

# **Asian-African Legal Consultative Organization**



## **Report of the Forty-Ninth Annual Session**

**5-8 August 2010  
Dar es Salaam,  
United Republic of Tanzania**

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

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## **PREFACE**

The historic Bandung Conference which is otherwise known as the Asian-African Relations Conference was held in 1955. As an institutional outcome of that Conference, the Asian-African Legal Consultative Organization (AALCO) was established in 1956. Today it consists of forty-seven Member States and beholds the spirit of solidarity, friendship and cooperation among its Member States from the Asian and African continent. The Organization serves its Member States as an essential mechanism for Inter-Regional co-operation; and the exchange of information and views on matters with an international legal dimension.

AALCO is one of the prominent regional intergovernmental Organization that unites countries from Asian and African continent on matters of international legal issues of common concern. The consultative nature of the Organization beholds transparency within the AALCO and also ensures that the voice of Asia and Africa is heard in various fora where international law-making takes place. Its close working relationship with various other international organizations is the evidentiary fact of AALCO's contribution towards progressive development and codification of international law. The current work programme of AALCO incorporates important legal issues and closely tracks the items on the agendas of the International Law Commission and Sixth Committee of the UN General Assembly.

At the Plenary Organ of the Organization – the Annual Sessions, deliberations that take place lead to framing a concerted Asian-African approach on contemporary issues of relevance to Asian-African countries. In conjunction with this, the Forty-Ninth Annual Session of AALCO was held from 5 to 8 August 2010 in Dar es Salaam, United Republic of Tanzania. The session marked a memorable event in terms of extensive deliberations on various significant areas of international law. The session witnessed participation from thirty Member States, representatives from two Regional Arbitration Centres of AALCO, Observers from two Non-Member States and representatives from six Intergovernmental/Specialized Agencies/Subsidiary Organs/Inter-Regional Organizations, totalling to about 200 participants.

During this session, a thematic debate on “Making AALCO's participation in the Work of International Law Commission (ILC) More Effective and Meaningful” was organised. The debate focussed on transmitting the views of AALCO Member States to the ILC and vice-versa. Two half-day special meeting were also organized on 7 August 2010, jointly by AALCO with (i) the International Committee of the Red Cross (ICRC) on “The International Criminal Court: Recent Developments”; and (ii) International Council of Environmental Law (ICEL) on “Environment and Sustainable Development”. Deliberations that ensued were very informative and relevant for AALCO Member States.

In order to rationalize the agenda items, seven items (including the two half-day special day meetings) were extensively deliberated. A new proposal has been put forth by the Government of Republic of Korea on “Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law”. Furthermore, an

agenda item titled “An Effective International Legal Instrument against Corruption” has been revised taking into account contemporary relevance, upon consensus by the Member States to “Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption”. As per established practice, the Secretariat prepared briefs on all the sixteen agenda items. This comprehensive Report presents to the Member States the discussions and deliberations on those items in detail. On the concluding day of the Session, the Member States adopted the Summary Report, Resolutions on Organizational and Substantive Matters, including resolutions on the Special Day Meeting along with the Message of Thanks on behalf of all the Member States to the President of the United Republic of Tanzania. I take this opportunity to thank all the distinguished members of the Drafting Committee for their immense support in scrutinizing all the above mentioned documents. Besides the above mentioned documents, the officials of the Secretariat also prepared the Provisional Summary Records of the Inaugural Session, First and Second Meetings of Delegations of Member States as well as First to Third General Meetings which were distributed to all delegations. The Member States were requested to review the documents and send their opinions/suggestions/comments to the Secretariat within a period of six weeks. The Secretariat would like to sincerely extend its gratitude to Member States who had transmitted their views and suggestions to be incorporated in the Summary Report of the Forty-Ninth Annual Session.

This Report of the Forty-Ninth Annual Session contains mainly the text of statements of the Inaugural Session, three Meetings of Delegations of Member States and four General Meetings; two-half day special meetings; the Resolutions on both organizational and substantive matters adopted at the Session; the Summary Report and the list of participants who attended the Session.

I wish to thank the Ministry of Constitutional Affairs and Justice, United Republic of Tanzania for convening the Annual Session of the Organization at a very short notice as well as their whole-hearted cooperation and excellent administrative arrangements amidst the preparations for general elections in their country, which were very helpful in conducting the proceedings of the Session successfully. I would also like to express my heartfelt appreciation and thanks to my friends and colleagues Dr. Xu Jie, Dr. Yuichi Inouye, and Dr. Hassan Soleimani, the Deputy Secretaries-General, for their support in making the Session a success.

I also wish to express my deep appreciation to Mrs. Anuradha Bakshi, the Assistant Principal Legal Officer; Mr. Shikhar Ranjan, and Mr. Mohammed Hussain, Senior Legal Officers; and Mr. S. Senthil Kumar, Ms. Shannu Narayan and Mr. S. Pandiaraj, Legal Officers, along with the other Staffs of the Secretariat for their immense efforts exerted to help me in accomplishing my mandate. Their professionalism and sense of responsibility contributed a lot towards making the Session a success and in bringing out all the documents referred to above on time.

31 March 2011

Prof. Dr. Rahmat Mohamad  
Secretary-General

## **AGENDA OF THE 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. Admission of New Members
5. Report of the Secretary-General on the Work of AALCO
6. Report on the Financial Situation of AALCO and Proposed Budget for the Year 2011
7. Report of the Chairperson of the Advisory Panel of AALCO
8. Report on the AALCO's Centre for Research and Training (CRT)
9. Report on the Work of the AALCO's Regional Arbitration Centres
10. Venue of the Fiftieth Session

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

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

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

1. Expressions of Folklore and its International Protection
2. Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption

### **IV. Matters under Article 1 (d) of the Statutes: Matters Relating to the International Law Commission (ILC)**

*Thematic Debate:* Making AALCO's Participation in the Work of the ILC more Effective and Meaningful

### **V. International Trade Law Matters**

WTO as a Framework Agreement and Code of Conduct for the World Trade

### **VI. Two Half-Day Special Meetings**

1. Special Meeting on "The International Criminal Court: Recent Developments"
2. Special Meeting on "Environment and Sustainable Development"

### **VII. Any Other Matter**

## **BUREAU OF THE SESSION**

### **PRESIDENT**

His Excellency Mr. Mathias M. M. Chikawe,  
Minister for Constitutional Affairs and Justice,  
United Republic of Tanzania

### **VICE PRESIDENT**

His Excellency Mr. Priyasath Gerald DEP,  
Solicitor General,  
Sri Lanka

### **SECRETARY-GENERAL**

His Excellency Prof. Dr. Rahmat Mohamad

### **HEAD OF THE NATIONAL ORGANISING COMMITTEE**

Mr. Oliver P J Mhaiki,  
Permanent Secretary,  
Ministry of Constitutional Affairs and Justice,  
United Republic of Tanzania

Mr. George M. Masaju,  
Deputy Attorney General,  
Attorney General's Chambers  
United Republic of Tanzania

### **DEPUTY SECRETARIES-GENERAL**

Dr. Xu Jie

Dr. Yuichi Inouye

Dr. Hassan Soleimani

### **CHAIRPERSON OF THE DRAFTING COMMITTEE**

Mr. Casmir S. Kyuki  
Chief Parliamentary Draftsman  
Attorney General's Chambers  
United Republic of Tanzania

**I. SUMMARY RECORD OF THE INAUGURAL SESSION OF THE  
FORTY-NINTH ANNUAL SESSION  
HELD ON THURSDAY, 5<sup>TH</sup> AUGUST 2010 AT 9:30 AM**

**His Excellency Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO in the Chair.**

**1. Welcome Address by H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO**

*Karibu* – Welcome to the United Republic of Tanzania.

Your Excellency, Mr. Phillip S. Marmo, Minister of State of the United Republic of Tanzania,

Your Excellency, Tan Sri Abdul Gani Patail, the Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO,

Your Excellency, Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, the United Republic of Tanzania,

Your Excellency, Dr. M. Gandhi, Director, Legal and Treaties Division, Government of India representing Mr. Narinder Singh, Joint Secretary & Legal Adviser, Ministry of External Affairs, Government of India and the President of the Forty-Seventh Annual Session of AALCO,

Honourable Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen,

On behalf of the Asian-African Legal Consultative Organization and my own behalf, I respectfully and warmly welcome Your Excellency Mr. Phillip S. Marmo and this distinguished gathering to the Forty-Ninth Annual Session of AALCO.

Your Excellency, the AALCO, since its foundation in 1956, has a unique tradition of holding its Annual Session, at the invitation of its Member States, on a rotational basis in the countries of the two continents. “It’s Time for Africa”, says the Anthem of the recently held 2010 FIFA Football World Cup in South Africa. For AALCO, also this Anthem stands true, and here we are in Tanzania – “The cradle of humankind” in the African continent meeting for our Forty-Ninth Annual Session, in this historical, beautiful and majestic city of Dar es Salaam.

I would like to express on behalf of the Organization and its Member States our profound gratitude to Your Excellency, to the Government and people of the United Republic of Tanzania for inviting the AALCO to hold its Forty-Ninth Annual Session. Personally, I am also beholden to your esteemed Government for responding to my request for holding the Forty-Ninth Annual Session of AALCO with utmost speed and efficiency.



We are privileged to be in Tanzania a country well known for its great cultural and linguistic diversity; a country always at peace with itself and with its neighbours; a land that holds the roof of Africa- Mt. Kilimanjaro and is the land of Serengeti – a world heritage site and recently proclaimed a 7<sup>th</sup> worldwide wonder. We are also overwhelmed by the warmth, generosity and hospitality of the Tanzanian people.

Your Excellency, let us also take this opportunity to remember and pay our tribute to Late Julius Nyerere the father of the Nation of Tanzania and the great hero of social justice. As the first Tanzanian President Nyerere led Africa to come out of colonialism. In true Bandung Spirit, Tanzania provided moral, material and political support to all the freedom movements in the African continent. This was instrumental in attaining political freedom for Africa. To attain economic freedom, Nyerere envisaged a social and economic system that placed human beings rather than the maximization of profit at the center of all economic endeavour and it is this vision, that provides the basis for the non-violent struggle for social justice. Suffice, it to say that the vision of Julius Nyerere continues to guide and inspire us.

As an illustrious follower of Nyerere's ideology, Your Excellency's contribution to the all-round development of Tanzania and for promoting international peace, justice and rule of law in international affairs, are well respected and recognized. It is a matter of honour and privilege, for us that our Annual Session is being inaugurated by an outstanding, respected and eminent leader of your stature from our region. We are confident, with your Excellency setting the pace for our deliberations; the Dar es Salaam Session is going to be a historic success.

Your Excellency, the United Republic of Tanzania joined the then AALCC in 1973, and ever since then, the Government of Tanzania has actively contributed to the work of AALCO. Its commitment to the AALCO's objective of increasing the Afro-Asian influence in the progressive development and codification of international law is further demonstrable from the fact that it is for the second time we are assembled in your country for our Annual Session. Earlier the AALCO was privileged to hold its Twenty-Fifth Annual Session in Arusha in 1986. I am quite confident that our Forty-Ninth Annual Session will also be equally successful.

Mr. President, the AALCO, has always been in the forefront of forging Afro-Asian solidarity in promoting justice and rule of law in international affairs. I would like to recall, in this context, the words from the Message of Late President Julius Nyerere on the occasion of twentieth anniversary of AALCC in 1976, I quote:

“For many years International Law has been in many respects Eurocentric and thus geared to serve only the interests of States in Europe. It has failed to serve as an instrument of justice and peace for the rest of the world whose interests were not taken into account at the time of its development. The founding of the Asian-African Legal Consultative Committee was a turning point in organising the struggle for justice of the peoples of two continents..... We hope that the struggle enunciated and pursued by the

Committee to transform International Law to an instrument of justice to all mankind will be kept up and that more African and Asian countries will join the Committee so that its impact in international legal issues becomes greater.”

Excellencies, Distinguished Delegates, Ladies and Gentlemen; the AALCO in its journey of fifty-four years has been steadfastly contributing towards realizing such vision. Today, it has emerged as a leading inter-governmental regional organization, which renders consultative and advisory services to its Member States. It has been making significant studies on various branches of international law and conducting researches on issues having contemporary relevance for the Afro-Asian region. In the contemporary world, taking into account the current practice of international law making, the role and range of activities required to be undertaken by the AALCO has multiplied several fold, thereby it is imperative that the Organization remains on a strong ideological foundation and enjoys firm financial support from its stakeholders- the Member States.

Your Excellency, over the course of coming four days, our Annual Session would be deliberating upon several important international legal issues. Very soon after this Inaugural Session, the Heads of Delegations of the participating delegations through their General Statements engage in sharing of experiences and perspectives on contemporary areas of core concern in international legal matters for Afro-Asian States. Thereafter, a thematic debate on “Making AALCO’s participation in the work of International Law Commission more Effective and Meaningful” is to take place. On Saturday, the 7<sup>th</sup> of August during the course of two Special Meetings, organized jointly by the Tanzanian Government, the AALCO Secretariat, and partner organizations, the International Committee of the Red Cross (ICRC) and the International Council of Environmental Law (ICEL), we would be addressing in the first meeting, crucial issues pertaining to the International Criminal Court (ICC), namely the principle of complementarity and the crime of aggression. The second meeting on Environmental Law would analyze the legal issues surrounding the building of momentum for the Cancun Climate Change Conference, as well as the revised version of the African Convention on Nature and Natural Resources; and the Draft International Covenant on Environment and Development. The Annual Session is also expected to address the following topics that are on the work programme of AALCO, namely, 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; WTO as a Framework Agreement and Code of Conduct for World Trade; Expressions of Folklore and its International Protection; and Challenges in Combating Corruption: The Role of United Nations Convention against Corruption. In addition, the Heads of Delegations would also be reviewing the organizational matters, including the financial situation of AALCO.

I request the delegates to avail this unique opportunity and reflect the concern of their Governments/countries regarding these topics and to share their experiences with and among AALCO Member States as it is in my view one of the fundamental aims of our annual meeting. Together with the National Organizing Committee of the Host

Government, the AALCO Secretariat has done its utmost to make all the necessary arrangements for the success of our Forty-Ninth Annual Session. Pardon us, if there is any shortcoming in the arrangements of this Session from our part.

I am quite confident we would be able to achieve amicably, in the spirit of reconciliation, friendship, and mutual trust, the objectives of this Forty-Ninth Annual Session of AALCO.

I once again welcome you all to the Forty-Ninth Annual Session of AALCO and to Dar es Salaam – the “haven of peace”. *Asante*.

**2. Address by H. E. Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO**

Honourable Mr. Phillip S. Marmo, Minister of State of the United Republic of Tanzania,

Honourable Mr. Mathias M.M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania,

His Excellency Secretary-General of AALCO, Prof. Dr. Rahmat Mohamad,

Excellencies, Distinguished Delegates, Ladies and Gentlemen; on behalf of the Organization and all the Member States, allow me to express our appreciation and gratitude to the Government and the people of Tanzania for hosting the Forty-Ninth Annual Session of Asian-African Legal Consultative Organization. I also wish to take this opportunity to extend our appreciation to the Honourable Mr. Phillip S. Marmo, Minister of State of the United Republic of Tanzania, for taking time off from his busy schedule to grace this occasion.

The United Republic of Tanzania has been actively participating in AALCO's programmes and initiatives since its entry into AALCO in 1973. I also note that this is the second time that Tanzania has agreed to become host for the AALCO Annual Session, after the Twenty-Fifth Annual Session of AALCO which was held in Arusha from 3 to 8 February 1986.

Excellencies, Ladies and Gentlemen; throughout my tenure as the President of the Forty-Eighth Annual Session of AALCO, I had attempted to do whatever possible, within my capabilities, to steer AALCO into a new dimension. I am pleased to see that AALCO has positively moved forward towards realizing and implementing the Putrajaya Declaration which was adopted at the Forty-Eighth Annual Session of AALCO held in Putrajaya, Malaysia. The Putrajaya Declaration was drafted with the main aim of revitalizing AALCO. This mammoth but achievable task could only be attained with full determination and equal sharing of responsibility by all of us Member States.

