons learned from the accident. In that regard, the Government of Japan would hold the Fukushima Ministerial Conference on Nuclear Safety, with the IAEA, from 15 to 17 December 2012.
- 4.20 He said that after the last Annual Session in Sri Lanka, elections were held at the UN for the members of two institutions relating to the development of international law, namely the International Court of Justice (ICJ), and the International Law Commission (ILC). He thanked the Member States of AALCO for extending support for re-election of Judge Hisashi Owada, former President of the ICJ and for the election of Professor Shinya Murase as Member of the ILC. Regarding the work of the ILC, on Japan's proposal there were discussions on United Nations Convention on Jurisdictional Immunities of States and their Property in the previous year's Annual Session.
- 4.21 Promotion of rule of law in Asia and Africa was of grave significance, and there were great roles for AALCO to play in facilitating dialogue and exchange of views on various issues of international law. Putting AALCO on a sound financial basis and thereby further re-vitalizing the Organization was not just of benefit to Member States but it was the responsibility of Member States to the world as a whole. He mentioned that the budget for the year 2013 was approved by the Liaison Officers and expected that it would be adopted smoothly during the course of the Annual Meeting. However, financial challenges remain and in the event of recurrence of the difficulties, it could undermine the role that AALCO could play if member States did not take the matter seriously and duly address the problems. He informed that in 2013, TICAD V (Tokyo International Conference on African Development) would be held from 1st to 3rd June, 2013 in Yokohama wherein Japan hoped to address new challenges facing Africa, building on the past 20 years of the TICAD process. Some of the major themes would include "Boosting Economic Growth" in Africa, addressing various development challenges, and strengthening of Africa's own resilience and human security. He said Japan looked forward to welcoming the heads of state and government of Africa as well as representatives from Asian countries in June next year for TICAD V.

- 4.22 The **Leader of Delegation of Kuwait**, at the outset extended his heartfelt condolences to the Delegation of Saudi Arabia on the demise of the Saudi Crown Prince. As regards the agenda for the Fifty-First Annual Session of AALCO, he informed that the issues chosen were of critical importance for the Member States of AALCO and hence they needed in-depth deliberations.
- 4.23 While agreeing with the just demands of the peoples of the Arab World, he stated that their demands did strengthen the fundamental pillars of human civilization.
- 4.24 On the issue of Palestine, he stated that the international community could hardly ignore the violations of international law and international humanitarian laws, particularly the Geneva Conventions of 1949 committed by the occupying power Israel. The rights of the people of Palestine to self-determination were being violated with impunity, he added.
- 4.25 On the issue of International Criminal Court, he brought attention to the fact that Fatou Bensouda from The Gambia as the public prosecutor of ICC had succeeded Mr. Luis Moreno Ocampo. He also pointed out that the definition of aggression adopted at the first review conference of the Rome Statute represented a milestone in bringing the perpetrators of aggression to justice.
- 4.26 The **Leader of Delegation of the Republic of Korea** stated that the agenda items chosen to be deliberated at the Fifty-First Session of AALCO that included; International Criminal Court, Environment and Sustainable Development, Responses to Piracy and International Terrorism, were all cutting-edge international legal issues and deserved careful examination. However, he added that he would only speak on three of them, namely "Environment and Sustainable Development, 'International Criminal Court," and "Responses to Piracy: International Legal Challenges".
- 4.27 In the area of environment and sustainable development, there had been significant progresses at the 17th Conference of Parties to the UN Framework Convention on Climate Change and the 7th Meeting of Parties to the Kyoto Protocol, held in Durban, South Africa last year, he pointed out. He further added that in a few days, there would be another milestone in this field, namely the Rio+20, one main theme of which was "a Green Economy" in the context of sustainable development and poverty alleviation.
- 4.28 Commenting on the initiatives of his Government in this area, he informed that the Government of the Republic of Korea had been undertaking a variety of activities designed to achieve both economic growth and environmental sustainability. With strong support from the international community, the Korean government successfully launched the Global Green Growth Institute (GGGI) in June 2010 in Seoul. The GGGI is dedicated to support developing countries to shift their economies from the traditional manufacturing sectors towards the more environment-friendly "low-carbon, Green Growth" paradigms, he explained further. He also informed that, during the 18th Pre-COP Ministerial Meeting on Climate Change in Seoul, scheduled to be held in October 2012, the GGGI would be launched as an international organization, thanks to the cooperation and contributions of like-minded States including many AALCO Member

States. In this regard, he expressed his sincere appreciations to Cambodia, Ethiopia, Indonesia, Japan, Mongolia, the Philippines, Thailand, and the United Arab Emirates for their participation and expressed hope that AALCO Member States would also participate in the GGGI in the near future.

- 4.29 On the issue of International Criminal Court, he was happy to share the information that he was personally involved in the deliberations of the sessions of the Preparatory Commission that had adopted the Rome Statute. The ICC, which is the first permanent international criminal court established to punish individuals who have committed the most heinous crimes against humanity, had just witnessed its first verdict regarding the case of Lubanga in DR Congo in March this year, he added. Since the establishment of the ICC, the Republic of Korea has fulfilled its obligations as a State Party with sincerity and particular attention. The Government of the Republic of Korea has contributed to the effective functioning of the ICC by providing voluntary contributions and also by proactive leadership of H.E. Judge Sang-Hyun Song as the President of the Court, he noted.
- 4.30 On the issue of "Responses to Piracy: International Legal Challenges" he stated that piracy had been an enemy of humanity, not just because it put lives of innocent people at risk, but also because it undermined invaluable trust in the rule of law in the international community. The Government of the Republic of Korea took piracy very seriously. In this regard, he brought attention to the rescue operation that Korean sailors had undertaken to release people held captive by Somali pirates last year. He added that the Korean navy had captured 5 pirates alive, and prosecuted them in domestic criminal court. Some of them were sentenced to more than 10-year imprisonment and one was to life in prison, he stated. He was also of the opinion that criminal justice at the international level could not be brought about by a single State's effort and that close cooperation at the national and international criminal justice system were vital for the effective repression of piracy. This, in his view, demanded that the problem of piracy remained high on the agenda of the AALCO.
- 4.31 **The Leader of Delegation of the People's Republic of China** pointed out that currently, the international system was undergoing complex and profound changes, and that the international law system was facing significant adjustments. The role of International law was getting increasingly important in addressing global issues like security, reform of the financial system, international trade, environmental protection and climate change, which were bringing both opportunities and challenges to the development of international law. Most Asian and African countries are developing countries and share common interests and concerns in promoting social and economic development and coping with global challenges. Through this important platform of the AALCO, Asian and African countries could carry out cooperation and exchange, and build consensus in the field of international law, she explained.
- 4.32 While stressing the need on the part of international law to better reflect the interests and positions of the developing countries, she stated that China was ready to work with other Asian and African countries under the principle of equality, cooperation, mutual benefit

and win-win to seize the opportunities and meet the challenges so as to achieve our enduring development and common prosperity. Regarding "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties", she reiterated China's consistent position against abusing domestic legislation to impose sanctions on other countries. China held the view that all countries need to resolve disputes and differences on the basis of respecting state sovereignty and other fundamental principles of international law, and work together to maintain the international peace and build a harmonious world of lasting peace and common prosperity, she added.

- 4.33 Regarding "International Criminal Court", she supported the establishment of an independent, impartial, effective and universally recognized International Criminal Court to effectively punish the most serious international crimes. She also called upon the Court to get rid of prejudice and political distraction, so that it could win the trust of the State Parties from the Developing Countries to the Rome Statute.
- 4.34 Regarding "Environment and Sustainable Development", she stated that China held the position that all parties should stick to the principle of common but differentiated responsibility, and conduct consultations on establishing a just and reasonable international cooperative mechanism in dealing with climate change.
- 4.35 Regarding "Work of the Report of International Law Commission", she noted that the ILC needs to fully consider the concerns' of all states' and research on the drafts on "expulsion of aliens" and "the protection of persons in the event of disasters" so as to improve them constantly.
- 4.36 Regarding "Law of the Sea—Response to Piracy: International Legal Challenges", she hoped that the victim countries concerned would come forward to enhance judicial cooperation and assistance in bringing pirates to justice. She also called on developed countries to strengthen their assistance to developing countries in relation to their capacity building activities.
- 4.37 Regarding the importance that China attached to AALCO, she highly appreciated the achievements made by it since its establishment. He added that China would continue to support and take an active part in the work of the AALCO. While appreciating the efforts and contributions of Dr. Xu Jie who had served as a Deputy Secretary General of AALCO for the past 6 years, she expressed hope that his successor Mr. Feng Qinghu would also get the same invaluable support from all Member States of AALCO.
- 4.38 On the future development of the AALCO, she made a number of points;
- 4.39 Firstly, she expressed hope that the AALCO would continue to follow closely major international issues and events and provide in-depth analyses of the international law issues involved, encourage member states to exchange views and reach consensus, and work to influence the development of relevant International Law.

- 4.40 Secondly, she expressed optimism that AALCO would continue to strengthen its cooperation with important international legal bodies such as the UN International Law Commission, and actively reflect the views on issues, of which AALCO member states concern the most and have the widest consensus, in order to increase the influence of the AALCO to international legislation.
- 4.41 Thirdly, she also expressed hope that AALCO would strengthen its connection with the academia, and continue to hold seminars and training programs for its Member States so as to develop itself into a cradle of talents on international law for Asian and African countries.
- 4.42 The **Leader of Delegation of Saudi Arabia** at the outset informed the sad demise of their Crown Prince.
- 4.43 As regards the work of AALCO, he stated that it played a wonderful role in supporting its Member States in various fields including treaties, international Conventions, and for establishing united understandings of the issues of international law.
- 4.44 On the issue of Palestine, he stated that the actions of Israel violated innumerable laws including the UN Charter, human rights law and the fourth Geneva Convention of 1949. On terrorism, he stated that combatting terrorism in all its forms and manifestations was extremely important in protecting the rule of law and human rights throughout the world. In this regard, he made reference to the injunction contained in Holy Quran: Do not kill anybody except for the sake of justice. Accordingly, all the religions of the world require that we combat terrorism relentlessly. He further added that terrorism is terrorism whether it was committed by States, Organizations or individuals. Stressing the role played by Saudi Arabia in this area, he mentioned that his Country had created the 'International Centre for Combating Terrorism' on 19th Sep. 2011 under the banner of New York. Towards this Centre, the Saudi Arabian government had spent 10 million dollars in the first three years alone, he informed.
- 4.45 The **Leader of Delegation of Thailand** stated that Thailand had attached great importance to the work of AALCO and had valued its efforts in developing mutual legal policies and positions of Asian-African States ever since it joined as a Member of the Organization in 1961.
- 4.46 He added that, for its part, Thailand had been actively contributing to the issues of contemporary concerns under AALCO to promote closer co-operation for the development of international law. These issues of interests included those concerning law of the sea, piracy, environmental and sustainable developments as well as selected items relating to the work of the International Legal Commission (the ILC), he added.
- 4.47 On issues relating to Law of the Sea and Piracy, he informed that Thailand became a proud party to the 1982 UN Convention on the Law of the Sea since 14th June 2011 and that even before 2011, Thailand had made substantial contributions to the cause of developing States in this area. This included the assumption of the Chairmanship of the

Group of G77 of the whole of the 9th Session of the Preparation Commission for the International Seabed Authority and the International Tribunal on the Law of the Sea, he explained. As for piracy, he noted that Thailand had joined the naval patrol in the Gulf of Aden and the Western Indian Ocean with a view to lend support to the eradication of the global problem of piracy. It had also actively participated in many regional and international fora on maritime security, namely ASEAN Maritime Forum (AMF), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), International Maritime Organization (IMO) and the Contact Group on Piracy off the Coast of Somalia (CGPCS), he added.

- 4.48 On Environment and Sustainable Development, he stated that Thailand remained committed to addressing climate change seriously through a variety of innovative measures including building low-carbon and resilient societies and lowering greenhouse gas emission through innovative energy conservation. In order to achieve these commitments, its work was built on the foundation of the Philosophy of Sufficient Economy introduced by His Majesty the King Bhumibol Adulyadej of Thailand. Such enlightened Philosophy, introduced in the aftermath of the 1997 Asian Financial Crisis, encompassed 3 inter-related principles of Moderation, Reasonableness, and Self-Immunity, he explained.
- 4.49 On the Work of the International Legal Commission (ILC), he noted that Thailand had always closely followed the topics found in the agenda of ILC and that the topics that were of particular interest included; Expulsion of Aliens, Protection of Persons in the Event of Disasters and Immunity of State Officials from Foreign Criminal Jurisdiction. He stated that Thailand would aim to approach any issues to be discussed with sensitivity and regards to the complexity of the arguments involved. The balance between international relations and the principle of justice and fairness, principles of human rights as well as state sovereignty should together form the core of its position, he explained.
- 4.50 The **Leader of Delegation of the Democratic People's Republic of Korea** at the outset stated that AALCO, as one and the only regional intergovernmental organization in the field of the international law, had expanded its membership to 47 and made a remarkable contribution to the codification and the progressive development of international law. It had played a positive role in strengthening exchange and cooperation between Member States and in helping them to understand and coordinate their stands on important legal issues including regional issues of common concern. He emphasized that in today's complicated international situations, the Organization had fulfilled its mission successfully by representing and defending the stands and interests of its Member States in main international bodies like UN while increasing Afro-Asian influence on the discussion of international legal issues by establishing close cooperative relationship with relevant international organizations. These were all noticeable successes the AALCO had made in recent years.
- 4.51 Thereafter, he stated the principled stands of the DPRK Government on some issues which were brought on the Fifty-First Annual Session's agenda. Firstly, member states including the DPRK had been hindered unfairly in all areas of the national development

such as politics, the economy and culture due to the unilateral sanctions and blockade imposed by the United States which were products of high-handedness and arbitrariness. He added that, the United States in pursuit of its political objectives was making interventions in internal affairs of the other sovereign states and forcing its own values on the other independent states by pursuing double standards in interpretation and application of international law in an undisguised manner. These acts of high-handedness and arbitrariness impede not only the socio-economic development of target states but also the establishment of fair international order. He said that the government of DPRK strongly opposes and rejects the act of imposing unfair sanctions and blockade on the third state by certain states, including the US, by invoking its domestic law, by the act of forcing political and economic pressure on many Afro-Asian countries including the DPRK and by abusing international law as a gross violation of the general principles of international law, which stipulate respect for sovereignty of states, non-interference in internal affairs of the other, equality and reciprocity and the right to free development of the state.

- 4.52 On the issue of deportation of Palestinians and other Israeli inhumane practices, among them massive immigration and settlements of Jews in Occupied Palestinian Territories are grave violations of international law particularly the fourth Geneva Convention of 1949 relative to the protection of civilians in time of war, he mentioned that the blockade of Gaza Strip by Israel which had been in place for the last 5 years gave rise to grave humanitarian catastrophe in this region. The international community has adopted a number of resolutions and statements relative to the Palestinian issue by which they strongly censured the acts of violation by Israel of international law particularly international human rights law and the IHL including the Fourth Geneva Convention of 1949 and urged Israel to immediately implement its obligations under international law. However, Israel paid no heed to these strong demands and protests of the international community and continues violating international law flagrantly. He added that the DPRK government would reiterate its principled stand that it was the only way to address the Middle East issue and that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.
- 4.53 He reiterated the consistent position of the government of DPRK, that it opposed terrorism of all forms and any support to it remains unchanged. He also added that attention needs to be focussed on acts of military intervention committed against the sovereign states under the pretext of combating terrorism. Politically motivated military invasions and mass-killings of civilians in Iraq, Afghanistan and Pakistan committed by the US are the examples of state terrorism and extension of high-handedness and domination which causes the vicious circle of terrorism. Therefore, the draft Comprehensive Convention on International Terrorism under deliberation in the UN should clearly stipulate the obligations of the states to establish the international relationship based on the sovereign equality, justice and fairness, to respect each other's ideology, system, culture and custom and to promote international cooperation to achieve common development and prosperity as well as the issue of eliminating terrorism by state army.

- 4.54 He also mentioned that **President Kim Il Sung** and **General Kim Jong Il**, the great leaders of the Korean People had handed down to us, the new generation, the Socialist society where people owned everything and everything served for the interests of people, as precious legacy. In DPRK, the man-centered Juche Idea had been thoroughly introduced in all fields of social life and the state gives a top priority to realizing the demands and interests of the working masses in its activities, thus the human dignity and rights are guaranteed at the highest level.
- 4.55 The cause of building a thriving Socialist nation and the cause of national reunification in DPR Korea would ultimately accomplish under the independent Songun politics carried on by the respected leader Comrade Kim Jong Un was succeeding to the cause of President Kim Il Sung and General Kim Jong Il. In future, it would make strenuous efforts to ensure that the recognized principles of international law were strictly observed and to establish the equal and fair international order.
- 4.56 The **Leader of Delegation of Islamic Republic of Iran** noted that for the last couple of decades, developing countries and the Asian-African States had played a pivotal role in contributing to create an equal and fair framework for the codification and development of international law. In this regard, he expressed his hope that AALCO would continue to carry out cooperation and exchange of views on many critical issues of international law of common concern.
- 4.57 While drawing attention to the need on the part of the developing Countries to carry forward the spirit of Bandung in finding out solutions to the current world challenges, he stated that his Delegation had the honour to announce that the 16th Summit of the Movement of the Non-Aligned States would be convened on 30th – 31st August 2012 in Tehran.
- 4.58 On the role of AALCO, he was of the opinion that AALCO should be a milestone towards cooperation and consultation among its Member States in finding solutions to contemporary challenges such as international terrorism, maritime piracy, cybercrime, international criminal law and issues on the agenda of the ILC. In relation to cybercrime, he drew attention to the 12th United Nations Congress on Crime Prevention and Criminal Justice convened in Salvador, Brazil from 12-19 April 2010 which had observed that the development of information and communication technologies and the increasing use of the internet create new opportunities for offenders and facilitate the growth of crime. He added that the challenges faced by States, particularly the developing states, would require technical assistance and capacity-building activities in the prevention, prosecution and punishment of the crime of cyberspace. While stressing the need to intensify international cooperation as well as regional coordination in this regard, he drew attention to the UN General Assembly Resolution 65/230 which recommended that the UNODC provide, in cooperation with Member States and international organizations, assistance to improve national legislations and towards building the capacity of national authorities in dealing with cyber-crimes in all its forms.

- 4.59 On international terrorism he drew the attention of the delegates to the ‘International Conference on Global Fight Against Terrorism’, that was held on June 25-26, 2011 in Tehran. The participants at this Conference reiterated their unequivocal condemnation of all acts of terrorism in all its forms and manifestations including state terrorism and economic terrorism. It was also underlined that state terrorism has posed, for long, a real threat to the peace and stability of many nations across the globe.
- 4.60 On the ‘Revitalization Plan’ of AALCO, he stated that the Member States of AALCO needed to have a ‘financial policy’, that ensured ‘financial discipline’ in the Organization. It should also lead towards the creation of ‘sustained financial resources’, he added. In this regard, he suggested that an Open-Ended Working Group be established during the Annual Session that would analyse all the initiatives related to revitalization of the Organization. The Report of this Group could be considered at the subsequent Annual session and any decisions that do need to be made could be made in them.
- 4.61 The **Leader of Delegation of Indonesia** stated that since its inception in 1956, AALCO had made important contribution to the development of international law especially in the work on the Law of the Sea, when it was an effective forum where Member States engaged in consultations, exchanges of views and fostered coordinated efforts. The work of the AALCO on the Law of the Sea issues in subsequent meetings helped Member States to formulate their respective positions on different issues on the Law of the Sea being considered in the Conference on the Law of the Sea. Then finally in Kingston Bay Jamaica in 1982, the Member States signed the United Nations Convention on the Law of the Sea, and this year it commemorated the 30th year Anniversary of the adoption of UNCLOS. In short, this Organization had succeeded in establishing itself as a prominent organization representing the developing countries from Asia and Africa, serving as an advisory body to its Member States in the field of international law and as a forum for cooperation on legal matters among its Member States.
- 4.62 *Thereafter, he informed that the Indonesian Government would hold the Third Session of Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions/Folklore (LMCM-GRTKTCE/F III) on 27-29 June 2012 in Bali, Indonesia. The Meeting would begin with Preparatory Meeting LMCM 3: International Symposium in Ensuring Protection for GRTKTCE/F through the Creation of Database. He added that Indonesia not only played an active role but it had been recognized by the international community in its efforts to establish the international legally binding instruments or in a multilateral context. The Indonesian Government, represented by the Ministry of Foreign Affairs, would continue to prioritize the efforts to create international legally binding instruments in order to provide protection for GRTKF. He also informed that the Second Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) which was held in Bali last year, had reached an agreement or a common position which was manifested in the Bali Recommendation.*
- 4.63 Further in an effort to encourage the negotiation on establishing a legally binding international instrument in terms of GRTKF protection, the agreement, which was named

the Bali Recommendation to Advance the Work of WIPO to Establish an International Legal Instrument (or instruments) on the Effective Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (Folklore) (GRTKF), had been presented at the 19th Inter-Governmental Committee IGC-WIPO meeting in Geneva, 18-22 July 2011. This agreement represented an achievement and was expected to make an important contribution to the member countries of WIPO.

- 4.64 Thereafter, the Leader of Delegation highlighted that the Government of the Republic of Indonesia was seeking election for membership of the UN Commissions and International Trade Law (UNCITRAL) for the period of 2013-2019, at elections to be held during the 67th Session of the United Nations General Assembly in New York, November 2012. He mentioned the role Indonesia had played over the years as an active observer in UNCITRAL, and remained strongly committed to the development of international trade law, particularly through its active deliberations and best efforts in the UNCITRAL Sessions of Commission and Working Groups. He noted the national initiatives taken by his country in harmonizing national laws and legislation on international trade law by adopting UNCITRAL Conventions, model laws, legal guides, legislative guides, rules, and practice notes, among others, the *UN Convention on Contracts for the International Sale of Goods*, *UN Convention on Independent Guarantees and Stand-by Letter of Credits*, *UNCITRAL Model Law on International Credit Transfers*, and *UNCITRAL Arbitration Rules*. These harmonizations aimed to not only uphold the supremacy of international trade law in Indonesia, but also to give utmost protection to foreign traders and investors in Indonesia in a mutually beneficial manner.
- 4.65 As incoming Chair of APEC in 2013, Indonesia supported the promotion and harmonization of international trade law as a key component to boost the development of Asia Pacific's economy, including the South East Asian's, and committed vigorously in coordinating economic cooperation in the Asia Pacific region and the world. Hence, Indonesia seeks to achieve a leading role in Asia Pacific, including within the framework of APEC, on the harmonization of international private law in the region. At the international level, Indonesia had always acted and engaged constructively as a bridge-builder and problem-solver in the deliberations of international law issues, including in addressing matters on the international trade law, which was taking place in the Sixth (Legal) Committee Meetings. In addition, as a Member State of International Institute for the Unification of Private Law (UNIDROIT) since 2009, Indonesia is of the view that pertaining issues related international private law issues had to be addressed in a multilateral approach.
- 4.66 Further, the Government of Indonesia believed that Indonesia's membership of the UNCITRAL for the period of 2013-2019 would contribute substantially in maintaining the focus of UNCITRAL on addressing international trade law as enshrined in its founding resolution, and to ensure that the works of UNCITRAL in the future would be beneficial to all countries, particularly in forging global responses and solutions for global challenges in the area of international trade law. In this regard, the Government of Indonesia would highly appreciate the support of your Government for Indonesia's

candidacy for a membership of the UNCITRAL at the election to be held during the 67th Session of the General Assembly in 2012.

- 4.67 Thereafter, he briefly commented on the substantive items on the agenda and said that during deliberations his delegation would present their detailed views.
- 4.68 **The Leader of Delegation of Kenya** thanked the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO and congratulated President and Vice-President on their election. She also appreciated Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO on his re-appointment and for his untiring efforts to place AALCO at greater heights. She recalled the objectives of establishment of AALCO in 1956 and said that since Kenya joined the Organization in 1970, has actively contributed to activities of AALCO as it hosted the 28th (1989) and 44th (2005) Annual Session of AALCO.
- 4.69 Recalling the main function of AALCO as an advisory body, she said that AALCO was very actively contributing through engaging in close relationship with UN General Assembly, ILC and other International Organizations. She thanked the Permanent Observer of AALCO to the UN in New York and Vienna for their commendable work. She said that their delegation looked forward for deliberations on the topics for Half-Day Special Meetings and it attached great importance to the topic of International terrorism and Piracy under the law of the Sea.
- 4.70 The delegate informed that the establishment and functioning of the Nairobi Regional Arbitration Center was ongoing and the Attorney General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Regional Arbitration Centre. Further, the Regional Arbitration Centre has constitutional basis as the Constitution of Kenya also gives prominent to the Alternate Dispute Settlement mechanism. She informed about the progress made in establishment of the Regional Arbitration Centre in Nairobi. She once again thanked the Federal Republic of Nigeria and the AALCO Secretariat Staff for organizing and preparing for the Session.
- 4.71 **The Leader of Delegation of the Republic of Yemen** stated that his country had witnessed people's revolution and armed intervention where violation of laws took place by the authorities which consequently led to intervention at the Gulf Initiative. He thereafter enumerated the three main general phases of the revolution. In the first phase between December and February a rescue government was constituted whereby the election of the President took place. In the second phase which lasted two years a national conference was held which was tasked with formulating a social agreement as well as to initiate a national dialogue. In the third phase the government took upon itself the task of restructuring the security apparatus and armed forces with the aim of ending armed disputes. These tasks included preparing legislations for the transition period, in which justice and related laws were formulated. Another important task undertaken was the formulation of a new Constitution and new election laws. He hoped that his country with the help of AALCO would be able to confront the menace of terrorism and piracy at sea. The Leader of Delegation also sought support from AALCO on the issue of Deportation

of Palestinians and requested the Organization to continue its efforts so that Palestinians could get a State of their own with Jerusalem as its capital. He added that the most dangerous activity being carried out by Israel was its ongoing settlement activity, which could be the cause of religious and political fanaticism, which could be a justification for terrorist organizations. He also informed that the Government was desirous of signing the Rome Statute of the International Criminal Court, a decision which was somehow stalled earlier, and would soon be taken up by the Council of Ministers. The ICC he said was established with the aim of putting an end to impunity for the most serious crimes and desired that AALCO would provide the necessary incentives to the Republic of Yemen to ratify the Rome Statute.

- 4.72 The **Leader of Delegation of the Democratic Socialist Republic of Sri Lanka** pointed out that AALCO as an organization carried tremendous potential to make a difference in the Asian- African region. Sri Lanka was of the view that it is the responsibility of all stakeholders to raise the profile of AALCO in the world stage and that there are still many countries in our region that are yet to join AALCO.
- 4.73 He stated that the Annual Sessions of AALCO served as a useful forum for representatives of the Member States to come together and debate on the important legal issues faced by the individual countries and the region as whole. The outcome of these sessions were very important and therefore on behalf of Sri-Lanka, he proposed to include current topics which were of importance to the Asia-Africa region to be selected for discussion and included in the Agenda of the Annual Sessions.
- 4.74 On the issue of international terrorism that was considered by him to be one of the most important issue, he remarked that Sri-Lanka's experience related to eradicating terrorism was a long and hard one. While drawing attention to the remarks made by His Excellency Mahinda Rajapakse, during the Fiftieth Annual Session held in Colombo last year, he recalled that their Hon'ble President had stressed on the need and importance of exercising continued vigilance at the international level and stated that the ability to resort to both domestic law and international law as a source of protection, were vitally important. Considering the paramount importance of this issue in a global context and especially in an Asian- African context, Sri-Lanka urged all Member States to exert all efforts to take necessary action against terrorism including addressing issues of terrorist financing, he added.
- 4.75 On the issue of the work of the ILC, he noted that the relationship between AALCO and International Law Commission (ILC) was also one of crucial importance considering the pivotal role played by the ILC in the world stage. In his view, there was a need for greater collaboration among AALCO Member States and that this could not be done without the participation of all members of AALCO. There were three central issues currently faced by the ILC which include: Immunity of High State Officials from Foreign Criminal jurisdiction, Expulsion of Aliens and Protection of Persons in Disaster situations, he pointed out.

- 4.76 On the issue of Immunity of High State Officials from Foreign Criminal jurisdiction, he stated that this issue, which was a difficult and challenging topic involving as it did political sensitivities, was nevertheless a topic of contemporary relevance. Given the complexities involved, there is a clear need to agree on matters of principle, he added. In relation to the topic of expulsion of aliens, Sri-Lanka was of the view that the Right of Expulsion fell within the sovereign domain of the States and therefore must be essentially governed by domestic laws. However, he also added that it was also Sri-Lanka's position that international law should also be considered in this matter. On the third issue of Protection of Persons in the Event of Disasters, he stated that it was absolutely essential that persons be protected in the event of disasters. He also stressed that it was also important to comply with the overarching principles of respect for territorial sovereignty and non-interference in the internal affairs of the affected State. Sri-Lanka considered these three issues to be of central importance and urged AALCO as an organization to do the same, he added.
- 4.77 On the issuer of the Law of the Sea, he stated that the submission of claims to the CLCS was a matter of vital importance to all the State parties to the UNCLOS 1982. Sri Lanka made its submission in May 2009 and is scheduled to be taken up only in the year 2025, he revealed. In his view, it was imperative that the sittings of the Commission must be accelerated to dispose all pending submissions expeditiously even if it requires the Commission to sit throughout the year since vital economic interests were at stake, he added.
- 4.78 While remembering the contribution of AALCO towards the creation of UNCLOS, on the occasion of the 30th anniversary of the adoption of UNCLOS, he recalled that Sri Lanka had the privilege of chairing the UNCLOS. He also brought attention to the decisive role that AALCO had played in the development of the Law of the Sea. The emergence of new concepts such as EEZ owed its origins to the deliberations of AALCO Annual Sessions, he added. In this regard, he proposed that a Special Meeting be convened to mark this event and to recognize the contribution of AALCO as well as to focus on new areas of importance to member States.
- 4.79 On piracy, he stated that Sri Lanka considered sea piracy as a serious security problem which must be addressed and dealt with forcefully. Escalation of sea piracy attacks in the waters off Somalia, the Horn of Africa and in Asia has emerged as a major maritime security problem for international commercial activities and navigation. While noting that UNCLOS was ratified by Sri Lanka in 1994, he informed that Sri Lanka had enacted the Piracy Act No. 09 of 2001 which encompassed legal measures to be adopted in relation to incidents of piracy and criminalizes maritime piracy as a cognizable and non-bailable offence. Sri Lanka was also a party to the Regional Cooperative Agreement against Piracy and Armed Robbery in Asia (ReCAPP) which was an important inter-governmental agreement to counter maritime piracy in the region. It obliged member states to increase international cooperation and sharing of information in the efforts of prevention of piracy attacks, he added. Sri Lanka believed that the organized criminal nature of this issue demands a coordinated response from member states and hence, it

urged Member States of the AALCO to form similar inter-governmental cooperative mechanisms to strengthen anti-piracy efforts.

- 4.80 The **Leader of Delegation of United Republic of Tanzania** stated that we lived in the most difficult times the world had ever experienced and those man-made humanitarian crises, environmental, social and political crises, natural disasters with their attendant negative effects, impinged on the relevance of international law for which the work of AALCO was founded.
- 4.81 On the issue of Law of the Sea, he stated that even as we mark the 30th anniversary of the UNCLOS this year, it was important to take stock of the achievements as well as to reflect on the challenges in the implementation of the UNCLOS. Whereas the UNCLOS has generated positive impact in maintaining international peace and security through sustained use of ocean resources, navigation and protection of marine environment, it remained a matter of concern that the lack of mechanisms to fully implement the Convention has exposed the inability of the international community to govern the sea effectively. This, in his view, demanded that we take the issue of piracy seriously, particularly the problem of piracy as prevailing in Africa in general and the East Africa region, in particular. Further he added that it was a matter of fact that piracy off the Coast of Somalia and along the India Ocean continued to threaten regional trade, tourism and security beyond unimaginable proportions and that although Tanzania had put in place both preventive, deterrent and corrective measures, the same remained palliative and not a panacea. Hence, he appealed to the international community to explore other means of enforcing prosecutions of pirates by exercising jurisdiction within the purview of Article 105 of the UNCLOS.
- 4.82 While explaining some of the internal measures that Tanzania had been taking in this issue, he pointed out that three were very critical in this regard;
- 4.83 First, Tanzania amended its penal legislation so as to allow prosecution of suspected pirates being apprehended at the high seas by foreign vessels. Subsequently, it undertook to negotiate bilateral pirates transfer agreements with a number of countries with the capacity to pursue pirates at the high seas. To this end, it had signed a Memorandum of Understanding with the United Kingdom which allowed transfer of suspected pirates from U.K. Navy forces to Tanzania for prosecution and incarceration. He also informed that Tanzania was also about to sign a similar agreement with the European Union.
- 4.84 Secondly, Tanzania had developed a National Action Plan for countering piracy which elaborated in detail the short and long term strategies against piracy. However, the bottom line remained the lack of capacity both technical and material in implementing such strategies. Therefore they would continue to count on the support and assistance of the international community so as to sustain these efforts, he added.
- 4.85 Thirdly, as a party to the Djibouti Code of Conduct, Tanzania would continue to implement the same with their regional partners and that this legal framework, despite

being non-binding, had proven to be useful in the fight against piracy as members continue to exchange best practices and relevant marine surveillance, he added.