On this issue, I wish to commend the efforts of His Excellency the Secretary-General and the AALCO Secretariat in strengthening AALCO's financial situation. This is our

Organization. We owe it to our respective nations and continents to ensure the sustainability of AALCO. We must pay our contribution in time. We must support the efforts to collect arrears by encouraging the relevant Member States to continue dialogue with the Secretary-General to solve this problem. I am hopeful that the incoming President of AALCO will prioritize and continue to monitor this gargantuan task.

Upon assuming the presidency in August 2009, I had been in constant contact with His Excellency the Secretary-General of AALCO, Professor Dr Rahmat Mohamad, to provide guidance and direction on the current and future works of AALCO. I had also travelled to the AALCO Secretariat in New Delhi to have a meeting with the Secretary-General of AALCO and all members of the AALCO Secretariat on 21 December 2009.

We would hear in greater detail from the Secretary-General during the deliberation of his report on the work of AALCO for the current session. But at this juncture I wish to congratulate the Secretary-General and the AALCO Secretariat for the excellent efforts made thus far in numerous initiatives. In particular, I noted the active participation of the Secretary-General during his dialogue session with the members of the International Law Commission, the successful organization of the AALCO Lecture Series, the convening of the Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court, the collection of arrears and the revamped AALCO website. I was scheduled to meet and to hold dialogue with certain members of the ILC on the sideline of the Sixth Committee meeting during October 2009. However, due to certain circumstances, I regret that I had to cancel my trip to New York at the very last minute.

Excellencies, Ladies and Gentlemen; I note with interest that the AALCO Lecture Series is showing promising and favourable development. I was given the honour to deliver its First Inaugural Lecture on the theme “Enhancing Asian-African Solidarity in the Progressive Development and Codification of International Law: A Vision”, on 22 December 2009 at the AALCO Secretariat in New Delhi. At that august event I chose to focus my lecture on the importance of “Reviving AALCO”. As I thought the issues I mentioned are important, allow me to recapitulate the suggestions I made.

AALCO must remain an apolitical intergovernmental consultative organization that provides a platform to discuss issues purely from the legal perspective. To achieve this, I had outlined some proposals as below:

1. Increasing in-depth and open debates in AALCO on the issues of international law

In recent years, it is noted that there has been a lack of in-depth and open debates on the issues of international law being considered by AALCO. Instead, at the Annual Sessions, Member States merely assert or reassert their position on the issues.

In this regard, I proposed that the Secretariat takes a more active role in the preparation of papers for consideration by AALCO Member States during the Annual Sessions. AALCO should also consider establishing sub-committees or working groups to discuss

issues in greater detail. AALCO could even consider establishing a permanent body akin to the ILC.

2. Keeping up with and contributing to the development of international law in the UN and other international organizations

I observed that part of the main functions of AALCO is to consolidate, where possible, the views of its Member States and present it as one voice at the UN and the ILC with regard to international law topics that are under consideration.

AALCO had not been able to effectively execute this important function. Thus, there is a real need for the Secretariat to take a more active role in coordinating and assisting in the consolidation of views of AALCO Member States and transmitting AALCO's observations and comments to the relevant UN bodies in time for their consideration.

3. Expanding the role and influence of AALCO

It is noted that AALCO has been concentrating on the development of public international law since its inception. However, as the majority of AALCO Member States are developing countries, the importance of keeping abreast in the development of private international law should not be ignored.

In this regard, AALCO should work closely with the legal fraternities and private institutions in its efforts to grasp the problems faced in this area and to develop its ideas and position on private international law. The increased cooperation between AALCO and academic institutions, private institutions as well as legal practitioners is also important in the field of arbitration, in light of AALCO's Regional Centres for International Commercial Arbitration. This would keep AALCO's Regional Arbitration Centres abreast with the developments in international arbitration as well as increase the visibility of such centres, thus promoting and consolidating their position as respectable, independent arbitration centres.

4. Training and Capacity building

I called upon AALCO Member States to contribute financially to AALCO for training and capacity building. For future purposes, using the expertise of AALCO Member States and in collaboration with other international organizations, AALCO could embark on a progressive mode of generating income for AALCO by conducting a more attractive training programme to attract Member States.

5. Full utilization of AALCO experts

AALCO Member States has its own pool of renowned experts on various fields that could be tapped for mutual benefits of AALCO Member States. I had asked the Secretary General to put up a list of experts in various fields to be made available to Member States.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; fresh and innovative ideas should be considered by AALCO particularly on ways to move forward in a coherent and effective manner. One such idea is to revitalize the Arbitration Centres under the auspices

of AALCO. We should consider forming a common system both administratively and financially including on the sharing of resources between the Centres which would enable the creation of a pool of competent arbitrators to facilitate efficient Centres with the capacity to compete with new emerging Arbitration Centres. The effect of such a move would be the internationalizing of the arbitrators and the recognition of a pool of expertise that can be utilized for the benefit of every Centre.

A common standard in the qualification of arbitrators for all the Centres can be discussed and agreed upon for them to be able to practice in all the Centres. To make this a reality the representatives of each of the Arbitration Centres should meet at least one day in every AALCO Annual Session and establish clear lines of communication to enable ideas and deliberations to be exchanged among them. In carrying this out effectively, the Secretary-General could also take the initiative to promote the regional Centres among Member States as well as to establish another Centre in the region such as in South Asia which does not have an arbitration centre which operates under the auspices of AALCO.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; the AALCO Secretariat is an important feature in advising and carrying out the resolutions of AALCO. To that end, continued support should be given to the Secretariat by AALCO Member States. On the appointment of the Deputy Secretaries-General, I hope to see a more equal appointment system which should be based on the expertise and geographical distribution. The AALCO Statutes provides for the flexibility to the AALCO Committee to determine from time to time the number of Deputy Secretaries-General as well as Assistant Secretaries-General to be appointed in the Secretariat. The people appointed to these posts have to have the necessary experience and qualification to carry out the tasks assigned to them during the AALCO Annual Sessions. Member States must recognize and appreciate the need for excellent independent legal opinion which they can depend on and not just mere reports.

Over the years we have seen many items and topics being proposed and taken up by AALCO and these topics remained in the agenda of AALCO Annual Sessions despite its work being completed. This takes up too much time of the AALCO Secretariat as the number of topics keep increasing each year. The AALCO Secretariat should not be overburdened with repetition on topics which have been completed. I would like to propose that once the work on the topic is completed by the AALCO Secretariat, the topic should be taken off from the agenda and only, if need be, further taken up by the initiator of the topic. This would allow room for new topics to be introduced and the focus would be on these new topics rather than on the topics which have been dealt with. After all we lawyers in this organization of legal experts are interested in legal opinions only.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; please allow me to once again on behalf of all to extend to the Government and the people of Tanzania my appreciation for their gracious hospitality. To the Honourable Mr. Phillip S. Marmo, thank you once again for being with us today. I hope we will have a successful and fruitful meeting in the days ahead.

Mungu ibariki Afrika or “God Bless Africa”. Thank You.

**3. Welcome Remarks by H. E. Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania and the incoming President of the Forty-Ninth Annual Session of AALCO**

His Excellency, Mr. Phillip S. Marmo, Minister of State of the United Republic of Tanzania,

His Excellency, Mr. Tan Sri Abdul Gani Patail, the Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO,

His Excellency, Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO,

His Excellency Dr. M. Gandhi representing Mr. Narinder Singh, Joint Secretary & Legal Adviser, Ministry of External Affairs, Government of India and the President of the Forty-Seventh Annual Session of AALCO,

Heads of Delegations, Members of the Diplomatic Corps, Distinguished guests, Ladies and Gentlemen,

Permit me, on behalf of the organising committee, to extend to you Mr. President our profound appreciation for accepting to officially inaugurate the Forty-Ninth Annual Session of the AALCO. Your acceptance and attendance is a proof that you value the positive role of AALCO in enhancing cooperation among Member States in legal issues and in contributing valuable proposals for the development of international law.

As you know, the AALCO is an outcome of the Afro-Asian Conference famously known as the Bandung Conference which was held in 1955 and attended by twenty nine newly independent countries from Africa and Asia. The major objectives of the Conference were to oppose colonialism of all kinds and to promote Afro-Asian economic and cultural cooperation.

In order to achieve the objectives of the Conference, some Asian countries and later in cooperation with some African countries formed the AALCO. The Organisation was formed to serve, among other things, as an advisory board to Member States on international issues with legal dimension. Furthermore, AALCO was meant to play as a forum for Asian and African countries cooperation in legal matters of common concern.

Mr. President, Fifty four years have now elapsed since the formation of the AALCO and indeed the Organisation has not failed us. It has been identified as the only organisation at inter-government level embracing the two continents with the sole purpose of advising its members in legal matters with international dimension. In doing this, the AALCO has managed to fully participate in examination of international law matters such as international economic trade law, law of treaties, law of the sea, international criminal law and diplomatic law.

Due to the participation of AALCO in several matters under consideration of United Nations and other international bodies and its advice to new member states, our countries have managed to hold a common position in various international issues with legal dimension, this has helped our countries in fighting against neo-colonialism and unfavourable trade between continents and western countries.

Mr. President, I was merely highlighting the background of the AALCO; its objectives and success. I must now hasten to do what I have stood here to do which is the simple task of welcoming you Your Excellency to officially inaugurate the Forty-Ninth Annual Session of the AALCO. *Karibu Sana.*

**4. Inaugural Address by H. E. Mr. Phillip S. Marmo, Minister of State in the Prime Minister's Office - Policy & Parliamentary Affairs, United Republic of Tanzania, representing His Excellency Jakaya Mrisho Kikwete, President of the United Republic of Tanzania**

Honourable Mathias Meinrad Chikawe, Minister of Constitutional Affairs and Justice of the United Republic of Tanzania and the President of the Forty-Ninth Annual Session of AALCO,

Honourable Mr. Tan Sri Abdul Gani Patail, the Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO,

Honourable Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO,

Distinguished Heads of Delegations,

Observers, Invited Guests; Ladies and Gentlemen,

I feel greatly honoured to participate in this session of the Asian-African Legal Consultative Organization. First of all, let me bring to you an apology from His Excellency Jakaya Mrisho Kikwete, the President of the United Republic of Tanzania who was to inaugurate and participate in this Conference but due to other pressing National Commitments he was unable to do so. However, due to the importance of this meeting he has chosen me to represent him. The President sends greetings to all participants and wishes the meeting a great success.

After those few remarks let me now present the Speech of His Excellency the President to you.

“Distinguished Participants, I am greatly honoured to be invited to grace the opening of this Forty-Ninth Annual Session of the Asian-African Legal Consultative Organization. It is my honour to welcome you back to Tanzania, after twenty four years, you last came in Tanzania and particularly at Arusha in 1986, when we had such a meeting. I am aware



that you have been around to our neighbours across the border, but not in this country. You are warmly welcome or in Kiswahili, *Karibuni Sana*.

This Conference is taking place at a time when the General election in our country is just around the corner in October. Most of our leaders who are politicians in the mid of this month will be involved in the Campaigns. We believe we will continue to have peaceful, free and fair elections.

Distinguished Participants, it is a great honour to our Country and for the People of Tanzania for hosting this Session. This session marks the fifty five years of the Bandung Conference which brought together Asian Countries at Bandung in Indonesia 1955 and later the African brethren joined the Forum to fortify the voice of new States which had just emerged from imperialism. The Bandung Conference represented a nucleus for the emergence of the Third World non-aligned movement, which resolved to promote political and diplomatic autonomy for less developed countries in the face of the International Cold War Politics. The establishment of this Organization on 15<sup>th</sup> November 1956, a short while after the Bandung Conference as Asian-African Legal Consultative Committee to be renamed as AALCO as a tangible outcome of that historic Meeting, principally, it added legal expertise in the initial political and diplomatic drive. It has all along played an important role as a springboard for legal thought in the articulation of legal position for the Region in the international fora. It has been, in your own language, acted as a legal counsel to the partner states in their resolve to find themselves a space in the international negotiations, discussions and forums.

Indeed, so many events have taken place through years of AALCC and AALCO. Some of the Members of AALCO have emerged to become formidable tigers economically and politically, others are emerging economies, and those who remain the least developed countries in the world are grappling with all odds to forge economic development. The good news is, despite our different levels of economic development we are still sailing in the same boat. This August Conference still brings together Members of the legal fraternity from Asia and Africa and remains a true reflection of the long bonded relationship among Member States of the two continents in their quest to speed up development among our people. It remains a body that plays a pivotal role in the development of jurisprudence in the two Continents for both social and economic development.

The purposes and objectives of AALCO as stipulated in its Statute is a true reflection of one of the mandate AALCO carries, for the benefits of the Countries in the Asian and African continents. This body which is charged with the duty to pursue legal issues o the development of international law, that reflect the needs and aspirations of Member States, it has always remained stead forward in articulating and addressing the issues that are of importance to the region. The body has played a great deal in ensuring that problems of the region that call for legal solutions are voiced and recognized, and that those issues find their jurisprudence in international law. The common voice of the region has been firmed up by the organization and in so doing, even those of us who could not make a

direct participation in international fora like the United Nations had their voice find their way into international law.

**Achievement made by AALCO:**

Distinguished participants; I am particularly glad to lead a country which has travelled with AALCO for quite a long time since we joined this Organization in 1973. Over the years, we have witnessed commendable success scored by it. The organization has been able to cover diverse matters of interest in international law, from International Economic and Trade Law, Diplomatic Law, Human rights, environmental law to International Criminal Law. The formulation of “Bangkok Principles” in the treatment of refugees in 1966 and the review made to the principles in 2001 form a respectable framework for treatment of refugees. The adoption of the United Nations Convention on the Law of the Sea where we were privileged to serve effectively through the hands of our Justice Warioba, the promulgation is an important milestone that had immense contribution of AALCO of important Models in the areas of Extradition of fugitive offenders, Admission and treatment of Aliens and principles relating to elimination or reduction of Multiple Nationality. Others include Optimum utilization of resources of that exclusive economic zone, promotion and protection of investments, United Nations Convention against corruption, matters relating to World Trade Organization, to mention just a few. This is a demonstration of able participation of this Organization in matters of interest in international law. The long list of issues you have been able to address is evidence that this is a serious and committed Organization and needs to be supported and sustained. That is the reason why my country has all along strived to participate in all meetings and to contribute to all annual contributions, against all the odds.

**Challenges:**

Distinguished participants; today demands that are placed on international law are momentous. We are witnessing a development that call loud for a just international legal regime that will ensure a fair apportionment of obligations among the members of international community. For example, today international trade is beleaguered with insecurity in shipping. The Indian ocean is demonized as a home for piracy and insecurity. The perpetrators of these heinous crimes hide on the back of anarchic regimes in the horn of Africa to rip from the ships that sail in this region especially in Indian Ocean at the economic expense in terms of shipping costs and insurance that are hurled to the countries of the region. I hope this Organization will make a timely intervention to ensure that a balanced, fair and effective legal regime is put in place that obliges the international community to apprehend the criminals, investigate the crimes of piracy and punish the proven offenders without laying undue burden to the proximate states that do not benefits at all from the crimes. I believe this can do.

This body can lend an invaluable helping hand in articulating important initiatives in the maintenance of Law and Order, the conduct of good diplomatic relation and enhanced cooperation in our Region on the one hand and Countries and people of our Region with the rest of the World on the other. I have in mind the original values espoused by the

founders of Bandung Conference as our guiding principles. Those forefathers who thought of having you around, of having a body of this type established had a clear vision of ensuring that we as Nations have a strong voice despite our levels of development at the time, we now need to emulate and sustain their aspirations. This august body must continue to play a pivotal role in researching and advising Member States on current global legal issues. Its deliberations will help our Governments to keep abreast with current development around the world and make us react to them with appropriate guidance. Its advice will also help to put in place effective legal regime for the betterment of our people.

Ladies and Gentlemen, the challenging obligation of this Organization is to remain on course in discharging its fundamental role of exchanging views, experiences and information on matters of common interest, having legal implications over our jurisdictions. That duty is important today as it was at its inception. You have done a lot, yes, however, you must not relent. I challenge you to remain engaged in that Agenda for our common good.