- 4.86 On the issue of terrorism, he stated that counter-terrorism, which remained one of the very important components of their efforts at both national and international level, must build on the already strong law enforcement networks that have been built to fight terrorism and trace the funds that finance terrorism. We must also be prepared to be innovative and allow regional jurisdiction to seize proceeds of crime. More importantly, we must now resolve to conclude the prolonged discussion of a *Comprehensive Counterterrorism Convention*, he added.
- 4.87 On the work of the International Criminal Court, he noted that Tanzania remained a staunch member of Rome Statute and recognised the significant role that the Court plays in fostering international peace and security as well as the dispensation of international justice. However, he added that, it was also mindful of the recent developments such as the sentiments of *double standards* which had brought the prominence of the Court to test. We would strongly appeal that efforts should be taken to rectify the status of this important Court.
- 4.88 **The Leader of Delegation of India** congratulated His Excellency Mohammed Bello Adoke on his election as President and Mr. U Thiha Han on his election as Vice President of the Fifty-First Annual Session of AALCO and said that with their wisdom the session would be successful. The delegate thanked the Federal Republic of Nigeria for organizing and preparing for the Session and for their warm hospitality. The delegate said that India as one of the founding members of the Organization attached great importance to the work of AALCO and was proud to host the Organization as it serves as an advisory body in the field of international law in relation to the work of ILC, UNGA, etc. The importance of AALCO Annual Sessions was to formulate positions on international legal issues and therefore thanked the Secretariat for their efficient work. She said that issues that would be discussed during the session were the ones which the international legal community was grappling with to address them.
- 4.89 Maritime security was one of the areas wherein acts of piracy were serious threat to sea farers, increased areas of robbery, marine pollution, and security of coastal state which would be leading to high risk areas. In that regard, India welcomed the Code of Practice adopted by the 22nd Assembly of IMO and also supported MIOs efforts at promoting regional cooperation to address the problem wherein India had actively participated as the incidents of piracy in Exclusive Economic Zone (EEZ) was a serious threat. India was actively considering a comprehensive legislation which would be adopted soon, and would provide clarity in law, sound legal basis for punishing piracy, safety of crew and trade. The delegate reiterated that India has raised voice in UN legal mechanism and in various multilateral groups that dealt with piracy and that the Indian Navy had joined in escorting other countries also.
- 4.90 On the issue of international terrorism, the delegate said that it was an ongoing challenge and India continued to believe that it should be condemned in all its forms and

manifestations as it was a criminal and unjustifiable act under legal, political, ethical, philosophical and religious aspects. The UNGA had established a legal framework for countering terrorism comprising of 13 multilateral legal instruments to which India was a party. On the topic of ‘environment and sustainable development, climate change was a very important topic under UNFCCC, which had recently convened the Conference of Parties in Durban. As a developing country it was very important to note that at the insistence of India, the concept of ‘equity’ was brought back in Durban. Regarding India’s efforts to address climate change issue at national level, India being a developing country had huge developmental challenges as 55% of the population does not still have access to energy. There were other commercial challenges as well. India had taken all efforts to reduce its per capita emissions and domestically had adopted certain measures to that end. The delegate mentioned that India was working for energy products sustainability. Sustainable development was much larger issue and human beings should be the centre of development. Green economy should be seen as one of the means to achieve sustainable development and India’s position relates to poverty eradication, food security and being a dynamic concept for sustainability, greening economy was essential to develop socially, economical and environmentally.

- 4.91 Extraterritoriality reiterates that unilateralism was not a solution and not acceptable. State practice in international law reflected extraterritorial application of national legislation by third States violated the principles of sovereign equality and non-intervention in the internal affairs of the State. With regard to matters of ILC, immunity of state officials in foreign criminal jurisdiction, one should consider only foreign criminal jurisdiction because source of immunity in international law focused upon national laws.
- 4.92 The delegate reiterated that 2012 was the 30th Anniversary of the UNCLOS and the work of AALCO Secretariat on that topic was very much appreciative. The Organization was successful in bringing together all the Member States during the deliberations of the UNCLOS and the Convention has received universal acceptance. Oceans space, delimitation, technology and the law of the sea, etc. remain to be complemented and there was a need to increase the capacity-building in order to participate fully at global and regional forums (UNGA 64/2009). Maritime delimitation was an important issue as India had geography on vast coast lines.
- 4.93 **The Leader of Delegation of Nepal** stated that AALCO, which was the only legal mechanism that consists of member states from both Asia and Africa, had played a pivotal role in setting norms and standards in various fields of international law. In order to ensure that its Member States have proper laws and regulations in newly emerging areas, it has developed and disseminated model laws and agreements, he added. While appreciating the agenda items selected for the Session, he pointed out that the topics chosen that included; Environment and Sustainable Development; Extraterritorial Application of National Laws and recent developments with regard to the ICC, the issue of piracy and international terrorism were most important and timely and that they demanded extensive deliberations.

- 4.94 On the issue of Environment, he remarked that developing countries, including Nepal, had the challenge of striking a balance between their development activities and protection of environment. Nepal was a Party to a number of multilateral environmental agreements, and had adopted several policies dealing with sustainable use of natural resources and equitable sharing of benefits arising out of their use, he added. In this connection, he felt proud for sharing with the gathering the fact that the Community Forestry Program - in which users' communities themselves, and not the government, are involved in conservation efforts and sustainable use of forest resources in their respective forest areas – has become a symbol of tremendous success and a model conservation program all over the world.
- 4.95 Despite those efforts, worsening environmental conditions, especially climate change, have become a threat not only for Nepal's rich bio-diversity, but also for the very survival of its people. We have been experiencing unusual flash floods in rivers originating in the Himalayan region causing heavy loss of life and property. The rapidly melting snow in the mountains, the barren lands in the hills and the rapidly depleting water table in the plain land symbolized the seriousness of this problem in Nepal, he added. Since in his view, the situation was not much different in other Member States sharing similar ecology, he emphasized that concrete steps needed to be taken immediately to save life and livelihood of peoples of Asian and African continents.
- 4.96 On the issue of international terrorism, he stated that combating international terrorism required resolute responses from all Member States in a coordinated manner as efforts of a single country were not enough. As concrete measures to demonstrate its commitment against terrorism, Nepal had ratified the International Convention for the Suppression of the Financing of Terrorism and the United Nations Convention against Transnational Organized Crimes and other instruments, he pointed out. It was high-time for us to devise an international cooperation mechanism, especially among AALCO members, to combat terrorism, he added.
- 4.97 On the issue of piracy, he stated that it was inimical to free and smooth flow of goods all over the world and hence adversely affected international trade. Since uncontrolled piracy and resulting proceeds of crime might assist terrorist activities, he was of the view that maritime security measures must go hand in hand with measures to address the underlying root causes of this global problem.
- 4.98 On the issue of migrant workers, he stated that Nepal, being a source country of migrant workers, had legitimate concerns in protecting and promoting rights and interests of her workers abroad. Its experiences showed that migrant workers, especially the irregular ones, had been subjected to multiple victimization and exploitation everywhere-be it in the home country, transit countries or countries of destination. Since most of the destination countries of our migrant workers are the AALCO Member states, he was of the firm conviction that the AALCO would come up with some special arrangement on this issue and that the Draft Regional Model Cooperation Agreement between States of Origin and States of Destination/employment within AALCO Member States would be instrumental in this regard, he noted.

- 4.99 **The Leader of Delegation of Union of Myanmar** expressed sincere appreciation to the Government of the Federal Republic of Nigeria for hosting this session and for extending a warm welcome and hospitality to the delegation. She also thanked His Excellency Prof. Rahmat Mohamad, the Secretary General of AALCO, and the Secretariat for their hard work and commitment towards the work of AALCO. Myanmar noted with approval the work of the Secretary General's leadership, with his energetic activity towards extending the activities of the organization and has voted for extension of his term of office for an additional term. She also congratulated His Excellency Mohammed Bello Adoke on his election as President and Mr. U Thiha Han on his election as Vice President of the Fifty-First Annual Session of AALCO and thanked the Vice-President for acting on her behalf. She gave their sympathy and deepest condolence to the Government and the people of Saudi Arabia for the late Crown Prince.
- 4.100 The delegate reaffirmed their government's commitment towards AALCO and its important role in providing international legal assistance to its Member States. She said that respect for law and the promotion of rule of law was at the core of Myanmar's foreign policy as witnessed in the light of recent political developments and political reform under the leadership of their President and two Hluttaws/Parliaments. She said that during the recent visit of the Pyithu Hluttaw Delegation led by the Pyithu Hluttaw Speaker to the European Union Parliament and Parliaments of EU member countries, it was informed that changes and reforms were much faster. The delegation believed democracy was the only path towards national prosperity. Political reform, without the economic reform, alone could not make the political system a success. Legal reform too must be compatible with the new democracy system and economic reform, and those developments were at the centre of the mandate of Myanmar Government. During the First Session of the Pyidaungsu Hluttaw, 14 Laws had been promulgated, 10 laws were amended and 2 laws were repealed.
- 4.101 The delegate mentioned that their democracy was just a year old and had tremendous backlog of obsolete laws that needed to be reviewed and also had an enormous amount of new legislations to be drafted and legislated. She solicited constructive advice from all genuine well-wishers on the necessary legal framework to construct a solid foundation for their new-born Democracy. Reiterating the importance of peaceful settlement of disputes among states, both Myanmar and Bangladesh had consented to institute proceedings under Part XV of the UNCLOS, before the International Tribunal for the Law of the Sea (ITLOS). Recognizing piracy as the challenge on the high seas faced by all the maritime countries of the world, she said that Myanmar had cooperated with her ASEAN partners in the common endeavour to fight that ancient scourge of the seas. She applauded the work of AALCO in the area of terrorism and human trafficking which were not an unfamiliar problem for Myanmar. In common with many other developing nations, Myanmar being a labour exporting country, inevitably suffered from the problem of human trafficking, in particular to her neighbouring countries and her government was actively cooperating with her neighbouring countries to stop trafficking, and to assist in the return of the trafficked persons to their homelands.

- 4.101 On behalf of the Myanmar Government, she fully supported the reappointment of the current His Excellency Prof. Dr. Rahmat Mohamad as Secretary-General and said that the Government would support all the endeavours of AALCO to promote Asian-African solidarity, cooperation towards progressive development and codification of International Law.
- 4.102 **The Leader of Delegation of Republic of South Africa** thanked the Government of the Federal Republic of Nigeria for hosting the 51st Annual Session of AALCO and congratulated the incoming President and Vice President of the 51st Annual Session. The delegate also thanked the Secretary-General of AALCO H.E. Professor Dr. Rahmat Mohamad for leading the Organization into a position of influence and a relevant body in matters of international law and congratulated him on behalf of the Government of the Republic of South Africa towards the extension of the term of the Secretary General for another four years, from 2012-2016. She also conveyed deepest gratitude to the AALCO Secretariat and all those who were involved in the preparations for the 51st Annual Session. The delegate mentioned that South Africa was proud to be a member of the half a century old Organization, since its joining in 2004. She extended condolences to the Kingdom of Saudi Arabia on the passing of the Crown Prince.
- 4.103 The delegate then commented upon the deliberated items on the AALCO's agenda. On the topic of Environment and Sustainable Development, the delegate observed that South Africa had successfully hosted the 17th Session of the Conference of Parties to the United Nations Framework Convention on Climate Change and the 7th Session of the Conference of Parties, herein referred to as COP17/CMP7. COP17/CMP7 were scheduled for 28 November-9 December 2011 in Durban and the negotiations culminated into a breakthrough for the future of the international community's response to climate change whilst realizing the urgent need to raise the collective will to reduce greenhouse gas emission to keep the average global temperature rise below 2° Celsius.
- 4.104 The delegate mentioned that South Africa took note of and welcomed the admission of Palestine as a member state of the United Nations as of November, 23, 2011 but regretted that no convincing progress were made in the Arab-Israeli peace process since it was revived on the 2nd of September 2010. She also urged all parties, including the Israeli Government, to negotiate with the leaders chosen by the Palestinian people and the leadership on both sides should make all effort to establish a free and independent State of Palestine, which would live side-by-side in peace with the State of Israel.
- 4.105 The delegate also raised concerns about the increasing number of women and children being trafficked; and deteriorating conditions of migrant workers and protection of children. The delegate mentioned that while the negotiations for the Rome Statute of the International Criminal Court were taking place in 1998, the Republic of South Africa was only four years old after its democratic transition in 1994 and millions of South Africans suffered for generations the humiliation and human rights abuses associated with apartheid. Thus, it was gratifying that the crime of apartheid was criminalized in Article 7(2) (h) of the Rome Statute as a crime against humanity. She said that her delegation was proud to be part of the African Group which was the biggest block at the Rome

negotiations that vigorously supported the adoption of the Rome Statute and the creation of the world's first permanent international criminal tribunal to combat various impunities of most serious crimes of concern to the international community would not have happened without Africa's support. The delegate believed that the scourge of impunity must also be addressed by keeping in place an effective system of individual criminal liability for international crimes, thereby giving full effect to the prohibition of aggressive war in the Charter of the United Nations. In that regard, it was to be remembered that complementarity forms the cornerstone of the Rome Statute and all the AALCO Member States should assist each other to strengthen national jurisdictions to effectively investigate and prosecute those crimes. The delegate welcomed the appointment and congratulated Ms. Fatou Bensouda of The Gambia as the first African and first woman to head the team of prosecutors at the tribunal as Chief Prosecutor of the ICC. We congratulate her on her position and wish her a successful tenure. The delegate acknowledged the efforts made by the AALCO Secretary-General to work in close collaboration with the African Union and encouraged the AALCO to formalize those efforts. She expressed Government of the Republic of South Africa's on-going commitment and support to AALCO.

- 4.106 **The Leader of Delegation of Republic of Iraq** congratulated Prof. Dr. Rahmat Mohamad on his reappointment as the Secretary-General. The delegate also thanked the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO. The role played by AALCO in addressing some key issues were also appreciated especially in relation to the topic of terrorism, which has become a real challenge for many of the AALCO Member States and other countries of the world as well.
- 4.107 **Observer Delegate from the International Committee of the Red Cross (ICRC)** stated that, the ICRC was an impartial, neutral and independent organization whose exclusively humanitarian mission was to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict and also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. The ICRC's association with AALCO provides a welcomed opportunity to join efforts in the promotion of international humanitarian law, he added.
- 4.108 Commenting on the instruments of IHL, he brought attention to the fact that thirty-five years ago the international community had adopted Protocols I and II, and six years ago, Protocol III additional to the 1949 Geneva Conventions. While the Geneva Conventions have been universally ratified, there are 172 States party to Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, 166 to Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, he noted. While welcoming the sustained progress seen in the participation of States in the Additional Protocols, he informed that 60 States had already become Parties to the Additional Protocol III relating to the Adoption of an Additional Distinctive Emblem, which formed part of the foundation of international humanitarian law.

- 4.109 On the outcomes of the 31st International Conference of the Red Cross and Red Crescent (International Conference) held in November-December 2011 in Geneva, he stated that from an ICRC perspective, the 31st International Conference was a success and that the level of engagement in the different debates and the support received from States and National Societies of the Red Cross and the Red Crescent (National Societies) were unparalleled. Giving the details of it, he informed that, eight Resolutions had been adopted by consensus out of which three touched on IHL issues. They were Resolution 1 on "Strengthening Legal Protection for Victims of Armed Conflicts", Resolution 2 and its annex entitled "4-Year Action Plan for the Implementation of International Humanitarian Law" and Resolution 5 on "Health Care in Danger."
- 4.110 Resolution I reiterated that IHL remained as relevant today as ever before in international and non-international armed conflicts and continued to provide protection for all victims of armed conflict. Hence, Resolution I invited the ICRC to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, to identify and propose a range of options and its recommendations to enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law. The ICRC would also provide information at regular intervals to all members of the International Conference and would submit a report on this work to the 32nd International Conference in 2015.
- 4.111 Resolution II included a "4-Year Action Plan for the Implementation of IHL" adopted by the International Conference. The Action Plan urged States and components of the Red Cross and Red Crescent Movement to take specific action to enhance implementation of IHL in five areas: access by civilian populations to humanitarian assistance in armed conflicts; protection of children, women and persons with disabilities; protection of journalists; incorporation and repression of serious IHL violations in the domestic legal order; and arms transfers.
- 4.112 The 3rd Resolution to be highlighted was on Health Care in Danger. The ICRC had launched the project, 'Health Care in Danger' in 2011 based on the observations from its operational experience that violence against the wounded and sick and medical personnel, facilities and transports was one of the most crucial yet overlooked humanitarian issues of today.
- 4.113 In addition to its protection and assistance activities for victims of armed conflicts and other situations of violence, ICRC's preventive action in the field of weapons was also of utmost importance. The ICRC considered the upcoming negotiations of an Arms Trade Treaty in July this year as extremely important. He urged that AALCO Member States actively participate in the negotiations to achieve a strong treaty.
- 4.114 As regards the obligation of States to implement the IHL treaties domestically, he informed that they could do so by adopting a wide range of national implementation measures, including by adopting legislation and administrative measures, drawing up military manuals and proper training within the armed and security forces. National IHL Committees or similar bodies can play a valuable role in helping concerned authorities to

develop such measures, he added. He also informed that currently, 103 States, including several AALCO Member States, have established National IHL Committee and that as always, through the Advisory Service on IHL, the ICRC continued to stand ready to assist States in their efforts to promote and implement international humanitarian law.

- 4.115 The **Observer Delegation from the Russian Fédération** stated that the topics that have been chosen for délibérations at the Fifty-First Annual Session were of critical importance to the developing countries as a whole and that they could impact the development of international law in a significant manner.

5 Second Meeting of Delegations of AALCO Member States

- 5.1 **Release of AALCO Publications:** The Secretary-General of AALCO briefly gave a background about the Yearbook and the AALCO Journal of International Law. Thereafter, the following AALCO publications were released by Mr. U. Thiha Han the Vice- President of the Fifty-First Annual Session of AALCO.

1. *Yearbook of the Asian-African Legal Consultative Organization (2012);*
2. *AALCO Journal of International Law Vol.1 Issue 1, 2012 ;*
3. *NEWSLETTER of AALCO Volume 9 No.1 January-May 2012; and*
4. *AALCO Website www.aalco.int*

- 5.2 **Report of the Secretary-General on Organizational, Administrative and Financial Matters:**

- 5.3 The Secretary-General at the outset profoundly thanked all the Member States of AALCO for their constant support and cooperation extended to him in discharging his duties. He extended special thanks to **His Excellency Rauff Hakeem, the Minister of Justice of the Democratic Socialist Republic of Sri Lanka; and President of the Fiftieth Annual Session of AALCO** for his guidance in steering the work of Organization. He also thanked Madam **Mrs. Ifeyinwa Rita Njokanma, Director, International Law Department**, the Vice-President of the Fiftieth Annual Session for giving unwavering and endless support to AALCO and himself, he added that Madam Rita had played a vital role in organizing and preparing for the Fifty-First Annual Session. He also thanked the International Organizations and institutions which collaborated with AALCO in organizing several inter-sessional events. He extended special appreciation to the Deputy Secretaries-General and the AALCO Secretariat staff for their sincere efforts.

- 5.4 The SG first discussed the steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization. The SG proposed that in order to strengthen the Human Resources in the Secretariat, at least two new legal officers be recruited in the Secretariat in 2012-2013. In order to ensure African and Arabic representation in AALCO, he requests the African States to second at least one senior official to the Secretariat as Deputy/Assistant Secretary General and also the Arab Member States to depute one senior official to the Secretariat. Further, he proposed offering remuneration and other

terms and conditions of services at par with other Inter-governmental Organizations so as to attract the best legal talent and requested Member States to nominate legal officers from their legal ministry to assist in legal research. He finally proposed a Visiting Fellowship Programme for post- graduates from Member States.

- 5.5 The SG then went on to enlist the activities undertaken and participated in by the SG and Secretariat officials since the Fiftieth Annual Session of the AALCO including- Asia Pacific Regional Arbitration Group (APRAG) Conference, Kuala Lumpur from 9 to 10 July 2011; the Sixty-Third Session of the International Law Commission in Geneva on 26 July 2011 where the Eminent Persons Group (EPG) was constituted; meetings with the officials of the WIPO and UNCTAD, Geneva in July 2011; the Annual AALCO Meeting convened on the sidelines of the annual session of the United Nations General Assembly, at the UN Headquarters in New York on 31 October 2011; Luncheon meetings in New York held on 28 October 2011 and 1 November 2011 as a new feature to the 2011 AALCO-ILC Meeting; Fifty-Fifth Constitution day celebrations of AALCO, at Taj Palace Hotel in New Delhi on 11 November 2011; presentation of a paper on “International Criminal Court in the Development of International Rule of Law: A Reflection of Asian-African views” on 21 November 2011 at the Institute for Ethics, Governance and Law (IEGL), Australia; international conference on “Shifting Global Powers: Challenges and Opportunities for International Law” on 25 November 2011; 19th South Asia Teaching Session (SATS) on International Humanitarian Law (IHL), by ICRC and NLS, Bangalore from 27 November to 5 December 2011; International Seminar on Institutional Arbitration and Online Dispute Resolution techniques by CIAC, New Delhi; visit of President of AALCO to the AALCO Headquarters and lecture at the Indian Council of World Affairs (ICWA) on 24 January 2012; Joint Seminar on “Competition Law in Emerging Economies: Trends and Developments in India”, organized at AALCO Headquarters with O. P. Jindal Global University on 28 and 29 January 2012; Workshop on “Trade Law as a Means to Promote Economic Growth”, New York on 7 February 2012; Eighth International Conference organized by the India Society of International Law on the topic “Emerging Concerns in Public International Law” in New Delhi on 23-25 February 2012; Training Programme for the Diplomats and Officials from Kingdom of Saudi Arabia on the “Working of AALCO”, at the AALCO Headquarters in New Delhi from 12-13 March 2012; Discussion on the topic “State to State, Investor to State and Commercial Arbitration: Procedures and Implications”, 26 March 2012 in New York; 2nd Meeting of the AALCO-EPG at the AALCO Secretariat on 9th April, 2012; Inter-Sessional Meeting of Legal Experts to discuss Matters relating to the ILC at the AALCO Secretariat, New Delhi on 10 April 2012; Meeting with the Attorney- General of the Federal Republic of Nigeria on 27th April, 2012; training programme on “Trade and Development issues” at the AALCO Secretariat from 21-25 May 2012 and a Workshop in New York jointly with the Legal Office of the United Nations to celebrate the 30th anniversary of the UNCLOS, 30th May, 2012. Besides, the annual publications brought out by AALCO are: Yearbook of the Asian-African Legal Consultative Organization, AALCO Journal of International Law, Newsletter: Asian-African Legal Consultative Organization which reflects on the current activities of the Organization, and Special Studies published by the Centre.

- 5.6 The SG addressed the financial situation of AALCO by requesting for voluntary contributions and stating that annual contributions from 34 Member States had been received; however, the same had not been received from 13 remaining Member States. Further in light of the Action Plan adopted in 2008, 9 of the Member States had either partly cleared or are in the process of clearing their arrears, whereas efforts are being continued for 4 of the Member States (which have been in arrears for more than 10 years). With respect to the replenishment of the Reserve Fund under Rule 27 (3) of the Statutory Rules of the Organization, the SG suggested that the amount kept be sufficient to meet the expenses of the organization for at least a period of six months.
- 5.7 The SG went on to discuss the AALCO Secretariat and Welfare measures for the Secretariat staff, and stated that three Senior Officials from China, Iran and Japan had been deputed to the Secretariat on secondment. The number of the locally recruited staff (permanent category) in the Secretariat was 13 as of 15 May 2012. The SG mentioned that the ceiling of the gratuity amount payable to employees on the cessation of their employment in AALCO was enhanced and the ceiling limit was brought at par with the Government of India. On the basis of the 2010 session, the SG has implemented the ceiling limit of the 6th Pay Commission of Government of India up to Rs.10, 00,000/- (Ten lakhs). This formula should be retrospectively applied and implemented in AALCO from the year 2006.
- 5.8 In conclusion, the SG discussed the Plan of Action for 2012-2013 including: (i) Establishing Collaboration with Education Institutions and Universities, (ii) Expanding Internship Projects in AALCO, (iii) Improvising the website of AALCO, (iv) Preparation of the Studies on the item on the agenda of AALCO, (v) Preparation of studies on selected items on the agenda of the Sixty Seventh Session of United Nations General Assembly, (vi) Participation in International conferences, (vii) Capacity Building Programmes, (viii) Strengthening the Library, and (ix) bringing out more special studies and briefing papers on various specialized topics of international law.
- 5.9 ***Adoption of the Proposed Budget for the Year 2013:*** The **Secretary-General** introduced the Proposed Budget for the Year 2013 contained in document AALCO/51/ABUJA/2012/ORG.2. He informed that the budgetary papers were adopted at the 315th Meeting of the Liaison Officers in accordance with Statutory Rules 24 (2) and were placed for final approval before the Annual Session as per Rule 24 (4) of the Statutory Rules of AALCO. He explained that the total amount of the proposed budget for the year 2012 was USD 570,268 (US Dollars Five Hundred and Seventy Thousand, Two Hundred and Sixty Eight) which was calculated as per expected assessed contribution of Member States as per the revised and adopted scale of annual contribution of Member States during the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia in the Year 2009 vide resolution AALCO/RES/48/ORG.2.
- 5.10 The Secretary-General explained that during the Forty-Ninth Annual Session of AALCO held in United Republic of Tanzania in 2010, some Member States urged the Secretary-General to prepare a realistic budget on the basis of actual contributions received. Therefore, the budgeted expenditure for the year 2012 had been divided into two parts, (i)

the realistic budget of USD 501,621 on the basis of expected contributions from regularly paying Member States; and (ii) the remaining amount of USD 68,647 would fall under the heading ‘other projected expenditures’, which would be incurred depending upon contributions received from Member States in arrears. The Proposed Budget could be divided into two main heads namely: (i) Expenses incurred in relation to maintenance of the Headquarters, Pay and Allowances to Secretary-General and Locally recruited Staffs, emoluments to Deputy Secretaries-General, expenses in relation to Annual Session and inter-sessional meetings printing, publication and so on amounting to USD 499,621 and (ii) Expenses under Centre for Research and Training (CRT) was USD 2,000.

- 5.11 He recalled that to replenish the Reserve Fund, during the Forty-Eighth Annual Session, the resolution adopted had urged the Member States to ensure that it always had a six-month operational fund. As of May 2012, the total amount of the Reserve Fund was only for an operational period of five months. With regard to collection of arrears from Member States who were in large amount of arrears, certain measures were proposed. He thanked the Government of Iraq for having paid their first and second installment of arrears of contribution in compliance with the Memorandum of Understanding (MoU) signed with AALCO. The Secretary-General hoped that other Member States with large amount of arrears should also follow suit. He stated that the AALCO had received annual contribution from 32 Member States for the year 2011 (until June 2012). Arrears of contribution were received from 10 Member States in the year 2011. On those lines, he urged Member States who had not paid their annual contribution and arrears to fulfill their financial obligations. He also thanked the Secretariat staff for effective streamlining of the expenses and for extending their full cooperation in reducing the expenses.

The Vice –President declared that the Budget for the year 2013 was adopted.

5.12 ***Report of the Chairman of the AALCO-Eminent Persons Group (EPG) Meeting:***

- 5.13 The Chairman of the AALCO- EPG presented the report on the Second Meeting of the AALCO-EPG, held on 9th April, 2012 at New Delhi. The Agenda of the meeting was divided into two sessions- Organizational Matters and Substantive Matters.
- 5.14 With respect to Organizational Matters, the Chairman reported that financial matters relating to AALCO were first discussed where the SG mentioned that even though most Member States pay their annual contributions to AALCO regularly, collection of arrears from defaulting Member States remained a challenge, though they were beginning to respond and negotiate. The SG had emphasized the fact that voluntary contributions by Member States need to be intensified in order to alleviate the financial situation of the Organization. Among other measures discussed was the possibility forming an AALCO Foundation. The EPG expressed satisfaction at the progress in this front and endorsed the proposal of Member States sponsoring and hosting Meetings on specific topics and mentioned that the proposal by the private company to provide assistance in maintaining required the Secretariat in return for utilizing space, required careful study and consultations with the Government of India. The EPG emphasized the need to evolve sanctions against defaulting Member States.

- 5.15 The issue of the staffing of the Secretariat, the SG briefed the EPG that presently, the professional category was understaffed. It was mentioned that salaries and other perks given to AALCO professional staff, were not attractive enough to encourage young local talent. Both the SG and EPG supported the proposal to invite Member States to depute officials/experts to AALCO. The EPG was of the view that AALCO could sponsor one of its Legal Officers to attend the Annual ILC Sessions. This would also strengthen AALCO-ILC relations. The EPG also stated that it was imperative that Member States responded to the Secretariat, as to how much importance they attached to the substantive work prepared by AALCO. It was of the view that the Secretariat should identify the Focal Points in each country and create a database of email addresses, to facilitate speedy and effective communication with Member States.
- 5.16 The **Leader of Delegation of the Kingdom of Saudi Arabia** noted with concern that one of the reasons for the financial problems of AALCO pertained to the long pending arrears from some Member States. In this respect he inquired from the Secretariat why private funding could not be explored as an additional option. He was also of the opinion that an early solution to the financial difficulties faced by the Organization should be found.
- 5.17 In response the **Secretary-General** stated that this proposal was placed for the consideration of Member States during the 50th Annual Session held in Sri Lanka in 2011. However, many Member States cautioned about receiving private funding as this could in some way alter the basic role of the Organization. However, a detailed scheme for receiving private funding would be drawn out by the Secretariat and possibly be placed for consideration of Member States at the next Annual Session. He also said that other international organizations like the United Nations were receiving funding from some private companies.
- 5.18 The **President** then declared the Report of the Chairman of the AALCO-EPG as adopted.
- 5.19 ***Report of the Chairman of the Sub-Committee to look into the AALCO Secretariat's Human Resources and Financial Matters: On behalf of*** Mr. PG Indera Jaya Shamsu, the Liaison Officer of Brunei Darussalam and the Chairman of the Sub-Committee Dr. Y. Fukahori, Deputy Secretary-General presented the report on the Sub-committee. He recalled that pursuant to the 49th Annual Session of AALCO, Dar Es Salaam, United Republic of Tanzania (2010), upon a recommendation of the Secretary-General, a **Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters** (herein after Sub-Committee) was established at the Resumed 308th Meeting of Liaison Officers of AALCO Member States which was convened at the Headquarters of AALCO, on Wednesday, 1st December 2010. The sub-committee was entrusted with three main tasks, namely:
- i) Salary structure of the Staff;
 - ii) Right size of the AALCO Secretariat and
 - iii) Ways and means to generate income for AALCO other than the contributions received from its Member States.

- 5.20 The Reports of the First and Second meetings of the Sub-Committee were annexed to the document AALCO's Draft Budget for the year 2013 (AALCO/ABUJA/2012/ORG 2).
- 5.21 The DSG informed that the first meeting of the Sub-Committee was convened on 7th March 2012, at that meeting the Chairman proposed that to begin with, "the right size of the Secretariat" could be taken up as the first point of discussion. He asked the Secretariat to provide a list of the AALCO Staff. He was informed that currently there were **13** staff members in the Permanent category: 3 Legal Staff; 5 Administrative staff; and 5 subordinate staff. Besides this there were **9** contractual employees: 1 Librarian/translator; 1 watch and ward; 1 messenger; 1 chauffer; 2 electricians; 2 cleaners and 1 gardener.
- 5.22 In response to this information, the **Liaison Officer of India** said that before arriving at any conclusion on whether the Secretariat was under or over staffed, it was essential to have a look at the Sanctioned Staff for the Secretariat. He referred to the Secretariat document AALCO/50/COLOMBO/2011/SD/ORG 2 "Proposed Budget for the year 2012", and pointed out that on page 15 of that document, the Sanctioned Staff for the Secretariat was 34, and presently there were only 13 Permanent staff members in the Secretariat. Therefore, in his view there was no need to discuss this issue for the time being.
- 5.23 The **Liaison Officer of Sri Lanka** opined that the Sub-Committee was given a very onerous task, which would require detailed study and assessment of requirements, objectives and the tasks to be undertaken by the Secretariat over the next five years. In view of the fact that the activities were growing it would need a practical assessment. The right way to go about carrying out this task would be that the Chairman should circulate a detailed paper on all the above mentioned points, which could be studied by the Liaison Officers and their capitals, as well as discussed in the Sub-Committee. The **Liaison Officer of Bangladesh** endorsed the views of the Liaison Officer of Sri Lanka. Thereafter, it was decided that before the next meeting of the Sub-Committee a Basic Fact Sheet of the required information would be provided to all the Member States.
- 5.24 The **DSG** informed that the second meeting of the Sub-Committee was convened on 29 May 2012. In that meeting, the Secretariat official first drew attention of the participants to "the Comparison between the Government of India Pay Scale and Benefits accorded to the Permanent Employees of the AALCO Secretariat" which appeared in the Basic Fact Sheet. He stated that it was aptly clear from the list that AALCO local staff employees were in a much inferior state as far as the allowances and benefits when compared to Indian Government employees, he further stated that for this reason during the past few years in general and last year in particular a few precious legal officers chose to leave the Organization as a result of such "less attractive package" at AALCO.
- 5.25 Having said that, he drew attention of the participants to the "Trend and Comparison of Salary Increase Rate between Indian Government and AALCO" which appeared in the "Numerical Analysis of AALCO Budget," and explained that AALCO had faithfully tried its best to comply with the mandate received from the Member States, i.e. to provide equivalent salary increase to locally recruited staff in consonance with the Indian

Government. He pointed out that the inflation rate in India had been very high in recent years and this was the main cause of the salary increase, which suppressed the activity budget of AALCO. He then stated that in a simple mathematical prediction, that if the salary component in the AALCO Budget continued to rise, AALCO was likely to face bankruptcy again in a few years if the current inflation continues and no new measures were taken by the member States.