### **Relationship with the ILC:**

Distinguished Participants, another important role of this body is to examine subjects that are under consideration by the ILC. I have taken note that one of your agenda at this session is to ensure you become more engaged to the work of that international body. This is a very valid idea. International Law Commission has played an important role in shaping International Law. That work requires to address the needs and aspirations of our Region as it does to others. Asia and Africa are part of this world and therefore it is important that AALCO takes part effectively, in every debate going on in the ILC. Whereas I commend members of this region for their participation in ILC, let me express my hope that we shall always maintain that relationship and participation for our good.

Ladies and Gentlemen, once again, let me invite you to Tanzania. I believe that for some of you, it is your first time you are visiting Tanzania. The constraints of time have prevented us from showing you our spending wild nature which we are abundantly endowed. What you will be shown on your last day is, but a tip of iceberg. I request and encourage you to spend some time after the conference, to visit our beautiful places, national parks, historical sites and museums. I would extend this invitation even to those who have visited Tanzania in the past. You will enjoy the diversified culture among our people and I have no doubt that you will enjoy their warmth and hospitality.

Mr. President, at this juncture, I would like to take this opportunity to wish you fruitful deliberations and without any further action, let me now take this opportune moment to declare this Forty-Ninth Annual Session of the Asian-African Legal Consultative Organization open. Thank you for the attention.

**5. Vote of Thanks by Dr. M. Gandhi, Director, Legal and Treaties Division, Ministry of External Affairs, Government of India representing H. E. Mr. Narinder Singh, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India and the President of the Forty-Seventh Annual Session of AALCO**

Excellencies,

His Excellency Mr. Phillip S. Marmo, Minister of State of the United Republic of Tanzania,

His Excellency Tan Sri Abdul Gani Patail; President of the Forty-Eighth Session of AALCO,

His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania and the incoming President of the Forty-Ninth Annual Session of AALCO,

His Excellency Professor Dr Rahmat Mohamad, Secretary-General of AALCO;

Distinguished delegates, ladies and gentlemen:

The Annual Session of AALCO marks the manifestation of mutual cooperation and support extended by Member States of the Asian and African countries. The vision and trajectory envisaged by the founding members still stands fresh in our institutional history. For the past five decades and above, the Organization's efforts in bringing together nations from the two continents, in order to address international legal matters which has serious implications in international relations stream also is remarkable. The common platform that AALCO provides in these matters would add to the formation of a just and equitable world order.

Excellencies and Distinguished delegates, in an interdependent world, cooperation in terms of sharing experiences and pooling in resources during and for emergencies would be the mantra for the coming years. The international legal matters like human rights, human security, environmental law including climate change, managing financial crisis and framing effective remedies for prevention, corruption, refugee and migration problem, trafficking in human beings and so on, requires to be addressed from our perspective too. An approach that accommodates both domestic demands and international obligations is a necessary one for the achievement of all our objectives. We are required as governments of individual states, to bring about programs that must be more responsive to the current challenges that the world is facing today. As the President of the Forty-Seventh Session of AALCO, I wish to take this opportunity to register on behalf of the Government of India and its people, our gratitude to this Organization for having given us an opportunity to hold this position in the years 2006 and 2008.

In this regard, we wish to thank the Government of the United Republic of Tanzania for hosting the mega event and through them to express our gratitude to the people of this country for extending warm hospitality. Allow me to express my sincere appreciation to His Excellency Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO for his able leadership and guidance. Under his Presidency, AALCO strived to achieve greater heights in the international legal fraternity. I would like to extend our whole-hearted support and cooperation to the current President His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania and the Organizing Committee for all their efforts in conducting the Forty-Ninth Annual Session of AALCO in a smooth manner.

The office of the Secretary-General of AALCO is a pivotal one. I am sure that all the AALCO Member States realize the significant role that our Secretary-General His Excellency Professor Dr. Rahmat Mohamad has played in leaving no stone unturned to revitalize this Organization. We trust that under your stewardship this institution will attain many more glories.

Excellencies and Distinguished delegates, I would like to thank in advance the Honorable Ministers, distinguished delegates and observers for their active participation and hope that this week's deliberations will be robust and assist us in producing tangible outcomes. Thank you.

**The Meeting was thereafter adjourned.**

**II. SUMMARY RECORD OF THE FIRST MEETING OF THE DELEGATIONS  
OF AALCO MEMBER STATES  
HELD ON THURSDAY, 5<sup>TH</sup> AUGUST 2010 AT 11:40 AM**

**His Excellency Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and President of the Forty-Eighth Annual Session of AALCO in the Chair.**

1. The **President** welcomed the Delegates for the First Meeting of the Delegations of the AALCO Member States. Thereafter, the President referred to the Provisional Agenda and the Tentative Schedule of the Meetings. There being no comments from the delegations, the President declared the Agenda and the Schedule of Meetings as adopted.
2. The next item taken up was related to the “**Admission of Observers**”. Referring to Rule 18 of the Statutory Rules of the AALCO relating to the “Admission of Observers”, the President stated that it permitted the Organization to admit at its Meetings Observers from non-Member States, International Organizations and other bodies. The President informed that applications from non-Member States, namely, the Russian Federation and Lesotho and from international organizations, namely, the International Law Commission, the International Committee of Red Cross (ICRC), the International Criminal Court and the International Council of Environmental Law (ICEL) were received. There being no comments the Admission of Observers was approved by the Meeting.
3. The Meeting then took up the agenda item on the “**Election of President and Vice-President**”.
4. The **Leader of the Delegation of the People's Republic of China** proposed the name of **His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice of the United Republic of Tanzania** to be the President of the Forty-Ninth Annual Session of the AALCO. The proposal was seconded by the **Leader of the Delegation of Ghana**, following which H. E. Mr. Mathias M. M. Chikawe was elected as the President of the Forty-Ninth Annual Session of AALCO.
5. The **Leader of the Delegation of the Republic of South Africa** proposed the name of **His Excellency Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka** to be the Vice-President of the Forty-Ninth Annual Session of AALCO. The proposal was seconded by the **Leader of the Delegation of Brunei Darussalam**, following which His Excellency Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka was elected as the Vice-President of the Forty-Ninth Annual Session of AALCO.
6. The **President** of the Forty-Eighth Annual Session of AALCO in his farewell remarks thanked the Member States for the cooperation extended to him in efficiently discharging his duties as the President of AALCO. He also expressed his gratitude to the Secretary-General of AALCO and Secretariat for faithfully observing the mandate entrusted to them by the Forty-Eighth Annual Session of AALCO. The outgoing

President called upon the Member States to render full support to the Secretariat so that it was able to perform the responsibilities entrusted to it in an efficient manner. Commending the election for the posts of the President and Vice-President, the outgoing President stated that there could not have been better choice than those elected for these positions.

7. Thereafter, the newly elected **President** and the **Vice-President** assumed their position on the podium.

8. The incoming **President** in his opening speech thanked the Member States for the support rendered to him in his election for the position of the President. The President appreciated the agenda of the Forty-Ninth Annual Session and hoped that with the cooperation of the participating delegations the deliberations would be conducted in a friendly spirit to achieve consensus. He also warmly welcomed the Delegations to the historic city of Dar es Salaam and hoped that they would also find time during their hectic schedule to see some of the places of historical and tourist interest in Tanzania. The President applauded the efforts made by the National Organizing Committee and the AALCO Secretariat in preparing for the Forty-Ninth Annual Session and appreciated that despite the short time for preparing for the Annual Session the efforts made had been fruitful and the presence of delegations from several Member States testified it.

9. The **Vice-President** in his opening remarks thanked the delegations for the support extended to him for his election for the position of Vice-President. The Vice-President stated that his country as one of the founding Member States of AALCO wished to extend an invitation to the Organization to hold its Fiftieth Annual Session in Sri Lanka.

10. The **President** announced the “Establishment of the Drafting Committee” to prepare the drafts of the Summary Report, resolutions and Message of Thanks to the President of the United Republic of Tanzania. He informed that Mr. Casmir S. Kyuki, Chief Parliamentary Draftsman of the United Republic of Tanzania would head the Drafting Committee and invited the delegates to participate in the work of the Committee.

**The meeting was thereafter adjourned.**

### **III. SUMMARY RECORD OF THE FIRST GENERAL MEETING HELD ON THURSDAY, 5<sup>TH</sup> AUGUST 2010, AT 12.15 PM**

**His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania and the President of the Forty-Ninth Annual Session in the Chair.**

#### **General Statements**

1. The **Leader of Delegation of the Sultanate of Oman**<sup>1</sup> congratulated His Excellency the President and the Vice President of the Forty-Ninth Annual Session and also commended the President of the previous Session for the efforts made during his presidency. He also expressed his deep gratitude to His Excellency the Secretary-General of the Organization for his constructive efforts which he hoped would be sustained and continued to be supported by all Member States.

2. He stated that his country had given much importance to supporting international efforts aimed at preventing and combating crimes of corruption through provisions in its applicable laws that criminalize all forms of corruption. He informed that the Sultanate was also committed to combat money laundering activities, which was considered the most significant economic and banking problems on both the international and local levels and being related to various dangerous crimes, particularly terrorism. In that regard, the Sultanate issued a new law on Combating Money Laundering and the Financing of Terrorism, promulgated by Royal Decree number 79/2010 on 28<sup>th</sup> June 2010, which repealed the Money Laundering Law issued in 2002. Such action was in response to the new developments in that area and in line with the recommendations of the Financial Action Task Force (FATF). The Law included a number of provisions intended to prevent the occurrence of money laundering crimes and the financing of terrorism, and established a national committee concerned with that. The Leader of Delegation expressed Sultanate's keenness to do whatever strengthens international cooperation in combating such type of crime and tracing its perpetrators.

3. The Leader of Delegation informed that in the framework of the Sultanate's tireless efforts at implementing its international obligations in combating human trafficking crimes, the National Committee for Combating Human Trafficking assumed its functions, issuing a national plan that identified the applied and procedural aspects of the Law on Combating Human Trafficking, which was issued in November 2008. The plan focuses on spreading sufficient awareness within the community on the crime of human trafficking, including the identification of victims and clarifying the rights, duties and assistance accorded to them, in addition to familiarization with the applicable laws in the Sultanate related to the crime of human trafficking. In the field of human rights, the National Human Rights Commission-established by Royal Decree number 124/2008-assumed its functions, was currently working on following up human rights issues and

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<sup>1</sup> Statement delivered in Arabic. The AALCO Secretariat expresses its gratitude to the Delegation of the Sultanate of Oman for providing the English translation of the statement.



freedoms and their protection, as well as monitoring any violations relating to human rights in the country, and assisting in its settlement or resolution, in addition to proposing an annual plan containing the necessary national measures for promoting a culture of human rights which the Committee deems appropriate in that regard, for the purpose of providing the best safeguards and rules to ensure the exercise of those rights.

4. In that context, the General Federation of Oman Trade Unions held a founding Conference on 15<sup>th</sup> February 2010 in the presence of a distinguished audience on the local, regional and international levels. Eighty Eight delegates participated in the Conference representing all trade unions based in the Sultanate, which numbered 45 unions at the time those were registered for membership to the Conference. The Memorandum of Association of the General Federation was adopted and 11 Members were elected to the Board of Directors for duration of 4 years. The election process was fully transparent under the supervision of observers from international associations, headed by the International Labour Organization, in addition to local observers and in the presence of Arab and regional labour organizations and trade unions. It was noteworthy that the General Federation of the Oman Trade Union, in accordance with the Omani Labour Law, enjoyed the status of an independent juristic person and has the right to conduct its activities with full freedom, and pioneers the interests of all workers in the Sultanate, regardless of whether they were national or foreign workers, and defending their rights guaranteed by international and national laws. He also referred to the Global Peace Index of 2010 compiled by the US Institute for Economics and Peace and issued in June 2010 which placed Oman second in the Arab world for peace and security, and twenty-third worldwide. Oman was also placed first in the Arab world in the index of the world's most successful states of 2010 prepared by the US Foreign Policy magazine. That confirmed Oman's prestigious international position, as it had previously fared very well in a number of indices prepared annually.

5. The Leader of Delegation expressed his satisfaction with the statement delivered by His Excellency the Secretary-General of AALCO at the outset of the Annual Session in which he submitted his report on the work of the Organization, and they noted that great efforts continued to be made in developing its method of work and activating its role in all areas. They believed it was time the Organization urged its Member States to feeling that it was indispensable to them in the legal services it offered and its defending of their stances in international forums, thus enhancing their sense of belonging to it and attracting more States to join. In that context, the Leader of Delegation proposed, as one essential step, that the esteemed Organization encourage the carrying out of legal research of importance to the Member States, and to give more consideration to the training of legal researchers of those States in various international law issues through conducting courses and seminars in both English and Arabic Languages and other languages of interest to those States.

6. To conclude, the Leader of Delegation expressed deep gratitude and praise for the great efforts made by those who had planned, prepared and implemented the Session.

7. The **Leader of Delegation of the Republic of Indonesia**, at the outset congratulated the President and Vice-President of the Forty-Ninth Annual Session. He also thanked the AALCO Secretariat for the excellent preparation of the meeting, and the host Government for the hospitality extended to his delegation. He assured the Organization of the continuous support and cooperation of the Indonesian delegation.

8. The Leader of Delegation noted that for the last couple of decades, developing countries, including the Asian-African countries, had played a pivotal role in contributing to the international law making process. For their contribution in the process, the Asian-African countries had reaped the benefit of having their interests being represented in the current international law system. The adoption of the United Nations Convention on the Law of the Sea in 1982 was a testament of those consistent efforts in promoting the interest of developing countries in taking the benefit of marine resources beyond national jurisdiction.

9. He felt that there was greater need to confirm AALCO's role in the development of international law which needs to be continuously renewed to create equal and fair international law system. Towards this purpose, one of the issue on which AALCO could contribute in the international law making process was the effort of developing countries in establishing an international legal instrument or instruments, in order to protect genetic resources, traditional knowledge and folklore that was still under negotiation in WIPO. Such an effort was indeed a challenge in establishing an equal and fair international Intellectual Property Rights Law that should not only accommodate the interests of developed countries but also developing countries. He appreciated the role of AALCO in taking up this issue for consideration during the Forty-Ninth Annual Session. He hoped that AALCO could expand its deliberations, not only on the topic of expressions of folklore, but also touching the topic of genetic resources and traditional knowledge.

10. The Leader of Delegation stated that international law was currently facing strong challenges in its application, particularly where State compliance towards international law were yet to be applied by certain States in their practices. The Palestine-Israel conflict which has always been a fundamental and frequently discussed topic at the AALCO Annual Sessions was one example regarding the compliance to international law. He strongly believed that compliance towards international law should receive better attention, given that it would become a part of the existence of international law.

11. He recalled the statements made by his delegation as well as other delegations, including the proposal made by the President of the Forty-Eighth Annual Session that suggested the need for AALCO to focus and prioritize on legal issues to be discussed during the meetings which were of particular importance to AALCO Member States, which could be done through streamlining the agenda items of the Annual Sessions. He acknowledged that that suggestion was followed by the Secretariat for the Session, thus more focused discussions could be held on the deliberated items. That suggestion could be further institutionalized in the coming years. He similarly commended on the choice of subjects for the special meetings, namely the International Criminal Court and Environment and Sustainable Development.

12. Thereafter, the Leader of Delegation of Indonesia referred to the Regional Workshop on Treaty Law and Practices scheduled to take place in Jakarta in mid October 2010. He appreciated the efforts of the AALCO Secretariat for initiating and organizing that workshop in collaboration with the UN Office of Legal Affairs. He mentioned that the workshop would engage in the topic of combating corruption, in order to answer the necessity of capacity building of expertise in the area of international cooperation to prevent and combat corruption and in the area of transnational organized crimes. He invited all the Member States to participate in that workshop.

13. Finally, he touched upon the financial problems facing the Organization and noted with concern that the prolonged situation would indeed affect the future work of the Organization and that the global financial crisis had worsened the situation. He underscored the need for Member States to clear their arrears, but cautioned that any solution should not create additional burden on the Member States taking into account the financial crisis affecting most of the Member States.