- 5.26 It was also explained that other international organizations in India also faced the same problem; however, they overcame it with the increase of contribution from member countries or headquarters, or partially by the support from the host government.
- 5.27 After hearing the explanation provided by the Secretariat official, that Chairman summarized the Report of the Secretariat that the increase of contribution from Member States was a logical conclusion to address AALCO's budget problem in view of the fact that inflation was expected to continue to rise in India and there was an urgent need to employ a few legal officers in AALCO. He stated that discussions could revolve around the following points: (i) how to reduce the expenditure; (ii) possibility of increasing contributions from member States; (iii) could AALCO seek financial support from the private sector and (iv) request the host government to explore the possibility of making some additional contributions to AALCO.
- 5.28 The Chairman requested that a comparison should be clearly made between the current amount of contributions received and the increased amount of contributions expected from Member States, so that the effect and degree of the increase should be clearly understood by Member States. The Secretariat stated that such a comparison table would be presented if and when the increase of contributions would become necessary.
- 5.29 **The Secretariat** further commented that an overall review of salary structure of the AALCO Secretariat employees including allowances and benefits would have to be considered under this Sub-Committee, however, the immediate priority was to form a solid financial basis which would, once in place, enable the comprehensive reforms within the Secretariat.
- 5.30 Thereafter, the Liaison Officers from Sri Lanka, Japan, India, and Ghana suggested that the first and for most priority of the Secretariat should be to collect the outstanding arrears of contributions from the Member States in arrears, to cut down further on the Secretariat expenses, send all the documents via email in order to reduce the postage expenses and try and seek voluntary contributions from Member States. The Secretariat was also cautioned on exploring means to raise funds from the private sector.
- 5.31 The Liaison Officer of India while taking note of the financial problems of AALCO, stated that the Indian Government was still concerned about the inadequate disbursement of gratuity to retired officials and requested that the Secretariat pay the remaining amount soon to those entitled. In addition she requested the Secretariat to prepare a detailed transparent paper outlining the current financial status, present and sanctioned staff strength of the Organization as well as enlist the problems of the employees.

- 5.32 In view of the foregoing discussions, and the mammoth task before the Sub-Committee, the DSG informed that the AALCO Secretariat would like to seek a mandate from the Member States, to further extend the tenure of the Sub-Committee. The text of the draft resolution on this topic is annexed to the document containing the Draft Budget for the year 2013 (Doc. No AALCO/51/ABUJA/2012/ORG 2)
- 5.33 The **Delegate of Malaysia** sought a clarification from the Deputy Secretary-General whether the Secretariat had undertaken a comparative study with salaries given to other locally recruited employees say in UN organizations based in New York, Geneva or Vienna. The practice followed in other regional organization like ASEAN could also be explored. He also wondered whether inflationary trends were unique only in India.
- 5.34 The **Deputy Secretary General** responded that the Secretariat was doing such a research and probably by December the findings would be placed for the consideration of Liaison Officers.

6. **Third General Meeting**

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

- 6.1 **Dr. Hassan Soleimani, Deputy Secretary-General**, while introducing the agenda item, said that Israel had administered a military occupation of the West Bank, the Gaza Strip and East Jerusalem for well over four decades and been perpetrating horrific atrocities on the civilian population in Occupied Palestinian Territories (OPT) in defiance of the will of the international community⁴ and international law. The AALCO Secretariat had been deliberating on this topic since 1988, ever since it was initiated by the Government of the Islamic Republic of Iran. the Israeli activities in the OPT that violated the Fourth Geneva Convention of 1949 and other relevant provisions of international law, included – (1) Annexation and Illegal Expropriation of Palestinian Land; (2) Creation of Jewish Colonial Settlements; (3) Deportation of Palestinians; and (4) Construction of the Wall in the OPT.
- 6.2 He added that, the atrocities carried out by Israel on the civilian population had been given in the **Report of the Special Committee (the Committee) to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arab Territories** according to which Israeli activities in OPT were found to be in violation of International Humanitarian Law and Human Rights obligations. The Committee reiterated the call for Israel to lift its illegal siege of Gaza, in line with Security Council Resolution 1860 (2009) and called Israel to put an end to the perpetration of atrocities on civilians.

⁴ Beyond Oslo: The new uprising International law and the al-Aqsa Intifada – Middle East Report 219, Winter 2002

- 6.3 He further added that, the **question of Statehood of Palestine was discussed in the UN General Assembly in September 2011** whereby the President of the State of Palestine asserted the right of the people of Palestine to self-determination and confirmed the readiness of the Palestinian people and their institutions for Independence. On receiving an application from Palestine for its admission to the membership of UN, the President of the Security Council referred it to the Committee on the Admission of New Members for examination. The **Report of the Committee (Committee) on the Admission of New Members** noted that the Committee should be mindful of the broader political context, whatever is its outcome. **Positive developments were noted at the 36th General Conference of UNESCO**, where 107 Member States voted in favour of Palestine's membership, resulting in Palestine becoming the 195th member of UNESCO. The membership of Palestine into UNESCO may open the doors to other United Nations specialized agencies that have individualized process of admission.
- 6.4 The DSG also highlighted that the resolutions adopted at the successive Annual Sessions of AALCO, have demanded that the Occupying Power "Israel", should fully comply with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention in order to protect the rights of Palestinians.
- 6.5 The **Leader of Delegation of the State of Palestine** stated that security peace, stability, justice, growth, development and prosperity were the important constituents which were demanded by the peoples of the Middle East region as they needed them from their respective governments and states. In order to fulfill their demand it was necessary to respect the rules of international law and not to allow any state to ignore the International law, International Human Rights Law and Humanitarian Law. Thus, combating injustice and securing justice for the peoples was an inevitable goal.
- 6.6 He further noted that the Middle East region was suffering from high tension since many years. This tension, he said would not end unless the Arab-Israeli conflict ended upon compliance of all resolutions adopted by the UN. In this regard, the Palestinian leadership under President Mahmud Abbas had demonstrated maximum flexibility for achieving justice and comprehensive peace in the region through full coordination with the Arab brothers, the League of Arab States, Organization of Islamic Cooperation, Non-aligned countries, Asian states, Russian Federation, African Union and the two Americas as well as with all people who loved freedom, independence, peace and justice.
- 6.7 However, he maintained that all these efforts had met with the absolute Israeli refusal to apply the UN resolutions or to comply with the rules of international law, International Human Rights and Humanitarian Law. While briefing this conference, the Palestinian leadership demands that it should take up a special role for putting an end to injustice faced by the Palestinian people and to secure justice for them through ensuring their right to self-determination and establishment of the Palestinian state with Jerusalem as its capital within the borders of 4th June 1967 on the basis of the relevant UN resolutions.

6.8 He stated that the Palestinian leadership would like to emphasize the following points:

“1. Reiterating the need of commitment to the principles agreed upon to achieve the just peace, especially Security Council’s Resolutions 242, 338 and 1515; that the resumption of negotiations requires that Israel should accept the principle of returning to the borders of 1967 and stop all activities of building settlements in the occupied Palestinian territories including East Jerusalem.

2. Supporting the plan of Palestinian move which President Mahmud Abbas offered to the Ministerial Committee for Arab Peace Initiative on 2.12.2011 and reiterated in the last meeting of the Committee at Doha, Qatar on 2.06.2012; to follow up the efforts being made for the membership of Palestine in the United Nations through Security Council, General Assembly and other international institutions and organizations; to work on the resumption of the conference of the states which are party to the Fourth Geneva Convention of 1949 concerning protection of civilians during the time of war.

3. To reiterate that the settlement in all forms constitutes violation of the International law and the Fourth Geneva Convention; to ask the international community and UN to intervene immediately for pressurizing Israel to stop construction of settlements, especially in Jerusalem which is faced with the attempts of effacing its historical features.

4. To call upon the quadruple committee through UN Security Council to speedily move to take actions against the Israeli occupation authorities for continuing the building of settlements and its destructive policies towards the efforts of achieving peace; to ask Israel to resume serious and specific dialogue within a clear time frame which should be based on UN resolutions, Arab Peace Initiative and the road map to be culminated by a peace accord covering all substantial issues according to the said resolutions.

5. To condemn the continued arrest of thousands of Palestinians and Arabs by the Israeli occupation authorities in a flagrant violation of all human and international principles and laws, an open violation of International law and the International Human Rights Law as well as the Geneva Conventions; to hold Israel fully responsible for the safety and life of all prisoners and detained people; to call upon the international community to make the Israeli govt. bound for releasing all Palestinians and Arab prisoners, especially those who have been imprisoned before the end of 1994.

6. Reiterating the Resolution of Arab league 7502 dated 6.05.2012, especially para 7 which calls for convening an extra-ordinary session of the General Assembly to discuss the issue of the Palestinian and Arab prisoners languishing in the prisons of Israeli occupation with its all dimensions.

7. Demanding an immediate stop to all forms of the oppressive and illegal Israeli siege of Gaza Strip; considering it a flagrant violation of International law and International Human law; urging the International Criminal Court to prosecute some Israeli leaders who committed heinous crimes in Gaza Strip when they assassinated 1500 Palestinians including children, women and old persons in addition to inflicting injuries on 5000

people (as the Israeli war planes used internationally banned and prohibited uranium) as well as attacking the UN offices where the unarmed Palestinians had taken refuge. It is not logical and just to have two standards when it comes to the Israeli crimes and to keep silent on the issue of its criminal leaders who are roaming across the world with all immunity.

8. Demanding from the international community to compel Israel to put its arsenal, which is a real danger for the whole world, under inspection by International Atomic Energy Agency, that it should be the signatory to the accord to free the Middle East region from all mass destruction and to close the Dimona nuclear plant which has become a real menace not only for the Palestinian people but also for the people of whole region, because the harmful and killer nuclear rays have started leaking from this plant due to bad maintenance and lack of care and it is more likely to explode any moment and cause a human tragedy similar to that which happened at Chernobyl in Ukraine.

9. Renewing our total commitment to the Arab peace initiative at the Beirut Summit of 2000, thanks to the effort of the Saudi monarch, His Majesty King Abdullah bin Abdul Aziz. The initiative urges Israel to completely withdraw from all Palestinian and Arab lands which it had occupied in 1967 including the Syrian Golan Heights and farms of Shaba in Lebanon, to restore the right of Palestinian refugees to return to their lands as per resolution 194 from which they were evicted in 1948 and to establish an independent Palestinian state within the borders of June 1967 with Jerusalem as its capital against comprehensive and just peace which may put an end to the Arab Israeli conflict. Unfortunately, Israel has been completely defying and ignoring this initiative till this moment.”

- 6.9 The **Leader of Delegation of the Islamic Republic of Iran** at the outset thanked the AALCO Secretariat for preparing an update report on “Deportation of Palestinian and others Israeli practices among them, the massive immigration and settlement of the Jews in all occupied territories in violation of international law, particularly the Fourth Geneva Convention of 1949”, as contained in document AALCO/51/ ABUJA/2012/SD/S 4.
- 6.10 He said that the Islamic Republic of Iran continued to attach high importance to the agenda item which addressed one of the most crucial matters of the time. He added that the situation in the Occupied Palestinian Territory in recent years, resulted from the abhorrent carnage and the crimes perpetrated by the Israeli regime, which was a clear manifestation of a cold-blooded massacre of innocent civilians, most of them women and children. Further, he noted that the most heinous crimes committed by the Israeli soldiers during their 22 days of aggression against Gaza Strip were well known. Certainly, such military could not be justified under international humanitarian law and there was reasonable ground, to prove this argument. He further referred to the report of the United Nations Fact Finding Mission on the Gaza Conflict presented to the Human Rights Council on 29 September 2009, urging the Council and the international community as a whole to put an end to impunity for violations of international humanitarian law in Israel and the Occupied Palestinian Territory.

- 6.11 He noted with great concern that the blockade of the Gaza Strip, the world's largest open-air Gulag, enters its sixth year. For over five years in Gaza, more than 1.6 million people had been under blockade in violation of international law. More than half of these people were children. More than 80 per cent of families in Gaza were dependent on humanitarian aid. In addition, while some steps had been taken to ease the blockade's impact, Gaza remained subject to severe restrictions on imports, exports and the movement of people, by land, air and sea – which amounts to a “collective punishment” of all those living in Gaza and was a denial of basic human rights in contravention of international law.
- 6.12 He said that the proposal to grant Palestine full membership in the United Nations was discussed in the United Nations General Assembly in September 2011, unfortunately the same was vetoed by United States in Security Council among 46 others resolutions which had been already presented against Israel.
- 6.13 He added that the government of the Islamic Republic of Iran since the beginning of this conflict had announced that the Israeli criminals shall be brought into justice for their actions. In this respect, the Fifth International Conference on Palestine was held in Tehran on October 1-2, 2011, which was attended by delegates from 70 countries. In the final Declaration of Conference, the state terrorism targeted by Israel against Palestinian personalities and civilians, specifically children, women and the elderly, were condemned as “evident instances of war crimes”. Finally, the Declaration undermined Israeli's weapons of mass destruction arsenal, specially its military capabilities and urged the international community to take proper measures for the eradication of such arms, which were threats to regional peace and security.
- 6.14 In conclusion, he said that his delegation believed that the time had come for the international community to put an end to impunity and bring all persons without any distinction who had committed international crimes to justice. In this regard, he regretted the recent decision taken by the ex- Prosecutor of the ICC to refuse to recognize the possibility for the state of Palestine to bring the complaint for the crimes committed by Israeli forces in Occupied Territories.
- 6.15 The **Leader of Delegation of the Republic of Indonesia** re-emphasized Indonesia's three pragmatic steps presented in line with their common efforts to achieve a just, lasting and comprehensive solution to the Question of Palestine, as was stated by Indonesian Foreign Minister at the Non-Alignment Movement Ministerial Committee on Palestine, in Egypt, in May this year.
- 6.16 First, it was necessary to pave the way for the eventual membership of Palestine in the UN. He underlined that it was important to support Palestine in attaining international recognition as a sovereign State. Palestinian independence was no longer a choice, but a certainty. Indonesia believed that the time of peace and settlement for Palestine would eventually come upon real actions performed by the international community, particularly to assure Palestinian independence according to the borderline set in 1967 that dictates East Jerusalem as the capital of Palestine. Regarding this issue, Indonesia

called upon all the like-minded-countries to draw more recognition for Palestine as a sovereign state, from the neighbouring countries in their regions.

- 6.17 According to the second point, continued Israeli illegal actions, including the building of settlements on Palestinian land, must stop. In this regard, a conducive situation must be created to resume the talks between Israel and Palestine and other Arab nations in good faith. He called for support to the current talks between the Palestinian factions toward reconciliation and unity government. He added that it was important to speak as one in demanding an end to all illegal Israeli practices, including the central issue of settlement activities. In this regard he added that it was important that AALCO Members, should reaffirm their unity, to assure and to draw the attention of the international community, on the obligation of the Israel to be bound by the principles of international law contained in Fourth Geneva Convention of 1949, and on the fact that the Palestinians were suffering rampant injustice, through efforts in UN forum, social media and engagement in civil society.
- 6.18 The Third point emphasised was, the need for sustained efforts to help Palestine build its capacity for effective governance. In this regard Indonesia encouraged AALCO Members as part of the international community to sustain these efforts of state building, development and strengthening of Palestinian national institutions, as Palestine prepares itself for statehood. It was also important to gain international support for Palestine's capacity building. On their part, Indonesia had an ongoing capacity building program to train 1000 Palestinians in various fields. They were also open to collaborating to support capacity building programs for the Palestinians.
- 6.19 Finally, regarding the funding issue in UNESCO following the membership of Palestine in UNESCO, Indonesia had once again shown its commitment to support Palestine by giving additional fund of 10 million USD to UNESCO as Indonesia believed that through concrete and meaningful contributions, the plight of the Palestinian people could be alleviated.
- 6.20 The **Leader of Delegation of the Democratic People's Republic of Korea** at the outset said that for the past 60 years of Israeli occupation of Arab territories was the history of systematic violation of international law by Israel. In particular, violations of international law committed by Israel in recent years, was of grave concern to the international community.
- 6.21 He added that the blockade of Gaza Strip which had been enforced for past 5 years was a typical example of collective punishment and state terrorism strictly forbidden by international law particularly the IHL and international human rights law, especially as Israel refused to observe its obligations under the Fourth Geneva Convention of 1949 relative to the protection of civilians in time of war, and this had jeopardized the lives and safety of more than 1.5 million Palestinians confined in this region. Evidencing this was the report of the special committee to investigate Israeli practices affecting human rights of the Palestinian People and other Arabs of the occupied territories submitted on 22 September, last year.

- 6.22 Next, acts of violation of international law by Israel were being committed against non-belligerent countries in areas beyond occupied Arab territories. It was well known, that in May 2010, Israeli forces, infringing upon the sovereignty of Turkey, the flag state, had attacked the Humanitarian Aid Flotilla heading to the Gaza Strip in the Mediterranean high-seas thus causing the loss of lives of some humanitarian activists. By this, Israel had breached its commitments not only to the IHL and international law of war, but also international law of sea which provides for freedom and safety of navigation by vessels in the high seas.
- 6.23 He noted that the international community had censured in strong terms the recent violations of international law particularly the IHL by Israel in recent years and urged Israel to respect and observe international law. The fact that the UN General Assembly had adopted 18 resolutions during its 66th session, all of which condemned the Israeli practices and supported the just cause of Palestinian people, clearly showed this.
- 6.24 The DPRK delegation appreciated that AALCO, had been considering the Palestinian issue as an important regional issue having serious political and legal implications, and had been making contribution with constructive opinions in deliberations to this date. They also appreciated that AALCO has been representing the positions of its member states in international arena like the UN on this issue.
- 6.25 He emphasized that, it was a consistent position of the DPRK government stated to the world that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.
- 6.26 The international community should pay due attention to the behaviour of the US which connives at, encourages and shelters Israel's acts of violation of international law, and take legally binding concrete steps to ensure the implementation of relevant UN General Assembly resolutions and Advisory Opinion of the International Court of Justice on Gaza Strip without delay.
- 6.27 The DPRK delegation reaffirmed the consistent support and solidarity to the struggle of the Palestinian people for the restoration of their legitimate rights particularly, the right of self-determination, right to return to the State and right to establish an independent state, and the struggle of Arab people to achieve lasting peace in the Middle East. In future, DPRK would strengthen solidarity with other countries in the struggle to end the military occupation by foreign forces which was an obstacle for world peace and security. The DPRK delegation joined other delegations to propose this item to be included as an agenda item for the 52nd Annual Session of the Organization.
- 6.28 The **Leader of Delegation of Japan** had held deep interest and concern on the Palestinian question. It has been Japan's basic position that on the basis of UN Security Council resolutions 242 and 338 (1) Israel should withdraw from all the area which it had occupied since 1967, (2) Palestinian people's rights for self-determination including establishment of an independent state should be recognized, (3) Israel's right for existence should be recognized and that peace should be realized, paying due consideration to

legitimate security interests of the countries of the region. Thus, Japan had been supporting the efforts to seek the realization of lasting peace in the Middle East based on the two-state solution in which Israel and a future independent Palestinian State coexist in peace and safety and considered that for that end the serious direct negotiations between the two parties were essential and the earliest resumption of such task was most desirable.

- 6.29 On the question of activities for settlement, he said that Japan considered that they are illegal as stated in the UN Security Council resolution 465 which said that the policy and practices of settling parts of its population and new immigrants in the territories occupied since 1967 constitutes "a flagrant violation of the Fourth Geneva Convention", and had all along taken the position that activities for settlement in the west bank including East Jerusalem should be stopped.
- 6.30 Further he added that with a view to alleviate the sufferings of the Palestinian people and to serve to increase their well-being, since 1993, Japan had provided to Palestinians assistance and aid, in such areas as humanitarian assistance, assistance for reforms, confidence building and assistance for a self-sustainable Palestinian economy, totaling 1.2 million US dollars which was the largest only after the US and the EU. Japan considered that assistance to Palestinian people placed in difficult conditions in the West Bank C area, East Jerusalem and Gaza Strip was very much needed and thus contributed 25.8 million US dollars to the UNICEF and UNRWA for their projects and activities in those areas.
- 6.31 He informed that Japan had also been carrying out a middle and long term project named Jericho Agro Industrial Park (JAIP) which aimed at promoting economic and social development in Jericho and the Jordan Valley area with regional cooperation among the Palestinians, Israelis, Jordanians and Japanese under the "Corridor for Peace and Prosperity" initiative. Besides this, Japan was also cooperating with other AALCO countries such as Malaysia and Indonesia for human resources development programs for Palestinians.
- 6.32 The **Delegate of the Republic of Iraq** said that the situation in Palestine was in conflict with the lofty goals of AALCO which included securing peace and justice for the people of the two regions. The Iraqi delegation joined the other speakers in condemning the suffering of the Palestinian people due to the atrocities committed by Israel, including terrorist attacks on its religious places. They also joined the United Nations General Assembly in condemning Israel for its actions which were aimed at changing the demography and geography of the Occupied Palestinian Territories.
- 6.33 The **Leader of Delegation of the Kingdom of Saudi Arabia** stated that AALCO was a legal Organization and not a political one, for this reason the students were taught about legal affairs. In this regard he said that it was essential to take advantage of the experience and expertise of this organization and stand up for the just cause of the suffering people of Palestine. The double standards adopted by some countries on the Palestinian issue should be condemned, and AALCO should have its own legal position on this issue which could also be useful for the next generation. He said that even after 6

decades the Palestinian issue remained unresolved. He said that efforts exerted by Saudi Arabia had resulted in UNESCO granting statehood to Palestine. Therefore, as a legal organization it was important to implement the resolutions adopted at the subsequent Annual Sessions of AALCO. He fully supported the stance taken by the Ambassador of Palestine, taken in his statement on this topic in the 51st Annual Session. Furthermore, he urged AALCO to examine the stance taken by the ex-Prosecutor of the ICC in rejecting Palestine's application for probe into the Israeli atrocities, on the ground that the question of statehood of Palestine remained unresolved. He added that the conflict between Israel and Palestine could end by following the initiative of Peace proposed by King Abdulla, according to which Israel should withdraw from all occupied Palestinian Territories. He also urged all Member States of AALCO to support the rights of the Palestinian people and encourage it to become a member of all the International Organizations.

- 6.34 The **Leader of Delegation of the State of Kuwait** reiterated the stance taken by his country in their general statement that demanded justice for the Palestinian people and strengthening ways and means to enforce human rights and humanitarian law.
- 6.35 The **Leader of Delegation of the Republic of Yemen** hoped that AALCO would continue its efforts until Palestinians got independence and freedom. He appreciated the stance taken by the Organization to support the cause of Palestinians and called on Member States to work to achieve justice for the Palestinian people. He supported all the demands of the Palestinian people as enumerated in the statement made by the Ambassador of Palestine. He hoped that those demands could be reflected in the resolution adopted by the Organization on that issue. Until the Palestinians got their legitimate rights, it would remain as a blot on the human conscience. He added that the first step towards Palestinians getting their own independent State was to put an immediate end to the settlement activity being carried out by Israel on the Palestinian land. It was also necessary that all the Palestinian Arab prisoners were released and the Israeli criminals be prosecuted by the ICC. All these efforts taken together would help in the establishment of an independent Palestinian State with Jerusalem as its capital.
- 6.36 The **Delegate of Malaysia** thanked the AALCO Secretariat for the very well written paper on this subject matter. He said that Malaysia would continue to support the Palestinian cause until the creation of an independent Palestinian State. He mentioned that the issue of the statehood of Palestine was being taken up at various international fora as reflected in the Secretariat document and was supported by the Malaysian delegation as was reflected in the three Annexures appended to the AALCO Secretariat report. He requested the AALCO Secretariat to concentrate on this topic specially the application by the State of Palestine to the Prosecutor of the ICC and the proper legal interpretation and application of Article 12 of the Rome Statute of the ICC. He recalled that the Leader of Delegation of Malaysia in his general statement noted that this issue has been one of the important topics placed on AALCO Annual Session agenda since 1988, and that AALCO has been discussing this topic continuously for the past 24 years. As regards the outcome of the deliberations that have been happening on this item over these years, he raised a number of pertinent questions. He opined that the delegated needed to ask themselves honestly as to what had been the tangible outcome of the

discussion and that whether their views had been conveyed to the relevant parties? He stated that it was time that the delegates asked these questions with a view to proceed further in this issue. He also had a suggestion that if we wanted to retain the topic of Palestine in the Agenda of our Annual Sessions, we should stop our rhetoric and come out with concrete plans.

- 6.37 Dwelling on the legal issues involved in the topic, he pointed out that the fundamental rights of the Palestinian people to self-determination and a sovereign State as provided in Article 1 of the Montevideo Convention⁵ have remained unrealized for more than four decades despite Palestine's efforts to be recognised as a sovereign Palestinian State. Drawing attention to the numerous Resolutions adopted by the General Assembly and the Security Council on the establishment of an independent State of Palestine and for the right of the Palestinian people to self-determination, he brought attention to two of the Resolutions adopted by UN bodies; the first one was the Security Council Resolution 1397 (2002) which affirmed a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders and the second one was the General Assembly Resolution 54/152 (1999) which reaffirmed the right of the Palestinian people to self-determination, including the option of a State.
- 6.38 While drawing attention to the recent decision of the Office of the Prosecutor of ICC not to commence investigation on Palestine's application on the ground that it was in no position to decide whether Palestine is a State or not, he remarked that the question of the statehood of Palestine had been discussed by the Committee on the Admission of New Members under the United Nations Security Council and the same had decided that it was unable to come to an agreement as there were contradicting views regarding whether Palestine have an effective government in control over the claimed territory and also its capacity to enter into relations with other States including the issue of recognition by other States.
- 6.39 While calling for AALCO to have a re-look at the deliberations by Member States on this topic, he stated that AALCO should look at the legal issues pertaining to the elements of determination of a State under the Montevideo Convention and the question as to who or which body has the ultimate determination to decide whether Palestine is a State. The AALCO Secretariat should be given a mandate to conduct a thorough legal research into this subject and prepare it for the deliberations by AALCO Member States. AALCO Member States should take the AALCO legal view for discussions at the UN General Assembly or such other bodies, he added.
- 6.40 The **Leader of Delegation of the People's Republic of China** said that the legal rights of the Palestinian people must be protected and achieved. International law particularly the Fourth Geneva Convention of 1949 should be observed in the occupied territory. China continued to support the Palestinian legitimate cause as well as the Middle East Peace Process.

⁵Article 1 of the Montevideo Convention on the Rights and Duties of States provides the requirements for a "State": (a) permanent population, (b) a defined territory, (c) government and (d) capacity to enter into relations with the other States.

- 6.41 The Leader of Delegation of the **Democratic Socialist Republic of Sri Lanka** stated that Israeli occupation of the occupied Palestinian Territories had continued for the past 45 years, since it began in 1967. As has been the stance in AALCO resolutions it has demanded Israel to withdraw from the occupied territories in compliance with the relevant provisions of the UN Charter, Universal Declaration of Human Rights, Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention of 1949. On the rejection of Application by the Palestinian authority to the ICC, in order to protect the rights of the Palestinians, he said that it was pertinent to note that general rules of statehood indicated in the Montevideo convention, however in the case of Palestine that convention needs to be re-examined in light of the 1988 Declaration of Palestine, which was not in relation to a new state rather it exerted its stance on being a state which could fulfil all the requirements of a state including entering into relations and agreements with other states and international organizations, as provided in the Oslo accords.
- 6.42 Furthermore, a final set of arguments were based on the situation before 1948, during the Ottoman era and the later League of Nations Mandate Period, which sought to determine whether the Palestine claim to sovereignty is a continuation of a pre-existing State. A number of submissions argued that the 1988 declaration of independence was in relation to an extant statehood and not by an entity that purported to be a new state. The declaration referred to the Covenant of the League, thus indicating a pre-existing claim. It was suggested that after the demise of the Ottoman Empire, Palestine had become an independent State, when the British administered it under the League of Nations mandate System, where it was assigned a class A mandate - in the category belonging to independent States. It was also pointed out that even during the mandate era, Treaties were concluded by the administering power to which Palestine was registered a party under the League of Nations Treaty Series. Palestinians had also lost the Ottoman citizenship and gained a new Palestinian nationality and passports. The pre-existing title to sovereignty was also pointed out to be reflected in the 1947 General Assembly resolution that out the partition plan envisaging two provisional states. Therefore, in the opinion of the Leader of Delegation Palestine statehood should be expedited, and he condemned the office of the Prosecutor of the ICC for denying its competence under Article 12(3) of the Rome Statute of the ICC.

Agenda Item: Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties

- 6.43 **Dr. Hassan Soleimani, Deputy Secretary-General of AALCO** introduced the agenda item “Extraterritorial Application of National Legislations: Sanctions imposed against Third Parties” as discussed in the Secretariat Report AALCO/51/ ABUJA/2012/SD/S 6. He said that the topic was introduced at the Thirty-Sixth Annual Session of AALCO held in Tehran in 1997, upon a proposal made by the Government of Islamic Republic of Iran. Extraterritorial Measures or the application of the domestic laws having extraterritorial effects with the imposition of unilateral sanctions violated the sovereign interests of a State. Imposition of unilateral sanctions was impermissible under international law as

they violated the international rule of law, core principles of the Charter of the United Nations, and general principles of international law, he added.

- 6.44 He said that the concept of unilateral sanctions violated certain core principles of the Charter of the United Nations, namely; (i) principle of sovereign equality and territorial integrity, (ii) principle of non-intervention, and (iii) duty to cooperate. Principle of sovereign equality and territorial integrity of a State and principle of non-intervention in the internal affairs of the State are core principles, because through imposing unilateral sanctions, imposing countries were actually trying to influence the policy making by the governments of such countries. Such sanctions also were directed towards changing the political decision-making or general will of the peoples of the targeted countries to choose their own government. Hence, consensus by the international community stating that unilateral sanctions were violative of such principles and also the principle of duty to cooperate should be regarded as rule of law.
- 6.45 The concept of unilateral sanctions does not respect the principle of sovereign equality. Within the framework of international law, a State's jurisdiction within its territory was absolute and exclusive. The principle of non-intervention was the mirror image of the sovereignty of States. Intervention and interference in both internal and external affairs of other States, in view of either transforming the economic or political policy of such countries had been clearly prohibited. Extraterritorial application of national legislation in the form of unilateral sanctions, which also in turn affected the bilateral relations with other States of the targeted State, was contrary to the principle of non-intervention. The principles of non-intervention clearly stated that no State shall interfere in the internal or external affairs of a State which shall be a violation of sovereignty of the State. International economic cooperation was vital to the economic development of all countries of the world, and particularly of the developing countries. On those notes, cooperation in international trade and economic relations was also a very significant aspect of the duty to cooperate.
- 6.46 He noted that the unilateral sanctions imposed against third parties by virtue of application of a State's own national legislation extra-territorially also breached certain basic principles of international law. Those include, (i) principle of self-determination, (ii) right to development of the citizens and individuals living in the targeted territory, and (iii) countermeasures and dispute settlement. The unilateral imposition of sanctions by States deprived the peoples of the target States with basic human rights and also their right to development. Economic sanctions affect the overall development of the individuals and the economy as a whole therefore the burden of sanctions should not be put on the succeeding generations. Those sanctions represent a form of collective punishment and did not comply with the ethical principle of individual responsibility, i.e. with the ability to attribute behaviour to an individual. Comprehensive economic sanctions heavily impacted the life and health of the civilian population. International community recognized that any dispute should be solved peacefully and bilaterally.

- 6.47 He opined that extraterritorial application of national legislation in the form of sanctions was harmful to the right of the targeted States to development and victimized the most disadvantaged sections of the society in those States.
- 6.48 He said that in view of those concerns, the Secretariat report had covered the issues dealing with Impermissibility of Unilateral Imposition of Sanctions, a brief overview of the sanctions imposition against AALCO Member States, Ministerial Declaration adopted by the Thirty-Fifth Annual Meeting of the Ministers of Foreign Affairs of Group of 77, Consideration of the Resolution on the “Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba”, at the Sixty-sixth Session of the United Nations General Assembly. The remedy could be sought in terms of encouraging direct dialogue between the parties to resolve their differences for the betterment of citizens of the targeted country. He highlighted the issues for focused deliberations for the meeting which were: (i) Unilateral Sanctions imposed against third parties violated principles enshrined in the Charter of the United Nations and other principles that were recognized through soft laws like the right to development and Friendly Relations Declaration, and (ii) Extraterritorial application of national legislation on third parties was per se illegal.
- 6.49 **The Delegate of People’s Republic of China** extended their delegation’s appreciation to the Secretariat for preparing such a comprehensive and professional report on the agenda item. Imposing unilateral sanctions against another state based on one’s own national legislation, showed that the state considered its national legislation over international law. This not only violated core principles of the UN Charter such as sovereign equality, non-intervention and duty to cooperate but seriously undermined the authority of international law. It infringes on the right to development of the sanctioned state and was not in conformity with the attainment of the UN Millennium Development Goals. He emphasized that unilateral sanctions imposed against third state, including its government, organization and citizens, further violated international law, infringed on the right of the third state and would aggravate the negative impact on international relations.
- 6.50 The delegation held the view that every country had the right to choose its own political and social system and development model and no other country was entitled to intervene. However, international conflicts should be resolved peacefully through dialogue and cooperation and the delegation opposed any form of hegemony, power politics and any move to impose sanctions against other countries by abusing domestic legislations. He reiterated that countries need to follow the principle of peace, development and cooperation, conduct equal-footed and mutually beneficial interaction, seek common ground while shelving differences, properly resolve disputes and differences by peaceful means, uphold international fairness and justice and realize common development and progress.
- 6.51 **The Delegate of Islamic Republic of Iran** expressed their appreciation to the Secretariat of AALCO for preparing the useful and informative report on the agenda item. His delegation reiterated the critical importance of the agenda item as “extraterritorial application of national legislation”, especially those manifested by unilateral economic

restrictions against some developing countries continues to unfold in various and new forms. That matter was more important since an alarming trend seemed to be emerging by certain powers to defy all international norms concerning the immunity of State and its properties in furtherance of their policy of pressurizing developing countries through economic embargoes. Such trend was consequential not only for the economic and overall human development of the countries but also disruptive of norms and principles of international law and international human rights law.

- 6.52 He said that extraterritorial imposition of national legislations on other States contravened international law by violating the fundamental principles enshrined in the Charter of the United Nations, particularly the principle of sovereign equality of States and non-intervention in domestic affairs of other States. It also defied the recognized principle of State immunity, especially in cases where the functional agencies of a sovereign State, like Central Banks, were subjected to sanctions. The States imposing the sanctions disregarded the very basic notion of State sovereignty by forcing other States to abide by the restrictive measures against a third party. That was tantamount to the presumption of a super sovereign power which has supremacy over all other sovereign States. Moreover, the very basic human rights were at stake; the ongoing unilateral economic sanctions were in fact developed only to bite the ordinary citizen by depriving them of their basic necessities which was a shameful hypocrisy that aimed to cover up the human costs of unilateral sanctions. Furthermore, imposition of domestic laws and regulations on other States with the aim of pressurizing a third party prejudiced the right to development.
- 6.53 The position of international law was quite clear with regard to unilateral sanctions and in that regard reference was made to the Declaration on Principle of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which, among others, urged all states to respect the principle of sovereign equality and territorial integrity as well as non-intervention in domestic affairs of other States. He said that the Declaration was invoked by the International Court of Justice in its judgments, including in the Nicaragua Case in 1986 and quoted one of the major provisions of the Declaration regarding confirmation of Article 2 paragraph 7 of the Charter of the UN that prohibits any form of intervention.
- 6.54 He underlined the annual resolutions adopted for the past 20 years by the General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo against Cuba". The General Assembly renewed, in its most recently adopted resolution its call for an end to the economic, commercial and financial embargo imposed by the United States against Cuba and urged all States that applied extraterritorial measures to repeal them at the earliest. His delegation believed that the most unjustifiable and deplorable form of sanctions was the imposition of unilateral embargo and extraterritorial application of domestic laws by one State against others that affected not only the population under sanction but also the interests of the third parties.
- 6.55 The delegate stated that Islamic Republic of Iran had been under unjustified and unjustifiable economic restrictions for the past 3 decades following the popular Islamic

Revolution in 1979. Very recently the Islamic Republic of Iran came under a most unprecedented economic coercive measure by the United States by blocking of the property of Central Bank of Iran and imposing other restriction on it. Such unilateral act should be very alarming to all States, particularly for developing States in Asia and Africa, as it contravened all norms and principles of international law concerning the immunity of State and its properties as manifested also in the 2004 UN Convention on Jurisdictional Immunities and their Property. It was underlined therein, under Article 21 and the preamble of that Convention that the jurisdictional immunities of States and their properties including property of central bank or other monetary authority of the State are generally accepted as a principle of customary international law.

- 6.56 The delegate reiterated that Islamic Republic of Iran strongly rejected and remained opposed to the application of unilateral economic and trade measures by one State against another as well as to the extraterritorial application of national legislations on other sovereign States. The delegation opposed and condemned those legislative measures and urged other States to do likewise by refraining from recognizing and implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on other countries, threatening their sovereignty and independence, and their freedom of trade and investment and prevent them from exercising their sovereign right, by their own free will.
- 6.57 He appreciated AALCO for considering the agenda item at the annual sessions of AALCO from 1997, indicating the high importance the Member States of the Organization attached to the issue. He said that the politically narrow and ethically unfair and legally rejected approach defied all the norms and principles of international law and the Charter of the United Nations and signified a very alarming domineering policy which certain powers insist to dictate to the whole international community. The delegation called on the Secretary-General to conduct a thorough study on the matter to discern different aspects of that unlawful action.
- 6.58 **The Delegate of Democratic People's Republic of Korea** observed that imposition of unilateral sanctions against third states by invoking domestic legislation of an individual state was a flagrant violation of the Charter of the United Nations and general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development. The international community including Asian and African countries was deeply concerned about the issue as it retarded the socio-economic development of the target state and impeded the establishment of an equitable, multilateral, non-discriminatory trading regime. He said that presently such illegal and inhumane move for unilateral sanctions was being spearheaded by the United States of America against anti-American independent countries.
- 6.59 The delegate said that his country together with Cuba, Iran, Syria and Myanmar had been subjected to the US sanctions for the longest period. That country had imposed sanctions against his country for many decades by applying tens of its domestic laws, including

“Trading with the Enemy Act”, “Export Administration Act”, “Foreign Assistance Act”, “Export and Import Bank Act”, “Arms Export Control Act”, “North Korea Nonproliferation Act”, “North Korea Human Rights Act”, “International Religious Freedom Act”, “Trafficking Victims Protection Act” and many others, all of which were unilaterally fabricated in wanton violation of general principles of international law and the losses suffered in that regard during those years were beyond imagination.

- 6.60 It was stated that if the arbitrary act of imposing unilateral sanctions against third states by individual states like the US by invoking its domestic laws goes unpunished, it would be obvious that more and more countries, especially Asian and African countries were bound to fall victims of the unilateral sanctions. Besides that what could not be overlooked was that individual states like the US were trying to check the exercise of sovereign rights of the other states by abusing the position and role of the international organizations including the UN. The US infringed upon the sovereign rights of other states and imposed its demands upon other countries by pursuing double standards in interpretation and application of international law in an undisguised manner. The delegate cited the example when recently the US had taken an issue with the satellite launch for peaceful purposes by the delegate’s country, naming it “a long-range missile launch” by wire-pulling the UN Security Council. The US also abused UN Security Council and the International Atomic Energy Agency to justify its moves to take an issue with the Iran’s nuclear activities for peaceful purposes and to interfere in internal affairs of Syria.
- 6.61 In that regard, it was an urgent task for the progressive peoples all over the world, desiring for independence and peace, to establish international legal regime to criminalize and punish the act of extraterritorially applying the domestic laws, particularly imposing unilateral sanctions against third states and the act of abusing international law. He appreciated AALCO for considering deliberating upon the agenda item.
- 6.62 **The Delegate of Ghana** stated that the Charter of the United Nations called upon all States to promote friendly relations and cooperation and to respect international law, the sovereign equality of States, the self-determination of peoples and the peaceful settlement of disputes. Adherence to those principles would contribute to the elimination of tension and confrontation between States. He noted that under Article 41 of the United Nations Charter, economic sanctions had been one of the primary enforcement mechanisms of the united collective security machinery. Unfortunately, economic sanctions in national legislations had been applied much more often unilaterally as instruments of foreign policy by some states contrary to international law. The tentacles of such national legislation reached third parties who had economic relations with the target nations. The delegate said that it does not encourage extraterritorial application of national legislations and its ramification on third parties and in that regard Ghana had voted in favour of the draft resolution on the Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States against Cuba (documents A/66/L.4) on 25 October 2011 at the Sixty-Sixth General Assembly Plenary. He noted that by the text, the Assembly expressed concern at the continued application of the 1996 "Helm's-Burton Act" which extended the embargo's reach to countries trading with Cuba - and whose extra territorial effect impacted both state sovereignty and the legitimate interests of

entities or persons under their jurisdiction. The text reiterated the call on states to refrain from applying such measures in line with their obligation under the United Nations Charter, urging those that had applied such laws to repeal and invalidate them. The Government of Ghana was of the view that United States and Cuba were two countries whose destinies were linked by history and geography and it should follow that the embargo and coercive measures should be replaced by dialogue and cooperation. Hence, it strongly believed that unilateralism was not the way to solve international problems no matter how appealing it might appear.

- 6.63 Ghana strongly believes in a better international community where all nations, big or small would work together to respect international law and obligations in the conduct of international relations. The delegate reminded members of AALCO of their collective determination captured in the preamble of the United Nations Charter to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained.
- 6.64 **The Delegate of Malaysia** appreciated AALCO secretariat for a well-researched document on the legal aspects of unilateral sanctions especially with regard to impermissibility of unilateral sanctions. The delegate said that Malaysia was of the view that continued application of the unilateral sanctions violated the principles of sovereign equality and in the governance of rule of law. Because the UNGA through its resolutions enshrined in Chapter VII of the Charter of the United Nations refer to impermissibility of unilateral sanctions. Such sanctions affected the right to trade as per the WTO trading system. In that regard, the innocent civilians were deprived of their right to development because there would be lack of economic stability. Collective security mechanism under Article 41 of the Charter of the United Nations does not discuss unilateral sanctions and the extraterritorial application of national legislation on the foreign financial institutions like Central Bank, imposed by the US was violative of the right to transact. In that regard, the delegate noted that US on 11 June 2012 gave out a determination of sanctions on Central bank of Malaysia for next 180 days.
- 6.65 Unilateral sanctions should be limited to peace and security only and under the UN system it was quite alarming that such extraterritorial applications of national legislations happen and are violative of international law, sovereign equality and principle of non-intervention. For example, sanctions on the petroleum industries would severely affect the developing state's citizen's well-being.
- 6.66 **The Delegate of Japan** expressed his delegation's appreciation to the AALCO Secretariat for preparing a very detailed study on the topic of Extraterritorial Application of National Legislation and Sanctions Imposed against third parties. The delegate said that Japan shared the concern of the AALCO member states that sometimes the unilateral sanctions imposed against third parties include extraterritorial application of domestic legislation that were not compatible with the established general rules of international law. Japan agreed that extraterritorial application of domestic legislation must be in conformity with the basic principles of international law such as respect for state sovereignty and non-intervention in the domestic affairs of another state. However, on the

question whether or not a certain economic measures by states, including those which could involve extraterritorial application of domestic legislation, could be justified under international law must be dealt with on a case-by-case basis taking into account various facts and circumstances pertaining to the case concerned.

- 6.67 **The Delegate Republic of Korea** briefly mentioned about the DPRK case stating that following its nuclear tests and missile launches in 2006, 2009 and again this year, DPRK was surely under the mandatory sanctions by the several resolutions of the UN Security Council which had invoked the Chapter VII of the UN Charter. The delegate also said that whether the US imposes and was implementing unilateral sanctions against DPRK separately from relevant UN sanctions was not certain since US Government had lifted sanctions against DPRK some years ago after it removed DPRK from the list of states sponsoring terrorism. Further, the delegate said that in that case, it was incumbent upon DPRK to submit detailed information on the alleged unilateral sanctions by the US and for the Secretariat to do fact-finding based on that information. It was also emphasized that sanctions imposed by the UN Security Council under the Chapter VII were binding to all Member States of the UN in accordance with the UN Charter.

As the statement of Republic of Korea appeared to be against one of the member States of AALCO, there was a brief in house discussion following which it was decided that both Democratic People’s Republic of Korea and Republic of Korea could justify their position in writing to the Vice-President of the Fifty-First Annual Session and the same would thereafter be reflected in the Secretariat Record of the proceedings of the Fifty-First Session.

“ADDITIONAL STATEMENT OF THE DELEGATION OF THE DPR KOREA
(Submitted to the President of the 51st Annual Session of the AALCO, the Secretary-General of AALCO and the Secretariat of AALCO)

Subject: The comment of the South Korean Delegation on the Statement of the Delegation of the DPR Korea during the deliberation of the agenda item of the 51st Annual Session of the AALCO “Extraterritorial Application of National Legislation: Sanctions Imposed against Third States”

As every participant of the present AALCO Session knows, the AALCO is a renowned regional intergovernmental organization in the field of international Law, which upholds as its mandate to held its member states understand the issues of international law and to defend and represent the positions and interests of its member states in the codification of international law in international arenas like the 6th committee of the UNGA and the International Law Commission of the UN.

The DPRK delegation, respecting the AALCO Statute and principles the Organization observes in its activities, had delivered the statement highlighting the position of the DPRK Government on the agenda item “Extraterritorial Application of National Legislation: Sanctions Imposed against Third States” , with an objective of actively participating in the 51st Annual Session of the AALCO.

But the South Korean delegation has made objecting comments on the statement of our delegation, an act which is unprecedented in the history of the AALCO.

The DPRK delegation condemns the act of South Korean delegation as a flagrant breach of the AALCO Statute and the principles the Organization observes in its activities.

At the same time, the DPRK delegation declares that any member states should not be allowed to commit such an act of objecting the statement of the just positions of other member state, while voicing up in defense of a certain non-member state in the AALCO arena.”

“INTERVENTION BY THE HEAD OF DELEGATION OF THE REPUBLIC OF
KOREA ON THE EXTRETTERRITORIAL APPLICATION OF NATIONAL
LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

Thank you Mr. President.

I would like to comment on the DPRK case briefly.

Following the nuclear tests and missile launches in 2006, 2009 and again this year, DPRK is surely under the mandatory sanctions by the several resolutions of the UN Security Council which have invoked the Chapter VII of the UN Charter.

Whether the US imposes and is implementing unilateral sanctions against DPRK separately from relevant UN Sanctions is not certain since US Government lifted sanctions DPRK some years ago after it removed DPRK from the list of states sponsoring terrorism.

In this case, therefore, it is incumbent upon DPRK to submit detailed information on the alleged unilateral sanctions by the US and for the Secretariat to do fact-finding based on that information.

Lastly, I would like to emphasize that sanctions imposed by the UN Security Council under the Chapter VII are binding to all Member States of the UN in accordance with the UN Charter.

Thank you for your attention.”

- 6.68 **The Delegate of India** commended the work of the AALCO Secretariat on the agenda item and said that AALCO Secretariat could conduct a detailed study on the legal consequences of sanctions. The delegate reiterated that any unilateral sanctions violated the basic principles of the Charter of the United Nations and that all national legislations were primarily territorial in nature which should not be used for the purpose of creating obligations for third countries. Such unilateral sanctions violated the principles of non-intervention, sovereign equality of states and other principles and India condemned any sort of interference in the sovereign and internal affairs of another state. The delegate mentioned that India was a party to NAM and G-77 and actively participated in various negotiations at international fora.

First Half-Day Special Meeting on “Selected Items on the Agenda of the International Law Commission”

- 7.1 A Half-Day Special Meeting was held on “Selected Items on the Agenda of the International Law Commission”. The meeting deliberated upon two important topics, namely: “Protection of Persons in the Event of Disasters”, and (ii) “Immunity of State Officials from Foreign Criminal Jurisdiction”.
- 7.2 **Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO** invited the delegates to the Special Half-Day Meeting on the topic “Selected Items on the Agenda of the International Law Commission”. He recalled that the founders of the AALCO thought it was imperative for the Organization to have close cooperation with the ILC with a view to provide the work of the ILC with inputs from the Asian-African States. With that objective in mind, Article 1 (d) of the Statutes of AALCO mandated AALCO to consider the matters relating to the work of the ILC at its annual sessions. It was now customary that a Representative of ILC addressed the Annual Session of AALCO, on the progress of work in the ILC, while the Secretary-General of AALCO addressed the ILC Session reporting on the common minimum consensus that emerged from the deliberations on the ILC topics at an Annual Session. Therefore, he had the opportunity to briefly summarize the deliberations that took place at Fiftieth Annual Session of AALCO, held in Colombo, Sri Lanka previous year during the Sixty-third session of the Commission. The Secretariat had also prepared the verbatim record of the deliberations on the agenda items of ILC that took place during the Fiftieth Annual Session of AALCO and the same was circulated at the Sixty-third session of the Commission.
- 7.3 The Secretary-General said that AALCO organized the AALCO-ILC Joint Meetings along the sidelines of the Legal Adviser’s Meeting of AALCO Member States in New York in October/November. On 31 October 2011, AALCO-ILC Meeting was held and it was chaired by Mr. Maurice Kamto, the then Chairman of the ILC. The three topics that were deliberated during the meeting were: firstly, Expulsion of Aliens; secondly, Responsibility of International Organizations; and thirdly, Protection of Persons in the Event of Disasters. These topics were presented by the respective Special Rapporteurs and Member of the ILC – Mr. Maurice Kamto, Mr. Giorgio Gaja, and Mr. Eduardo Valencia-Ospina. The discussants for the meeting were Mr. Mahmoud D. Hmoud and Dr. A. Rohan Perera, Members of the ILC. He acknowledged and extended his gratitude to Dr. Roy S. Lee, Permanent Observer of the AALCO in New York, for efficiently coordinating and convening the AALCO-ILC Joint Meeting and for his contribution towards substantial matters of the meeting. Dr. Lee was also a member of the AALCO-Eminent Persons Group (EPG) wherein he had made few very concrete suggestions to improvise the Organizational and Substantial matters of AALCO.
- 7.4 He recalled that the Fiftieth Annual Session of AALCO mandated that the Annual Sessions of AALCO should devote more time for deliberating on the agenda item relating to the work of ILC. Accordingly, the Half-Day Special Meeting was scheduled during this Session for deliberation on certain pertinent agenda items of the Commission and the distinguished panelist for this meeting was Dr. A. Rohan Perera, former Member of the International Law Commission from Sri Lanka. He thanked him for taking time off his busy schedule for briefing us on the agenda items which were (i) “**Protection of Persons**

in the Event of Disasters”, and (ii) “Immunity of State Officials from Foreign Criminal Jurisdiction”.

- 7.5 The report prepared by the AALCO Secretariat contained in AALCO/51/ABUJA/2012/SD/S 1, briefly discussed the matters relating the work of ILC at its Sixty-Third Session. The agenda items dealt during the Sixty-Third session of the ILC were: Reservations to treaties, Responsibility of International Organizations, Effects of armed conflicts on treaties, Immunity of State officials from foreign criminal jurisdiction, Expulsion of aliens, Protection of persons in the event of disasters, the obligation to extradite or prosecute (*aut dedere aut judicare*), Treaties over time, and Most-Favoured-Nation clause.
- 7.6 The Secretary-General informed that the first part of the Sixty-Fourth session of the Commission was convened from 7 May to 1 June 2012 in UN European Headquarters in Geneva and the agenda item that was taken up during its first part was “Expulsion of Aliens” by the Special Rapporteur Mr. Maurice Kamto wherein he presented the Eighth Report on the topic which included (i) comments by Member States, (ii) European Union, (iii) specific comments on draft articles, and (iv) specific comments on several methodological issues. The text of the draft articles from 1 to 32 were provisionally adopted at the first reading by the drafting committee at the Sixty-Fourth session.
- 7.7 While giving a summary of the proceedings at the Sixty-Third session of the ILC held in 2011 as reported in the Secretariat document, the Secretary-General pointed out the following progress made.
- 7.8 On three important topics, namely, Reservations to Treaties, Responsibility of International Organizations, and Effects of Armed Conflict on Treaties, considerable work had been completed. On “*Reservation to Treaties*”, the Commission adopted the Guide to Practice on Reservations to Treaties which comprised an introduction, the text of the guidelines with commentaries thereto, as well as an annex on the reservations dialogue. On the topic “*Responsibility of International Organizations*”, the Commission adopted, on second reading, a set of 67 draft articles, together with Commentaries. With regard to the topic “*Effects of Armed Conflicts on Treaties*”, the Commission adopted, on second reading, a set of 18 draft articles and an annex (containing an indicative list of treaties the subject matter of which involved an implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries. On those three topics, the substantial progress made was appreciated. Further, in accordance with article 23 of the Statute of ILC, the adopted Draft Articles and Guidelines were recommended to the UN General Assembly to take note of the draft articles in a resolution and to annex them to the resolution. Further to consider, at a later stage, the elaboration of a convention on the basis of those draft articles.
- 7.9 On the topic “*Immunity of State Officials from Foreign Criminal Jurisdiction*”, the Secretary-General informed that the Commission considered the second and third reports of the Special Rapporteur. The second report reviewed and presented the substantive issues concerning and implicated by the scope of immunity of a State official from

foreign criminal jurisdiction, while the third report addressed the procedural aspects, focusing, in particular on questions concerning the timing of consideration of immunity, its invocation and waiver. The debate revolved around, *inter alia*, issues relating to methodology, possible exceptions to immunity and questions of procedure. The Commission deliberated upon the addendum 2 to the sixth report and the seventh report of the Special Rapporteur on the topic “*Expulsion of Aliens*”. Addendum 2 to the sixth report completed the consideration of the expulsion proceedings (including the implementation of the expulsion decision, appeals against the expulsion decision, the determination of the State of destination and the protection of human rights in the transit State) and also considered the legal consequences of expulsion (notably the protection of the property rights and similar interests of aliens subject to expulsion, the question of the existence of a right of return in the case of unlawful expulsion, and the responsibility of the expelling State as a result of an unlawful expulsion, including the question of diplomatic protection). Following a debate in plenary, the Commission referred seven draft articles on these issues to the Drafting Committee, as well as a draft article on “Expulsion in connection with extradition” as revised by the Special Rapporteur during the sixty-second session held in 2010. The seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles.

- 7.10 The Secretary-General while discussing the topic “*Protection of Persons in the Event of Disasters*”, said that the Commission had before it the fourth report of the Special Rapporteur that dealt with the (i) responsibility of the affected State to seek assistance where its national response capacity is exceeded, (ii) duty of the affected State not to arbitrarily withhold its consent to external assistance, and (iii) right to offer assistance in the international community. Following a debate in plenary, the Commission decided to refer draft articles 10 to 12, as proposed by the Special Rapporteur, to the Drafting Committee. Concerning the topic “*The Obligation to Extradite or Prosecute (aut dedere aut judicare)*”, the Commission considered the fourth report of the Special Rapporteur addressing the question of sources of the obligation to extradite or prosecute, focusing on treaties and custom, and concerning which three draft articles were proposed.
- 7.11 On the topic “*Treaties over Time*”, the Commission reconstituted the Study Group on Treaties over time, which continued its work on the aspects of the topic relating to subsequent agreements and practice. The Study Group first completed its consideration of the introductory report by its Chairman on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction, by examining the section of the report which addressed the question of possible modifications of a treaty by subsequent agreements and practice as well as the relation of subsequent agreements and practice to formal amendment procedures. The Study Group then began its consideration of the second report by its Chairman on the jurisprudence under special regimes relating to subsequent agreements and practice, by focusing on certain conclusions contained therein. In the light of the discussions, the Chairman of the Study Group reformulated the text of nine preliminary conclusions relating to a number of issues such as reliance by adjudicatory bodies on the general rule of treaty interpretation, different approaches to

treaty interpretation, and various aspects concerning subsequent agreements and practice as a means of treaty interpretation.

- 7.12 Regarding the topic “*The Most-favoured-nation clause*”, the Commission reconstituted the Study Group on the Most-Favoured-Nation clause. The Study Group held a wide-ranging discussion, on the basis of the working paper on the Interpretation and Application of MFN Clauses in Investment Agreements and a framework of questions prepared to provide an overview of issues that may need to be considered in the context of the overall work of the Study Group, while also taking into account other developments, including recent arbitral decisions. The Study Group also set out a programme of work for the future.
- 7.13 Pursuant to the mandate received by the Fiftieth Annual Session of AALCO held in Colombo, Sri Lanka, in 2011, an Inter-Sessional Meeting of Legal Experts to Discuss Matters relating to the ILC was held in April this year at AALCO Headquarters, New Delhi. The report of the Inter-Sessional Meeting had been annexed to the Secretariat report on the agenda item from page no. 62 to 106. The Lead Discussants for the Inter-Sessional Meeting were Dr. A. Rohan Perera, former Member of ILC from Sri Lanka and Prof. Shinya Murase, Member of the ILC from Japan. He said that it was an honour for him to deliver welcome remarks on behalf of AALCO and to give a detailed presentation on “Appraisal of the Present and Future work of the ILC”.
- 7.14 Dr. A. Rohan Perera, was the Lead Discussant on two important Agenda Items of the ILC; (i) Protection of Persons in the Event of Disasters; and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction. Prof. Shinya Murase, Member of the ILC from Japan made presentations on Proposed New Topics of the ILC which were on (i) Protection of the Atmosphere, (ii) The Fair and Equitable Treatment Standard in International Investment Law; and (iii) Other New Topics on the Long-Term programme of work of the ILC. He thanked Amb. Dr. Kriangsak Kittichaisaree, Member of ILC from Thailand, for his valuable comments on the topics discussed during the Inter-Sessional Meeting. 17 Member States of AALCO participated at the Meeting.
- 7.15 He then stated that few major suggestions that evolved out of the Legal Experts Meeting with regard to the proposed new topics were to focus on whether there was a need for the Commission to work on those proposed topics. Also, if there was any topic which a Member State considers as contemporary and relevant, it should put it forward during this meeting and the Secretariat would forward such comments to the Commission at its second part of the Sixty-fourth session which would begin next month.
- 7.16 The Vice-President then asked Dr. A. Rohan Perera, former member of ILC from Sri Lanka to make presentations on the two important topic of deliberation for the Special Meeting.
- 7.17 **Dr. A. Rohan Perera, former Member of the ILC from the Democratic Socialist Republic of Sri Lanka** presented a paper on the topic “Protection of Persons in the Event of Disasters”. The Panellist said that it was indeed a timely decision to discuss

upon these agenda items of the ILC as these topics were entering a decisive phase. He said that in introducing the Fourth Report on the topic, “Protection of persons in the event of disasters”, the Special Rapporteur recalled that the broad concept of protection proposed since the First report, called for the recognition of “the tensions underlying the link between protection and the principle of respect for territorial sovereignty and the non-interference in the internal affairs of the affected State.” The “poles of tension” as referred to by the Special Rapporteur between sovereignty and protection, became manifest and sharply underlined the debate, on the cluster of Draft Articles 10, 11 and 12, both within the Commission and in the Sixth Committee, during the annual consideration of the ILC Report.

- 7.18 Draft articles 10 and 11 dealt with the “duties” of the affected State, while Draft Article 12 referred a “right” of third parties, including States, International Organizations or Non-Governmental Organizations to offer assistance in disaster situations.
- 7.19 Commenting on *Draft Article 10*, Dr. Rohan Perera mentioned that it addressed the particular situation in which a disaster exceeds a State’s national response capacity. The Article stipulates that in such circumstances, the affected State has the duty to seek assistance, from among others, States, the United Nations, other competent inter-governmental organizations, and relevant non-governmental organizations. The Special Rapporteur explained that the Draft Article “affirms the central position of obligations owed by States towards persons within their borders”.
- 7.20 Dr. Rohan Perera said that, referring to the relationship between Draft Article 10 to Draft Articles 5 and 9 the Special Rapporteur pointed out that the duty expounded in Draft Article 10, was a specification of the content of Draft Article 5 and 9. It was also recalled that Draft Article 9 (1) stipulated that an affected State by virtue of its sovereignty had the duty to ensure the protection of persons and the provision of disaster relief and assistance on its territory. Draft Article 5 affirmed that the duty to cooperate was incumbent upon not only potentially assisting States, but also the affected State, where such cooperation was appropriate.
- 7.21 Accordingly, the Special Rapporteur considered that such cooperation was both appropriate and required to the extent that an affected State’s national capacity had exceeded. In those circumstances it was pointed out that seeking assistance was additionally an element of the fulfilment of an affected State’s primary responsibility under International Human Rights Instruments and Customary International law.
- 7.22 The cluster of Articles 10-12, given the underlying tensions between the principles of State sovereignty and protection, was the subject of sharp divergence of views among the members of the Commission. Some members were opposed to the idea that affected States are under or should be placed under a legal duty to seek external assistance in cases of disasters. Their opposition was premised on the basis that, as it currently stood, international law did not place any such binding duty upon affected States. Those supporting that view took up the position that the Draft Article should be re-formulated in exhortatory terms to the effect that an affected State **should** seek external assistance, in

cases where a disaster affects its national response capacity rather than in mandatory terms that a States **shall** seek such assistance, as currently drafted.

- 7.23 On the other hand, those who supported the Draft Article as currently drafted, emphasized that recourse to international support may be a necessary element in the fulfilment of a State's international obligations towards individuals, where an affected State considers its own resources inadequate to meet protection needs. They emphasized that rules of Human Rights were implicated in the context of a disaster, including the right to life, right to food, the right to health and medical services, the right to supply of water, adequate housing, clothing and sanitation and the right to be free from discrimination.
- 7.24 A middle ground that seemed to emerge during the debate pointed towards the notion of international cooperation in rendering external assistance in disaster situations, where a State's national capacity had exceeded. The guiding principles attached to landmark GA resolution 46/182 had stipulated: "The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with International Law and National Laws."
- 7.25 The notion of international cooperation and solidarity, in contrast to a "rights and duties" approach in seeking and providing assistance, appeared to point the way towards an ultimate consensus.
- 7.26 The current formulation of Draft Article 10 also proceeded on the basis of an affected State "seeking" assistance, rather than making a "request" for assistance carried an implication that the consent of an affected State was automatically granted, upon acceptance of that request by a Third State". In contrast, it was pointed out that a duty to "seek assistance" implies a broader negotiated approach to the provision of international assistance. "The term 'seek' entailed the proactive initiation by an affected State, of a process through which agreement may be reached."
- 7.27 The Draft Article as currently drafted, places a duty upon an affected State, to take positive steps, and to seek assistance to when a disaster exceeds its national response capacity.
- 7.28 The Commission recognized that the Government of an affected State would be in the best position to determine the severity of a disaster situation and the limits of its national response capacity. It was emphasized in that connection that such an assessment must be made in good faith. While re-iterating the importance of the Principle of Good Faith as recognized in the UN Charter and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States, the Special Rapporteur stated: "A good faith assessment of the severity of a disaster was an element of an affected State's duty, by virtue of its sovereignty, to ensure the protection of persons and the provision of disaster relief and assistance on its territory".

- 7.29 Another issue which gave rise to some concerns within the Commission was the reference to “States, the United Nations, other competent Intergovernmental Organization, and relevant Non-Governmental Organizations as appropriate”. The Special Rapporteur sought to allay such concerns by pointing to the use of the phrase, “as appropriate”, which the Special Rapporteur explained was adopted to emphasize the discretionary powers of an affected State, to choose from among States and various other entities involved, the assistance that was most appropriate to its specific needs. It was further clarified that the term “as appropriate”, also reflected the fact that the duty to seek assistance does not imply that a State was obliged to seek assistance from every source listed in Draft Article 10.
- 7.30 Notwithstanding these clarifications, however, concerns remained among some members on the desirability of treating on par, States, Inter-Governmental Organizations and Non-Governmental organizations, in a provision which sought to cast a legal duty on affected States to seek external assistance.
- 7.31 On *Draft Article 11*, dealing with the consent of an affected State to external assistance, also raised a number of issues which were the subject of intensive discussion within the Commission.
- 7.32 As a whole, the Draft Article created for affected States a “qualified consent regime” in the field of disaster relief operations. Paragraph (i) reflected the core principle that implementation of international relief assistance was contingent upon the consent of the affected State. Paragraph (ii), however, stipulates that consent to external assistance shall not be withheld arbitrarily. Paragraph (iii) places a duty on the affected State to make its decision regarding an offer of assistance known, wherever possible.
- 7.33 There was a broad degree of support for Paragraph (i), on the basis that the principles that the provision of external assistance requires the consent of the affected State, was fundamental to International Law. The consent requirement was highlighted in the Guiding Principles attached to the GA Resolution 46/182. The consent requirement was also viewed as being comported with the primary role of the affected State in the direction, control, coordination and supervision of disaster relief assistance in its territory, as envisaged in Draft Article 9.
- 7.34 However, the stipulation that an affected State’s right to refuse an offer of assistance was not unlimited and the assertion in Article 11 (ii) that “consent shall not be withheld arbitrarily”, was the subject of a sharp divergence of views. The Special Rapporteur sought to explain its rationale in the basis of the “dual nature of sovereignty as entailing both rights and obligations”. However, there was some disagreement on that approach and those expressing such reservations also pointed out that the provision should not be drafted in mandatory terms using the term “shall”, but rather in non-mandatory terms, such as to indicate that “consent to external assistance should not be withheld arbitrarily”.

- 7.35 On the other hand, those supporting the Special Rapporteur's approach emphasized that the duty of an affected State to ensure protection and assistance to those within its territory, in the event of disasters was aimed at preserving the life and dignity of victims of disasters and guaranteeing the access of persons in need of humanitarian assistance.
- 7.36 The need to develop a criteria to determine the arbitrariness or otherwise of a decision to refuse the consent also engaged the attention of the Commission. The range of views expressed on that difficult question was reflected in the commentary to the Draft Article so as to provide some degree of clarity. It, states, *inter alia*, that the determination whether consent was withheld arbitrarily or otherwise, must be determined on a case by case basis. However, it was pointed out that as a general rule, several principles could be adduced:-
1. The withholding of consent to external assistance would not be arbitrary, where a State was capable of providing and willing to provide an adequate an effective response to a disaster, on the basis of its own resources;
 2. Withholding of consent to assistance from external sources was not arbitrary if, an affected State has accepted appropriate and sufficient assistance from elsewhere;
 3. Withholding of consent was not arbitrary, if the relevant offer was not extended in accordance with the present Draft Articles; Humanitarian assistance must take place in accordance with Principles of Humanity Neutrality and Impartiality and on the basis of non-discrimination.
- 7.37 Conversely, where an offer of assistance was made in accordance with the Draft Articles and no alternate sources of assistance were available there would be a strong inference that decision to withhold consent was arbitrary.
- 7.38 *Draft Article 12*, on a "Right to offer assistance" was also the subject of a sharply divided debate within the Commission. While introducing the Draft Article, the Special Rapporteur stated: "It served to acknowledge the legitimate interest of the international community to protect persons in the event of disasters."
- 7.39 The Special Rapporteur explained that the Draft Article 12 sought to reflect the general proposition that offers of assistance should not be viewed as interference in the internal affairs of the affected State, subject to the condition that the assistance offered did not affect the sovereignty of the affected State as well as its primary role in the direction, control, coordination and supervision of such relief and assistance.
- 7.40 However, some members were strongly of the view that the provision avoids a reference to 'legal rights' since such offers of assistance from the international community were typically extended as part of international co-operation and solidarity as opposed to the assertion of 'rights'. It was recalled in this context that in many instances, the mere expression of solidarity was equally important as offers of assistance. In that regard, reference was made to Article 2 (7) of the UN Charter, which in the view of those members limited the ability of the international community to offer assistance.