14. Finally, he reassured the Organization the continuous support of Indonesia which had always supported cooperation between Asia and Africa. He reiterated the Indonesian Government's support for AALCO and its contribution to world legal affairs.

15. The **Leader of Delegation of the People's Republic of China** after congratulating the President and the Vice-President of the Forty-Ninth Annual Session on their election, expressed the hope that their wisdom, leadership and experience would ensure that the Session would be a success. He also deeply appreciated the Secretary-General of AALCO and all his Staff for their outstanding work during the last year. He also expressed his heartfelt thanks to the Government of the United Republic of Tanzania and its people for making all the necessary arrangements to hold the Session in a professional way.

16. Commenting on the role played by AALCO, he stated that as the only inter-governmental organization consisting of members from Asia and Africa, AALCO had made a great contribution towards facilitating the participation of the Asian-African States in the international law practices and thereby promoting the development and codification of international law. Besides enhancing cooperation and exchange among the Member States, AALCO has also promoted all-round friendship among its Member States, he stated. He also expressed optimism that as AALCO expands its activities in various fields, it would play a more active and substantial role on the stage of international law and international affairs.

17. Commenting on the increasing importance of international law in the contemporary life, he opined that international law had come to play a critical role in addressing global issues such as security, reform of the financial system, international trade, environmental protection and climate change. That has created both opportunities and challenges to the development of international law, he added.

18. On the role played by AALCO, he remarked that through AALCO the Asian and African States could carry out cooperation and exchange so as to build consensus on many critical areas of international law of common concern. According to the delegation, it was immensely beneficial for the development of international law in its effort to better reflect the positions and concerns of the developing countries. That in turn, he stated would go a long way in building a just and equitable new international political and economic order. He also added that China was willing to work with other Asian-African States in order to meet the contemporary legal challenges based on the principle of equality, cooperation mutual benefit so as to achieve enduring development and common prosperity.

19. On China's relationship with AALCO, he opined that his Country had always attached great importance to the work of AALCO and that it appreciated the achievements of it over the past fifty years. He stated that China had always been encouraging and supporting AALCO's active participation in international law making with an effort to strengthen its international influence both in international affairs and in the development of international law.

20. Commenting on the future development of AALCO, he gave a number of suggestions. Firstly, he expressed the hope that AALCO should strengthen its cooperation with the United Nations legal organs so as to reflect the views of Asian-African Countries on issues that concern them most in an effort to increase the influence of AALCO. Secondly, AALCO needed to follow closely major international issues and events and to conduct in-depth analysis of the critical international legal issues involved in it so as to help Member States understand them correctly and to reflect upon it. Thirdly, AALCO needed to conduct in-depth studies on the emerging trends and developments in international law and produce reports where appropriate so as to promote its academic influence. Finally, he expressed the hope that AALCO should continue to host seminars and training programmes and develop itself into a cradle of talent on international law for Asian-African States.

21. He also expressed the hope that AALCO, guided by the 'Bandung Spirit' of "Unity, Friendship and Cooperation" would make continuous progress and duly contribute to the peace, development and cooperation in the region and beyond.

22. The **Leader of Delegation of Japan** expressed his pleasure to address the Annual Session of AALCO once again. First and foremost, he expressed his heartfelt congratulation to H.E. Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania, for assuming the presidency of the Forty-Ninth Annual Session. In particular, he took the opportunity to express their most profound appreciation to the Government of the United Republic of Tanzania for hosting the Annual Session. Their deepest appreciation were also expressed to the Secretary-General of AALCO, Deputy Secretaries-General and all the staff of the AALCO Secretariat who executed all the hard work within a short period of time in organizing and preparing in cooperation with the Government of the United Republic of Tanzania to make the Annual Session possible.

23. The Leader of Delegation stated that when he addressed the previous Annual Session in Putrajaya, Malaysia, he mentioned that the AALCO had undergone a most challenging period in its history, having to tackle with the financial difficulties and at the Putrajaya Session, the Member States made a very important decision to revise the assessed scale of contributions, which had remained the same since 1993. The Member States also adopted the Putrajaya Declaration in which they confirmed their commitment to support and revitalize AALCO, he recalled. However, he noted that the current year, they have been taken aback after knowing that the groundbreaking and courageous decisions taken by the Member States at the Putrajaya Annual Session had not been able to save the AALCO from its financial troubles.

24. The Leader of Delegation stated that the reason for it appeared to be quite clear. It was because the commitments and promises made had not been followed through, and because the words had not been backed up with concrete actions. Therefore, he called on the distinguished and honorable delegates gathered at the Session, to pay attention anew to the need to overcome the financial difficulties and to take actions by all AALCO Member States. While he appreciated the emergency contributions by a few generous donors, he noted that resorting to ad-hoc or temporary stop-gap measures would only postpone the problem and such measures were certainly not sustainable. Whatever agreements they might reach or the commitments they would make for short-term objectives, those would not save AALCO unless they were backed up by effective actions.

25. The Leader of Delegation reminded the distinguished delegates that only two paths are in front of them: either all the member states contribute their own share of contribution without single default to keep the current budget size, or concede realistically that AALCO could expect only seventy percent of contributions from its member states each year, and hence acknowledge that was the real budget for AALCO. The latter would imply, however, that AALCO needed to carry out a courageous reform which include downsizing of its activities and/or personnel so that the expenses and income would be sustainably balanced. He was doubtful that anyone should prefer the latter to the former, but that would be the course left for them if all the Member States could not commit to the former. He noted that when the Member States discuss the issue and the budget for the year 2011, he hoped that there would be forward-looking and productive deliberations with active participation of Member States.

26. The Leader of Delegation noted that since the last Annual Session in Putrajaya, there had been two significant developments in the international community, in relation to AALCO's agenda, namely, the UN Climate Change Conference in Copenhagen held in December last year, and the ICC Review Conference of the Rome Statute held in Kampala in May and June of 2010. He appreciated the environmental issues and the ICC which had been selected as themes for the Special Sessions of the Annual Session. He stated that they were very timely, and they were two areas to which the Japanese government attached great importance.

27. With regard to the ICC, the Leader of Delegation reported that Professor Kuniko Ozaki, for whom he had sought support in Putrajaya last year, was elected at the top of the list in the by-election of the ICC judges held in November last year. He took the opportunity to thank for their support. Also in relation to the Review Conference, he noted that the Japanese government co-hosted a Round-Table Meeting with the Government of Malaysia and the AALCO Secretariat, in March 2010. He had participated in that meeting and it had provided a valuable opportunity to engage in high-level and substantive discussions on legal issues. The round table meeting contributed to the great success of the Kampala Review Conference where legalization of "Crime of Aggression," which had been discussed since the end of the World War II, was finally achieved, he noted. He was convinced that there would be very active and fruitful discussions during the Special Meeting of the Annual Session. His Government welcomed the decision made at the Review Conference in Kampala to retain Article 124 in its current form, in view of its merits towards the universalization of the Rome Statute. He also called on AALCO members who had not acceded to the Rome Statute, and especially the Asian friends, to seize the opportunity to join.

28. As regards climate change, he observed that it was an issue that required urgent attention of the international community. His country would continue to work actively to assist developing countries take climate change related measures, and at the same time Japan would be ready to work with other countries towards the success of COP 16, with the Copenhagen Accord as the basis, in order to adopt one comprehensive legal document as soon as possible.

29. On environmental issues, he drew the attention to the fact that the year 2010 was the International Year of Biodiversity designated by a United Nations resolution. It was a milestone year when a new strategy for biodiversity would be set out for the coming decade. He informed that his Government would host the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity (COP10) in Nagoya, Japan, from 18 to 29 October 2010. Also in Nagoya, the Fifth Meeting of the Conference of the Parties Serving as the Meeting of the Parties to the Cartagena Protocol (COP-MOP 5) would be held from 11 to 15 October 2010. His Government was working hard to prepare for a successful Conference.

30. The Leader of Delegation further stated that the progress being made in the efforts to develop and implement rule of law in the international community, including frameworks for international environmental law and international criminal law. His Government regarded promotion of rule of law in the international community as one of the pillars of its foreign policy, and therefore welcomed such progress and development. His government was committed to continuing its engagement with various activities to establish and expand the rule of law in the international community, at the same time prepared to sending talented individuals to various fields to that end.

31. In that regard, he drew the attention of the distinguished delegates to the presence of Professor Shinya Murase of Sophia University of Japan, who was also a member of the International Law Commission. In fall 2011, at the 66<sup>th</sup> General Assembly of the United

Nations, the election of ILC members were scheduled to be held, and the Japanese government had officially nominated Professor Murase as the candidate for that election. He hoped that there would be chances for the distinguished delegates to get to know Professor Murase better.

32. The Leader of Delegation stated that AALCO bore a very important mission to establish and promote the rule of law in Asian and African regions, and also to serve as a vehicle to reflect the voices of Asia and Africa to the development of international law. Revitalization of AALCO, therefore, was really crucial for the stability and prosperity of the countries in the two regions. In that respect, he had made one proposal. It was indeed important that they see solutions to the financial problems, but he was sure that there were thrifty ways to revitalize AALCO. For example, they could establish a framework with which to share state practices and experiences. If at the Annual Sessions, and/or inter-sessionally as well, they could promote delegates to share their state practices that would not only be quite useful for the practitioners at international legal departments of the member countries, but could also contribute to the progressive development and codification of international law.

33. In his concluding remarks, while he appreciated the efforts made by the AALCO staff in preparing for the Annual Session as he mentioned at the outset, it might be needless to say that much difficulty was experienced on the Member States side as well in preparing in such a short period of time. Their delegation hoped that all efforts would continue to be made to secure ample time for preparation before each Annual Session. Last but not least, he thanked greatly the Secretariat for preparing useful drafts of resolutions, as they requested in the light of experiences at the last Annual Session.

34. He looked forward to engaging in fruitful exchange of views with the distinguished delegates from the member countries in the next 4 days, both in and out of the conference room.

35. The **Leader of Delegation of Malaysia** congratulated the President on his election to the Forty-Ninth Annual Session of the AALCO. The Delegation also extended thanks to the Secretary-General of the AALCO, the Host Country, the AALCO Secretariat and the Organizing Committee for the warm hospitality and the tireless efforts in making their stay in Tanzania pleasant and meaningful. Being the host of the Forty-Eighth Annual Session in Putrajaya, Malaysia, the delegation stated that they could very well relate to and were fully aware of the challenging tasks undertaken by the Organizing Committee and the AALCO Secretariat. The delegation also expressed their appreciation to the AALCO Secretariat for its efforts in conducting detailed and in-depth studies of current issues in international law. The reports provided by the Secretariat were extremely useful particularly in providing the current developments of international law issues. In addition, it served as an important source of information which could assist Member States in the deliberation of the topics.

36. The Leader of delegation said that Malaysia looked forward to the exchange of views with Member States on the issues that had been included in the Agenda and would

share its comments and views on some of the topics during its deliberations. The government had taken note that AALCO had undertaken a host of activities since the Forty-Eighth Annual Session which included, among others, the Convening of Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court from 30 to 31 March 2010, Putrajaya, Malaysia; AALCO's participation in the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda from 31 May to 3 June 2010; and the Seminar on "The Blockade of Gaza and its International Legal Implications" on 16 July 2010, AALCO Headquarters, New Delhi.

37. The Leader of Delegation stated that convening of these activities had indeed contributed to a more coherent and effective contribution by AALCO Member States to the respective bodies. In the present session following the same targets Malaysia noted that the topic on "Making AALCO's Participation in the Work of International Law Commission (ILC) More Effective and Meaningful" had been chosen as thematic debate. In view of the significance of ILC's work towards development of international law, particularly, its codification, Malaysia welcomed the existing arrangement with the respective Special Rapporteurs of the ILC on the topics that were under the consideration of ILC in AALCO's Annual Sessions. However to strengthen the current arrangement, AALCO could also jointly organize with the ILC, seminars and workshops on topics of mutual interests. That proposal would afford more time and opportunity for AALCO Member States to deliberate the topics being considered by the ILC and would also provide appropriate platform to allow and maximize interaction between AALCO Member States and the ILC members.

38. Apart from the conduct and manner of discussion of the ILC topics as they had proposed, in the course of the deliberation of the agenda item, he said that his country would be providing their comments and proposals with regard to the topics under consideration of the ILC at its current sixty-second session particularly relating to Shared Natural Resources, Effects of Armed Conflicts on Treaties, Expulsion of Aliens, Nationality of Natural Persons in relation to Succession of States and the very important work on Reservation to Treaties.

39. At the forty-third United Nations Commission on International Trade Law (UNCITRAL) Commission Session held in New York from 21 June to 9 July 2010, they had been fully supportive of the recent positive achievement by UNCITRAL which resulted in the adoption of the *Revised UNCITRAL Arbitration Rules*, *UNCITRAL Legislative Guide (Part III) on Insolvency Law* and *UNCITRAL Legislative Guide on Secured Transactions, Supplement on Security Rights in Intellectual Property*.

40. He said that their country had actively participated in the work of Working Group II (International Arbitration and Conciliation), which resulted in the finalization and adoption of the Revised UNCITRAL Arbitration Rules. The Revised UNCITRAL Arbitration Rules marked the modernization and a step forward in the promotion of peaceful settlement of disputes for numerous forms of commercial disputes and in many other areas. Its commitment on the adoption of the said Rules was clearly reflected as it



was now in the midst of studying the Revised UNCITRAL Arbitration Rules for application and adoption within its domestic jurisdiction and compatibility with its national law on arbitration.

41. In addition, it has taken note and acknowledged the contributions made by many AALCO Member States that were present during the discussions. It believed that as a united front, and with a significant presence, that AALCO Member States could better address certain mutual interests and concerns which would lead to an efficient and pragmatic way of addressing issues at UNCITRAL. It was to be noted that there lay numerous important issues that had been identified by UNCITRAL Working Groups for their future work which included further development in legislative guides pertaining to, amongst others, electronic commerce, microfinance, security interest and transparency in Investor State Dispute Settlement (ISDS).

42. On the issue of 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, his country reiterated its previous positions on that issue and remained supportive of the struggle of the Palestinian people and condemned the aggressive activities of Israelis towards the civilians in the Occupied Palestinian Territory (OPT). Israel's acts of violence, use of force against Palestinians resulting in injury, loss of life and destruction, coercive migration and deportation were in clear violation of the Fourth Geneva Convention of 1949 and human rights law.

43. The country urged that prompt action should be taken by the international community to seriously address the continued grave violations and severe breaches of international humanitarian law committed by Israel against the Palestinian people. In that regard, the foremost priority at that time must be the lifting of the unlawful and inhumanely imposed blockade against Gaza which was depriving its civilians of the basic necessities recognized under the Fourth Geneva Convention that was food, medical aid and basic housing and other amenities. It further called upon States Parties to also independently take appropriate measures to ensure that Israel would be held accountable for all its unlawful actions.

44. As regards the topic of the Status and Treatment on Refugees which called on all States to ratify, accede and fully implement the 1951 Convention Relating to the Status of Refugees and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the country noted that the issue of Internationally Displaced Persons (IDPs) was indeed central to the African Region. Hence it was therefore appropriate for the Forty-Ninth Annual Session to note that the issue of ratification, accession or implementation of the Kampala Convention be directed to the relevant States in the African Union.

45. The current problems relating to migrant workers raised in the AALCO's Report was duly noted by his delegation. In relation to the said topic the delegate observed that the draft Model Agreement for Cooperation among Member States on issues relating to

migrant workers was intended to identify ways and means through which the rights of migrant workers could be protected but taking into consideration the national security aspects of States. However, it stated that any instrument to be developed must be formulated as a form of a guideline which served as a guide and to be non-legally binding in nature.

46. At that juncture, his country, noted that the report on the status of the draft Model Agreement appeared to have reported that it was being adopted. However the delegate said that their country had recalled that the Draft Agreement was yet to be formally adopted by Member States and pending responses from Member States. Hence in that respect perhaps it would be appropriate for the Secretariat to clarify on the status of the draft Model Agreement to date. In that context, the delegation would submit its proposed amendments to the draft resolution on the non-deliberated topic of Legal Protection of Migrant Workers to be considered by the Drafting Committee. On the other non-deliberated items, the delegation would be submitting its written intervention in due course.

47. In conclusion, the Leader of Delegation said that they extended their deepest and heartfelt appreciation to His Excellency, Professor Dr. Rahmat Mohamad, the Secretary-General of AALCO, and to the host of the Forty-Ninth Annual Session of AALCO for their commendable efforts in organizing the event.

48. The **Leader of Delegation of the State of Kuwait**<sup>2</sup> at the outset congratulated His Excellency Mr. Mathias M. M. Chikawa and Mr. Priyasath Gerald for their election as the President and Vice-President of the Forty-Ninth Annual Session of AALCO respectively. He also expressed his sincere appreciation for the Government and the people of the United Republic of Tanzania for making excellent arrangements to ensure that the Session was a success. He also thanked the out-going President of AALCO His Excellency Tan Sri Abdul Gani Patail for the wonderful efforts that he had exerted in order to take AALCO to new heights. He expressed his sincere appreciation for the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad and all the Staffs of the Secretariat for taking painful efforts to make sure that the Session was a success.

49. Commenting on his Country's cooperation with AALCO he stated that, Kuwait has always been giving its comprehensive support to AALCO and that towards that end it was working hand-in-glove with AALCO in all those years. He stated that Kuwait was willing to extend its full cooperation to all the Member Countries of AALCO irrespective of race or religion, in order to achieve the objectives for which AALCO was founded.

50. Commenting on the Israeli-Palestinian Conflict he stated that Israel had been violating the human rights of the Palestinians for a long time and that the international community should take concrete measures against Israel taking into account the various violations of international laws involved in it. He added that Kuwait would support any effort to take action against Israel and that States which were not adhering to their international law obligations and Israel should be forced to comply with them.

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

51. Commenting on the topics chosen for deliberation at the Forty-Ninth Annual Session of AALCO, he remarked that all of them were of critical relevance to the developing countries and that Member States of AALCO would ensure that their deliberations would lead to a fruitful outcome.

52. The **Leader of Delegation of Kenya** stated that the Asian-African Legal Consultative Organization had made great strides over the past in the cooperation on legal matters of common concern. Such cooperation had bettered the relations of Member States thereby ensuring that Member States supported each other in international fora. At that juncture AALCO comprising of 47 Member States was an important forum for expressing legal positions on key areas of concern in the international arena.

53. He highlighted that one of the main objectives of AALCO was to serve as an advisory body to its Member States in the field of international law. That together with its close relationship with the International Law Commission, the UN General Assembly and other international organizations indicated the importance of having the Annual Sessions which allowed for a regular forum to formulate the positions that Member States held on various legal issues. He added that given the visionary leadership of the Member States, there was no doubt that the goals that had been set within the Organization would be realized at the earliest opportunity.

54. Having said that, the Leader of Delegation stated that Kenya recognized that corruption was a complex economic, political and social challenge that threatened democracy, sustainable development, the rule of law, and the welfare and health of citizens globally. If not curbed urgently its corrosive influence would extend to the spread of transnational organized crime, terrorism and other illicit areas that posed threat to the security, good order and well being of the society. Thus the opportunity during the Annual Session should be seized to discuss “Challenge in Combating Corruption”. He mentioned that the Government of Kenya was at the forefront of the fight against corruption in all spheres of Kenyan life, he mentioned that Kenya was the first country to sign and ratify the UN Convention against Corruption in 2003. The Government had subsequently adopted and implemented practical strategies, including legal and institutional mechanisms, to combat that vice. He also informed that the national legislation of Kenya had domesticated most parts of the UN Convention against Corruption. In addition they had published a report entitled “Kenya: UN Convention against Corruption Gap Analysis Report and Implementation Plan”. He hoped that the report would propel them to the next level of their national efforts against corruption.

55. The Leader of Delegation of Kenya mentioned that Kenya had ratified the Rome Statute of the ICC on 15 March 2005. Subsequently, the Kenyan Parliament enacted the International Crimes Act in 2008. The Act domesticated the Rome Statute and came into effect on 1 January 2010. He mentioned that two areas featured during the First Review Conference of the Rome Statute, namely complementarity and the crime of aggression. With regard to complementarity, while Kenya supported the principle, it should be viewed with caution when it came to speedy ascertainment that a Member State is

unwilling or unable to handle such matters. He said that Kenya was both willing and able to prosecute alleged crimes that may fall within the ambit of the ICC and options open to the country had been implemented, those included setting up of the Truth, Justice and Reconciliation Commission. Kenya was therefore, of the view that a hurried determination of alleged inability or unwillingness by an affected country may only exacerbate an already delicate situation.

56. Kenya was of the view that the office of the Prosecutor ought to come up with a formal policy instrument encompassing the proactive complementarity policy. This would entail the Court working in cooperation with States Parties to build municipal capacity to investigate and prosecute crimes under the Rome Statute.

57. With regard to the process for the definition for the crime of aggression, Kenya resonated with the position that came out of the Kampala Review Conference. The general agreement on the definition and elements of the crime of aggression were a positive step forward, and any move in the direction to entrench that crime under the Rome Statute would receive the full support of Kenya. Kenya commended all States Parties who took part in the process which resulted in excellent proposals for amendment in that regard.

58. Turning attention on the Special Meeting on Environment and Sustainable Development to be held in the Forty-Ninth Annual Session, he stated that climate change was considered as one of the most serious threats to sustainable development and well being globally. Studies had shown that about 90% of all natural disasters afflicting the world were related to severe weather and extreme climate change events. In addition to inducing the displacement of climatic regions, more droughts, floods, intense hurricanes, global melting and an increase in sea level, among other effects, climate change also lead to biodiversity loss, and the deterioration of water resources and environmental services provided by ecosystems.

59. Tackling climate change required the immediate development of activities that mitigated or reduced greenhouse gas emissions, and of others aimed at adaptation or reduction of vulnerability and of risk to human life, nature and economic development.

60. He said that the Government of Kenya had developed a National Climate Change Response Strategy to put in place robust measures needed to address the challenges posed by climate variability and change. The response strategy was an indication of the high priority that the Government had accorded to climate change and its associated impacts. Through the Strategy, the Government would put in place a comprehensive climate change policy and related legislation.

61. The Leader of Delegation informed that Kenya continued to play her part in climate change negotiations and hoped that the negotiations during the forthcoming Cancun Climate Change Conference in December 2010 would result in legal framework to implement effective, collective climate action beyond 2012 under the Kyoto Protocol.

62. Thereafter, he dwelled on matters under the WTO and said that the central objective of the Doha Development Agenda talks was to address the development needs and concerns of developing countries in the areas of agriculture, manufacturing, services, trade facilitation and environment among others. The outcome of the Doha Development Agenda was therefore expected to assist Kenya and other developing countries to integrate into the Multilateral Trading System and thereby improving their trading and exporting opportunities. With this in mind the Kenyan Government had continued to participate in the current trade negotiations with the main objective of enhancing Kenya's economic development and thereby contributing towards the realization of the country's objective of becoming an industrialized state by the year 2030.

63. He mentioned that one of the outstanding issues which Kenya would like to give an update was about establishing the Nairobi Regional Centre for Arbitration, the process had already commenced and even though they were running behind schedule, the Government of Kenya reassured the Member States that they were on the course of realizing their undertaking to establish the Nairobi Regional Centre for Arbitration.

64. Finally, the Leader of Delegation of Kenya expressed concern about the financial situation of AALCO and said that they were aware of the dire financial situation of the AALCO Secretariat. In that regard, he urged member countries to support the Secretariat by paying their annual contributions on a timely basis and where possible to make voluntary contributions in support of the commendable work that the Secretariat was engaged in.

65. The **Leader of Delegation of the Republic of Korea**, on behalf of his delegation congratulated the President on the assumption of the Presidency of the Session. He extended his full support to the President and the other members of the Bureau. He had confidence that the Forty-Ninth Annual Session in Dar es Salaam would prove to be a resounding success, not only in exchanging views on key issues in contemporary international law, but also in forging and nurturing friendship between the peoples of Asia and Africa.

66. The Leader of Delegation expressed his heartfelt appreciation to the Secretary-General Prof. Dr. Rahmat Mohamad, and the AALCO Secretariat for their hard work in making the session a memorable and successful event. He also thanked the Tanzanian Government for hosting the mega event. He mentioned that there was a broad array of agenda items before them, encompassing both organizational and substantive matters, ranging from the ILC to the International Criminal Court and World Trade Organization.

67. He also said that the following two items which were to be discussed for the special meetings: the "International Criminal Court" and "Environment and Sustainable Development" were very timely. He informed that recently Review Conference to the Rome Statute of the International Criminal Court had concluded. Since it was founded, the Court had made substantial progress as the only permanent international criminal court in existence. With 111 States Parties, ICC was now moving even closer to the Rome Statute's goal of universality. In terms of its activities, the Court was dealing with

eight cases in five situations, all triggered by the mechanisms provided for in the Statute. The participation of the victims in the judicial proceedings had been secured. The Court's outreach activities were being carried out not only in communities affected by crime, but also in other regions around the world. The ICC was now referred in discussions on international criminal justice on a day-to-day basis. In short, it had matured into a fully functional and operational international criminal court. He hoped that the discussions on the principle of complementarity and crime of aggression at the Annual Session of the AALCO would go a step further and promote the universality of the Rome Statute.

68. The Leader of Delegation also informed that there had been a significant breakthrough in the area of environment and sustainable development at the Fifteenth Meeting of the Conference of Parties to the UNFCCC (UN Framework Convention on Climate Change) and the Fifth Meeting of the States Parties to the Kyoto Protocol, held in Copenhagen, Denmark last year. With international assistance, the Korean government launched the Global Green Growth Institute (GGGI) on 16 June 2010 in Seoul to support developing countries' shift from traditional manufacture towards the "Green Growth" paradigm. He added that his Government had committed to host the 18<sup>th</sup> Conference of Parties to the UNFCCC in 2012 (COP 18) so as to contribute to the global agenda of climate change. His Government had sought to find a balance between economic growth and environmental sustainability throughout the entire course of its economic development. The unique experience made Korea well suited to play a bridging role between developed and developing countries.

69. The Leader of Delegation observed that the AALCO Annual Session was significant for his country, as his country would have the chance to share its own experiences regarding policies in international law during the fourth meeting, scheduled on the second day of the gathering. He also took the opportunity to present how international law had been appreciated in the Republic of Korea and what the Korean Government would do to increase the appreciation. He hoped that during the Session, they would further discuss about the agenda item, "Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International law", in the Fiftieth Annual Session of AALCO.

70. The Leader of Delegation mentioned that the Constitution of the Republic of Korea stipulates that treaties and international customs were part of its domestic laws. Article 6 of the Constitution<sup>3</sup> embodied the requirement that all branches of the Korean government comply with international law. In keeping with the constitutional requirement, his Government had faithfully implemented the treaties to which Korea was a party as well as customary international law. It was also the established judgment of the domestic courts, especially the Constitutional Court, that governmental compliance with international law was legally required.

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<sup>3</sup> Article 6, Paragraph 1 of the Constitution: "Treaties duly concluded and promulgated under the Constitution and the generally recognized rule of international law have the same effect as the domestic laws of the Republic of Korea".

71. The Leader of Delegation informed that in the year 2008, the Lee Myung-Bak's administration espoused the slogan of 'Global Korea' as its diplomatic platform. This was a multi-pronged policy intended to upgrade Korea's profile and broaden its network by riding the wave of globalization. The phrase 'Global Korea' implied that Korea must observe global standards in its diplomatic posture and acts. The very core of these 'global standards' was none other than international law. His Government was fully committed to the idea that foreign policy based on international norms ensures its legitimacy, acceptability and predictability. However, the Korean public was largely unaware of the importance of international law to Korea's future. The lack of perception correlated to the nature of international law as public goods. As with other public goods, if the promotion of international law was left to the private sector, it would be largely ignored. Therefore, the government must take concerted efforts in cooperation with academia to promote international law, otherwise by doing so it would encounter a crisis of international law. He said that it was disappointing to note that the public's lack of appreciation for and legal practitioner's poor knowledge of international law had led to a dearth of domestic litigation involving international law.

72. The Leader of Delegation stated that the Ministry of Foreign Affairs and Trade had taken note of that problem very seriously, and in recent years, had conducted several programmes in cooperation with Korean academic institutions to promote awareness of international law in the Korean legal community. For instance, the government launched a moot court competition for university students last year, and held an annual thesis contest on international law for the past several years. Those programs served as a strong incentive for students to get exposure to international law, thus helped them appreciate how international law related to their studies.

73. The Leader of Delegation had mentioned as previously, it was a great honour for his delegation to have the opportunity to share its experiences in international law on the fourth meeting of the Annual Session in Dar es Salaam. He once again reaffirmed his Government's commitment to AALCO. The Government of the Republic of Korea had been an active and ardent supporter of AALCO ever since becoming a full member in 1974. He also recalled that the Korean Government was honoured to have hosted the annual session twice in Seoul, both in 1979 and 2003 respectively. The Leader of Delegation also said that he took great pride in the accomplishments and initiatives stemming from the previous two sessions it hosted, and the Republic of Korea would continue its efforts to contribute to more productive and efficient AALCO Sessions.

74. The **Leader of Delegation of the Arab Republic of Egypt**<sup>4</sup> stated that he was pleased to begin his speech by expressing his gratitude to the Government and People of sister African country of Tanzania for their hospitality and well organization of the Session, which they considered as an evidence of the generosity of the people, and a guarantee for the success of the Session, if God wished.

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<sup>4</sup> Statement delivered in Arabic. The AALCO Secretariat expresses its gratitude to the Delegation of the Arab Republic of Egypt for providing the English translation of the statement.

75. He said that he was honoured to address a group of distinguished elite of jurists and judges from Africa and Asia who were attending the Forty-Ninth Session of the highbred Organization, and he was really convinced that the Session would be a new step forward in the 50 years of history of the Organization.

76. As members of that esteemed old Organization, along its history, have been always preoccupied with the fair issues of the peoples of those two continents whom they were honoured to represent. Presently, AALCO Member States were confronting great challenges imposed by a new phase of unprecedented developments and incomparable crisis and dilemmas which the world was facing. Those developments, crisis and dilemmas were simultaneous and reflect negative impacts on each other. Unfortunately, their nations were the ones to be influenced firstly by impacts which they do not even contribute in creating. Those challenges were very difficult or even impossible to either confront or deal with through emptying the solutions from its contents by adopting hollow slogans which were inapplicable on the ground, but they could be confronted by legal systems and judicial mechanisms.

77. The Leader of delegation cited an example of most of the States talking about promoting and protecting human rights values, wherein many of the powerful States did not pay attention to the 25<sup>th</sup> Anniversary of the United Nations General Assembly's Declaration on Right to Development to be celebrated in 2010 and did not offer any worth mentioning rights for the peoples of many African and Asian countries.

78. On those sidelines, no one took into consideration that the right to development was one of the basic human rights, and the international community had not worked hard and seriously on applying that right on the ground, although it had been 25 years since that right was adopted in 1986. The reason that was behind the right to development was an essential demand of only third world countries which were hindered from development by developed countries through systematically plundering and depleting their resources and wealth and weakening their human resources for many centuries.

79. Proceeding further, the Leader of Delegation stated that being the representative of one of the oldest nations in the history and civilization of mankind of the two continents, he was keen on emphasizing to the whole world that their priorities in international relations as representatives of the nations of Africa and Asia, whose unity has emanated from Bandung Conference, were still justice, development and rule of law. He emphasized that they were not satisfied with what has been achieved so far in that regard, and as a result they were determined to continue their struggle through positive and constructive dialogue with all regional organizations, depending on the principles and aims of the Charter of the United Nations which was representing the legal background for international relations.

80. Although the principles and aims of the Charter of the United Nations were intact, they had become in many cases a pretext to achieve specific targets for certain powers. The application of such principles had been partial and incomplete, and moreover, selective. As a result, justice was denied and rights were lost because of the use of power,



political partialities and double standards. Moreover, as mentioned earlier on the example of right to development, which was not controversial from his point of view, had not been applied seriously so far, and above all, was the responsibility of the international community. Another example he highlighted was the International Criminal Law.