- 7.41 In terms of a contrary view however, the contemporary understanding of Article 2 (7) of the Charter allowed for limitations and exceptions, especially in the context of protection of Human Rights. It was also pointed out that Article 12 should not be interpreted to imply permission to interfere in the internal affairs of an affected State. It merely reflected a right to offer assistance, which the affected State may refuse.
- 7.42 Those opposed to a ‘right’ to offer assistance approach, also highlighted the particular problems that would arise where external assistance was offered by NGOs. Such an approach would imply that NGOs enjoyed same rights as a State. It was accordingly suggested that the provision merely indicate that, “third actors may offer assistance”, thereby providing an authorization and not a right.
- 7.43 Given those concerns, Dr. Rohan Perera said that suggestions were also made on the need to clearly differentiate between assistance by non-affected States and Inter-Governmental Organizations and that provided by Non-Governmental Organizations, working with strictly humanitarian motives.”
- 7.44 A further view that emerged was that the provision be recast as a positive duty to offer assistance, cast on the international community. However, the contrary view was also expressed that it might be going too far to recognize a specific legal obligation on States and Organizations, to provide assistance.
- 7.45 The middle ground which seemed to surface from these range of views was that the ‘right’ of an affected State to seek international assistance was complimented by the duty on third States and Organization to ‘consider’ such requests, and not necessarily a duty to accede to them. It was further emphasized that, the right to the international community to offer assistance could be combined with an encouragement to the international community to make such offers of assistance on the basis of the Principle of International Cooperation and Solidarity.
- 7.46 The Drafting Committee was unable to conclude consideration of Draft Article 12 due to lack of time. The discussion on these vital issues pertaining to the balancing of sovereignty and protection would therefore resume at the forthcoming session. It was important, therefore, that the Member States of Asia and Africa made their views known in a timely manner, in order to ensure an acceptable outcome.
- 7.47 Elaborating upon the 6th *Committee Debate* on this topic, Dr. Rohan Perera said that the cluster of Draft Articles 10-12, during the consideration of the ILC Report, reflected very much the range of diverse views, which characterized the discussion of these Articles in the Commission. It was also noteworthy, that on certain aspects there was a broad convergence of views across the geographical and political divide.
- 7.48 Thus, for instance, the United Kingdom, in expressing their position on the overall approach to the Draft Articles, emphasized that;

“The codification or progressive development of comprehensive and detailed rules is likely to be unsuitable for the topic and... the development of non-binding guidelines and a framework of principles for States and others engaged in disaster relief is more likely to be of practical value and to enjoy widespread support and acceptance...”

- 7.49 Commenting on the specific Draft Articles, the UK was of the view that the duty to seek assistance, set out in Draft Article 10, was ‘clearly progressive development’ and that the argument in the Commentary that such a duty could be spelled out from existing international obligations in the two Human Rights Covenants, “was questionable”. On the requirement in Draft Article 11 that consent shall not be arbitrarily withheld, the UK delegation expressed the view that “this represents progressive development rather than a reflection of the law as it stands.”
- 7.50 On the ‘right’ to offer assistance set out in Draft Article 12, the UK was of the view that, the idea is essentially superfluous in that, as a matter of sovereignty, “States could always offer whatever they want”. The interventions made by the delegations of Ireland and Austria were also in similar vein, and militated against a notion of either a duty to seek assistance or a right to provide assistance.
- 7.51 From the Asian region, similar sentiments were expressed by the delegations of Japan, Sri Lanka, Indonesia and Islamic Republic of Iran, stressing, *inter alia*, that it was the Government of an affected State that would be best placed to determine whether a disaster had exceeded its national response capacity. Japan in particular requested the Commission to deepen the discussion on the ‘rights and duties’ dimension and stressed the importance of international solidarity in the event of disasters.

“The Commission is requested to continue to deepen the discussion as to whether it is justifiable in view of the progressive development of international law, to characterize the seeking of assistance as a ‘duty’ of the affected State, while offering of assistance is understood as a ‘right’ of other States. from this point of view, Japan would like to note the remarks of some members of the Commission, who have emphasized during the discussion, the importance and the necessity of international solidarity in the event of disasters.”

- 7.52 Similarly, the delegation of Sri Lanka stated:

“We also share the concerns which have been expressed in the Commission regarding the reference to a “Right to Offer Assistance” in Draft Article 12. This should be reformulated to reflect a positive duty on the International Community to offer disaster relief on the basis of well-established Principles of International CO-operation and Solidarity, rather than as a legal right. What is required is a flexible operational framework that facilitates the providing of international disaster relief under a broad umbrella of international co-operation and solidarity.”

- 7.53 These statements encapsulate the growing support, both within the Commission as well as within the Sixth Committee, of the importance of an approach based on the Principle of International Cooperation and solidarity rather than a ‘rights and duties’ based approach.
- 7.54 On the question of treating NGOs on par with States and Intergovernmental Organizations in providing external assistance, several countries from the Asian region voiced concern. Thus the delegation for Islamic Republic of Iran, for instance stated:
- “Certainly there is little doubt as to the obligation of the State affected by natural disasters to co-operate with other States and competent Inter-Governmental Organizations. Such an obligation to cooperate is however limited only to the subjects of International Law, excluding NGOs.”
- 7.55 A further dimension of the practical aspects of disaster relief assistance and the problems posed by what was referred to as “inappropriate assistance” was highlighted in the IFRC intervention during the Sixth Committee debate.
- “There have been significant problems in some major disaster operations with the involvement of foreign actors that lack the requisite skills and ability to contribute to a well-co-ordinated, appropriate and a high quality response. As such, States can and should be selective about the foreign assistance they seek, and accept in the wake of natural disasters. They may wish to target requests to specific types of assistance or to particular actors in order to fill identified gaps in national capacity. This approach should also help to minimize the significant problems that inappropriate assistance can create.”
- 7.56 Dr. Rohan Perera highlighted that those words of caution of the leading International Agency, active in the field of disaster relief operations and which had made a distinct contribution to the development of practical Guiding Principles in rendering international disaster relief assistance, which had been taken on board by the Special Rapporteur, merits the close attention of Asian and African States, as the work on that challenging and complex topic resumes at the forthcoming session of the ILC.
- 7.57 **Dr. A. Rohan Perera, Former Member of ILC from Sri Lanka** who was the Lead Discussant on that topic explained the nuances of the Agenda Item. He discussed about the Second Report of the Special Rapporteur. The debate in the International Law Commission (ILC) on the topic of Immunity of State Officials from Foreign Criminal Jurisdiction centered around three principal issues: (i) general orientation of the topic; (ii) scope of immunity; and (iii) question whether or not there were exceptions to immunity with regard to grave crimes under international law.
- 7.58 Regarding the “**General Orientation of the Topic**” he said that the Special Rapporteur in his introduction to the Second Report emphasized the importance of looking at the actual state of affairs as a starting point for the Commission’s consideration of the topic and explained that it was from the perspective of the *lex lata* that he had proceeded to

prepare his report. From that perspective the Special Rapporteur was of the view that immunity of a state official from foreign criminal jurisdiction was the norm and any exception thereto would need to be proven.

- 7.59 The position of the Special Rapporteur on the General Orientation of the Topic led to an intense discussion in the Commission as to the perspective from which the Commission should approach the topic. i.e. whether from the *lex lata* or *lex ferenda* perspective. It was pointed out that even if one chose to adopt the approach of the Special Rapporteur who had analyzed the issue from a strict *lex lata* perspective, the interpretation given to the relevant state practice and judicial decisions relating to this topic could plausibly lead one to different conclusions as to the existing law.
- 7.60 On the other hand, to approach a topic from a *de lege ferenda* perspective raised other questions involving competing policy considerations including to what extent the Commission should develop the law and whether it would be appropriate for it to take a lead in the area in the light of the divergent policy considerations involved. The point was also made that the issues of principle implicated by the topic may not necessarily be best described in terms of *lex lata* versus *de lege ferenda*, but rather involved the application of rules that were all *lex lata*.
- 7.61 However, views were also expressed mentioning that the topic was broadly suitable for codification and progressive development which allowed the Commission to approach the topic from both aspects of its mandate. It was recognized, however that the Commission needed to proceed with caution in order to achieve an acceptable balance between the need to ensure stability in international relations and the need to avoid impunity for grave crimes under international law. In that regard, it was pointed out that in deciding which approach should be adopted it would be essential to keep in mind the practical value of the end product, which inter alia, was intended to serve the interests of the international community. It was further emphasized that in approaching the question of immunity, it was important to recall that it was the legal and practical interests of the State that were engaged and not those of the individual (para 118 to 119 Report of the ILC 63rd Session).
- 7.62 Dr. Rohan Perera mentioned that the outcome of the discussion in the Commission on the General Orientation of the topic led to the conclusion that the Commission should establish a Working Group to discuss at its 64th Session and determine how best to proceed with the topic. It was recognized that the general direction in which the Commission wished to steer the topic had to be settled prior to moving forward (para 120 Report of the ILC 63rd Session).
- 7.63 With regard to the 6th Committee Debate when the agenda item was debated upon at the 66th session of the UNGA, a number of countries commenting on the Second Report of the Special Rapporteur adverted to the need to address upfront, the question of the General Orientation of the topic. Several Countries underlined the need for a cautious approach and the importance of approaching the issue from *lex lata* perspective. Thus, for instance, the Representative of the United Kingdom stated that it was essential that the

Commission kept clearly in mind the distinction between its task of codifying the *lex lata* and making proposals for the progressive development of *lex ferenda*. Given the very practical importance of the Commission's work on the topic, they urged the Commission to ensure that such distinction was to be made clear throughout their work and that "any proposals they make for the *lex ferenda* by way of draft articles for a future Convention are thought through with rigour and vigour that has informed the work to date" (UK Statement of 31/10/2011).

- 7.64 Dr. Rohan Perera said that several other delegations expressed the view that the Commission should as a first step concentrate on the identification of existing rules (*lex lata*) "an exercise that would also show situations where international law in force is unable to keep pace with present developments". Once the Commission identified the existing laws and its discrepancies with such developments it was stated that the Commission should as a second step, try to propose rules *De Lege Ferenda* aimed at bringing international law in conformity with those developments (Statement of Austria 1/11/2011).
- 7.65 Thus the 6th Committee debate reflects an approach which in principle endorses the Special Rapporteur's position of treating the *lex lata* perspective as the starting point. However, it nevertheless underlined the need that having codified and identified the gaps, the Commission should proceed to the next stage the *De Lege Ferenda* perspective. This is the challenging task before the working group that is to be established in May 2012 and the position of Asian-African States on this approach would no doubt be of value to the Commission in determining the future direction of the topic of Immunity of State Officials from Foreign Criminal Jurisdiction.
- 7.66 With regard to "**Scope of Immunity**" as to whether officials are to be covered under the topic, there was a broad degree of consensus within the Commission in the light of State practice and recent judicial decisions that Heads of State, Heads of Government and Ministers of Foreign Affairs who constituted the so called "troika" of State officials enjoyed personal immunity "*rationae personae*". Views were also expressed in favour of extending immunity *rationae personae* to certain other high level officials representing the State in its international relations whose functions involved a substantial amount of foreign travel on behalf of the state.
- 7.67 Dr. Rohan Perera observed that it was with regard to the "other categories of State Officials" outside the established "troika" that the Commission was required to move into unsettled territory. The challenge before the Commission was to strike a delicate balance between the need to expand, albeit cautiously, the different categories of state officials to be granted jurisdictional immunities "*rationae personae*", in the light of contemporary developments in international relations on the one hand and the need to avoid the risk of a liberal expansion of such categories, which could be conducive to an environment of impunity under the cover of immunity.
- 7.68 In its approach to the question of determining the categories of State Officials entitled to immunity *rationae personae*, the Commission tended to veer towards a process of

identifying and defining applicable criteria to be invoked in granting jurisdictional immunities to high ranking officials, while taking due account of the principle of functional necessity and the representative character of the officials concerned.

- 7.69 In the identification of such criteria it was emphasized that prime consideration must be given to the notion that the representation of the State in international relations must be an indispensable part of the functions of the officials concerned.
- 7.70 Dr. Rohan Perera explained that in the course of the debate at the Sixth Committee it was asserted by some members that:
- (a) A very high degree of involvement of the State Officials in the conduct of foreign affairs on behalf of the State must be established in asserting immunity; and
 - (b) To consider in defining eligible categories, only those persons who exercise powers intrinsic to the State, thereby excluding the vast majority of State Officials whose work could be performed equally by the private sector as well or who did not have the instruments of State power at their disposal.
- 7.71 The rationale underlining the approach pursued by some members on that issue was that the effective conduct of a State's foreign relations were an integral factor in the preservation of its sovereignty. Together they constituted an integral whole, which should be considered as such, when establishing the criteria for granting jurisdictional immunities to different categories of State Officials.
- 7.72 A debate within the Commission indeed reflects the readiness of the ILC to adopt a flexible and pragmatic approach in an attempt to strike the requisite balance between the need to preserve the sovereign function of the States on the one hand and the need to avoid an overly broad expansion of jurisdictional immunities and thereby create a fertile terrain for impunity.
- 7.73 During the 6th Committee Debate on the ILC Report several delegations underscored the need to take into account in addressing the Scope of Immunity of State Officials, the current realities in the conduct of international relations and the fact that the nature of representations in international relations had undergone fundamental change. Consequently it was recognized that there was a need to examine possible "other categories of State Officials" beyond the "troika" who by virtue of their functions may be entitled to immunity 'rationae personae' (see Statement of Sri Lanka 1/11/2011).
- 7.74 In general, delegations who adverted to this aspect emphasized the need to reflect the reality of how foreign policy was conducted today amongst States involving high officials other than the Minister of Foreign Affairs. At the same time they underlined the need for caution in that regard and that any expansion of the list of high officials beyond the "troika" must be contingent on the specific functions entrusted to such high officials by the State (See statement of Singapore 2/11/2011).

- 7.75 On the “**Question of Exceptions to Immunity**” of a State Official from Foreign Criminal Jurisdiction, the Special Rapporteur observed that in the case of immunity “*rationae personae*” the predominant view seemed to be that such immunity was absolute and covered acts performed both in an official capacity or personal capacity and committed both while in office and prior thereto and that no exceptions thereto could be considered. In the opinion of the Special Rapporteur, the question of exceptions could only be pertinent with regard to immunity “*ratione materiae*” concerning acts performed in an official capacity, in the context of crimes under international law. At the same time, the Special Rapporteur acknowledged the widely held opinion that the issue of exceptions to immunity fell within the sphere of progressive development of international law. In his view however the issue raised serious concerns including in relation to politically motivated prosecutions, trials in absentia and evidentiary problems as a result of lack of cooperation of the State concerned. He cautioned the Commission against drafting provisions *de lege ferenda* and recommended that it should restrict itself to codifying existing law.
- 7.76 The question of possible exceptions to immunity gave rise to diverse views within the Commission. While some members agreed with the conclusions of the Special Rapporteur, some other members expressed the view that the Commission could not limit itself to the status quo and had to take into account the relevant trends that had an impact on the concept of immunity, in particular developments in human rights law and international criminal law. According to the view the assertion that immunity constituted the norm to which no exceptions existed was thus unsustainable. In that context it was pointed out that the question of how to situate the rule on immunity in the overall legal context was central to the debate.
- 7.77 Such line of argument sought to emphasize that a superior interest of the international community as a whole had evolved in relation to certain grave crimes under international law which resulted in an absence of immunity in such cases. It was therefore contended that instead of addressing that issue in terms of “rule” and “exception”, with immunity being the rule, it seemed more accurate to examine the issue from the perspective of responsibility of the State and its representatives in those limited situations - which shock the conscience of mankind - and consider whether any exceptions thereto in the form of immunity may exist (Para 121 to 124 Report of the ILC Commission 63rd Session).
- 7.78 The rationale for the exceptions to immunity was also sought to be explained on the basis that in the case of conflict between the rules of immunity and those established in international crimes, the latter being rules of *jus cogens*, had to prevail. That approach sought to examine the issue of immunity and exceptions from the perspective of a hierarchy of norms and sought to draw strength from the minority opinion of dissenting judges in the case of *AI-Adsani Vs. United Kingdom* in the European Court of Human Rights (ECHR) which stated:

“Due to the interplay of ‘jus cogens’ rule on prohibition of torture and the rules on State immunity, the procedural bar on State immunity is automatically lifted

because those rules, as they conflict with the hierarchically higher rule, do not produce any legal effect."

- 7.79 However, the majority of the judges in the European Court held that the court was unable to discern in the international instruments, judicial authorities or other materials before it, any firm basis for concluding that as a matter of international law, the State no longer enjoyed immunity from civil suit in the courts of another state, where acts of torture were alleged.
- 7.80 The Special Rapporteur in his concluding remarks contextualized the issues by recalling that there were many truisms in international law including that the development of human rights had not resulted in the disappearance of sovereignty or the elimination of the principles of sovereign equality of States and non-interference in the internal affairs despite having a serious influence on their content. The Special Rapporteur pointed out that the central issue for consideration in the present topic was not so much the extent to which changes occurring in the world and in international law had an influence on sovereignty as a whole, but rather how more specifically there was an influence on the immunity of State officials, based on the sovereignty of a State; the essential question being how had the immunity of State officials in general and immunity from the national criminal jurisdiction of other States in particular, been affected.
- 7.81 The Special Rapporteur emphasized that to juxtapose immunity and combating impunity was incorrect. Combating impunity had a wider context involving a variety of interventions in international law including the establishment of international criminal jurisdiction. Moreover, it was pointed out that immunity from criminal jurisdiction and individual criminal responsibility, were separate concepts. Immunity and foreign criminal jurisdiction was the issue to be grappled with and not immunity and responsibility.
- 7.82 In response to the contention of the hierarchy of norms whereby *jus cogens* prevailed over immunities, the Special Rapporteur contended that *jus cogens* rules which prohibit or criminalize certain acts were substantive in nature and could not overturn a procedural rule such as the one concerning immunity.
- 7.83 The Special Rapporteur also pointed out that the question of international criminal jurisdiction was one that was to be separated and distinguished from foreign criminal jurisdiction. In his view the Rome Statute on the ICC was unlikely to be relevant in respect of foreign criminal jurisdiction (Para 187 to 189 Report of the ILC 63rd Session).
- 7.84 Dr. Rohan Perera then highlighted the debate in the 6th Committee which also mirrored the range of diverse views that were expressed in the Commission on possible exceptions to immunity. The need to strike an appropriate balance between several fundamental principles was emphasized by several delegations. For instance, it was pointed out that the topic revolves around two major values protected by international law, namely immunity of State officials and the obligation of avoiding impunity, and that to serve the interests of the International Community would require a balance being struck between

State sovereignty, the rights of individuals and the need to avoid impunity for serious crimes under international law (Statement of Portugal).

- 7.85 In addressing the issue of possible exceptions to the immunity of State officials some delegations also underlined the need to bear in mind the fact that the risk of politically motivated criminal prosecutions before foreign courts could very well lead to serious frictions in inter-State relations. Hence, there was a clear need to strike a careful balance between the respective policy considerations involved, namely preserving the well established principle of immunity of State officials and that of addressing the issue of possible exceptions to this rule (Statement of Sri Lanka dated 1/11/2011 and also New Zealand dated 2/11/2011).
- 7.86 Some States also emphasized the fact that immunity of States was not a courtesy by one State to another, but rather an important principle of international law that was based on fundamental legal principles, namely sovereign equality resting on the maxim '*par in parem non habet imperium*'. It was thus contended that if the above fundamental legal principles were placed in a position where they may be superseded by other rules at any time, the very foundation of modern international relations would be seriously eroded and lead to disastrous consequences. (Statement of People's Republic of China 2/11/2011).
- 7.87 The distinction drawn by the Special Rapporteur between international criminal jurisdiction and assertion of jurisdiction by foreign courts also found support within the 6th Committee. Thus it was pointed out that the scope of immunity of State officials from criminal jurisdiction needs to be examined in different ways, depending on whether the proceedings concerned were taken by a national court or whether the alleged offence falls within the competence of an international court.
- 7.88 It was pointed out where the ICC was concerned the Rome Statute expressly set limits on the possibility of invoking immunities deriving from other sources of international law. However, this limitation on immunities does not apply where the competence of a national court was concerned. The latter involved situations where the principle of sovereign equality between States and the stability of international relations must be guaranteed. (Statement of Switzerland 31/10/2011).
- 7.89 The sharp divergence of views that have characterized the discussion of possible exceptions to immunity both within the Commission and in the 6th Committee is likely to dominate the Working Group to be established at the 64th Session of the ILC. The outcome was likely to be guided and determined by the availability of cogent evidence of State practice, judicial decisions and other material. That was a matter that required the highest priority of States of the Asian-African region.
- 7.90 Dr. Rohan Perera then cited the recent judgment of the International Court of Justice (ICJ) in the "**Jurisdictional Immunities of States case**" (**Germany and Italy - 3rd February 2012**). He said that the recent Judgment of the ICJ in the case of *Germany Vs. Italy*, although involving civil proceedings as distinct from criminal proceedings, nevertheless had clear implications for the ongoing work on the question of immunity of

State officials from foreign criminal jurisdiction. The case arose out of proceedings before the Italian Courts against Germany in respect of what were termed as serious violations of the laws of armed conflict which amounted to crimes under international law committed during the Third Reich. The arguments made by Italy were based upon the proposition that international law does not accord immunity to a State or at least restrict its immunity where it has committed serious violations of the laws of armed conflict. The court made it clear that the actions of the German armed forces and other organs of the German Reich, which were the subject matter of proceedings before the Italian Courts, were serious violations of the laws of armed conflict. The question for determination before the court was whether that fact operated to deprive Germany of an entitlement to immunity.

- 7.91 On the question whether Customary International Law (CIL) had developed to a point where a State was not entitled to immunity in the case of serious violations of human rights law or the law of armed conflict, the court came to the conclusion that apart from the decisions of the Italian courts which were the subject of the present proceedings, there was almost no State practice which might be considered to support the proposition that a State was deprived of its entitlement to immunity in such case. The court pointed out that there was a substantial body of State practice from other countries which demonstrated the fact that CIL does not treat a State's entitlement to immunity as dependent upon the gravity of the act of which it was accused or the peremptory nature of the rule which it was alleged to have violated (Paras 81-83, 84 and 85 of the ICJ judgment).
- 7.92 In the course of the argument before the court, the question of the *jus cogens* limitations which figured prominently in the ILC discussion on immunity of State officials was also raised. The court having gone into the history of the negotiation of the 2004 U.N. Convention on Immunities of States and their property (2004) observed that during the debates in the 6th Committee, no State had suggested that a *jus cogens* limitation to immunity should be included in the draft convention. The court therefore concluded that that history indicated that at the time of adoption of the U.N. Convention in 2004, States did not consider that CIL limited immunity in the manner which was now being suggested by Italy.
- 7.93 Referring to the argument of hierarchy of norms, the court observed that the argument depended upon the existence of a conflict between a rule or rules of *jus cogens* and the rules of customary law which required one State to accord immunity to another. In the opinion of the court, however, no such conflict existed. Assuming for that purpose that the rules of the law of armed conflict which prohibit the murder of civilians in occupied territories, the deportation of civilian inhabitants to slave labour and the deportation of prisoners of war to slave labour, are rules of *jus cogens*, there was no conflict between these rules and the rules on State immunity. The two sets of rules address different matters on the rules of State immunity were procedural in character and were confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State. They do not bear upon the question whether or not the conduct in respect of which the proceedings were brought was lawful or unlawful.

7.94 The Separate Opinion of Judge Abdul Koroma, places the central issue before the Court in perspective, when he states;

“The case before the Court however, is not about the legality of the conduct of Germany’s armed forces, during the Second World War, or Germany’s international responsibility for such conduct. The question in this case is limited to whether Germany is entitled to immunity before the Italian domestic courts, with respect to the conduct of its armed forces in the course of the conflict. The Court did not need to address the substantive matter of the legality of Germany’s conduct, to resolve the issue of sovereign immunity. Indeed the Court’s jurisdiction in this case is limited to addressing only the issue of jurisdictional immunity” (para 3).

7.95 Judge Bennouna, in his Separate Opinion, also elaborated on the dichotomy between immunity and responsibility, and emphasized on the fact that immunity before foreign courts did not mean complete exoneration from responsibility. In other words, the granting of immunity by these courts can in no sense mean that the State concerned is exonerated from responsibility. It merely defers consideration of that responsibility to other diplomatic and judicial bodies (para 8.).

7.96 That line of reasoning was consistent with the reasoning of the Special Rapporteur on the Immunity/responsibility dichotomy, wherein he stated that combating impunity had a wider context involving a variety of interventions in International Law, including the establishment of International Criminal Jurisdiction.

7.97 The above reasoning stands in stark contrast to the views of some of the dissenting judges, such as Judge Trindade whose dissenting opinion tends to blur the immunity/responsibility distinction, viz,”. The central principles at issue here were, in my perception, the principle of humanity and the principle of human dignity. State Immunity could not in his view be unduly placed above state responsibility for international crimes... The above reasoning falls into that unfortunate error of juxtaposing immunity/responsibility and combating impunity, which the Special Rapporteur cautioned against.

7.98 The conclusion reached by the majority Judges in the Immunity of States Case was supported by a series of Judgments of domestic Courts from different jurisdictions (such as UK, Canada, Poland, Slovenia, New Zealand and Greece) where the argument of *jus cogens* displacing the law of State immunity had been rejected. In that respect the ICJ judgment in *Germany Vs. Italy* fully supported the majority view of the European Court in the *Al Adsani Case*. In reaching the conclusion that under Customary International Law as it presently stands, a State was not deprived of immunity by reason of the fact that it was accused of serious violations of international human rights law or the international law of armed conflict, the court sought to emphasize that it was addressing only the immunity of the State itself from the jurisdiction of the courts of other States and therefore that the question of whether and if so to what extent immunity might apply in criminal proceedings against an official of the State, was not an issue in the present case

(Para 91 of the Judgment). It would be interesting to examine the impact of that statement in relation to *ratione materiae* immunity of State officials which were considered acts of the State.

- 7.99 Despite that careful circumscribing of scope of judgment, the key issues addressed by the court, particularly on the relationship between *jus cogens* and the rule of State immunity would undoubtedly be of persuasive authority in further consideration of these issues before the Working Group to be established on the question of immunity of State Officials in respect of Foreign Criminal Jurisdiction.
- 7.100 Discussing on the “**Third Report of the Special Rapporteur**”, Dr. Rohan Perera said while the preliminary and second reports of the Special Rapporteur dealt with substantive aspects of the immunity of State Officials, the third report addressed a series of procedural issues, which in the words of the Special Rapporteur was, ‘intended to complete the entire picture’. The report focused particularly on: (i) timing of consideration of immunity; (ii) invocation/waiver of immunity; (iii) substantiation of immunity; and (iv) question of implied waiver.
- 7.101 While commenting upon the issue of “**Timing**”, namely when and at what stage immunity should be raised in criminal proceedings, the Special Rapporteur was of the view that questions of immunity were preliminary issues, which must be expeditiously decided in *limine litis*. He stressed that the question of the immunity of a State Official from foreign criminal jurisdiction should, in principle, be considered either at the early stage of court proceedings, or even earlier at the pre-trial stage, when the State that was exercising jurisdiction decides the question of taking criminal procedural measures.
- 7.102 There was general agreement in the Commission that immunity ought to be considered at the early stage of the proceedings or indeed earlier during the pre-trial stage as stated by the Special Rapporteur. The Advisory Opinion of the ICJ in “*Differences Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights*” was cited by the Special Rapporteur in support of the above position.
- 7.103 Interestingly the recent ICJ Judgment on *Jurisdictional Immunities of States (Germany Vs. Italy)* cited above, addressing the same point stated that:

“Immunity from jurisdiction is immunity not merely from being subjected to an adverse judgement but from being subjected to the trial process. It is therefore, necessarily preliminary in nature. Consequently a national court is required to determine whether or not a foreign state is entitled to immunity as a matter of international law, before it can hear the merits of the case brought before it and before the facts have been established. If immunity were to be dependent upon the State actually having committed a serious violation of international human rights law or the law of armed conflict, then it would become necessary for the national court to hold an inquiry into the merits in order to determine whether it had jurisdiction. If on the other hand, the mere allegation that the State had committed such wrongful acts were to be sufficient to deprive the State of its entitlement to

immunity, immunity could in effect be negated simply by skillful construction of the claim.” (para 82).

- 7.104 In relation to the issue of **“Invocation of Immunity and duty to Notify State of Official”**, on the question as to who was in a position legally to raise the issue of immunity, the Special Rapporteur emphasized that only the invocation of immunity or a declaration of immunity by the State of the Official and not by the Official himself, constituted a legally relevant invocation or declaration capable of having legal consequences.
- 7.105 In order for immunity to be invoked it was vital that the State of the Official should know that criminal procedural measures were in fact being taken or planned in respect of the official concerned. Accordingly, the State that was planning such measures was obliged to inform the State of the Official in this regard.
- 7.106 On the duty to **“notify”**, the Special Rapporteur drew attention to a distinction that ought to be made based on categories of State Officials enjoying immunity *rationae personae* on the one hand and those enjoying immunity *rationae materiae* on the other. In respect of the Troika, a foreign Head of State or Head of Government or the Foreign Minister, the State exercising criminal jurisdiction itself must consider, *proprio motu*, the question of immunity of the person concerned and determine the position within the framework of international law. Given the high political office these Officials hold, the State of the Official in that case, does not bear the burden of raising the issue of immunity with the authorities of the State exercising criminal jurisdiction.
- 7.107 On the other hand, in respect of persons enjoying immunity *rationae materiae* it was pointed out that the burden of invoking immunity resided in the State of the Official. If the State of such an official wish to invoke immunity in respect of that official it must inform the State exercising jurisdiction, that the person in question was its official, acted in an official capacity and enjoyed immunity, facts which were essentially within the knowledge of the official's State. Otherwise, the State exercising jurisdiction was not obliged to consider the question of immunity *proprio motu* and therefore might continue criminal prosecution.
- 7.108 Dr. Rohan Perera while addressing the question of **“waiver of immunity”** said that the Special Rapporteur noted that the right to waive immunity of an official was vested in the State and not in the official himself. However, when the Head of State or Head of Government or the Foreign Minister waive immunity with respect to himself, the State exercising criminal jurisdiction was entitled to assume that such was the wish of the State of the official, at least until it was otherwise notified by that State.
- 7.109 On the issue whether waiver should be expressed or implied, Special Rapporteur was of the view that the waiver of immunity of a serving Head of State or Government or Foreign Minister must be expressed. A waiver of immunity of officials other than the Troika, but who enjoyed immunity *rationae personae*, of officials who enjoyed immunity

rationae materiae, may be either expressed or implied. Implied waiver in this case, might be imputed *inter alia* from the non invocation of immunity by the State of the official.

7.110 As regards the response within the Commission to the Special Rapporteur's Third Report was that the analysis contained in the report was convincing and logical. However, two aspects arising from the Third Report attracted particular comment within the Commission. These were:

- (a) question of substantiation of immunity; and
- (b) implied waiver through subscribing to an international treaty

7.111 (a) Substantiation of Immunity

7.112 Dr. Rohan Perera said that at the Commission, commenting on the substantiation of immunity, in respect of immunity *rationae materiae*, several members adverted to the Special Rapporteur's observation that it was the prerogative of the State of the official to characterize the conduct of the official as being "official conduct of the State", and at the same time that the State exercising criminal jurisdiction did not have to "blindly accept" such a characterization and took the view that such a conclusion seemed "rather broad and unclear." These members stressed that it was necessary to find the balance. Each case had to be assessed on its merits. It was pointed out that the use of terms such as "prerogative" and suggesting that there was a "presumption" arising out of the mere appointment of an official, may be going too far.

7.113 In that regard reference was also made to the ICJ Advisory opinion on the *Immunity of Special Rapporteur of the Commission on Human Rights case*, which was used as confirmation of the general proposition that if the official capacity of the official and the official nature of his acts was manifest in a specific situation, the burden to demonstrate that he was acting in an official capacity "was significantly alleviated".

7.114 (b) Implied Waiver Through Subscribing To An International Treaty

7.115 Dr. Rohan Perera said that the Special Rapporteur's assertion that a State's consent to be bound by an international agreement establishing universal jurisdiction for grave international crimes, does not imply consent to the exercise of international criminal jurisdiction in respect of its officials and therefore did not constitute an implied waiver of immunity, also generated some discussion within the Commission. While some members supported the view that there was a general reluctance to accept an implied waiver, based on the acceptance of an agreement unless there was a manifest expression of a clear intent to waive immunity, some others took a contrary view.

7.116 According to the latter view the conclusion of an agreement establishing universal jurisdiction, with *aut dedere aut judicare* provisions and establishing criminal jurisdiction for grave international crimes, without any distinction based on official capacity of the perpetrators, pointed to a construction that the State parties intended to waive immunity. However, it was also pointed out by other members, that unless there was express

provision on waiver of immunity, such a broad inference, based on mere silence in the treaty should not be lightly drawn on implied waiver.

- 7.117 The 6th Committee debate on the topic “Immunity of State Officials” concentrated on the Second Report of the Special Rapporteur and substantive issues contained therein such as the general orientation of the topic, scope of immunity and possible exceptions for grave crimes. The lack of attention to the procedural issues raised in the Third Report which was less contentious in nature, was perhaps for the reason, (which was also apparent in the debate within the Commission), that it would be more proper to consider such procedural issues after the Commission had reached definitive conclusions with regard to the key substantive issues in the Second Report - these constituted the basic issues that needed to be resolved bearing on the general direction of the topic as a whole.
- 7.118 Dr. Rohan Perera said nevertheless, as the work of the ILC on that topic resumes at the 64th Session, the issues raised in the Third Report must also engage the close attention of the Asian-African States.
- 7.119 The Vice-President thanked Dr. Rohan Perera for his presentations and invited Prof. Djamchid Momtaz, former member of the ILC from Islamic Republic of Iran to make his comments on those two topics.
- 7.120 **Prof. Djamchid Momtaz, former member of the ILC from Islamic Republic of Iran** thanked the Secretary-General for asking him to make his observations on those two important topics of ILC. He said that he regretted not having any sitting member of ILC representing at the Fifty-First Session of AALCO which would have given more insight into first part of the Sixty-fourth session of the ILC. He recalled that as referred in the Statutes of AALCO, progressive development and codification of international law were very significant. In that regard, it was essential that Member States of AALCO had to respond effectively to the ILC’s queries as and when raised by the Special Rapporteur. He gave an example with regard to the topic of obligation to extradite or prosecute (*aut dedere aut judicare*), wherein one important question raised by the Special Rapporteur was “if the practice of State regarding the question of obligation to extradite or prosecute was based on treaty obligation or customary international law”.
- 7.121 He raised two important issues. Firstly, on “Protection of Persons in the Event of Disasters” he said that one could not question the real nature of sovereignty of States which has rights and obligations. It was without doubt that States had absolute sovereignty; however the question remained as to whether it was not the right to offer assistance but does the States has the duty to offer assistance (not the affected states). The scope of the obligation imposed in the territory where disaster had taken was restrictive. Such an obligation was, however, limited only to the subjects of international law, excluding non-governmental organizations.
- 7.122 On immunity of State officials from foreign criminal jurisdiction, there was a need to make important distinction between *lex lata* and *lex ferenda*. Also, it was required to codify the existing customary practice of States in use. The dispute between Germany

and Italy in the ICJ, it was insisted that decision on immunity of States before national tribunals referred only to acts committed by armed forces of a state which was outside its territorial jurisdiction. The decision of the court of all actions imperium of States and does not make distinction between armed forces. That decision of the ICJ insisted on the jurisdictional immunity of state before national tribunals.