81. Many of the Asian-African States had welcomed, in principle, the establishment of the International Criminal Court and the formation of any institutional entity in order to enhance values and principles of justice. However, practice and application of the Statute of the ICC during the past years revealed, unfortunately, breaches, denial of justice and a source of danger not only on the idea of justice and the spirit of law but also on international security and stability.

82. Representing government of Egypt's viewpoint from the technical and legal perspective and according to the practices of the ICC, he made the following remarks.

83. Firstly, there was an intended confusion between the criteria of the ICC's jurisdiction and the means of applying such jurisdiction or what he could call also the mechanisms of the criminal renvoi. Some people had mistakenly understood the cases of the basic jurisdiction of the ICC for the means of applying that jurisdiction "Mechanisms of Renvoi". For Example, the ICC, according to its provisions, has jurisdiction only in crimes committed by the States or the subjects of the States who had signed and ratified Rome Statute (state party) provided that such crimes were committed after the ratification of the constituent instrument. The means of applying that jurisdiction could be done through a complaint or a simultaneous referral by the Prosecutor General of the ICC, or through the Security Council on condition that the referral must be within the jurisdiction of the Court.

84. Secondly, regarding the mechanisms of renvoi; government of Egypt believed that the right of reporting or accusing was a basic right for the States who signed or ratified the Statute of the ICC. That right was given to the Prosecutor General of the ICC as he would be an international judicial personality. According to that personality, he should apply, with total impartiality, objective criteria on the referral in a way that no one will suspect his decisions. They should take into consideration that practices reveal, in their opinion, paradoxes which he found himself unable to explain objectively. The reason behind that was the decisions of referral or non referral were issued as a result of a double standard criteria practice of the Prosecutor. There was no doubt that objectivity was required, in the first place, the application of common objective criteria on all suspicious cases of the occurrence of an international crime. Many a times, the Prosecutor General raised accusations of committing war crimes, genocide or crimes against humanity for mere political motives and not for legal ones. I am not in need of giving examples of specific cases, because it's easy for any fair observer of the history of the ICC and its recent verdicts to notice. Therefore, there was a lack of fair trial with the existence of a terrible defect in the means of raising the accusations and their motives. The aforementioned problem affected negatively the credibility of the ICC, was not the essential or the most dangerous problem in relation to the mechanisms of renvoi. There

was another highly defective mechanism in operating jurisdiction which was the jurisdictions of the Security Council related to referral.

85. The fundamental problem, he has faced as a judge himself was on how a political organism could raise the most serious legal charges or accusations. One could deny that the Security Council, according to its formation was a political organism. Moreover, the Security Council was created, from the very beginning, on the idea of discrimination between its members for political reasons and equilibrium of powers. The most prominent aspect of that discrimination was to favour certain member states with the permanent membership of the Security Council and providing them with Veto power.

86. Reflecting upon the above mentioned reasons, one could ask as to what kind of justice the Security Council could offer while its membership was based on selective discrimination and inequality! Also, what kind of criminal justice or international peace and security were to prevail whilst the resolutions of the Security Council could not be appealed or repealed! Despite all that, countries have given the Security Council the right of referral. It would be an irony to note that despite not having jurisdiction on the States or the subjects of the States who had not signed and ratified the Rome Statute, it raises charges against them; was raising charges according to the interest of specific states, and also against specific states. Hence, it must not deal with any referred cases by the Security Council, as the latter does not have the necessary jurisdiction to do so.

87. As judges one could not acknowledge and recognize the neutrality of the ICC and its verdicts within its actual status as the illegality of the referral of decisions by the Security Council was causing the illegality, of its verdicts.

88. Considering these prevailing issues, which compelled him to evaluate from an experienced old judge's point of view before evaluating it from a politician's point of view, were imposing on all of them to make a pause for revision, emphasizing that that pause was for scrutiny and revision and not for renunciation or demolition. Besides all these, from the government's perspectives, he has reconfirmed their welcoming, in principle, of the idea of the institution of international criminal justice, for a simple and important reason, at the same time, which was that every additional legal institution for the contemporary international system was a step forward as it decreases the extreme effects of the absolute politicization of the international relations which causes the relations between states to be dependant on power and not on justice.

89. It was observed that there was a clear fundamental relation between his previous criticism, legally wise, of the practices of the ICC and his forthcoming observations on the sufferings of the brother Palestinian People under the atrocities of the Israeli Occupation composing of injustice, coercion, racial discrimination, deportation, settlement and breaches of human rights and dignity.

90. Every word that was mentioned was a brief title of a systematic practice of violating the principles and provisions of the International Humanitarian Law and the International Law of Human Rights through the illegal use of power, being accustomed to

killing of innocent people, displacing civilians, and separation and its tool was the discriminatory segregation wall against which the International Court of Justice, the highest neutral and fair international judicial authority, issued a consultative verdict stipulating the necessity of its demolition for the reasons that there were no legal basis for its construction, and that it violated the principles of the International Law. In addition, there was an exclusive and continuous deportation in an obvious defiance for the provisions of the International Humanitarian Law and an unprecedented violation of the simplest human rights and carelessness about all international conventions through a series of individual and to deprive decisions, and unfair regulations, whose sole objective was to evacuate Palestine from its people, and depriving the Palestinian People of its legitimate rights to have a good life and self-determination. Those rights were the simplest ones given to those people according to the UN Charter, the resolutions of its different organs, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and even according to the simplest human roles.

91. Presently, the question that had been moving the conscious of every legal expert or anyone interested in fulfilling justice in its simplest shape was: where was the ICC in front of all those violations? And where was Chapter VII of the Charter of the UN and the obligatory resolutions of the Security Council?

92. He believed that no human conscious could accept, support or justify the continuous and collusive silence of the international community, and while choosing the words collusive silence, he had attached great caution to those words as a jurist because such collusive silence in front of the State of Israel's violations of the International Humanitarian Law and the violations of the rights of the Palestinian People under the occupation, should be considered as an international criminal contribution legally wise.

93. Against all those collusive silence, Egypt reconfirmed its basic and firm stance of total rejection of all Israeli politics of isolation and deportation, and all unilateral measures which were causing demographic changes in the Occupied Territories. He said that Egypt also stood insistently against any plan to transfer the Palestinian Issue from being an issue of a people and a state into an issue of refugees and refuge. Attaining long-lasting peace was the wish of all the nations Peace was the only paved way to achieve their hopes of political and economic reform. By peace states could build cooperation ties among all countries in the world, the big ones as well as the small ones, but peace also cannot be achieved without justice. Without justice achievement of peace would be impossible even if it seemed to be achieved because that peace which would not be achieved on the basis of pillars of justice would be considered as surrender and not peace. The oppressed would wake up one day and revolt against that surrender in order to bring an end to that injustice.

94. Combating corruption was another major area that needed to be highlighted because it was a basic obstacle for attainment of development efforts and the principal right of nations to live in a good environment, and enjoying sustainable development.

Also, preservation of folklore stood significant as it was the pool pot of values of our civilizations and the authenticity of the heritage of our nations.

95. The Leader of Delegation concluded his general statement with some positive ideas. He said the Egyptian government was totally convinced that all aspects of defects which he had mentioned previously could be and should be treated, if the efforts of all the Afro-Asian countries in all international organizations be collaborated, to get a common stance and represent positively a common vision towards those fateful issues. That could be done through a constructive dialogue with all countries and other regional organizations. The world now was in bad need, more than before, of the philosophical essence of the Non Aligned Movement, as it was simply the objective equivalent to moderateness and equilibrium within a world full of excessive impartialities. Differences in vision among the member states of the NAM were healthy, as the nature of those differences was superficial and accidental and not rooted or genuine. Those differences are related to means and explanations, and not to aims and targets, as the latter are commune, our challenges are similar, and our future was one. Every member country looks forward for a brighter future for our nations and the whole humanity.

96. He once again thanked and extended his gratitude on behalf of his government, to the brother people and Government of Tanzania for their hospitality, brotherly reception and the well organization of the session He wished all of the very success for the annual session conference, that was concluded by credible and effective decisions reflecting the real aspects of all the nations of our two continents which are the cradle and refuge of human civilization.

97. The **Leader of Delegation of Ghana** warmly congratulated H.E. Mr. Mathias Chikawe, Minister of Constitutional Affairs and Justice of the United Republic of Tanzania as the President of the Forty-Ninth Annual Session and Mr. Priyasath, Solicitor-General of Sri Lanka as Vice-President of the Session. She said that Ghana was confident that under their able leadership and the concerted efforts of the delegations of Member States, the Session would achieve complete success. She also commended the outgoing President and Vice-President for steering the Forty-Eighth Annual Session to a successful end.

98. The Leader of Delegation appreciated the efforts of Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO and the AALCO Secretariat for the well organized preparations for the Session. She mentioned that the Ghanaian delegation had noted the issues on the agenda for the Forty-Ninth Annual Session. These included the Palestine cause, anti-corruption, the International Criminal Court, WTO, Environment and Sustainable Development, Folklore and its International Protection and the thematic debate on ILC. Her delegation believed them to be topical issues and of special interest. She looked forward to sharing views and experiences on the agenda topics with other member countries and at the same time learning from their experiences.

99. The **Leader of Delegation of Thailand** after congratulating the President and the Vice-President of the Forty-Ninth Annual Session of AALCO on their election

respectively, expressed the hope that their able leadership and efficient direction would make the Session a success. He also appreciated the staff of the AALCO Secretariat for taking lot of efforts to prepare for the Session. He also extended his deep appreciation to the government as well as the people of the United Republic of Tanzania for extending very warm hospitality and welcome to all the delegates attending the Session.

100. Commenting on the increasing role that international law had come to play in the contemporary times, he stated that the rapid increase in the cross-border flow of goods, services, people, capital, technology and information had lead to a situation where the challenges thrown open by those factors could no longer be addressed by States individually. In that context, he added that international law had become the main vehicle for governments to strengthen cooperation in various areas such as international trade, investment, migration, environmental protection, transnational crime and terrorism.

101. Commenting on the role of AALCO, he stated that AALCO has not only been an active advisory body to its Member States in the field of international law but also a forum for Asian-African Cooperation on legal matters of common concern. He stated that his Country greatly valued the efforts of AALCO, its work and importantly, the inter-Sessional meetings that it convenes regularly with the aim of promoting a better understanding on critical international legal issues in order to reach a common approach. In that regard, he congratulated the Secretariat of AALCO, the Government of Malaysia and the Government of Japan for organizing the two- day “Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court”, at Putrajaya, Malaysia. The deliberations that took place during that meeting were instrumental in producing high-level discussions on various topics at the Review Conference of the Rome Statute in Kampala, Uganda, he added.

102. Commenting on the relationship of AALCO with International Law Commission, he stated that it should be commended since it had enabled Asian and African States to contribute jointly to the progressive development and codification of international law. On the agenda items chosen for the Forty-Ninth Annual Session of AALCO, he stated that they were not only very topical but were also of high priority for his Country. He added that his delegation was looking forward to sharing its views and experiences on those topics with other Member States and eager to learn from them as well.

103. Lastly, after expressing his Country's commitment to cooperate with all Member States of AALCO in order to achieve its objectives and aspirations, he wished the Session a great success.

104. The **Leader of Delegation of the Islamic Republic of Iran**, at the outset, congratulated the President and the Vice-President on their recent election. He was quite sure that under their skillful and diligent leadership, they would have fruitful discussions in the annual session. Furthermore, he expressed deepest gratitude of the Government of the Islamic Republic of Iran to the Government and the People of the United Republic of Tanzania for hosting the session and for their hospitalities extended. His delegation also

appreciated the valuable efforts of Tan Sri Abdul Gani Patail, the President of the Forty-Eighth Annual Session of AALCO.

105. The Leader of Delegation expressed his delegation's sincere appreciation to Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO as well as the Secretariat for preparing the report on the work of AALCO during the last year. According to him, the valuable endeavour of the Secretary-General to demonstrate a new horizon in their organization was much appreciated.

106. He observed that the establishment of the Asian-African Legal Consultative Committee, then Organization, was a milestone towards cooperation and consultation among developing countries in the field of international law. For many years, the Organization played a crucial role and contributed extensively to the development of international law, in particular in the fields like law of the sea, environmental law, the right to development and other areas of international law.

107. The Leader of Delegation mentioned that the Organization was established for different functions and purposes. One could divide them into two pillars: on the one side, the Organization was a forum for exchanging information on the international legal matters of common concern or under consideration by international organs like ILC or UNCITRAL, and on the other side, it was responsible for making recommendation to the Member States and communicating the views of its Members to the United Nations principal or subsidiary organs and other relevant international organizations. It seems that it was successful to cover its responsibilities under the first pillar to some aspect, but, with respect to the second pillar, they must work together more than before to materialize the objectives of the Organization.

108. He further stated that at the Forty-Eighth Annual Session of AALCO "Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization" was adopted. They were of the belief that it was a significant step toward revitalization of the Organization. The Member States of the AALCO must try to explore all ways and means to implement the Declaration and materialize the purposes and objective therein.

109. The Leader of Delegation mentioned that in paragraph 2 of the Declaration, it was noted that despite the differences in their political, economic or legal systems, the States of Asian-African region were inextricably linked together as an Asian-African identity.

110. Furthermore, he thanked the Secretary-General for his endeavour to improve training programmes and holding of seminar and workshops on international matters, indeed, such activities could lead to dissemination of international law in the Asian and African region as it was one of the goals of the Organization.

111. His delegation welcomed the initiative of AALCO lecture series in order to exchange ideas in the discipline of international relations and law and suggested that the

texts of the lectures could be published in the Yearbook of the Asian-African Legal Consultative Organization.

112. The Delegate also expressed his country's appreciation for the efforts and approach of the Secretary-General to improve the financial situation of AALCO. They sincerely hoped that such efforts would bear positive results at earliest. Effective and further cooperation of Member States with the Secretary-General in order to fulfill their statutory and financial obligations to the Organization was necessary.

113. The Delegate observed that the improvement of interaction and cooperation between AALCO, International Law Commission and Sixth Committee of the United Nations General Assembly and examining of the questions under agenda of the Commission in their Organization preferably before presentation of the report of the Commission in the Sixth Committee of the General Assembly and making necessary coordination in that regard, was of a great importance and immense value. His delegation also welcomed the initiative of holding the thematic debate on "Making AALCO's participation in the work of the International Law Commission more Effective and Meaningful".

114. They welcomed the Secretary-General's initiative to establish an Expert Group of international lawyers. His Delegation was of the view that the subsidiary body of the Organization could contribute a lot to the materialization of the AALCO's purposes. The Group shall in appropriate ways and methods assist the Organization and its members to contribute to the process of the codification and progressive development of international law and cooperation with the International Law Commission and other organs in charge of those matters. In that respect, his delegation suggested the following as the duties of the Group:-

1. To identify, collect and compile the practices of the Member States relating to international Law,
2. To provide the Member States with the technical assistance necessary in order to reply to the *Questionnaire* of the International Law Commission.
3. Last but not least, to examine and comment on the subjects that are under consideration by the ILC and to recommend the Member States on the points that needs attention and observation that could be raised during the meetings of the Sixth Committee of the General Assembly.

115. Finally, the Leader of Delegation pointed out that in order to implement any "Revitalization Plan", the financial matters of the Organization were among the key factors, but were not limited to that. They needed a "Financial Policy" that would ensure the "financial discipline" in the Organization plus "sustained financial sources". His delegation also suggested that during annual session an open-ended group were to be established in which all aspects of the proposals and initiatives related to the revitalization of the Organization could be examined and report to the session for consideration and possible decision.

116. The **Leader of Delegation of the United Republic of Tanzania** welcomed all the delegation and thanked them for their participation in the Forty-Ninth Annual Session of AALCO. He extended his apologies for some inconveniences caused to some of the distinguished guests upon entry or in the hotel. He informed that such inconveniences were already rectified. He thanked the AALCO Secretariat for having chosen Tanzania for the Session. He said that it was an honour that AALCO had bestowed on Tanzania also extended to all countries of East African Community, which forms an economic community aiming at achieving a political federation consisting of Burundi, Rwanda, Uganda, Kenya and Tanzania.