- 7.123 In the ensuing deliberations the delegations from **People’s Republic of China, Indonesia, Japan, Islamic Republic of Iran, Malaysia, Republic of Korea, Kingdom of Saudi Arabia, State of Kuwait, and India** made their statements.

Second Half-Day Special Meeting on “Responses to Piracy: International Legal Challenges” Jointly Organized by the Government of Federal Republic of Nigeria and the AALCO

- 8.1 A Half-Day Special Meeting on “**Law of the Sea - Responses to Piracy: International Legal Challenges**” in conjunction with the Fifty-First Annual Session of AALCO was jointly organized by the Government of the Federal Republic of Nigeria and the AALCO. The meeting deliberated upon a wide range of issues pertaining to piracy, its root causes, its impacts on the development of States, the response of the international community and the avenues for regional and international cooperation in the fight against piracy.

- 8.2 **Dr. Xu Jie, Deputy Secretary-General of AALCO** made the introductory remarks. While drawing attention to the 30th Anniversary of the UN Convention on the Law of the Sea (UNCLOS, 1982) that is being celebrated this year, he highlighted the contribution of AALCO towards the creation of the international law of the sea as embodied in UNCLOS 1982. In his view, the contribution of AALCO consisted of the following three things;

- Providing data on economic, oceanographic, mineralogical, and engineering aspects of the various uses and resources of the sea;
- Informing Member States of the developments in international negotiations on a continual basis; and
- Most importantly, helping the developing nations to forge a united position on the diverse facets of law-making diplomacy.

- 8.3 In this regard, he also pointed out that the new concepts such as the Exclusive Economic Zone, which are an integral part of UNCLOS, was born in the cradle of AALCO during its deliberations held on this issue in the 1970’s. He added that once the Fifty-First Annual Session adopted a Resolution commemorating the 30th Anniversary of the UNCLOS, the same would officially be sent to the UN General Assembly which is planning to adopt a Resolution on the 30th Anniversary of UNCLOS. This Resolution, which would make an explicit reference to the contribution of AALCO to the UNCLOS in it, would provide an opportunity for the General Assembly to officially recognize AALCO’s contributions to the creation of UNCLOS, he opined.

- 8.4 Drawing attention to the international law of maritime piracy as embodied in UNCLOS, he stated that the definition of piracy contained in it had four components: (1) an act of

violence, detention or theft; (2) on the high seas ; (3) committed for private ends; and, (4) by one private vessel against another vessel. This definition reflected customary international law, and hence, applied to all the States irrespective of treaty membership, he added. Pointing out the flaws obtaining in the UNCLOS law, he noted that though UNCLOS confirmed the duty of all States to cooperate to *suppress* piracy, made the actual *prosecution* of pirates discretionary and that it included no express provisions on transferring suspects to other jurisdictions, nor any requirement that States have adequate national laws for prosecuting pirates, he explained.

- 8.5 Elaborating the possible solutions to the menace of piracy, he remarked that there are three main areas that needed to be strengthened substantively in the fight against piracy. First, States should, among other measures, consider enacting adequate national legislation to criminalize all acts of piracy and armed robbery at sea as well as providing for effective and modern procedural laws that are indispensable for the suppression of piracy. Second, at the international level, States should try to reinforce the international legal framework by removing any flaws that are found in it. They should also work towards strengthening international cooperation so that the numerous complexities involved in different national systems could be overcome. Thirdly, the root causes of piracy such as political instability, lack of economic development needed to be addressed adequately, he clarified.
- 8.6 The Vice-President then invited the Panellists to make their presentations on their respective topics.
- 8.7 The first presentation was made by **Judge Albert J. Hoffmann, Vice-President of the International Tribunal for the Law of the Sea (ITLOS)** who at the outset recalled the important contributions that AALCO had made, first, in the negotiations leading up to the adoption of UNCLOS 1982 and thereafter in the setting up of institutional arrangements envisaged in the Convention as well as promoting the Convention amongst its Member States towards achieving universal acceptance and participation. He held the view that it was therefore fitting that we paid tribute to AALCO and its Member States this year on the occasion of the 30th Anniversary of the adoption of UNCLOS.
- 8.8 While noting that though the problem of maritime piracy was a centuries - old practice with its heydays in the seventeenth and eighteenth centuries, there has been resurgence in the activities of pirates in recent years. According to the figures published by the International Maritime Organization (IMO) and the International Maritime Bureau (IMB) the number of acts of piracy and armed robbery at sea has reached alarming levels not only seriously affecting international trade and maritime navigation but also resulting in loss of life and livelihood of seafarers, he added. He held the view that from these statistics it could be understood that many attacks occur in areas under national jurisdiction viz. near coasts (territorial waters) in straits and even in ports, outer harbour works and at the quayside (what is known as internal waters). When such attacks are carried out in these areas they are subject to the jurisdiction of the coastal State and no other State would be able to exercise jurisdiction even if the latter's ship or nationals are involved. State jurisdiction over ships, whether in terms of policing or enforcement or in

terms of prosecution does not as a rule apply to the territorial waters of another state except as provided for in article 27 of UNCLOS, he clarified. Furthermore, he added that these acts or attacks are not regarded as 'piracy' under International Law and they are classified as "armed robbery at sea", a crime over which only the coastal State has jurisdiction and the right to prosecute. Such acts also did not fit the definition of piracy and could therefore not be considered a crime under international law over which any state may exercise jurisdiction (known as universal jurisdiction), he reasoned.

- 8.9 In this regard, he pointed out that universal jurisdiction applied only in the case of crimes under customary international law, in respect of which all states have the right to prosecute. Such crimes are limited to piracy, slave trading, war crimes, crimes against humanity, genocide, and torture. There are many international crimes that have been created by multilateral treaties, which confer wide jurisdictional powers upon States parties. Piracy is therefore recognized as an international law crime and subject to universal jurisdiction, he observed. Although already established as crime under customary international law, the first comprehensive definition of piracy was codified in the 1958 Geneva Convention on the High Seas (article 14 to 21) and later adopted without amendment in the UNCLOS (articles 100 to 107) which might now be regarded as representing the current law of piracy both as conventional and general international law, he clarified.
- 8.10 In his view, the existing rules for the suppression of piracy have proven to be inadequate to respond to modern-day attacks on shipping and threats to maritime navigation and security. Elaborating this, he pointed out that one of the major deficiencies is that the definition of piracy is too narrow in its scope and lacked clarity and that according to Article 101 of UNCLOS, only illegal acts of violence and detention, or acts of depredation, committed "for private ends" counted as piracy. Another restriction was that the act of piracy must be committed by the crew or passengers of a private ship against another ship (the so called "two ships" requirement). The seizure of a ship by its crew or passengers is excluded from the definition of piracy. This means if a ship is taken over by its crew or passengers that results in violence or killing of those on board or the depredation of cargo and property, a foreign State would lack jurisdiction to intervene since such attacks do not constitute acts of piracy according to the definition and the matter would have to be dealt with under the jurisdiction of the flag state, he explained further.
- 8.11 Drawing attention to the third limitation, he observed that, only acts committed on the High Seas might qualify as piracy thereby limiting piracy to the High Seas enabled a State to exercise jurisdiction over pirates without interfering in the sovereignty of any other state. Although Article 101 of UNCLOS refers to the High Seas only, it also included the Exclusive Economic Zone (EEZ) through the application of Article 58 of the Convention. The EEZ also encompasses the contiguous zone by reason of the spatial extend of the zone as defined in article 55, he clarified.
- 8.12 This narrow definition of piracy and its requirements as outlined above in all its complications, in his view, have led to the creation of new rules by international

agreements to specifically deal with these situations. He was of the view that the inadequacies of the piracy regime had been clearly demonstrated in instances of hijacking at sea where no other ship was involved and the motive of the attack was for political purposes thus not meeting the 'two ship' and 'for private ends' requirements in the definition of piracy. He gave two examples to substantiate his case. In his view, it was only in response to *Achille Lauro* incident of 1985 that the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA) Convention was adopted. As a second example, he stated that it was only in direct response to the September 11, 2001 terrorist attacks when aircrafts were used as weapons, that the 2005 Protocol to the SUA Convention was adopted with the objective of expanding the scope of the Convention and to define more broadly the offences covered therein.

- 8.13 However he went on to add that though the SUA Convention and the 2005 Protocol filled the gaps left by the narrow definition of piracy occurring in UNCLOS, he was of the opinion that the SUA Convention and its Protocols are only binding between those States that are party to these legal instruments and their provisions therefore have no general application. Furthermore, the SUA Convention and Protocol also provided limited sanction against parties who failed to fulfil their obligations and who declined to act against alleged offenders by neither extraditing nor prosecuting them.
- 8.14 Drawing attention to another important gap left by UNCLOS, he pointed out that UNCLOS does not require that States enact domestic anti-piracy laws, nor does it provide model laws that States can use should they wish to enact legislation for combating piracy. In his view, what this meant was that relatively few states have anti-piracy laws in place and where such laws existed there appears to be a lack of harmonization between these laws. He was of the view that since UNCLOS gave so much of discretion to States to enact domestic legislation; this created a lack of uniformity in the laws and their application in various jurisdictions.
- 8.15 As regards the need to have international and regional cooperation in the fight against piracy, he stated that it is essential for states, organizations and enforcement agencies to work together and to coordinate their efforts towards achieving their goals and that cooperation between States organizations and enforcement agencies were crucial to resolving piracy problems. This was more so in the areas of information-sharing, enforcement crime investigation, prosecution and punishment, he added. In this regard, he also made reference to Article 100 of the UNCLOS under which States Parties are under an obligation to cooperate to the fullest possible extent in the repression of piracy on the high seas.
- 8.16 Notwithstanding all the impediments and shortcomings found in the piracy regime, serious efforts have been made by a number of institutions and bodies to combat piracy. The United Nations and the International Maritime Organization (IMO) are among the organizations active in this endeavour, he pointed out. Among other bodies/institutions that are engaged in combatting piracy, he made reference to the Contact Group on Piracy off the Coast of Somalia; the United Nations Office on Drugs and Crime (UNODC); the

IMO; the International Maritime Bureau of the International Chamber of Commerce; the Djibouti Code of Conduct and others.

- 8.17 As regards the role that the United Nations Security Council has been playing, he stated that it has adopted a number of resolutions to tackle piracy and to ensure an effective response by the international community towards ensuring maritime safety and security. While making a specific reference to the UNSC Resolution 1918 adopted in 2010, he pointed out that it had requested the UN Secretary General to prepare a report on possible options to further the aim of prosecuting and imprisoning persons responsible for piracy and armed robbery at sea off the coast of Somalia including in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements. Though this Report proposed a number of options including the enhancement of UN assistance to States in the region, establishment of a special chamber, establishment of a Somali Court, establishment of a Regional Tribunal, establishment of an international tribunal and the establishment of an international tribunal by a Security Council Resolution under Chapter VII, he pointed out that except for the last option, all the other options only relate to the problem of piracy occurring in the coast of Somalia and did not take into account that piracy does occur in other regions such as West Africa, South and Southeast Asia and the Caribbean.
- 8.18 While dwelling on the possible solutions that could be found to combat piracy, he made reference to a number of short-term measures that needed to be taken. This included, regional cooperation, enactment of domestic legislation and criminalizing acts of piracy, armed robbery and related crimes at sea, an effective criminal justice system and as regards Somalia, real and meaningful efforts have to be taken towards state-building and reconstruction.
- 8.19 **Ms. Mariam Sissoko**, the Country Representative of the United Nations Office on Drugs and Crimes (UNODC) made the next presentation that focussed on the role of her Organization in combating piracy. She stated that the mandates of UNODC are embodied in several Conventions, particularly, the three international drug control conventions (1961, 1971 and 1988); the UN Convention against Corruption; the UN Convention against transnational Organized Crime and the UN Global Counter-Terrorism strategy. Several Security Council resolutions also provide a basis for its interventions, she added.
- 8.20 While noting that acts of piracy continue to be a serious issue of concern in East Africa, she pointed out that pirates might often be linked to other forms of organized crime and that a parallel economy has been created, leading to a growing dependency of coastal communities on funds obtained from piracy. Drawing attention to the role of UN Security Council in the fight against piracy, she stated that the UNSC Resolution 1816 of 2008 provided a key international response to piracy off the coast of Somalia and allowed foreign ships to take action within the territorial waters of Somalia to repress piracy and armed robbery against ships in the same way that international law did in respect of high seas, she added. While drawing attention to the Contact Group on Piracy off the Coast of Somalia, which was established pursuant to Resolution 1851 of the UNSC to suppress

piracy off the coast of Somalia, she stated that his Organization is an active participant in the contact group and that successive SC Resolutions on the issue acknowledged the role of UNODC in providing technical assistance to States fighting piracy. This specifically pertained to the development of the necessary legal frameworks and judicial and law enforcement capacities that would enable States to prosecute and imprison pirates, she added. Through its Counter-Piracy programme launched in 2009, UNODC provided substantial support to Countries of the region in their efforts to bring suspected pirates captured off the coast of Somalia to justice, she added. UNODC also has started implementing the Piracy Prisoner Transfer Programme that was endorsed by the UNSC in its Resolution 2012 adopted in 2011.

- 8.21 Drawing attention to the problem of piracy in the West African Coast region, she made a reference to the 2010 Annual report of the International Maritime organization (IMO) which had listed the West African Coast among the top six piracy hotspots in the world. On the need for cooperation in tackling the problem of piracy, she observed that a Regional Summit of Gulf of Guinea Heads of States called for by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), and the Gulf of Guinea Commission should be convened in 2012 with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea.
- 8.22 As regards the potential role that UNODC could play in this regard, she stated that his Organization stood ready to assist the countries of the Gulf of Guinea both at the national and regional level. The Organization would also be ready to assist other countries upon their request, to develop maritime security strategies and enhance national legal frameworks.
- 8.23 **Commodore Austin Owhkhor-Chuku of the Federal Republic of Nigeria**, who made the next presentation, discussed a number of issues on the theme: ‘Piracy within the West African Coast of the Gulf of Guinea’. At the outset he pointed out that the aim of his presentation was to examine acts of piracy within the Gulf of Guinea. Towards this end, he had divided his presentation into four areas.
- 8.24 While explaining the first part of his presentation which was on the ‘Location and Strategic Importance of the Gulf of Guinea’, he mentioned that, strategically speaking, the Gulf has both global and regional importance particularly as a major trade and shipping route linking the North and South Atlantic in one hand and to some extent, the continents of South America and Africa (East to West Coasts respectively). Furthermore, in his view the Gulf provided an ample sea area for military exercises, researches and rich ecosystems and that the region has come to be regarded as one of the world’s top oil and gas exploration hotspots, he added.
- 8.25 While noting that the full potentials of this great region could not be fully achieved due to the pervasive criminality by pirates operating in this area, he observed that to partly solve the problems of the region, the Gulf of Guinea Commission had been established on 3 July 2011 whose membership was limited to sovereign states bordering the Gulf of

Guinea. These included: Nigeria, Cameroon, Equatorial Guinea, Gabon, Republic of Congo, Democratic Republic of Congo, Sao Tome and Principe and Angola. In his view, the Commission would: create mutual confidence and trust among members; Create an atmosphere of mutually beneficial economic activities pursued peacefully by their citizens; Harmonise the exploration of national resources (fishing, oil and gas) in overlapping areas of Exclusive Economic Zones; Provide framework for monitoring and controlling environmental degradation; Articulate and coordinate common positions on issues of interest to enhance peace and stability in the region.

- 8.26 As regards the second part of his presentation which was on ‘Piracy within the Gulf of Guiana’, he stated that piracy in the Gulf of Guinea affected a number of countries in West Africa and was fast becoming an issue of international concern. While trying to substantiate this, he referred to the Report of the UN International Maritime Organization and stated that the year 2010 witnessed forty five incidents and 2011 had witnessed sixty four incidents.
- 8.27 While referring to the concern expressed by the international community over the rising spate of piracy attacks in the Gulf of Guinea, he pointed out that in November 2011, the UN Secretary General Ban Ki-Moon had assembled a team to examine the situation of piracy in the region. As a result, recommendation was made to convene a regional summit to form a united front by affected African countries to tackle piracy he added. He held the view that that the increasing incidents of piracy in the Gulf had triggered the Nigerian President Dr. Goodluck Jonathan and his Beninois counterpart, Thomas Boni Yani to launch joint naval operations.
- 8.28 On the third part of his presentation that was on ‘Other Atrocities Committed in the Gulf’, he noted that apart from piracy, a number of other atrocities also are committed in the region that included; Illegal oil bunkering, Hostage-taking, Drug trafficking, Human trafficking, Terrorism and militancy, Poaching, Smuggling in contrabands, Gun running and environmental degradation. In this regard, he also stated that the most unfortunate part in this episode was the encouragement and/or sponsorship that some unscrupulous Western and Asian business piracy and militancy within the region extend to boost their stakes in the “Monkey Business” in oil and other issues. Hence, tackling piracy and other atrocities committed within the region would require the concerted effort and assistance of the UN, US and EU, acting sincerely, faithfully and committedly, he added.
- 8.29 As regards the way forward that formed the last part of his presentation, he had a number of recommendations to offer. These included, a comprehensive and united action by the states within the region against pirates, terrorists, militants and their sponsors or patrons; the establishment of a Maritime Development Bank which would ensure the availability of capital to undertake innovative research programmes, technology and logistics acquisition; Development of maritime awareness curriculum in schools, employment generation strategy by the respective regional governments and others.
- 8.30 **H.E. Amb. Y. Ishigaki, the Leader of Delegation of Japan** at the outset stated that piracy has in recent times, had re-emerged as one of major issues facing the world and

that despite the efforts of the international community to address this issue, it remained to be a real and grave threat to the safe navigation of ships. He said that Japan's economy to a great extent depended on import of energy resources and raw materials and export of manufactured goods, all of which hinged on security of sea lanes. For this reason, for many years, Japan had been tackling with the question of piracy in Malacca Strait in cooperation with the countries of Southeast Asia and upon the surge of piracy along the coast off Somalia; Japan had been actively participating in the international efforts to combat piracy, he stated.

- 8.31 Amb. Ishigaki's presentation was divided into the following four parts: (i) a brief overview of the current situations of piracy, (ii) the international legal regime regarding piracy as well as some major international and regional frameworks aimed at coordinating the work of the international community in addressing the issue of piracy, (iii) the challenges, both legal and practical, and identify the major issues that need to be addressed in order to ensure effective anti-piracy responses of the international community and (iv) Japan's anti-piracy efforts and experiences.
- 8.32 While giving an overview of the current situation of piracy, he mentioned that according to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), in 2011, there were 439 incidents of piracy and armed robbery at sea worldwide, down by 1% from 2010. Geographically, of these, 237 incidents occurred in the Gulf of Aden and surrounding areas off the coast of Somalia, which was about 54% of the incidents worldwide.
- 8.33 In comparison, there were 80 incidents in South East Asia, including the Straits of Malacca and Singapore, which was about 18% of those, occurred worldwide. As for the statistics in 2012, according to the IMB, there had been 157 attacks and 18 hijacks worldwide as of 13 June 2012. 62 attacks and 12 hijacks occurred in the waters off the coast of Somalia, involving 219 hostages.
- 8.34 He said that as the special meeting on this subject was taking place in Africa, and given the overwhelming number of incidents occurring in waters off the coast of Somalia, in his presentation he focused on piracy in this region.
- 8.35 In the second part of his presentation Amb. Iskigaki outlined the international anti-piracy laws and the efforts by the international community. Drawing attention to the definition of piracy contained in UNCLOS, he said that this definition contained three important conditions regarding the legality of the acts of violence. This included; committed for *private ends*; committed by the crew or the passengers of a *private ship* or a *private aircraft*; and directed on the high seas, *against another ship or aircraft*, or against persons or property on board such ship or aircraft. On the issue of universal jurisdiction, he pointed out that Article 105 of the UNCLOS provided for universal jurisdiction in that, it stipulated that every State may seize a pirate ship or aircraft and arrest the persons and seize the property on board. It further stipulated that the courts of the State which seized pirates may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, he added.

- 8.36 As regards the types of Ships and aircraft which were entitled to be seized on account of piracy, he referred to Article 107 of UNCLOS that stipulated that “a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.” Thus, it was only the warships, military aircrafts, and/or government ships and aircraft that were authorized to carry out the seizure and arrest, he clarified.
- 8.37 In this background he briefly outlined the various international and regional anti-piracy efforts to coordinate the actions of States. These frameworks, which served to supplement the international anti-piracy regime, included: UN Security Council Resolutions; Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). He informed that in November 2011 the then Prime Minister Koizumi of Japan had proposed to establish a legal framework to promote regional anti-piracy cooperation in Asia, and Japan led the negotiations to conclude the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, a.k.a. ReCAAP, and the agreement was concluded November 2004. Explaining further, he brought attention to the fact that it was the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia and that till date, 17 States had become Contracting Parties to the ReCAAP. The main feature of the Agreement was the establishment of ReCAAP Information Sharing Center (ReCAAP ISC) to facilitate exchange of information among the ReCAAP Focal Points. ReCAAP ISC was officially launched in Singapore on 29 November 2006, he elaborated.
- 8.38 On the various international and regional anti-piracy efforts, he also made reference to; IMO Djibouti Meeting: Contact Group on Piracy off the Coast of Somalia (CGPCS). The later initiative, Amb. Iskigaki noted, was taken pursuant to UN Security Council Resolution 1851 mentioned earlier, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. He further noted that the G8 Foreign Ministers’ Meeting was recently held in April 2012 in Washington, the Ministers agreed to the Chair’s statement reiterating “their firm condemnation of maritime piracy and armed robbery at sea off the coast of Somalia and called for the TFG to enact counter piracy legislation”. The Ministers also recognized that the issues of piracy and armed robbery at sea “can only be effectively addressed through broad, coordinated, and comprehensive national and international efforts, along with the strengthening of coastal states’ as well as regional organizations’ capabilities”, he added.
- 8.39 On the various international and regional anti-piracy efforts, he also made reference to: Counter-piracy activities that included patrolling the Internationally Recommended Transit Corridor (IRTC) in the Gulf Aden. He also noted that in the Gulf of Aden, there were coordinated efforts by organizations and independent States to patrol the area designated as the Internationally Recommended Transit Corridor (IRTC). Currently the EU Naval Force (EU NAVFOR), EU and the Combined Task Force 151 of the Combined Maritime Forces (CMF CTF-151) had frigates, destroyers and surveillance aircrafts

deployed. There were also naval ships of independent States, such as Japan, Russia, India, China, Malaysia, Saudi Arabia, Australia and Iran, joining the coordinated effort to counter-piracy.

- 8.40 Thereafter, he briefly touched upon the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or SUA Convention, adopted in March 1988. While it was not an anti-piracy framework, it was a legal instrument aimed to prevent unlawful acts against passengers and crews on board ships, he stated. The SUA criminalized certain unlawful acts against ships, and it obliges State Parties to establish jurisdiction over the offences set forth in the Convention. The Convention further obliges State Parties either to extradite or prosecute alleged offenders, he added. He also made reference to 2005 Protocol amending the SUA Convention, which added terrorism and transportation of weapons of mass destruction using ships as offences under the Convention.
- 8.41 Thereafter, he discussed the legal and practical challenges of combating piracy. In this regard, he drew attention to two of the provisions of UNCLOS, namely Article 100 and 105 that dealt with obligation to cooperate and right of States to prosecute pirates. In this regard, he stated that the obligations of states are not clearly mentioned. Therefore, he was of the view that, in order to ensure effective seizure, arrest, extradition, prosecution and punishment of pirates, major challenges under the current legal framework needed to be met and that included the development of the judicial and other infrastructures including domestic legislation in each State. He also brought attention to some of the political challenges confronting the fight against piracy and the need to address the issue of impunity.
- 8.42 Finally, Amb. Ishigaki enumerated the efforts and experiences of Japan. He informed that Japan had enacted 'Law on Punishment of and Measures against Acts of Piracy' in July 2009, which was one of the first comprehensive piracy legislation in the world after the entry into force of the UNCLOS. Another feature of Japan's anti-piracy law, in his view, was that it established a truly universal jurisdiction: under this law, acts of piracy were punishable even if it was not committed by or against Japanese nationals, and even if the suspects are arrested by non-Japanese warships etc. and transferred to the Japanese authorities, he clarified. Further, under the anti-piracy law, Japan had two destroyers of the Maritime Self-Defense Force (MSDF) deployed in the waters off the coast of Somalia. So far, they had escorted 320 times, 2,560 ships (as of 6 June 2012).
- 8.43 As regards the assistance that Japan has been extending to other countries towards strengthening their maritime capacities, he opined that Japan had contributed 14.6 million US dollars to the IMO, which is to be utilized for establishment of a training center in Djibouti. Japan had also assisted maintenance and operation of piracy information centres in Yemen, Kenya and Tanzania. Further, Japan had contributed 3.5 million US dollars to the trust fund to support prosecution pirates. Japan had also invited coast-guard officials from Yemen, Oman, Kenya, Djibouti and Tanzania for training in Japan, he added further.

- 8.44 As regards addressing the root causes of piracy in the region, he was of the opinion that it was important to work towards stabilizing the political, economic and social situations in Somalia and that Japan, in this regard, has been extending assistance to Somalia, in areas such as improvement of security situations, humanitarian assistance and development of infrastructure.
- 8.45 He added that it was essential that the international community too provided coordinated and unified assistance to Somalia in order to truly address the issues of piracy. Towards this end Japan was planning to take-up the issue of piracy as one of the agenda items for TICAD V to be held next year in June, he added.
- 8.46 **Mr. Mathew Egbadon, Secretary/Legal Adviser at the Nigerian Maritime Administration & Safety Agency (NMASA), Federal Republic of Nigeria** spoke on behalf of its Director General Mr. Ziakede Patrick Akpobolokemi. His presentation focussed on the topic, 'Piracy in the West African Coast'. He stated that maritime piracy, which has emerged today as a major threat to shipping and related activities globally, assumed renewed global focus during the period 2008 to 2009 since this period witnessed a surge in Piracy that had not been seen in generations, with the rumblings in the Horn of Africa. Piracy and Armed robbery at Sea has threatened vital sea lanes of communication, disrupted commerce, encouraged political aggression and insurgency and in the process constricted socio-economic development. He said that those worrisome consequences had led to the current global efforts aimed at assuaging the threats posed by the menace to the barest minimum, he added.
- 8.47 While giving a brief overview on the problem of piracy in the West African sub-region, he noted that the activism in the definition of the concept particularly in the context of incidents in West Africa. Maritime zones would be considered and discussed in the report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea with the attendant recommendations in marching a way forward to bid to rid the West African region of those "enemies of the Maritime domain".
- 8.48 He stated that Article 101 of UNCLOS 1982 defined piracy on the High Seas. In his view, there were essentially five maritime zones in International law that are relevant to our discourse which included; Internal waters (including the ports); The territorial seas; The Archipelagic waters, The contiguous zones; The Exclusive Economic Zone; and The High Seas. He mentioned that the characteristics of each maritime zone and possible maritime offences, in internal waters, was the narrow belt of water running along the coast, lying landward of the baselines from which the breadth of the territorial sea was measured. The Coastal States exercised full sovereignty over that area and was regarded in International law, as equivalent to land. The Territorial seas was also an area where the coastal state exercises sovereignty, but subject however, to the right of innocent passage of foreign ships, he added. He was of the view that in archipelagic waters, the coastal state had sovereignty subject to the right of innocent passage of foreign ships and that the Exclusive Economic Zone was a product of compromise by those who negotiated the 1982 UNCLOS treaty. The EEZ was the body of waters beyond the territorial sea, up to a maximum of 200 nautical miles from the baselines from which the breadth of the

territorial sea was measured. The High Seas were those parts of the seas that were not included in the EEZ, in the territorial sea or internal waters of a state, or in archipelagic waters of an archipelagic state, he clarified.

- 8.49 With regard to “Piracy in West Africa (Gulf of Guinea)”, he reiterated that piracy was an age-old scourge and the incidents had risen significantly and have become diverse in form in the West African Region since 2010. In his view, this has made the region the second most acute Piracy prone region on the African continent and among the top six piracy hotspots in the world. He also explained this in terms of numbers by pointing out the fact that the IMO had confirmed that 58 attacks had been reported in the region during the first ten months of 2011 as opposed to 45 in 2010. Twenty one of the reported attacks in 2011 occurred off the coast of Benin, 14 off the coast of Nigeria, 7 off the Coast of Togo, 4 off the coasts of the Democratic Republic of Congo, the Republic of Congo and Guinea, 2 off the coast of Ghana and 1 off the coast of Angola and Cote D’Ivoire, he detailed.
- 8.50 Explaining why there was strategic importance attached to the Gulf of Guinea, the Panellist mentioned that those incidents of piracy unlike those off the coast of Somali should be viewed against the background of the Gulf of Guinea as a region with abundant energy resources typified by the proximity of large oil producers such as Nigeria and Angola, and other oil producers such as Congo Brazzaville, Cameroon, Gabon, Equatorial Guinea and lately Ghana. Africa provided a substantial percentage of the United States oil requirement and that trend was expected to be sustained as the western world latches on to fuel sources other than the Middle East. It was also pertinent to observe that countries in the Gulf of Guinea such as Angola were relatively close to most European and US Refineries located on the East Coast, a fact which significantly reduces shipping costs. Apart from Hydrocarbon, there are other natural resources, fisheries and agricultural commodities located in the region with significant economic importance to the increasing food security challenge globally.
- 8.51 He held the view that the countries in the Gulf of Guinea with a coastline of about 5,500 km provided a significant market for imported goods which made the sea lanes ever busy. All of these strategic features made the region a critical piece in the global Economic and Political jigsaw puzzle. He briefly said about the UN Assessment Mission of Piracy in the Gulf of Guinea. On July 2011, President Boni Yayi of the Republic of Benin appealed to the International Community for help to fight Piracy in his country and throughout the Gulf of Guinea. That request was contained in a letter to the Secretary-General of the United Nations. Subsequently on October 19 during an open debate in the Security Council on the matter of “Peace and Security in Africa: Piracy in the gulf of Guinea” convened by Nigeria in its capacity as President of the Security Council, the Secretary General confirmed his intention to dispatch an assessment mission to the region and appealed to ECOWAS and ECCAS (Economic Community of Central African States) to work together to develop a comprehensive and integrated regional anti-piracy strategy for the Gulf of Guinea. The Committee report considered the scope of the threat noting that more than 5 million barrels of oil was produced per day in the region. That was in addition to the fact that the region supplied more than three quarters of the World supply

of Cocoa, aside the abundant riches in minerals. These “riches” and other political considerations had unfortunately accounted for the surge in those incidents which no country in the region could singularly confront. The report in that regard took cognizance of the efforts of the Nigerian government to assist neighbouring Benin Republic. He pointed out certain recommendations amongst others to combat Piracy in the Region.

- 8.52 While portraying the measures adopted by Nigeria to combat this menace, he stated that they included; the Support of the Regional Maritime Rescue Coordinating Centre (RMRCC); Maritime Domain Awareness Initiatives; Implementation of Long Range Identification and Tracking of Ships (LRIT), Establishing a Legal Framework that define *offence/Criminalization*, explain jurisdiction, nature and extent of punishment; Collaboration with Private Sector to Procure Boats (PPP); Collaboration of Relevant Sub-Regional Bodies; Funding, and Information Exchange and so on.
- 8.53 The Panelist concluded his presentation by expressing deep concern on the challenges posed by piracy and armed robbery at sea in the West African coast as in other parts of the globe. There was a compelling need to take urgent and pragmatic steps towards addressing this problem. It was his conviction that firstly there was the need for a strong government buy-in, supported by relevant private sector interests in the project to rid our waters of Piracy and armed robbery. The problems of poverty, food insecurity, political manipulations and rising insurgencies, as well as inequitable distribution of National resources must also be addressed in a bid to eliminate the root causes of the penchant for criminality in our waters, he elaborated. Finally, there was a need for the collaboration of Security Agencies and forces in the West African Coast and it was also necessary to collaborate for ensuring access to intelligence and relevant data. He expressed optimism that the totality of those efforts would no doubt go a long way in addressing the problem and significantly reduce the present persistence of the crime in West African waters.
- 8.54 After the presentations by the Panellists, the Delegations from **Indonesia, Kenya, Thailand, Tanzania, Malaysia , Sri Lanka, Saudi Arabia, Ghana, People’s Republic of China, India, and Republic of Korea** and made their statements. **The Leader of Delegation of Uganda** also made a general statement.
- 8.55 **The Leader of Delegation of Uganda** stated that though he had a lot of things to say, he would confine himself to issues relating to International Criminal Court (ICC). While narrating the problems that Uganda has been facing in recent years, he stated that the rebellion movement against his Government operating by the name Lord’s Resistance Army (LRA) had committed innumerable atrocities against civilians. In this regard, he recalled that the ICC had issued an arrest warrant for the leader of the LRA Joseph Kony and four of its leaders for war crimes and crimes against humanity committed in Northern Uganda. However, two of them had died during the proceedings and hence, charges against them were withdrawn, he noted.
- 8.56 As regards Uganda’s position in relation to ICC, he pointed out that Uganda is a Signatory to the Rome Statute and had adopted an International Criminal Court Act of 2010 that is consistent with the Rome Statute. He added that this law, which has

provisions for arrest and surrender of persons, also allowed Uganda to try many other crimes as well. However, he observed that Uganda had challenges in the application of ICC's jurisdiction. In this regard, he also drew the attention of the delegates to the efforts of African Union to have a regional court without supplanting the ICC. Finally he mentioned that he would be making a detailed presentation on this issue later.

Third Half-Day Special Meeting on “International Terrorism”

- 9.1 **Dr. Hassan Soleimani, Deputy Secretary-General** in his introductory statement highlighted the issues to be discussed in this Special Meeting are: (i) Challenges before the Ad Hoc Committee on International terrorism; (ii) International legal cooperation in criminal matters against terrorism; and (iii) countering financing of international terrorism. The Government of India while referring this topic to AALCO maintained that consideration of this item at AALCO would turn out to be relevant in the context of the ongoing negotiations in the AD Hoc Committee on elaboration of the Comprehensive Convention on International Terrorism.
- 9.2 The Ad Hoc Committee at its 48th meeting on the 15th of April 2011 focused on the definition of terrorism, without which certain areas of law seem to be lacking and have not resulted in effective implementation to combat terror. The definition must include under its ambit the various rules and principles of international law that safeguards human rights and dignity as well as fundamental freedoms. The framing of such a definition would only be possible with the experts of both the field as well as the Member states. Realizing that terrorism was a multi challenging phenomenon, the need for a comprehensive counter terrorism strategies, was also proposed. The UN Secretary-General H.E. Ban Ki Moon on the 3rd of June 2012 highlighted 4 key areas that the nations need to work on for tackling terror i.e., a) Tackling conditions favorable to the spread of terrorism, b) prevention of terrorism, c) strengthening up the States capacity to counter terrorism and d) promotion of inter community engagements.
- 9.3 The DSG further added that a special meeting of the Counter Terrorism Committee (CTC) took place on 18th September 2011 at New York which noted the compatible relation between terrorism and transnational organized crime including trafficking of illegal drugs, money laundering, illegal arms trafficking and resolved to monitor and assist to ensure the full implementation of Resolution 1373 (2001), with the support of CTED and to continue to focus on means to address the identified gaps and loopholes in the implementation of the resolution in cooperation with international, regional and sub-regional organizations by strengthening its role in providing technical assistance aimed at providing full implementation of the resolution. At the 66th session of the General Assembly of the UN, resolutions that would impact the formation of a legal regime to combat terrorism were adopted. At this session, the General Assembly had also considered the report of the Secretary General on measures to eliminate international terrorism.

- 9.4 **Dr. Rohan Perera, the Chairman of the UN Ad-Hoc Committee on Measures to Eliminate International Terrorism**, at the outset gave a brief introduction as to how the issue of terrorism was dealt with, first by the League of Nations and then, by the United Nations. He was of the view that the current initiatives undertaken under the aegis of the United Nations had been at two levels; firstly, the norm-creating role of the General Assembly, Specialized Agencies and its Ad-Hoc bodies, such as the Ad-hoc Committee on Measures to Eliminate International Terrorism, through which specific Conventions are adopted and secondly, the measures adopted by way of enforcement action by the Security Council under Chapter VII of the UN Charter. He stated that the primary thrust of his presentation would be on the first aspect, namely the norm-creating process in the UN Ad-Hoc Committee on Terrorism. This was because of his close association with this process as the Chairperson of the Committee, he clarified.
- 9.5 Explaining the definitional problems that have been plaguing the efforts to find a definition for terrorism, he remarked that at the core of this problem was the demarcation between ‘terrorists’ and freedom ‘fighters’. In his view, the dilemma confronting the UN initiatives could be summarized in the slogan: ‘*one man’s freedom fighter is another man’s terrorist*’. He held the view that due to this problem, the UN has adopted what is known as the ‘Sectoral Approach’ that involved criminalizing specific criminal acts. He also added that a number of Conventions had been adopted based on this ‘Sectoral Approach’ on various subjects such as unlawful acts against aircraft, safety of maritime navigation, hostage taking, terroristic financing and others. He was of the opinion that these Conventions had a common architecture in that they obliged State Parties to criminalize under their domestic laws, the specific acts covered under the Convention; to establish their jurisdiction over these acts and the fundamental obligation to ‘Extradite or Prosecute’.
- 9.6 While narrating the rationale for a Comprehensive Convention on Terrorism, he mentioned that it was mandated by the UNGA as a means of developing a comprehensive legal framework of Conventions dealing with international terrorism. The objective of the Convention, in his view, was to provide comprehensive coverage to terrorist crimes not covered under the existing Conventions and to adopt enhanced measures of cooperation and assistance between States. As regards the definition of terrorism contained in the draft text, he pointed out that the draft text proposed by the sponsor State India contained an operational definition of the term and that it covered specific criminal acts such as unlawful and intentional causing of death or serious bodily injury to any person, serious damage to public or private property when these acts are committed with a terrorist intent.
- 9.7 The Delegations of the Organization of the Islamic Conference (OIC) on the other hand, opted for a generic definition of the term and sought to have a clear distinction between acts of terrorism, and those acts committed in the course of exercising the right of self-determination. This was opposed by European States who favored an operational definition, he added. In the light of these divergent approaches to the Comprehensive Convention, the challenge before the Committee was to take the focus away from the definitional issues and to address the specific concerns that have arisen in the context of

the scope of application of the Convention. In view of these problems, the Committee had decided to follow a practical approach and that the negotiations are now proceeding on the basis of a compromise package known as a 'Choice of Law' provision that carves out the scope of application of the Convention rather than going down the politically sensitive path of attempting to draw distinction between acts of terrorism and an armed struggle for national liberation, he clarified. In his view, the key elements of the comprehensive package were as follows;

- Activities of 'armed forces', during an armed conflict as those terms are understood under international humanitarian law, are not governed by the Convention;
- Activities undertaken by the military forces of a State, in the exercise of their official duties, in as much as they are governed by other rules of international law, are not governed by the Convention.

9.8 The latter provision, sought to address the concerns of the Western States that official activities of State military forces, outside the context of an 'armed conflict' should not be governed by the Convention as other rules of international law, viz., principles of state responsibility would apply in such situations. Hence, he was of the opinion that the basic approach and rationale of the "compromise package" was the recognition of the fact that the comprehensive convention is not comprehensive in the absolute sense of the term, but that it would operate alongside other applicable legal regimes and sought to preserve the integrity of such other laws. Citing an example, he made reference to an element of the package that specifically provided that "this Convention is without prejudice to the Rules of International law, applicable in armed conflicts, in particular those rules applicable to acts lawful under International humanitarian law". The gist of this provision was summarized by him thus: the Convention would not criminalize, what is not prohibited under IHL. He was of the opinion that the fact that all delegations are now prepared to negotiate on the basis of the approach in the Co-ordinator's text was a positive step that needed to be underlined.

9.9 **Mr. Peter Terkaa Akper, SAN, Senior Special Assistant to the Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria** made a succinct presentation on the topic **Legal Response to Terrorism in Nigeria: Issues and Challenges in his introductory remarks said that** the subject matter is relatively novel to us in Nigeria and that our legal response can reasonably be adjudged to be at its infant stage, when compared to other jurisdictions like South Africa and the United Kingdom.

9.10 He mentioned that until, recently terrorism or the threat of terrorism was a negligible phenomenon in Nigeria. President Goodluck Ebele Jonathan, GCFR recently reiterated this position in his Democracy Day Address where he stated that "*... terrorism, a new menace, is totally alien to our way of life and culture; it has reared its head and is posing serious challenge*"⁶ Thereafter, he enumerated some instances of acts of terrorism that had occurred in Nigeria. The spate of bombings in the country however started on 1st October 2010 when terrorist struck near the eagle square where the independence

⁶ See Democracy Day Address by His Excellency, Dr. Goodluck Ebele Jonathan, GCFR Tuesday, 29th May 2012.

activities were taking place in Abuja. Since then, other bombing incidents were recorded in Jos, Bayelsa and Lagos.

- 9.11 He added that the Boko Haram sect had also added another dimension to the bombings as they routinely attacked Police stations, churches and Schools. But, the most profound of their terrorist activities was the UN House bombings in Abuja which attracted international condemnation. This, coupled with the Mutallab's attempted bombing of Delta Airline in December 2009, brought Nigeria to the global discourse on international terrorism. Although, acts of terrorism had been on the increase in the country, Nigeria did not have a comprehensive legislation on terrorism before June, 2011. This was despite the fact that Nigeria had ratified more than ten out of the 16 United Nations Terrorism Conventions.
- 9.12 He highlighted that the Nigerian Government's counter terrorism strategy was to confront all those threatening the nation's collective peace and security and bring the perpetrators to Justice. To give effect to that strategy, government responded to the menace of terrorism by taking steps to enact the Anti-terrorism legislation which had been in the works for about 5 years. The collective resolve of the government came to fruition with the enactment by the National Assembly of the Terrorism (Prevention) Act, 2011. In his presentation, Mr. Akper examined the legal regime that had been put in place to combat terrorism in Nigeria, the extent to which it complied with global standards and offered suitable recommendations where necessary to address growing terrorism threats in Nigeria.
- 9.13 In a brief overview he outlined the objectives of the Terrorism (Prevention) Act 2011 (TPA 2011) as "to provide for the prevention, prohibition and combating of acts of terrorism, 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 or Terrorism".⁷ TPA was divided into eight major parts, which included namely: (i)provision of acts of terrorism and related offences; (ii) prohibition of terrorist funding and seizure of terrorist property; (iii) provision of cooperation to other countries through mutual legal assistance and seizure of terrorist assets; (iv) provision of cooperation to other countries through extradition of suspects linked to terrorism; (v)investigative powers; (vi)prosecution; (vii)power to register or refuse registration of charities, and (viii)miscellaneous powers. Thereafter, he gave the salient features of the pertinent provisions enlisted in the Act.
- 9.14 One of the important features of the TPA was that in recognition of the effect of international terrorism, the TPA had empowered the President on the recommendation of the National Security Adviser or the Inspector General of Police to declare a person to be a suspected international terrorist. The person so declared must be involved or has been involved in the commission, preparation or instigation of acts of international terrorism, is a member of, or belongs to or has links to an international terrorist group, or recognised as such under the Act or listed as a person involved in terrorist acts in any resolution of

⁷ See Explanatory Memorandum to TPA 2011

the United Nation's Security Council, or any instrument of the African Union and the Economic Community of West African States (ECOWAS).⁸

- 9.15 He highlighted that In view of the transnational nature and dimension that terrorism had assumed, Part III of the TPA 2011 contained provisions relating to mutual assistance and extradition as part of Nigeria's international obligations and to further international cooperation with other countries in the investigation and prosecution of criminal matters.
- 9.16 In his appraisal of the Terrorism (Prevention) Act, 2011, **Mr. Akper** alluded to the relative infancy of the TPA and the counter terrorism measures contained in it. He said that it may be unrealistic to objectively assess its efficacy in combating the menace of terrorism in Nigeria, as the Act was barely one year in existence and many of the accompanying regulations to give effect to the Act were just being gazetted. The Attorney General had recently issued the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2011 in relation to freezing and forfeiture measures as well as proscription measures for terrorist groups provided under Section 9 on international terrorists in accordance with FATF Special Recommendation 3 and the United Nations Security Council Resolutions 1269 (1999) and Resolution 1373 (2001).⁹
- 9.17 He was also aware that a lot of work needs to be done in terms of providing the requisite policy and regulatory frameworks and advice to support various measures in the law and to assist the implementing institutions and the financial and non-financial institutions that are required to submit suspicious transaction reports to the Nigerian Financial Intelligence Unit. There was also the need for financial regulatory institutions to understand the TPA and to develop further guidance for its sector.
- 9.18 Towards this end, he said that the office of the Attorney General of the Federation was working on additional regulations that would underpin the various aspects of the TPA related to Charities, Immigration, Aviation, prosecution guidelines, investigation guidelines and the development of proscription list which would be forwarded to the banks on a monthly basis. The effective implementation of this law called for a pragmatic and proactive approach and the development of a national strategy to ensure that each agency, financial sector regulators, reporting entities, prosecution and investigation officials understood their remits and were able to secure convictions in a manner that respects and guarantees constitutional rights.
- 9.19 Further, a proactive strategy that responds to the need for community based organizations (CBOs) to be actors in the prevention of terrorist activities in their communities, towns and cities needed to be developed to make the terrorism prevention efforts effective. Also central to the terrorism prevention efforts was the need for a comprehensive witness

⁸ See section 9 (1) (2) TPA 2011. The Act defines "acts of international terrorism" to mean an act of terrorism involving; a non citizen, a person possessing dual citizenship or a groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries.

⁹ Made pursuant to sections 9 (6) and 39 TPA 2011 and gazetted on 30th September 2011

protection programme that would encourage voluntary provision of intelligence and information needed to combat terrorism.

- 9.20 Equally important was the need for proper coordination of their counter terrorism efforts. The TPA appeared to have placed heavy responsibilities on the NSA, IGP and the Attorney General of the Federation with respect to the administration of the Act. This meant that these state officials must work closely and cooperatively to prevent duplication of efforts that may militate against effective implementation of the Act. Given the large number of institutions (financial and non- financial) whose inputs were required for the proper implementation of the Act, the need for a properly coordinated counter-terrorism strategy could not be overemphasized. It was important for all relevant institutions to understand the strategy and collectively align their efforts to ensure success.
- 9.21 He also observed that despite the commendable efforts made to adopt internationally recommended standards and practices in the TPA 2011, the TPA still fell short of FAFT standards and the United Nations Convention on the Suppression of Terrorism in some critical areas. This called for a comprehensive review of the TPA to bring it in conformity with international standards set by FATF and the UN Convention on the Suppression of Terrorism. For instance, the provisions of the TPA had been adjudged to be grossly inadequate to combat terrorism in line with international best practices. Furthermore, some of the provisions of the TPA did not align with or were in direct conflict with provisions of earlier legislations such as the Economic and Financial crimes Commission (Establishment) Act, 2004 and the National security Agencies Act, 2004.
- 9.22 To cure these defects, the Federal Ministry of Justice embarked on the drafting of a new Bill known as “A Bill for an Act to Repeal the Terrorism (Prevention) Act, 2011 and Re-enact the Terrorism (Prohibition) Act, 2012. During the review period, comments were received from relevant Nigerian Agencies involved in the implementation of TPA 2011 and other international agencies such as the United Nations Office of drugs and Crime (UNODC), the United States Department of Justice and the United Kingdom High Commission, the UK Home Office and FATF Secretariat.
- 9.23 The new Bill, he added, took on board most of the provisions of TPA 2011 and further improved on some of the provisions on the TPA. The highlights of the new Bill included: (i)the empowering of the ONSA and State Security Service to serve as the lead agency and central coordinating agency in the investigation and intelligence gathering on terrorism; (ii)the prescription of life imprisonment for all acts of terrorism; (iii)the number of terrorist offences have been increased from 13 in TPA 2011 under the new Bill to include all offences prescribed by international conventions; (iv)the obligation on the part of airlines, commercial carriers and tour operators and travel agents not to aid and abet, facilitate and promote terrorist activities and obligation to notify its clients accordingly; (v)re-affirmation of the Attorney General’s power to institute and undertake criminal proceedings against any person in respect of the offences committed under the Act or any law relating to acts of terrorism; (vi)the re-affirmation of the Jurisdiction of the Federal High Court to try terrorism offences and

power to refuse any application for stay of proceedings in respect of any criminal matter brought under the Act until judgment is delivered, and (v) the provision for the establishment of Victims Trust Fund to be managed by a Trust Fund Board.

- 9.24 In his concluding remarks, Mr. Akper said that Nigeria's experience with terrorism was relatively new. The legal regime that had been put in place to tackle terrorism in Nigeria was also new and undergoing review to bring it in conformity with internationally recommended standards and practices. Despite some of the identified shortcomings, Nigeria had made commendable efforts to domesticate international standards relating to the strengthening of counter-terrorism strategies. However, its implementation had not been long enough for its efficacy to be tested. But, until the review process was completed and enacted into law, the extant legal regime on terrorism is the TPA 2011. It was therefore important for institutions and agencies charged with the implementation of the law to rise up to the challenge of implementing the legislation.
- 9.25 Finally, he said that it was worth appreciation that the task of combating domestic and international terrorism in Nigeria should not be left to Nigeria alone. It must be the collective responsibility of all. It was in this connection that Nigeria would benefit from knowledge sharing and the rich experiences of other Asian and African countries in the global fight against terrorism.
- 9.26 In the ensuing deliberations the delegations from **People's Republic of China, Myanmar, Democratic Socialist Republic of Sri Lanka, Republic of Indonesia, Islamic Republic of Iran, India, Uganda, Japan, Republic of Korea, Malaysia, State of Kuwait, State of Palestine, Iraq and the Observer Delegation of the International Committee of Red Cross (ICRC)** made their statements. The Delegations of the **Democratic People's Republic of Korea and Republic of Yemen** gave their written statements for reflection in the final record of the Session.

Fourth General Meeting

Agenda Item: International Criminal Court: Recent Developments

- 10.1 The Secretary- General (SG)** introduced the agenda item "International Criminal Court: Recent Developments". He went on to talk about the circumstances surrounding the establishment of the ICC and its mandate to dispense justice without undermining peace processes. The SG while noting the operational reality of the ICC mentioned the first verdict of the Trial Chamber I, which held Thomas Lubango Dyilo guilty of war crimes.
- 10.2 Further, the SG enlisted the issues for deliberation at the Fifty-First Annual Session. He then addressed the significant role of the ICC in the International Criminal Justice system by discussing the core features that enhance its achievements. The SG firstly spoke about the expansive territorial and subject- matter jurisdiction of the ICC, proceeding to the principle of complementarity under the Rome Statute. Another feature of the ICC discussed was the relationship between the UN and the ICC, forged by the Relationship Agreement of 2004, and progressively evolving through cooperation requests. The SG

- also spoke about the victim outreach efforts undertaken by the ICC, including ordering reparations for victims and the establishment of a Trust Fund to assist victims.
- 10.3 The SG mentioned how the ICC practices the principle of individual responsibility in order to neutralize the major players in the perpetration of serious crimes.
- 10.4 He mentioned that far from being an obstacle to peace, the ICC creates conditions conducive to reconciliation and negotiation processes by focusing international attention towards these horrific crimes so as to help bring the belligerents to the negotiating table and help to marginalize those who bear the greatest responsibility for serious crimes and exclude them from the negotiating frame.
- 10.5 The SG stated that merely ratifying the Rome Statute was not enough and genuine commitment to the Court required the adoption of necessary implementing legislation. He also mentioned that the principle of complementarity needs to be further strengthened. He stated that the ICC has regrettably evoked lesser participation from Asian states.
- 10.6 The SG finally, went on to discuss the issues concerning the relationship between non-party States and the Rome Statute, broadly divided into questions of jurisdiction of the Court and cooperation with the Court. Some concerns raised by non-State parties were regarding the immunities of Heads of States particularly if it is a Monarch as well as the cost entailing membership to the ICC. The SG said that the other major challenges before the ICC are mainly universality, sustainability and complementarity. He concluded by stating that in order to achieve universality, sustainable efforts should be taken to iron out the misconceptions surrounding the Rome Statute and thereby accommodate the non-States parties in to the system.
- 10.7 **The Delegate of the Republic of Indonesia** reiterated support to the global efforts to end any form of impunity for crimes against humanity, war crimes and the crime of aggression and supported the International Criminal Court since its inception. In her view, the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. The establishment of the Court was the reflection of global cooperation of all nations regardless of their political, economic, social and cultural differences. Therefore, universal participation of all States should become the spear point of the Court.
- 10.8 She also maintained that the International Criminal Court as the first and only permanent tribunal dealing with the most serious crimes was expected to deliberate equal justice and promote impartiality. For this reason, Indonesia supported the adoption of the Rome Statute and the establishment of the International Criminal Court. In light of this, accession of the Rome Statute remained a priority in Indonesia's National Plan of Action on Human Rights for 2011-2014. With a view, the Government of the Republic of Indonesia had also taken several important steps to build and develop both normative and institutional infrastructures. It had also enacted law concerning Human Rights and Human Rights Law.

- 10.9 Towards this end, the Delegate said that several principles of the Rome Statute had been recognized within Indonesia's national legislations related to human rights. Reflecting a firm stand against impunity, the national human rights court had the authorization to prosecute criminals of genocide and crimes against humanity, along with the recognition of non-retroactive principle.
- 10.10 Furthermore, she also highlighted the two important principles contained in Article 1 and Article 11 of the Rome Statute regarding the principle of non-retroactive effect and the principle of complementary. In relation to the principle of complementary, Indonesia re-emphasized the importance of Paragraph 10 of the Preamble and Article 17 of the Statute. The concept of "inability" and "unwillingness" should not serve easily as pretext to provide continuous preference to ICC intervention. The principle was one of the corner stones of the architecture of the Rome Statute.
- 10.11 Therefore, she believed that the effective implementation of the principle of non-retroactive and complementary was the key to the success of the ICC in further promoting criminal prosecution related to human rights violations and would increase the universality of the Rome Statute. In this respect, the prosecution of human rights violations should be the primary role of the national court.
- 10.12 The Delegate also stressed upon the importance of Article 17 on the principle of inadmissibility and believed that the effective implementation of this principle would increase the universality of the Rome Statute. Bearing in mind also that those principles were closely related to a country's sovereignty, it was important to see how the principles could be sustained and further strengthened, notably in honouring the supremacy and integrity of a sovereign country.
- 10.13 **The Delegate of Japan** said that 2012 marked the tenth anniversary of the International Criminal Court since the entry into force of the Rome Statute on 1 July 2002. It was surprising for many that such an important treaty as the Rome Statute entered into force with the ratification by more than 60 States only four years after it had been adopted in July 1998 and till date 121 States were parties to the Rome Statute, including 33 States from Africa and 18 States from the Asia-Pacific. Last year three States from the Asia-Pacific, namely, the Philippines, the Maldives and Vanuatu, and two States from Africa, namely, Tunisia and Cape Verde, joined the Rome Statute. Japan welcomed those five new members which had joined their serious efforts towards the fight against impunity and the establishment of the rule of law in the international community.
- 10.14 Besides that above facts 2012 also marked a turning point for some other reasons as well. The first reason being, that the major actors inside the Court and the Assembly of States Parties had changed. First, the former President of the Assembly of States Parties, Ambassador Christian Wenaweser of Lichtenstein, was succeeded by the newly elected President, Ambassador Tiina Intelmann of Estonia. Second, six new judges, including Judge Miriam Defensor-Santiago of the Philippines and Judge Chile Eboe-Osuji of Nigeria, were elected in December last year and took office in March. Third, the

composition of the Presidency of the Court also changed in March, with President Sang-Hyun Song of South Korea being re-elected, Judge Sanji Mmasenono Monageng of Botswana elected to the First Vice-President and Judge Cuno Tarfusser of Italy elected to the Second Vice-President. Fourth, the incumbent Prosecutor, Mr. Luis Moreno-Ocampo of Argentina, completed his nine-year term and Ms. Fatou Bensouda of Gambia, who was Deputy Prosecutor so far, took office as the new Prosecutor just last Friday. Being a staunch supporter of the ICC, Japan looked forward to working with the new teams of the Court and the Assembly.

- 10.15 According to the Delegate, the second reason why this year marked a turning point for the ICC was that in March this year, the Trial Chamber of the Court rendered its first judgment on the Thomas Lubanga Dyilo case, convicting the accused of charges on conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities in the context of an internal armed conflict in the Democratic Republic of the Congo. Japan praised the ICC for having fulfilled its role in refusing the impunity of the most serious crimes of concern to the international community as a whole and in preventing the recurrence of such crimes. However, it must be borne in mind that the same Trial Chamber of the Court will render its sentence against the accused in due course and then a decision on reparations to the victims of the crimes of which the accused was convicted. After all these procedures were completed, the accused may appeal to the Appeals Chamber. Thus, this case remained to be seen.
- 10.16 He mentioned that presently, the ICC had seven situations and fifteen cases before it. Two new situations in Libya and Cote d'Ivoire had been referred to the ICC and had posed significant challenges for the Court, such as the heavy financial burden on States Parties. Presently the international community was concerned with the situation in Syria, with some countries suggesting possible referral by the Security Council to the ICC. In light of the current situations surrounding the ICC, the future direction of the Court had to be carefully envisioned and defined.
- 10.17 He also highlighted that Japan attached great importance to the activities of the ICC as the only permanent judicial organ for international criminal justice, and expected that the ICC would continue to fulfil its role by prosecuting and punishing the most serious crimes in accordance with the Rome Statute. Securing the future of the ICC depended primarily upon whether universality could be achieved. According to the Delegate, as the number of States Parties increased, there would be fewer safe havens for perpetrators of the most serious crimes, and preventive effects would be enhanced. In conclusion he requested more AALCO members to consider ratifying the Rome Statute with a view to join the common efforts to fight against the most serious crimes of concern to the international community as a whole.
- 10.18 The **Delegate of the People's Republic of China** said that his Government supported an independent, impartial, effective and universally recognized international criminal court, and hoped that it would promote world peace and judicial justice by punishing the most serious international crimes.

- 10.19 He mentioned that 2012 marked the 10th anniversary of entry into force of the Rome Statute and the founding of the International Criminal Court (ICC). During the past 10 years, China had closely followed the Court's activities. It hoped that the ICC would win the trust and support of the international community through its concrete work.
- 10.20 He said that while it was true that the ICC had made some progress since its establishment. It had become an important international judicial organ, and influenced the development of international criminal law. At the same time, some activities of the Court caused controversy in the international community, and even affected process of peace and stability in certain regions. States parties to the Rome Statute, including some from Asia and Africa, were questioning the Court's impartiality and believed that the court had been selective in its exercise of jurisdiction. Furthermore, many Asian countries were not yet parties to the Rome Statute, besides some African countries had been reconsidering their cooperation with the ICC, these facts revealed a lack of trust in the Court among Asian and African countries.
- 10.21 He also noted that the Court was now at a critical stage of its development. Looking back and forward, China, as many others did, have one important question in mind: Where to go, ICC?
- 10.22 In order to come up to the expectations of the international community it was important that the ICC should make extraordinary efforts to abandon prejudice, refrain from being politically interfered, keep in mind the principle of complementarity, impartiality as well, and win confidence, trust and support of state parties of both developed and developing countries. The Delegate was glad to note that as of date in the court, Asian and African judges, claimed a big part of the whole judges of the court. The Delegate expected and believed that with the cultural and legal traditions they represented, they would make further contributions to the work of ICC. He also believed that through communication and cooperation, countries from Asia and Africa, could play a unique role in promoting the positive development of the Court, and contribute to international peace and justice. In conclusion he said that the Chinese delegation was ready to work towards this end.
- 10.23 The **Delegate of Malaysia** expressed appreciation to the AALCO Secretariat for its report which brought Member States up-to-date with the most recent developments of the ICC. She congratulated Ms. Fatou Bensouda on her appointment as the Prosecutor of the ICC by the 10th Assembly of State Parties of the Rome Statute of ICC in New York on 12 December 2011. In the same vein she also expressed sincerest gratitude to the outgoing prosecutor, Mr. Luis Moreno-Ocampo.
- 10.24 The Delegate hoped that Ms. Fatou Bensouda, as the new Prosecutor, would exercise the powers conferred upon her impartially, with due respect to the customary and currently acceptable notions of international law and domestic legal proceedings. As an independent separate organ of the ICC, the Office of the Prosecutor had vast powers. With regard to this, Malaysia highlighted the importance of impartiality and universality by the Prosecutor in dealing with situations or internalizing information that came to the

Office of the Prosecutor. Any perception of bias must be avoided, for bias is not only actual, but may also be imputed or apparent.

- 10.25 In light of the situation in Palestine, she noted that on 3 April 2012, the Office of the Prosecutor had announced of its incompetence to decide on the issue of recognising Palestine as a “state” for purposes of Article 12 (3) of the Rome Statute. The Office of the Prosecutor viewed that this issue should be referred to the relevant bodies of the United Nations or the Assembly of State Parties to make that legal determination. This decision indirectly implied that Palestine does not have the power to make such a declaration because it did not fulfil the requirements of statehood. Malaysia was of the view that the OTP should first and foremost took into account the basis of the establishment of the ICC, that is to punish serious crimes of international concern instead of technical requirements. In order for impunity to not go unpunished, the Office of the Prosecutor should have examined whether there existed serious crimes of international concern as claimed by Palestine i.e. a consideration of substantive issues. If there were, then the declaration by the Palestinians should not have been rejected *ab initio*.
- 10.26 On the issue of interpretation and implementation of the principle of Complementarity by the ICC and the Prosecutor, Malaysia reiterated its concern that Member States were required to give effect to the principle by enhancing the capability of national jurisdiction to exercise jurisdiction over serious violations of international law or international crimes committed on their territory. A view that was mooted recently was “positive complementarity” which came with “technical assistance and capacity building” from the Office of the Prosecutor, such as supplying judges and prosecutors to assist national courts. Malaysia was of the perspective that such assistance implied indirect interference from the ICC into the domestic courts and may subject Member States to political pressure to comply with the ICC’s standards in the name of eliminating impunity gap between national and international courts. This concept clearly differed from the original Complementarity scheme.
- 10.27 The Delegate was further of the view that the principle of Complementarity should be applicable even in situations of Security Council referrals. She recalled that the principle of Complementarity under the Rome Statute recognized that States had the first responsibility and right to prosecute international crimes. Articles 17 and 19 of the Rome Statute did not indicate any exception to such referral. In determining the issue of admissibility vis-a-vis cases originating from a Security Council referral, the ICC needs to be clear in its principles, practice and jurisprudence, and to demonstrate that its decision on the case’s admissibility is free from any political influence. According to Malaysia’s observation, in some cases, the discretion of the Prosecutor did not adhere to the principle of complementarity as States were not given the priority to take action in addressing atrocities.
- 10.28 The commitment to end the impunity of serious crimes of international concern by becoming a State Party to the Rome Statute could not materialize by the simple act of depositing the instrument of accession or ratification. In light of this, Malaysia wished to

emphasize on the need to have a suitable legal framework in place which would adequately address the legal concerns highlighted.

- 10.29 Lastly, Malaysia was firmly committed to ending impunity and will continue to support in principle the ideals and purpose of the ICC towards that end.
- 10.30 The **Delegate of the Republic of Korea** maintained the ICC was established to end the culture of impunity for serious crimes and for the protection of human rights, towards this end the Rome Statute of the ICC was central to international criminal justice and protection of human rights. He was grateful to the AALCO Secretariat for its various initiatives on this topic. He also wished that more Member States of AALCO could accede to the Rome Statute of the ICC. He said that his Government had provided voluntary contribution to the ICC besides this The President of the ICC Judge Song was a Korean national. His country was ready to support the ICC in order to ensure an end to the culture of impunity for the most serious crimes.
- 10.31 The **Delegate of the Kingdom of Saudi Arabia** stated that the activities of the ICC were of interest to them since arrest warrants were issued against the Sudanese President on the other hand Israeli criminals were let off scot free by the ICC. He maintained that this was a clear illustration of political considerations in matters relating to the Court. He posed a question to the Secretary-General whether it was possible for AALCO to reflect the concerns of its Member States to the ICC specially the role of the Security Council.
- 10.32 In response the **Vice-President** said that the AALCO Secretariat would soon circulate a paper on this issue.

Agenda Item: Environment and Sustainable Development

- 11.1 **Dr. Yasukata Fukahori, Deputy Secretary-General (DSG) of AALCO** introduced the agenda item “Environment and Sustainable Development” as contained in the Secretariat document AALCO/51/ABUJA/2012/SD/S 10. The DSG said that the Organization had been following the developments on Environment and Sustainable Development since 1975 with the contemporary focus being on the implementation of the three Rio Conventions namely, the: United Nations Framework Convention on Climate Change, 1992; Convention on Biological Diversity, 1992; and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994; and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002. The present Secretariat report contained developments in the area of International regime on climate change, international regime on desertification, and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development.
- 11.2 On the issue of Climate Change issues, the DSG said that it was the most prominent issue that the international community faced today. In the year 2011, at the Seventeenth Conference of Parties to the United Nations Framework Convention on Climate Change

(UNFCCC) held in Durban, South Africa, Durban Outcome - a “package deal” was adopted. The focus at the Durban Conference was on post-2012 Kyoto Protocol commitment or second-term commitment period. The hope was that the negotiations would produce more ambitious greenhouse gas emission reduction pledged by developed countries, a second commitment period under the Kyoto Protocol, and a mandate for a new legally-binding agreement. Further, it also wanted the institutions mandated by the 2010 Cancun Agreements to become fully operational and to complete the terms of reference for the review of the long-term global goal for emission reductions.