117. The Leader of Delegation stated that many challenges had occurred since Putrajaya, Malaysia. The economic meltdown occurred in the west but every country had been affected by the meltdown due to globalization. He said that their economies were besieged with the recession and they were finding it extremely difficult to meet their financial obligations. In spite of the challenges, Tanzania was holding elections in October. He informed that the incoming President had just been successful at the preliminary stage and his delegation wished him well. He stated that Tanzania shall continue to consolidate her excellent record of holding free and fair elections in a peaceful atmosphere constantly after every 60 months or 5 years.

118. He appreciated the usefulness and the dire need for the continued existence of AALCO. It must continue to examine questions of International Law Commission and other issues of common interest to its Member States and coordinate a common position in respect to public and private international law in all matters. He stated that Tanzania was committed to the AALCO's cause. He expressed his appreciation for the assistance rendered by the AALCO. He said success of any successful organization was a product of sacrifices of people. He said that everyone had to make sacrifices for the sake of AALCO in order to ensure its survival.

119. He said that the agenda for the present session was focused on the contemporary issues of common interests. The International Criminal Court and recent developments in respect of its mandate raised issues of concern to them and it would be interesting to share those concerns and decide how best to engage them. That was also the case for environment and sustainable development; expressions of folklore and its international protection; The Role of the United Nations Convention against Corruption; Deportation of Palestinians; and issues related to the World Trade Organization. There are many issues of regional and international concerns such as piracy which was an offence recognized by the Law of the Sea Convention.

120. He once again welcomed all the delegations to Tanzania and wished the President best of body and mental health to enable to guide the Session.

121. The **Leader of Delegation of the Kingdom of Saudi Arabia**<sup>5</sup> congratulated the President and Vice-President on their elections. He also thanked the outgoing President for his efforts during the Presidency of Malaysia. Thereafter, he thanked the Secretary-

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<sup>5</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.



General and staff of the AALCO Secretariat for taking the Organization forward by fulfilling the mandate given by the Member States. He expressed gratitude to the Government and people of United Republic of Tanzania for their hospitality. He mentioned that the Kingdom of Saudi Arabia tried hard to benefit from all opinions and suggestions in developing local legal programmes for promoting international law. He mentioned that the Kingdom of Saudi Arabia wished to keep pace with developing legal policies especially on Human Rights, anti terrorism and money laundering. He informed that recently many initiatives had been taken and Saudi Arabia had joined the WTO. Thereafter, in line with the new requirements they had amended their law relating to Property Rights and were trying to win over investors who could invest in their country, they were also making changes compatible to increasing human resources and facilitating the legal fraternity. He said that they were looking forward to workshops and seminars to be conducted by AALCO and supported the suggestion made by the Leader of Delegation of Oman that interpretation facilities should be provided in the seminars and workshops so as to encourage more Arabic speaking states to participate in them.

122. The **Leader of Delegation of the Democratic Socialist Republic of Sri Lanka** at the outset thanked the Government of the United Republic of Tanzania and its people for hosting the Forty-Ninth Annual Session of AALCO and extending a warm and cordial hospitality to all the delegates attending the Session. He also thanked His Excellency Prof. Rahmat Mohamad, the Secretary-General of AALCO and all staff of the Secretariat for the splendid work that they had done to organize the Session. He also congratulated His Excellency Mr. Mathias M. M. Chikawe on his election to the Presidency of the Forty-Ninth Annual Session of AALCO and wished him all success in his endeavours. He also remembered the valuable contributions made by the outgoing President of AALCO His Excellency Tan Sri Abdul Gani Patail for his continuous efforts to make AALCO a vibrant organization. He also congratulated the Secretariat of AALCO for choosing very relevant and contemporary topics for discussions at the Forty-Ninth Annual Session of AALCO.

123. Commenting on the relationship of AALCO with the International Law Commission, he stated that in view of globalization and the rapid developments taking place in the field of international law, the cooperation between the two Organizations must be strengthened. He added that the “Thematic Debate on Making AALCO’s Participation in International Law Commission More Effective and Meaningful” was extremely important in that context in that it would contribute towards the strengthening of ties between the two Organizations. The contribution of AALCO towards the development of international law deserved to be commended, he added.

124. On the need for the Member States to extend cooperation to AALCO, he stated that the Member States should continue to extend cooperation to the Organization not only by actively participating in the annual deliberations but also by disseminating the knowledge acquired during the deliberations to their Ministries in their respective Countries. That, he opined would keep the latter informed of the new legal developments occurring at the international level.

125. Commenting on the proposal of the Republic of Korea on **“Assisting in the Teaching, Study, Dissemination and Wider Dissemination of International law”**, he stated that it was a pertinent topic and that the subject of international law should be included into the curriculum of the law schools in every country. He added that in the era of globalization it was an absolute necessity that they possessed knowledge about both the issues of public and private international law. He also opined that updating of commercial laws was critical in order to facilitate international trade and investment.

126. Commenting on the International Criminal Court, he stated that it dealt with some of the most important crimes of the international criminal law such as Genocide, the crime of aggression, war crimes and other crimes. He was of the opinion that the international criminal court was extremely important in ensuring international criminal justice. He stressed the importance of other international Conventions such as Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, United Nations Convention against Transnational Organized Crime (UNTOC) and the Convention Against Corruption in dealing with a number of crimes which were of critical international concern. In that context, he stated that since international law depended on the consent of State Parties ratification of those Conventions that dealt with these crimes were of utmost importance in order to give effect to them. He also stressed that ratification of these Conventions by a large number of states would give them more recognition and legitimacy.

127. Commenting on the need to prevent and prosecute transnational organized crimes, he stated that all measures should be taken to combat these crimes and that perpetrators of such crimes needed to be punished stringently. It also necessitated a need to update the laws pertaining to mutual legal assistance and extradition. In that regard, he stressed the important role that AALCO could play in forging co-operation at the regional level to combat the menace. Elaborating on what he considered to be the most important part of the UN Convention on Transnational Organized Crime he remarked that, that instrument obliged the State Parties to take measures either to extradite or prosecute the perpetrators of such heinous crime. He opined that the obligation was valid even in the absence of the agreements to extradite. He further added that the Convention's provisions on mutual legal assistance were critically important in ensuring the cooperation of various State Parties towards tacking an effective and comprehensive action against the perpetrators of the crime. In that context, he suggested that the AALCO could examine that Convention so as to find out the various ways through which mutual legal assistance could be organized among its Member States. He also came up with the suggestion that Member States of AALCO should update their laws and policies on the transnational organized crimes so as to make it in tune with the international standards as contained in various international legal instruments. As a way of dealing with that crime more effectively, he also remarked that the jurisdiction of ICC could be so expanded as to include the transnational organized crime. Thus he added, would go a long way in addressing the menace effectively.

128. The **Leader of Delegation of India** stated that as they take the floor for the first time, his delegation would join hands with others in congratulating the President and Vice-President of the Forty-Ninth Annual Session on their election.

129. The Leader of Delegation expressed his immense pleasure to participate in the Forty-Ninth Annual Session of the AALCO which over the years had acquired a unique stature in promoting legal cooperation among Asian and African States. It was well known that annual sessions of AALCO were major events. The exchange of views that took place on contemporary issues of international law, proved highly beneficial to participants.

130. He mentioned that the Reports of the AALCO and declarations adopted at its Annual Sessions had become an important source for the development of international law. They were pleased that AALCO had been identifying the common interests of Africa and Asia on issues before the UN and other world bodies. They were also happy that the session, among other things, was set to discuss the Review Conference on International Criminal Court, post Copenhagen Climate Change negotiations and WTO settlement mechanism. They believed that those issues were topical and important for the countries in Asian and African region where most of them were developing countries. They assured of their active participation in those discussions.

131. The Leader of Delegation stated that they would like to encourage the AALCO to expand its activities. But they were conscious of the fact that increase in its activities depends on availability of funds. The clearance of arrears in contributions and raising funds through voluntary contributions therefore become vital for AALCO's existence. Therefore, they urged all the Member States of AALCO being their institution; was for them to strengthen it by paying the contribution promptly and also by paying their outstanding arrears.

132. He further stated that despite its financial limitations, the work of the AALCO was efficiently organized by a small band of experts working under its most competent Secretary-General. The quality of the Reports and other publications stood testimony of the dedication of its workforce.

133. The Leader of Delegation welcomed Sri Lanka's offer to host the Fiftieth Annual Session in Sri Lanka. He also stated referring to the Presidential remarks in which he made a point that Piracy at Sea requires a study from the perspective of international law by AALCO. His Delegation supported that proposal and also the proposal made by the distinguished delegations of Japan and Islamic Republic of Iran that AALCO must involve in compiling the State Practice in international law at least by its Member States. The Delegation also wished the Forty-Ninth Annual Session all success and looked forward for its fruitful outcome.

134. Finally, he expressed his heartfelt gratitude for the people and Government of the United Republic of Tanzania for making excellent arrangements for the Session.

135. The **Leader of Delegation of Nigeria**<sup>6</sup> congratulated H.E. Mr Mathias M. M. Chikawe and Mr Priyasath Gerald DEP on their election as President and Vice-President respectively of the Forty-Ninth Annual Session of AALCO and also for ably handling the Session.

136. He also expressed his deep appreciation to H.E. Tan Sri Abdul Gani Patail, President of the Forty-Eighth Annual Session for his able leadership during his tenure as President of AALCO for the past one year. He said that his delegation noted with immense satisfaction the excellent work of the AALCO Secretariat under the able leadership of the Secretary-General Professor Dr. Rahmat Mohamad and would like to join other delegations in thanking him for the commitment and dedication he brought to bear on the work of the Secretariat during the past two years while serving as the Secretary-General.

137. He stated that Nigeria had been involved with the work of AALCO for many decades and during these period, has come to appreciate the work and contribution of the organisation in global affairs particularly in the area of progressive development and codification of International Law as evidenced by its contributions to the work of the International Law Commission.

138. He appreciated the work of the Secretariat on the various items to be deliberated upon at the Session and was pleased to make Statements on the following items, namely: 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; and Challenges in Combating Corruption: The Role of United Nations Convention against Corruption.

139. The Leader of Delegation of Nigeria believed that the resolution of the Historic conflict was of paramount importance to the achievement of world peace. The recent confrontation between the Israeli forces and the international aid workers underscored the global volatility of the conflict and therefore underpinned the need for the invocation and compliance with the relevant principles of International Law. That feat could be achieved only if Global and Regional organizations like AALCO lend their voices on the need to uphold the rule of law and abide by the tenet of the Fourth Geneva Convention of 1949 and other customary International Laws.

140. Nigeria was well aware of the negative impact of corruption on development, a fact which had since become of global concern to all nations. Apart from ratifying the United Nation Convention against Corruption in 2004, Nigeria had put in place, the necessary legal and institutional framework for combating corruption. Of particular importance was the establishment of the Independent Corrupt Practices and Other related Offences Commission (I.C.P.C) and the Economic and Financial Crimes Commission (E.F.C.C.). That was also complemented by ongoing reform effort within the legal System of the Country in General.

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<sup>6</sup> In view of the delayed arrival of the Nigerian delegation, the statement was not delivered during the General Meeting. A written statement was handed over to the AALCO Secretariat and that is reflected here.

141. Although, far from winning the war against corruption, it had been reinvigorated in line with government's policy of Zero tolerance for corruption. Their laws were constantly being reviewed to meet the challenges of prosecuting emerging Internet Economic crimes. Consequently, the tempo of prosecution of corruption cases had been increased and major convictions recorded.

142. He said that efforts have been renewed in combating private sector corruption especially in the Banking Sector. Public Procurement process was being strengthened through a legal framework in order to make Government and Private Business more transparent and in line with global trends and best practices. They were confident that significant success would be recorded in the near future.

143. He informed that Nigeria was at a critical stage of her national development where vital State institutions were being reinvigorated. Consequently, reforms were ongoing in virtually all sectors of the economy in line with the policy objectives of repositioning the country to meet the challenges of the 21<sup>st</sup> century. The enthronement of the rule of Law in all facets of their national life was being championed by the Government. In tackling these challenges, Nigeria, he stated would continue to rely on the contributions and assistance it had enjoyed from AALCO over the years and especially the capacity building programmes being initiated by the Secretariat. However, the achievement of their collective dream could only be attained in the Global village community when there was peace.

144. Finally, he expressed the delegation's appreciation to the Government and people of the United Republic of Tanzania for hosting the Forty-Ninth Annual Session and the AALCO Secretariat for the hospitality extended to members of his delegation since their arrival at the Historic city of Dar es Salaam.

145. The **Observer Delegation of the International Committee of the Red Cross (ICRC)** thanked the Asian-African Legal Consultative Organisation and the Government of the United Republic of Tanzania for giving the International Committee of the Red Cross (ICRC) the opportunity to take part in its Forty-Ninth Annual Session. The ICRC was honoured to be invited to collaborate in organising the Special Meeting on the topic of the 'International Criminal Court' on 7 August 2010, as part of the Session.

146. He explained that ICRC as an independent, neutral organization was committed to ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. The ICRC had a mandate under international law to take impartial action for prisoners, the wounded and sick, and civilians affected by conflict. In line with its mandate, the ICRC endeavours to prevent suffering caused by armed conflicts and other situations of violence, by promoting and strengthening international humanitarian law and universal humanitarian principles. Therefore, ICRC's association with the AALCO helped the promotion of international humanitarian law, a task given to the ICRC by the States parties to the Four Geneva Conventions, which include all the Member States of AALCO.

147. In addition to its protection and assistance activities for those affected by armed conflict and other situations of violence, the ICRC's preventive action in the field of weapons also had saved lives. Since suffering in armed conflicts was inflicted both by the choice of weapons and how they were used. International humanitarian law had always addressed both the choice of weapons and the behaviour of combatants. The ICRC's mandate to promote and develop international humanitarian law covered both the general rules and specific provisions which regulate the use of weapons.

148. The Observer Delegate stated that keeping in view the unspeakable destruction they cause, the issues of nuclear disarmament and nuclear non-proliferation assume significance in that respect. The President of the ICRC said "the debate about nuclear weapons must be conducted not only on the basis of military doctrines and power politics. The existence of nuclear weapons poses some of the most profound questions about the point at which the rights of States must yield to the interests of humanity, the capacity of our species to master the technology it creates, the reach of international humanitarian law, and the extent of human suffering we are willing to inflict, or to permit, in warfare." The President of the ICRC further said "nuclear weapons are unique in their destructive power, in the unspeakable human suffering they cause, in the impossibility of controlling their effects in space and time, in the risks of escalation they create, and in the threat they pose to the environment, to future generations, and indeed to the survival of humanity." The President of the ICRC also said "preventing the use of nuclear weapons requires fulfilment of existing obligations to pursue negotiations aimed at prohibiting and completely eliminating such weapons through a legally binding international treaty. It also means preventing their proliferation and controlling access to materials and technology that can be used to produce them."

149. The Observer Delegate informed that a significant development that took place a few days ago in the field of regulation of the use of weapons has been that the Convention on Cluster Munitions has just entered into force on 1 August 2010. That was an important landmark in the life of the Convention as from that date the treaty's obligations would become legally binding on the first 30 ratifying States. The entry into force came only 20 months after the Convention was opened for signature in Oslo, Norway on 3 December 2008 and represented a forceful commitment by States in support of the Convention and a strong desire to address the humanitarian problems caused by cluster munitions. Presently, 108 States had signed the Convention and 38 of them had ratified its provisions. With the entry into force of the Convention on Cluster Munitions, international humanitarian law established a comprehensive framework for preventing and ending the civilian suffering caused by "weapons that can't stop killing". The 1997 Mine Ban Convention, the 2003 Protocol on Explosive Remnants of War and the 2008 Convention on Cluster Munitions together constituted a far-reaching response to the humanitarian consequences of unexploded and abandoned ordnance and provided hope of a future when communities would be able to live without the threat of these weapons.