- 11.3 Referring to the Durban Package, the DSG said that the package seemed to fulfil several objectives of countries that were among the most vulnerable to climate change: the Pacific Island Developing States and the larger Alliance of Small Island States. In fact, the Durban Package comprised decisions under both the UNFCCC and the Kyoto Protocol that accomplished many of the PSIDS and AOSIS goals for adaptation, finance, technology transfer, and capacity building. However, there was a shortcoming in terms of mitigation, and the action taken on the Kyoto Protocol’s second commitment period which was mere proposal to formalize pledges made in Cancun in 2012 by developed country Kyoto Protocol parties and does not include major emitting countries. The Durban Outcome dealt with UNFCCC parties agreeing to establish the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“AWG-DPEA”) which would adopt, a new “protocol, legal instrument or agreed outcome with legal force” by 2015. The new AWG-DPEA has a mandate to develop proposals on the full range of climate change issues, its focus would clearly be on raising the “level of ambition” with respect to mitigation for all parties.
- 11.4 In the field of desertification, he briefly summarized the major decisions adopted at the Tenth Session of the Conference of Parties to the United Nations Convention to Combat Desertification convened in Republic of Korea in 2011 wherein a high-level segment was held. Those discussions centred around three major concepts: (i) food security, (ii) green economy, and (iii) scientific knowledge. To solve development problems, climate change, desertification and food security, efficient use of renewable energy was an important potential tool. Promoting investment, combined with a renewed synergy of Rio Conventions could produce holistic and robust strategies, strategic partnerships and cooperative frameworks.
- 11.5 The DSG mentioned that presently, in June 2012, when the States marked the commemoration of 20 years of the Rio Conference and 10 years of WSSD, it was essential to recall the role and importance of the UNEP. Therefore, 40th Anniversary Year of the UNEP was also historic. Since 1972 Stockholm Conference, the environmental summits had played a crucial role in bringing sustainable development on international political agenda. Many of the countries had changed their national policies favouring green economy which would in future be beneficial for protection of environment and ensuring sustainable development for succeeding generations. It was essential, on those aspects, that countries took adequate efforts for protection of the environment besides safeguarding their national interests with a vision to transform their societies into a green economy which would be less polluting and be environmentally sustainable. The DSG

briefly summarized the issues covered by the Secretariat report, that included, the Twelfth Special session of the UNEP Governing Council/Global Ministerial Environment Forum held in Nairobi in February 2012 and the 19th session of the UN Commission on Sustainable Development held in New York in May 2011. The themes for the Rio+20 were (a) a green economy in the context of sustainable development poverty eradication; and (b) the institutional framework for sustainable development. The seven priority areas identified were decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.

- 11.6 The DSG informed that the issues for focused deliberations on the agenda item were:
- (i) Issues for deliberating upon the forthcoming Protocol/legal instrument on second-term commitment of countries in climate change, encompassing the principle of common but differentiated responsibility to be completed by 2015;
 - (ii) Importance of Green economy and preparations for the Rio+20 Conference; and
 - (iii) Challenges facing environmental sustainability.
- 11.7 **The Delegate of Nepal** said that it was a coincidence that we were discussing the topic on ‘Environment and Sustainable Development’ which was being discussed at the Earth Summit, Rio+20 and hoped that all AALCO member states were participating in that Conference. He recalled that at the 50th Session of AALCO Member States expected that United Nations Climate Change Conference that took place at Durban, would come up with the ambitious quantified emission reduction targets set for developed countries for second commitment period under Kyoto Protocol and those developed countries that were not parties to the Kyoto Protocol should also take comparable emission reduction commitments after 2012. Instead it just concluded with the extension of tenure of the two Ad hoc Working Groups. Capitalization of Green Climate Fund and decision on future of Kyoto Protocol after 2012 was still not so clear. Sustainable development emphasized a holistic, equitable and far-sighted approach to decision-making at all levels. It emphasized not just strong economic performance but intra-generational and inter-generational equity. It rested on integration and a balanced consideration of social, economic and environmental goals and objectives. The concept of green economy that countries were going to emphasize in Rio, focused primarily on the intersection between environment and economy.
- 11.8 Being aware of the human-induced multiple impacts of climate change on mountain ecosystems, goods, and services and implications on livelihoods, health and welfare of the mountain people and environment as serious, there was a need to take urgent, collaborative and effective actions at all levels to address climate induced vulnerabilities and impacts on mountains, coastal zones and other areas for enhancing the well-being of climate vulnerable communities and also strengthening the climate resilience measures by peoples. He said that their delegation wanted AALCO to engage expert-teams in formulating ecological zone-specific strategies that ensured practical solutions to the climate change vulnerability and measures in ensuring sustainable application of such solutions. He recalled the International Conference of Mountain Countries on Climate Change held in Kathmandu from 5-6 April 2012 wherein it was agreed to enhance

cooperation among the mountain countries and countries with mountainous regions for addressing the common problems recognizing that the mountains provide solutions for sustainable development using ecosystem services, in particular, water, biodiversity, energy, and for enhancing food security. He held the view that if AALCO could create a dedicated forum within it for better understanding of the challenges posed by the climate change and possible measures for mutual cooperation among the members that would be instrumental in responding to the global problem. Hence, Kathmandu Call for Action 2012 would be a good initiative to protect the high potentials of mountain ecosystem service to promote green growth strategies and strengthen linkages between mountain ecosystem and other ecosystems to reduce poverty and promote sustainable development which was prime concern for Asia and Africa.

- 11.9 **The Delegate of Japan** stated that Japan considered the Rio + 20 Conference currently underway in Brazil was a most important big event in which the government leaders were participating to discuss the questions relating to economy, society and world environment for the coming 10 years. The delegation hoped that the Conference would achieve its objectives and bring about fruitful results. The delegate believed that in order to realize the sustainable development, it was essential that the world make transition to Green Economy, and would actively endeavor to contribute to making that transition possible, taking into account the importance of sharing knowledge and wisdom and also capacity building. He mentioned about the Great East Japan Earthquake, which occurred in recent years and also referred to many large scale natural disasters that had taken place. He said that coping with such adverse circumstances, Japan had been advocating the innovative concept of city building such as “Environmental Future City Vision”. On the occasion of ongoing Rio + 20 Conference, Japan looked forward to actively share its ideas, knowledge and experiences with the international community in such areas as building of disaster-resilient society and Environmental Future City.
- 11.10 The delegate stated that with regard to the climate change, Japan considered that the COP17 held in Durban, South Africa last year had brought about a significant outcome, in line with Japan’s stance, such as clarifying the pathway to the establishment of a new legal framework in which all economies participate. Further, it was made clear that Japan remained committed to tackle climate change, despite immense challenges caused by the Great East Japan Earthquake. Based upon the results of COP17, Japan wished to contribute to the international discussions toward COP18, as to how to build a most desirable future framework, that included the newly set up Ad-Hoc working Group on the Durban Platform for Enhanced Action.
- 11.11 The delegate briefly touched upon the question of international regime on desertification. On behalf of delegation, he congratulated the government of the Republic of Korea for successfully hosting and concluding the 10th Meeting of the Conference of Parties (COP) to the UN Convention to Combat Desertification in those countries Experiencing Serious Drought and Desertification, Particularly in Africa (UNCCD) held in Changwon, Republic of Korea. He said that the task of combating desertification related closely to the questions of climate change and bio-diversity and it considered that it was very important to deepen and enhance the awareness of necessity of combating desertification

by way of strengthening the linkage with the two conventions of climate change and diversity.

- 11.12 **The Delegate of People's Republic of China** opined that sustainable development was closely related to the practical and long-term interests of all countries, especially those of developing countries. The UN Conference on Environment and Development and the World Summit on Sustainable Development provided action plans on sustainable development for individual countries and the international community as a whole. During the past 20 years, such action plans had contributed to the improvement of human welfare. The UNFCCC, the Convention on Biological Diversity and the Convention to Combat Desertification, had made positive achievements in their respective areas.
- 11.13 Among all environmental challenges, climate change had attracted much attention and China viewed that, climate change was a development issue, and that sustainable development was both the aim and the right path for its effective solution. In order to address both development and climate change challenges and upheld right to development, the developing countries should, under the framework of sustainable development, take a holistic approach to economic development, poverty eradication and climate protection. The delegate welcomed the outcomes of the Durban Conference, in particular progress related to the second commitment period of the Kyoto Protocol, finance and strengthened implementation of the UNFCCC.
- 11.14 He said that many problems were yet to be tackled for the implementation of the Durban outcomes and China hoped that all parties, while respecting and accommodating each other's core concerns, would take into full account both the historical responsibilities of developed countries and the practical needs of developing countries, based on the principles of equity and "common but differentiated responsibilities", and carry out further discussions on the establishment of a fair and equitable international cooperation regime addressing climate change. China stressed that as a community of shared interests, developing countries must maintain solidarity and strengthens coordination in urging developed countries to fulfil their historical responsibilities and provide financial, technical and capacity-building support to developing countries, which was the only way to truly safeguard long-term and fundamental interests.
- 11.15 Commenting upon the ongoing Rio+20 Summit Conference on Sustainable Development, which provided an important opportunity to promote global cooperation on sustainable development, the delegate said that China attached great importance to the conference. Further, the delegation stated that they were delighted to know that an "Action Plan" was to be adopted by heads of States at the conclusion of the summit that would reaffirm the principle of CBDR. It was stressed that the conference adhered to the Rio spirit and principles, especially the principle of "common but differentiated responsibilities", advance the three pillars of economic, social and environmental development in a balanced manner, respect the right of countries to independently choose their mode of sustainable development, and paid special attention to the concerns of developing countries.

- 11.16 China was a developing country that confronted pressing issues with regard to environmental protection and sustainable development and fully recognized the severity and urgency of environmental issues including climate change. China, out of a strong sense of responsibility for mankind's long-term development, had resolutely embarked upon the path of sustainable development and taken positive and vigorous policies and measures, towards contributing to the resolution of environmental issues. It was also mentioned that China's next Five-year Economic and Social Development Plan emphasized to pursue green and low-carbon development, focused on energy conservation and emission reduction, develop a resource-saving and environment-friendly pattern of production and consumption, and enhance capacity for sustainable development.
- 11.17 The delegate premier Wen's observation that China was a staunch supporter of the concept of sustainable development, and an active practitioner of the strategy of sustainable development, and also an energetic promoter for international cooperation in sustainable development. China had been actively engaged in South-South cooperation, earnestly fulfilled the responsibilities commensurate with its capabilities.
- 11.18 **The Delegate of Thailand** said that in order to move forward and to respond to the global challenge, it had many priorities like food security, poverty eradication, and sustainable economic development. Nonetheless, they strongly believed that a paradigm shift toward building low-carbon societies was necessary in addressing climate change. Thailand was committed to lowering greenhouse gas emissions through innovative energy conservation and efficiency policies with the aim of reducing the country's Energy Intensity by 25 percent below the current level within 20 years. Even though 70 percent of electricity generation in Thailand currently comes from natural gas, a low-carbon energy source, they still planned to propose and implement progressive policies to promote increased use of renewable and alternative energy in both the industrial and agricultural sectors. It was their ultimate objective to replace 25 percent of the energy generated by fossil fuels with green energy within the next decade. In that regard, the delegate explained certain national initiatives taken to address the issue and as a result of those plans, Thailand would reduce 206 million tons of greenhouse gas emissions by the year 2030.
- 11.19 Green economy could serve as an effective implementation tool to move a country towards sustainable development, but should not be a substitute for sustainable development itself. In that regard, Thailand was of the view that the discussion on green economy should be based on the agreed 1992 Rio Principles. Given the vast differences in development stages among countries, Thailand believed that there was no "one-size-fits-all" green economy strategy. Countries should be given sufficient policy space and flexibility to develop their own green economy policies aimed at sustainable development. However, Thailand believed that there were common elements that were essential to improving cross-sectoral coordination and coherence in the implementation of the sustainable development agenda.

- 11.20 Referring to Thailand Rio+20 conference, the delegate said that they would work with the international community in its collective actions to advance sustainable development at all levels. On climate change issues, the delegate stressed that it was absolutely essential that Annex I Parties to the Kyoto Protocol committed themselves to the second-term commitment period and ensured the continuity of the legally binding agreement with more ambitious targets. Comparable mitigation efforts were needed in order to measure the emission targets and achievements of the parties effectively. Securing long-term financial commitments from both private and public sources, from developed countries for climate mitigation and adaptation undertaken by developing countries was essential and it was their conviction that, in order to adequately address the need of developing countries, the scale of the commitments must be the same as that stipulated in the Cancun Agreements – 100 billion US dollars per year. The delegate called for meaningful steps to be taken by developed countries to promote, facilitate, and finance the transfer of or access to, environmentally sound technologies to developing countries, in order to enable them to meet their mitigation and adaptation needs. Reiterating the rights to sustainable economic growth and development of all Parties, the delegate called on all Parties to firmly observe Article 3, paragraph 5 of the Convention, and refrain from adopting any measure, including unilateral ones that constituted a trade barrier or a disguised restriction on international trade.
- 11.21 **The Delegate of Republic of Korea** stated that his government viewed that in order to bring about a genuine transformation in the measures against climate change, “common but differentiated responsibilities” were needed and urged the Member States of AALCO to act together to achieve the goal of sustainable development. Also, in order to take appropriate measures against climate change, the Republic of Korea considered that the difference in positions between developed and developing countries should be narrowed in terms of core issues such as the Second Commitment period for the Kyoto Protocol. The delegation supported the two-track negotiation system, which divided developed countries duties and developing countries actions to reduce greenhouse gas emissions.
- 11.22 The delegate mentioned that his government had been preparing for the transformation of the GGGI into a new international organization in October 2012 and they appreciated the participation in the GGGI by Japan, Cambodia, Ethiopia, Thailand, the Philippines, the United Arab Emirates and Indonesia; and hoped that other AALCO member states would also participate in the GGGI. Against that backdrop, the delegation informed that the Republic of Korea would be hosting the Ministerial-level COP 18 meeting in 2012 and thanked all the member States of AALCO for extending their warm support to them while hosting the COP 18 Meeting.
- 11.23 **The Delegate of United Republic of Tanzania** stated that the Tanzanian Government attached great importance to the environment and its sustainable development. The focus being protection of the environment and human health from all types of pollutants; efforts had started by putting in place mechanisms to mitigate the impact to climate change, environmental degradation and related matters.

- 11.24 In relation to the issue of climate change, the delegate said that Tanzania had already set its priorities including formulation of a National Adaptation Strategy and Action Plan built upon experience in preparing National Adaptation Program of Action (NAPA) as well as putting in place the National Climate change Steering Committee (NCCSC) and National Climate Change Technical Committee (NCCTC) contributing to a greener economic growth.
- 11.25 The delegate said that the world made some progress during the climate change conference in Cancun, particularly by bringing back the hope that multilateralism was needed to address a problem of such a global magnitude. However, much remained to be done after Durban especially ensuring that countries commit to emission reduction levels that were consistent with science; unless that was done poor countries would not avoid facing the envisaged challenges of climate change if global temperatures went beyond 1.5 degrees centigrade. The Cancun agreement offered not only unprecedented opportunities for developing countries to implement their strategies so as to strengthen their national institutional frameworks and capacities, but also made progress on reducing emissions from deforestation and forest degradation REDD.
- 11.26 The delegate stated that whilst commending various efforts by the international community in address that important issue, Tanzania was of the view that finance and technology to develop cleaner sources of energy were essential. Concerned about the future serious adverse impacts on African and Asian countries, the delegate said many options were available to address these challenges. Some required major investments built upon sound development initiatives which included protecting catchments, promoting diversified livelihoods, expanding water resources and access to water, increasing irrigation, protecting coastal zones and malaria control programmes in highland areas were due to climate change and now rampant with malaria. Integrating climate change in development process and poverty eradication actions would be a continuous and unavoidable undertaking that would require increased financial support to the overall budget of the governments. It was mentioned that road towards a Greener economy was prone to challenges such as difficulties in protecting forests since they were the only source of energy for the majority of developing countries such as Tanzania. Further, there was an urgency to understand the true implications of climate change to the economy and the people and also provide options to move their economy forward while contributing to global climate change mitigation in a low carbon growth economy in order to establish a mechanisms and functional systems to deal with environment sustainability.
- 11.27 **The Delegate of Indonesia** reiterated that the achievement of the UN Conference on the Environment and Development 1992 when for the first time the global community got together, took stock of development and environmental challenges, and charted a common path forward. Since then, among many encouraging developments, economic achievements and the environmental agenda had made significant advances. Environmental regimes itself had grown, for example on biodiversity, on climate change and on forestry. These days more nations were adopting green growth strategies. In that regard, Indonesia had actively pursued a policy of ‘growth with equity’, with 3 basic

components, namely pro-growth, pro-poor and pro-jobs. After successfully hosting the UN Climate Conference in 2007 in Bali, they had become very active in global climate diplomacy and expanded their development strategy from not just pro-growth, pro-poor and pro-jobs, but also to pro-environment. Presently, environmental sustainability was at the heart of their long-term development plans, both at the national and local levels, he added.

- 11.28 He said it was necessary to redefine modernity, development and prosperity, and move from overconsumption and excessive consumerism. Those steps might support the efforts to move from 'greed economy' to 'green economy'. For Indonesia, green economy was viewed as an economic development approach that no longer relied on overexploited natural resources and environment, but aimed to reach an environment friendly economic development. While ensuring that the world economic problems did not detract or distract from sustainability goals and climate change objectives, it was important to focus on our national commitments and global responsibilities. Therefore, to secure climate future, it was also important to stress the 'common but differentiated responsibility and respective capability' and their delegation believed that developed countries must take lead, along with the increasing role of the developing countries too. In that regard, Indonesia in the midst of a deadlock in 2009 had made the voluntary decision to reduce emissions of 26% by 2020, or 41% with international support.
- 11.29 **The Delegate of India** recalled that at the Durban Conference there was an attempt to shift the climate burden on to developing countries and one of the key demands of the developing countries was an agreement on the second commitment period of the Kyoto Protocol along with the operationalization of the arrangements agreed to at Cancun by the developed countries. However, the developed countries were insisting on new legally binding agreements for all the Parties without any differentiation.
- 11.20 The Durban Conference was one of the most significant Conferences on Climate Change since the second commitment period to the Kyoto Protocol was agreed upon for the developed countries (Kyoto Protocol Parties). In addition, the inclusion of Green Climate fund, a key demand for financing the efforts of developing countries in the technology mechanism, etc. had also seen light in the form of an agreed decision by the members. On those notes, she mentioned that upon India's insistence the issue of 'Equity' was brought back to the centre stage of the Climate change debate at Durban. Accordingly, it had been agreed to hold a workshop on the issue of equitable access to sustainable development which would advance the understanding and relevance of the approach in evolving the climate change regime.
- 11.21 The delegate stressed that India as a developing country had huge developmental challenges. Around 55% of India's population still had no access to commercial energy. Despite those developmental challenges, India had declared its commitment to keep its per capita emissions lower than the average per capita emissions of the developed countries and had adopted National Action Plan on Climate Change along with National Missions. Those Missions would go beyond mitigation and adaptation and were anchored to overall national prospective of sustainable development.

- 11.22 It was stated that the challenges related to all the three pillars of sustainable development should be addressed in a balanced manner. Global development path should recognize the fact that human beings were at the centre of sustainable development. Disproportionate weight to the environmental pillar would lead to unbalanced development and further threaten the abilities of the developing countries to achieve the Sustainable Development Goals (SDGs) and progress in the path of sustainable development. Balancing the three pillars of sustainable development i.e. economic development, social development and environmental protection required integration and coordination between them.
- 11.23 Green Economy should be essentially the one which directly related to the overriding priorities of poverty eradication, food security, universal access to modern energy services and employment generation. On that aspect, India believed that Green Economy was a dynamic concept intended to infuse every activity towards poverty eradication with sustainability thereby greening the economy towards developing economically, socially and environmentally. Green Economy could only be in terms of a gradual transition, while remaining firmly anchored within the overarching framework of “sustainable development” and equally important, the sustainability of livelihood. The overriding objective of socio-economic development and poverty eradication in the developing countries could not be diluted by setting new norms for development. However, Green Economy was not a normative concept and hence, a movement in that direction should be more in the nature of evolution than transition. One should promote sustained economic growth for poverty eradication and should not adversely impact the livelihoods of vulnerable sections of the society like the small and marginal farmers and those employed in small and medium enterprises.
- 11.24 Access to environmentally sound/clean technology at affordable cost was crucial for the countries for sustained economic growth and progress towards a green economy. Developing countries need access to cost effective technologies appropriate to their resource endowments and geographical factors to enable them to accelerate the transition to sustainable development. Any approach to Green Economy should facilitate research and development in environment friendly technologies in public domain so that developing countries could be accessed at affordable prices.
- 11.25 **The Delegate of Republic of Iraq** stated that their government was working towards favourable investment and food for all investors from different countries which would support their country to be rebuilt and would enhance the opportunities for countries in their economy. Such investments would cover up the lack of labour and increase in their per capita income which would enable them to serve human beings. The delegate further stated that Iraq had signed a number of Memorandum of Understandings (MoUs) with countries and supported all efforts of AALCO for improving sustainable investment.
- 11.26 **The Delegate of Malaysia** recalled the Decision 1/CP.17 from COP17 in Durban, South Africa to launch a process to develop a “Protocol”, “another legal instrument” or “an agreed outcome with legal force under the Convention” through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-DP). It was also decided for

a work plan to be launched on enhancing mitigation ambition and exploring options for a range of actions that could close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties. In that regard, all participating States were expected to undertake higher Greenhouse Gas emissions cuts, or lower the growth rates of their emissions.

- 11.27 In respect of the AWG-DP negotiations, Malaysia viewed that priority should be given by the negotiating parties to deliberate on the work plan to enhance mitigation ambition rather than on the form of the outcome document. To that, Malaysia's position was that such work plan should reflect the principle of "common but differentiated responsibilities" (CBDR) and the options and ways to increase the level of mitigation ambition must be understood in the context of promoting sustainable development, with equal and balanced consideration to the economic, social and environmental sectors.
- 11.28 Therefore, in the context of the existing AALCO's mandate to continue to monitor the progress in the implementation of climate change negotiations, Malaysia proposed for AALCO to establish a mechanism to streamline the AALCO Member States views and positions on that matter and to urge the respective AALCO Member States to bring forth such views and positions in the future UNFCCC negotiations.
- 11.29 On the Rio+20 ongoing conference taking place in Rio de Janeiro, the delegate said that the focus was on green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development. Of that, it was envisaged that the positive outcome of the Conference would result in the finalization of the document "*The Future We Want*".
- 11.30 The delegate observed that certain commitments in the outcome document relate to international obligations governed by various international legal regimes. In reference to the proposed commitment to establish a more effective wastes management and lifecycle regime, the issues might arise when the disposal of the chemical or electronic wastes involves transboundary movements of such substances which were governed under the export control regime.
- 11.31 With regard to the proposed commitments on global marine environment, global program of action for the protection of the marine environment from land-based activities etc., Malaysia was of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).
- 11.32 Malaysia urged the AALCO Member States to actively participate and express their approaches in particular their positions on CBDR at the forthcoming negotiations on environmental issues.

Third Meeting of the Delegation of AALCO Member States

Agenda Item: Report on the Work of the AALCO's Regional Arbitration Centres

- 12.1 **Dr. Xu Jie, Deputy Secretary-General (DSG) of AALCO** introduced the Organizational Agenda item, report of the AALCO's Regional Arbitration Centres as contained in the Secretariat Document AALCO/51/ABUJA/2012/ORG 3 which consisted of the Reports of the Directors of Lagos and Kuala Lumpur Regional Arbitration Centres. Since AALCO Secretariat had received the report of the Director of the Tehran Regional Arbitration Centre very recently, it would be circulated during the meeting.
- 12.2 The DSG said that AALCO's association with the area goes back to 1970's when there were hardly any permanent arbitral institutions in the Asian-African region. AALCO was prompted to realize the need to develop and improve the procedure for international commercial arbitration, the necessity for institutional support, develop necessary expertise and create environment conducive to conduct arbitration in the Asian and African regions. He recalled that AALCO Regional Arbitration Centres were the result of the AALCO's Scheme for the Settlement of Disputes in Economic and Commercial Transactions and the decision to establish Regional Centres for International Commercial Arbitration at the Doha Session in 1978.
- 12.3 In consonance with that scheme, the Regional Centres for Arbitration at Cairo, Arab Republic of Egypt for the African region and at Kuala Lumpur, Malaysia for the Asian region were established in 1978 and 1979 respectively. Later two more such Centres were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. AALCO had also concluded an agreement with the Government of the Republic of Kenya in 2007, to establish its Fifth Regional Arbitration Centre in Nairobi to cater to the needs of the Eastern and Southern parts of the African continent. The DSG said that during the meeting, it was informed that the establishment and functioning of the Nairobi Regional Arbitration Centre was ongoing and the Attorney-General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Centre. In that regard, AALCO firmly believed that with the support of the Government of Kenya, the Nairobi regional Arbitration Centre would start functioning at the earliest.
- 12.4 Commenting upon the role of Regional Arbitration Centres that marked a difference in the arbitration culture within the region as highly commendable, the DSG said that their progress and efforts to fulfil their mandate and effectively function had given them reputation across borders. Infact, it was an honour to have these Regional Arbitration Centres under the auspices of AALCO as these Centres were one of the most successful ventures of the Organization. So, AALCO held the view that the Centres successful activities would have been impossible without the active support and cooperation of the Host Governments. The DSG then congratulated the Directors and thanked the Host Governments hosting these Centres and all other Member States for energetically supporting and assisting the Centres. He then welcomed the Directors of Lagos, Kuala Lumpur Regional Arbitration Centres to present their respective reports to the Session

- 12.5 **Mr. Sundra Rajoo, Director, Kuala Lumpur Regional Centre for Arbitration (KLRCA)** thanked the Secretary-General and the host government Federal Republic of Nigeria for having given him the opportunity to present the report of the Centre. He thanked the host Government of the KLRCA – Malaysia, for extending its support to the centre’s activities. He informed that Kuala Lumpur Regional Centre for Arbitration (KLRCA) was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO). KLRCA was the first regional centre established by AALCO in Asia to provide institutional support in a neutral and independent venue for the conduct of domestic and international arbitration proceedings in Asia. The Centre was established after the Government of Malaysia and AALCO signed a host country agreement, whereby the Malaysian Government agreed to support the establishment of a regional centre for commercial arbitration in Kuala Lumpur and to provide the facilities for the establishment and functioning of such a centre. KLRCA was a non-profit, non-governmental arbitral institution and was led by a Director under the supervision of the Secretary-General of AALCO. The Government of Malaysia has accorded KLRCA independence and certain privileges and immunities for the purposes of executing its functions as an international institution.
- 12.6 Mr. Rajoo reported about the Annual Report for the period ended in 2011. He said that 2011 was a very active year for KLRCA and it began with the signing of the Memorandum of Understanding (MoU) with the Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM), an association that represented nearly 30,000 Malaysian Chinese companies, individuals and trade associations in the country. The Centre then went on a nationwide roadshow to educate and promote the adoption of Alternate Dispute Resolution among ACCCIM members. He said KLRCA continued to launch new products in 2011, with the KLRCA Mediation/Conciliation Rules 2011. It also began actively organising international roadshows and participating in international conferences, such as in China and Korea, to promote Malaysia as a venue and seat of arbitration. The highlight of the year was when the Centre was bestowed the honour of hosting the prestigious APRAG Conference in July 2011, and the Director of KLRCA was appointed the President of APRAG for a two-year term with the Centre serving as the Secretariat.
- 12.7 He said that the number of arbitrators and mediators on KLRCA’s panel has now grown to over 700 and the full list, which was continuously updated, was available on KLRCA’s website. Another major recognition for KLRCA was when the Malaysian Government accepted the key recommendations of KLRCA’s Construction Industry Payment and Adjudication (CIPA) Bill, the most noteworthy being KLRCA being named as the Adjudication Control Authority. That was a highly significant role in implementing legislation that would transform the construction industry in Malaysia.
- 12.8 The Director of the center informed about the New KLRCA Products and Services in 2011, which included (i) the KLRCA Mediation/Conciliation Rules 2011 and (ii) .my DOMAIN REGISTRY & Sensitive Names Dispute Resolution. Capacity building and knowledge transfer to help build capacity and educate the legal fraternity and the public on ADR; KLRCA partnered with accredited institutions of higher learning, governmental

and professional bodies in Malaysia to organise arbitration and mediation courses and forums.

- 12.9 **Mrs. Eunice Oddiri, Director, Regional Centre for International Commercial Arbitration-Lagos (RCICAL), Nigeria** thanked the Secretary-General of AALCO for having invited the RCICAL for making their report at the annual session. The Director of the RCICAL stated that in the period under review, six new cases were added to the current disputes/cases registered at the Centre. All the fresh cases newly added to the centre's caseload were still on-going. The cases relate to aviation, banking, maritime, and a newly added sub-division of power supply. An interesting development in one of the cases was the re-evaluation of the domestic arbitration clause of the Centre contained in the contract. She informed that though desperate efforts were made in the course of the proceeding to deny the Centre's jurisdiction in the administration of the case, at the end of the day the Centre was invited to assume jurisdiction when it became apparent that the arbitral panel could not otherwise.
- 12.10 She briefly mentioned about the participation of the RCICAL in Arbitral Events, (i) International Bar Association (IBA) Conference held in Delhi October 2011, (ii) Educational Activities like the ADR Moot Competition, collaborations with other fora dealing with Arbitration, and so on. On Future Activities of the Centre, she said that the RCICAL would be represented at the forthcoming Moot for African Universities ongoing from 2008/2009, Sensitizing Meetings with Commercial Attaches and Trade Officers of Foreign Missions, Business Meetings with Companies who use Arbitration to resolve disputes, and Promotional activities in mediation for new users.

Agenda Item: Report on the AALCO's Centre for Research and Training (CRT)

- 13.1 **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Organizational Agenda Item, "Report on the Centre for Research and Training of the AALCO". In his statement he gave a brief background on the establishment of the CRT. The CRT functioning as an integral part of the Secretariat of the Asian-African Legal Consultative Organization (AALCO), evolved from the AALCO's "Data Collection Unit", which was established based on the proposal made by the Government of Republic of Korea at the Twenty-Eighth Session of AALCO held in Nairobi in 1989. The Data Collection Unit was renamed as the Centre for Research and Training in the Fortieth Annual Session of AALCO in the Year 2001. This marked, as envisaged, a new chapter in the efforts of the Member States towards undertaking research activities, as well as training programmes, within the AALCO. The mandate was further strengthened at the Abuja Session, Nigeria in the Year 2002. The Deputy Secretary-General gave a brief account on the activities undertaken by CRT in the period under review on the following heads, namely, Capacity building programmes, publications, seminars and workshops. He also stated that Secretariat is in the process of upgrading and also creating an Arabic version of AALCO website.

Adoption of Message of Thanks to the President of the Federal Republic of Nigeria

- 14.1 The Secretary-General on behalf of the Member States of AALCO read out the Message of Thanks to the President of the Federal Republic of Nigeria. The same was unanimously adopted.

“Excellency,

On behalf of all the Delegations of the Member States and Observers attending the Fifty-First (2012) Annual Session of the Asian-African Legal Consultative Organization (AALCO), I would like to extend the following message as a token of our heartfelt gratitude and respect to the Government and people of the Federal Republic of Nigeria:

“We, the participants in the Fifty-Fifth Annual Session of the Asian-African Legal Consultative Organization, would like to seize this opportunity to convey our profound gratitude and respect to Your Excellency and through you to your esteemed Government and the people of the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO in this magnanimous capital city of Abuja. Excellency, I thank the Government of Nigeria, on behalf of AALCO, and on my own behalf, for hosting this Session.

Your Excellency, we are aware that Nigeria attaches great importance to the Organization and it has always actively participated in the activities and work programme of the Organization be it substantive, administrative or financial matters ever since it joined the Organization in the year 1970. Nigeria has previously hosted two Annual Sessions of AALCO, namely the Thirteenth Annual Session (1972) in Lagos, and Forty-First Annual Session (2002) in this very city. Besides this, Nigeria has always taken keen interest in the deliberations during the Annual Sessions and has undertaken to strengthen the agenda and the role of the Organization among the comity of nations.

Your Excellency would be pleased to know that a spirit of constructive dialogue and cooperation amongst attending delegations marked this Session, thus enabling us to take crucial decisions on the organizational as well as substantive matters. Among many factors which paved way for the success of the conference, one of the prime ones was the excellent cooperation from the Government of Nigeria, which contributed significantly towards the excellent achievements of our deliberations.

In this beautiful city named “Abuja” famous for its picturesque beauty, we the delegates of the Fifty-First Annual Session of AALCO would like to place on record our sincere gratitude for full cooperation that the Government of Nigeria had extended to AALCO and its Member States for hosting the Annual Session with warm gesture and great ability.

Please accept, Your Excellency, the assurances of our highest respect and consideration and may the Almighty bless all the endeavours of your Great Country.

Thank You.”

Adoption of Resolutions of the Session

- 15.1 The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 22 June 2012:

Organizational Matters

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| RES/51/ORG 1 | Report of Secretary-General on Organizational, Administrative and Financial Matters |
| RES/51/ORG 1A | Revision of AALCO's Gratuity Scheme for the Locally Recruited Staff |
| RES/51/ORG 2 | AALCO's Budget for the Year 2013 |
| RES/51/ORG 2A | Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters |
| RES/51/ORG 3 | Report on the AALCO's Regional Arbitration Centres |
| RES/51/ORG 4 | Report on the Centre for Research and Training of the AALCO |
| RES/51/ORG 5 | Reappointment of the Secretary-General |

Substantive Matters

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| RES/51/S 3 | The Status and Treatment of Refugees |
| RES/51/S 4 | The Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949 |
| RES/51/S 5 | The Legal Protection of Migrant Workers |
| RES/51/S 6 | Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties |
| RES/51/S 8 | Establishing Cooperation Against Trafficking in Women and Children |
| RES/51/S 9 | International Criminal Court: Recent Developments |
| RES/51/S 10 | Environment and Sustainable Development |
| RES/51/S 11 | Challenges in Combating Corruption: The Role of the United |

Nations Convention against Corruption

- RES/51/S 12 Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
- RES/51/S 13 WTO as a Framework Agreement and Code of Conduct for World Trade
- RES/51/S 14 Expressions of Folklore and its International Protection
- RES/51/SP 1 Resolution on the Special Meeting on “Selected Items on the Agenda of the International Law Commission”
- RES/51/SP 2 Resolution on the Special Meeting on “Law of the Sea: Responses to Piracy: International Legal Challenges”
- RES/51/SP 3 Resolution on the Special Meeting on “International Terrorism”

Consideration of the Summary Report

The Draft Summary Report of the Fifty-First Annual Session of AALCO was placed for consideration of the Member States. Thereafter, they were requested to send in their written comments on the same to the Secretariat within one month, after which the same would be taken to be adopted.

Fifth and Concluding Session

A vote of thanks was proposed by the Asian Member States, African Member States and International Organizations, which was followed by closing remarks by the President of the Fifty-First Annual Session.

The Fifty-First Annual Session was thereafter adjourned.