150. The Observer Delegate explained that the entry into force of the Convention also meant that States would begin preparing for the First Meeting of States Parties. The First

Meeting of States Parties would be held from 8 to 12 November 2010 in Vientiane, Laos. That would be the first collective opportunity for States Parties to begin to operationalize the Convention's obligations. Participation in the First Meeting of States Parties was open to all governments and all States were urged to attend. States that had not signed or ratified the Convention may attend as observers. For States that had not yet signed the Convention, the First Meeting of States Parties was a key opportunity to learn more about the instrument, its implementation and the approaches and mechanisms that States Parties were adopting to ensure that land contaminated with cluster munitions was cleared, stockpiles of these weapons were destroyed, relief was provided for the victims of these weapons and assistance was made available for affected countries. In the view of the ICRC, the first Meeting of States Parties must focus on providing concrete support for cluster munition clearance and victim assistance in affected States Parties.

151. Another important aspect in the regulation of the use of weapons was the regulation of arms trade. The ICRC strongly supported the elaboration of a comprehensive 'Arms Trade Treaty' that established common international standards for responsible trade in conventional weapons and ammunition. Conventional weapons were used to commit the vast majority of violations of international humanitarian law and cause untold suffering among civilians caught up in armed conflicts and their aftermath. Yet a vast array of conventional weapons remained easily accessible, even to those who consistently flout this law. The human costs of that phenomenon far surpass those of any weapons whose use was prohibited or specifically regulated by international humanitarian law. The ICRC thus considered it urgent that States begin to negotiate an Arms Trade Treaty. The ICRC understands the complexity and sensitivity of many of the related issues. However, these issues would be best addressed in the context of negotiations. He stated that, in accordance with their respective mandates, the ICRC looked forward to working with the AALCO on topics of international humanitarian law and issues of common concern.

152. The **Observer Delegation of the League of Arab States**<sup>7</sup> emphasized that it was important for the Member States of AALCO to support the cause of peace and stability in the world by both international and regional initiatives. One such cause for Member States of AALCO was to support Sudan to solve the Darfur problem and participate in all peace talks. He congratulated the Secretary-General for holding the seminar in Delhi to discuss the Palestinian issue and stated that the only solution to that problem was that Palestine should become an independent State with Al-Quds as its capital. He emphasized that for that solution it was also important that Israel withdraw from the Occupied Palestinian Territory as well as from Syria and Lebanon. It was also necessary that Israel should be taken to task for the crimes committed on the Palestinian territory and the civilians in particular. He mentioned that the League of Arab States was trying to come up with a number of new initiatives namely: (1) fighting IT crimes, (2) International criminal law, (3) Legal guide to solve the problem dealing with crimes in general and (4) Fighting terrorism.

**The Meeting was thereafter was adjourned.**

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<sup>7</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

**IV. SUMMARY RECORD OF THE SECOND MEETING OF THE  
DELEGATIONS OF AALCO MEMBER STATES  
HELD ON FRIDAY, 6<sup>TH</sup> AUGUST 2010 AT 9:30 AM**

**His Excellency Mr. Priyasath Gerald DEP, Solicitor General of Sri Lanka and the Vice-President of the Forty-Ninth Annual Session in the Chair.**

**A. Report of the Secretary-General on Organizational, Administrative and Financial Matters**

1. The Vice-President invited the Secretary-General to present his **“Report on the Work of the Asian-African Legal Consultative Organization”**.

2. **Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO**, stated that the previous day, the delegations had the privilege to hear the inspiring address delivered on behalf of the Hon’ble President of the United Republic of Tanzania. That speech amongst other things testified that at the highest political level in the AALCO Member States the objective for which the AALCO had been founded received utmost attention. The leaders of AALCO Member States held the expectation that the AALCO as an instrument to forge Afro-Asian solidarity would leave no stone unturned in ensuring that the views and perspectives of Asian-African States were adequately reflected in international law-making and its implementation.

3. The Secretary-General highlighted that perspective found its echo in the General Statements by the Heads of Delegations by the Member States. The essence of the statements made by the Leaders of the Delegations could be summed up as firstly, the ideological basis of AALCO remained relevant in the contemporary world; secondly, newer and emerging legal issues required that Afro-Asian States remain united to face those challenges; thirdly, the imperative of strengthening the Organization in all its aspects was considered of vital importance; and lastly, and more importantly, for him as the Chief Executive of the Organization, the Member States were fully supportive of the various activities being undertaken by the Organization and wished to further enhance AALCO’s profile and promote its role.

4. The Secretary-General in that context, recalled that at the previous Annual Session, the Member States had adopted the historic **“Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization”**. By virtue of that Declaration, Member States had *inter alia* reaffirmed their commitment to the Organization and recognized its significant contribution towards strengthening Asian-African solidarity, particularly in the progressive development and codification of international law. They had envisioned revitalizing and strengthening the AALCO so as to ensure that it remained the “main centre for harmonizing the actions of Asian-African States in international legal matters”. The realization of that vision required that the AALCO should:



*First*, represent and present the views of Member States in negotiation and codification of international rules;

*Second*, preparing analytical and technical studies for the benefit of Member States to equip them with necessary knowledge while negotiating international law;

*Third*, engage in capacity-building and training for Member States to understand rights and obligations flowing from international obligations;

*Fourth*, provide a forum for exchange of views and experiences which could be consolidated and presented to the law-making process;

*Fifth*, render special legal advice and support for member countries including Least Developed Countries who are lacking in expertise;

*Sixth*, provide specific assistance and technical support to requesting Member States for resolving their disputes and assisting them in negotiation or international adjudication; and

*Lastly*, monitoring and report on international legal developments for the benefit of its Member States.

5. The Secretary-General emphasized that to realize those objectives, various measures had been initiated since the Forty-Eighth Annual Session, as also some new measures were envisaged. He highlighted some aspects of his Report contained in document AALCO/49/DAR ES SALAAM/2010/ORG 1. He began by presenting an update on the activities undertaken since the Forty-Eighth Annual Session.

6. The Secretary-General informed that at the invitation of the Government of the People's Republic of China, he visited with his Deputy Dr. Xu Jie, the People's Republic of China from 13 to 19 October 2010. It was his privilege and honour to inaugurate the "Regional Capacity Building Workshop on Treaty Law and Practice and the Domestic Implementation of Treaty Obligations", at Wuhan University. During that visit, he also called upon Dr. Xu Hong, Deputy Director-General of the Department of Treaty and Law, Ministry of Foreign Affairs of the People's Republic of China and discussed many issues about strengthening relations between China and AALCO.

7. The Secretary-General informed that he had made a presentation at the International Workshop and Seminar on "*Siyar* and Islamic States Practices in International Law", held in Kuala Lumpur, Malaysia from 18 to 19 October 2009. Further, he informed that on 28 October 2009, the AALCO Legal Advisers and Joint AALCO-ILC meeting was convened at the UN headquarters in New York with the support and cooperation of the Permanent Observer of AALCO to the UN in New York, Dr. Roy S. Lee. Amongst others, Judge Hishashi Owada, the President of the International Court of Justice and Ms. Patricia O' Brien, the Legal Counsel of the United Nations also spoke at that meeting.

8. The Secretary-General stated that in order to make the seat of AALCO, in New Delhi, a vibrant centre for exchange of ideas in international relations and law, an AALCO Lecture Series was initiated in December 2009. The Series had a promising start as Tan Sri Abdul Gani Patail, the Hon'ble Attorney General of Malaysia and the President of the Forty-Eighth Annual Session delivered the Inaugural Lecture.

Subsequent lectures were delivered by Amb. Gudmundur Eiriksson of Iceland; and Judge Kuniko Ozaki of the International Criminal Court. The Secretary-General emphasized that the AALCO Lecture Series had been widely appreciated by the diplomatic and academic community based in New Delhi. He emphasized that the Member States, desirous of providing an avenue to their eminent scholars or practitioners in international law were most welcome to utilize that initiative. On behalf of the Secretariat, he assured of doing the best in that regard.

9. The Secretary-General informed that it was his privilege and honour to receive Tan Sri Abdul Gani Patail, the Hon'ble Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session in December 2009 at the AALCO Secretariat in New Delhi. The President held several rounds of consultations with the Secretariat Staff to give a greater vigour to AALCO's activities as well as delivered the Inaugural Lecture of the AALCO Lecture Series. The Secretariat took note of many of the ideas expressed by the Hon'ble Tan Sri, and two of them that have been implemented at that Session were: one, the thematic debate on "Making AALCO's participation in the work of the International Law Commission more Effective and Meaningful", that was scheduled to take place after that meeting; and two, bring out the Secretariat Report on non-deliberated items on the work programme of AALCO in a single compilation.

10. He also took the opportunity to request the current President of AALCO to find time from his hectic schedule to visit the Headquarters during the course of his Presidency.

11. Moving on further, the Secretary-General informed that in January 2010, at the invitation of the International Council of Environmental Law (ICEL), he had visited Germany to participate in a meeting on the Draft International Covenant on Environment and Development. Modalities of promoting cooperation on matters of mutual interest were also deliberated during that visit. As a positive outcome of that visit, the ICEL had joined hands with the Tanzanian Government and the AALCO Secretariat to organize Special Meeting on "Environment and Sustainable Development" on Saturday 7<sup>th</sup> August 2010.

12. The Secretary-General emphasized that the Capacity Building Programmes constituted an important element towards that endeavour. Towards that end, the AALCO Secretariat had organized the highly successful one week "Basic Course on the World Trade Organization", at the Permanent Headquarters in New Delhi from 1 to 5 February 2010. 67 participants from 19 AALCO Member States and 5 Non-Member States attended that programme for which the faculty was drawn from the WTO Secretariat and International Trade Law experts based in New Delhi. The Secretariat was working towards making it an annual feature.

13. The Secretary-General further informed that to encourage in-house capacity building two members of the legal staff attended international law training programmes. Furthermore, a regular internship programme for Law students had also been put into place. In the period under review eight students benefited from such programme.

14. The Secretary-General stated that it would be his constant endeavour to strengthen the existing relationship with various international organizations, as well as forge newer links, with Organizations having commonality of objectives. Therefore, ever since he assumed the Office of the Secretary-General, it had been his endeavour, as he came from an academic background to promote cooperation with institutions engaged in the learning and dissemination of international law. Towards that end, in July 2009, a Memorandum of Understanding with the Xiamen Academy of International Law, and the Secretariat of AALCO was concluded. Later in October 2009, a MoU between the Secretariat of AALCO and Wuhan University Institute of International Law was concluded. Another MoU between the Secretariat of AALCO and the International Council of Environmental Law (ICEL) was proposed to be concluded during that Session. On behalf of the Secretariat, he assured the Member States, that the signing of those MoUs did not constitute any precedent and in future any such endeavour would be based upon a scheme in which he would place before the Member States a list of Organizations or bodies with which the Organization may enter into any relationship. Only after approval by the Member States was accorded to his proposal, he would proceed to work towards formalizing the relationship.

15. In the light of that, the Secretary-General most humbly requested the Member States to endorse the MoUs with the Xiamen Academy of International Law, Wuhan University Institute of International Law and the proposed MoU with the ICEL.

16. The Secretary-General highlighted that the AALCO needed to work as a consultative forum on a regular and continuous basis and ensure that its work remained demonstrable to the international community. To achieve that, he proposed to convene at frequent intervals, meeting of legal experts on the topics on the work programme of AALCO. One such meeting of legal experts was convened on the Review Conference of the International Criminal Court in Putrajaya, Malaysia from 30 to 31 March 2010 with the support of the Governments of Japan and Malaysia. The meeting provided a forum where legal experts shared information on their respective national positions on issues that were to be taken up by the Review Conference. The successful outcome of that meeting encouraged him to organize more such inter-sessional meetings on topics of relevance for AALCO Member States.

17. It was his honour and privilege to inform the distinguished assembly that a three-member delegation from the AALCO Secretariat led by him had participated in the Review Conference of the Rome Statute of the International Criminal Court that took place in Kampala, Uganda from 31 May to 3 June 2010. On 1 June 2010, he had addressed the General Debate in which he *inter alia* presented the outcome of the Putrajaya Round Table Meeting of Legal Experts on the Review Conference. An Informal Networking Meeting of AALCO Member States was also organized during the Conference in which the Report of Putrajaya Meeting was released. In that context, he would like to inform that the Member States participating in the Review Conference very much appreciated AALCO's participation and wished that the Secretariat would be represented in more such multilateral level law-making Conferences. Building upon the

practice regarding Secretariat's participation in such Conference, he proposed to include his deputies and legal staff in more such international meetings.

18. It was his privilege and honour to present a report on the deliberations that took place on the work of the International Law Commission at the Forty-Eighth Annual Session before the plenary meeting of the International Law Commission at the United Offices in Geneva on 14 July 2010. A lively exchange of views with the Commission Members took place after that meeting, in which the ILC Members were highly appreciated and the work being done by AALCO and hoped for further strengthening of the institutional linkages between the AALCO and ILC. The Geneva visit was also utilized to meet senior officials of WTO to promote cooperation in areas of mutual interest, particularly, conducting joint capacity-building programmes.

19. Moving on further, the Secretary-General stated that on 16 July 2010, a Seminar on "The Blockade of Gaza and its International Legal Implications" took place at the AALCO Secretariat in New Delhi. H.E. Dr. Mohamed Abdel Hamid Higazy, Ambassador of the Arab Republic of Egypt in India; H.E. Mr. M. Levent Bilman, the Ambassador of the Republic of Turkey in India; H.E. Dr. Ahmed Salem Saleh Al-Wahishi, the Chief Representative of League of Arab States in India; and Prof. Achin Vanaik, Head, Department of Political Science, University of Delhi and he himself made presentations. Those presentations were followed by discussion to which the participants contributed valuably and exchanged their opinions with the Panelists.

20. The Secretary-General thereafter placed some new measures for the implementation of the Putrajaya Declaration. In that context, he stated that the AALCO should fashion itself to serve as a think-tank for the Afro-Asian regions. Towards that end, he proposed to consider constituting an AALCO Eminent Persons Group drawn from Member Governments, International Organizations, academia and civil society to address key issues of concern to the AALCO Member States. Such a group would be facilitative in redefining the role of the Organization in the fast changing global power matrix. The Group could also serve as an informal guidance mechanism for the Secretary-General to steer the work of the Organization.

21. Another initiative that he wished to embark upon pertained to bringing out a digest of national legislations on some of the topics that were on the work programme of AALCO. Some preliminary work had been done in that direction and with the support and cooperation of the Member States, he was hopeful that by the next Annual Session, on one or more topics the Secretariat would be able to prepare a database.

22. Moving on further, the Secretary-General emphasized that the Secretariat had a crucial role in strengthening the work of the Organization. Presently, the Secretariat functioned under severe constraints of human and financial resources. Yet the final products bore no witness to those handicaps and measured up to the quality and quantity of any important international conference and their outputs anywhere held in the world. Therefore, he emphasized that the Organization needed to further strengthen the infrastructure and other facilities offered to the Secretariat Staff. Furthermore, to give an

international character in the Professional Category of the Secretariat Staff, there was a need to ensure that the Secretariat was able to attract and retain the best talent from the two regions. That entailed offering remuneration and other terms and conditions of services at par with the other Inter-governmental Organizations.

23. The Secretary-General informed that the year 2011 would mark another milestone in the journey of AALCO. In 2011, the Organization would be holding its Fiftieth Annual Session. It would be an important occasion to reflect upon the past achievements and shortcomings. It would also provide an opportunity to carve out the next phase of development for the Organization. In that regard, the Secretariat had received an offer from the Government of Sri Lanka to host the Fiftieth Annual Session. He also proposed in order to encourage and motivate the young scholarship in international law, to convene on the sidelines of the forthcoming Annual Session, a Young Jurist Conference.

24. The Secretary-General thereafter invited the attention of the Member States towards some staff related matters. In that regard, he informed that concerning the disbursement of salary, pay and allowances to the Secretariat Staff, the Secretariat broadly followed the pay-structure followed by the host Government of AALCO- the Government of India. In that regard, he wished to inform that from January 2009, the salaries to the Staff were being disbursed according to the recommendations made by the Sixth Pay Commission of Government of India. As those salary scales were effective from January 2006, arrears were also required to be disbursed to the employees. In that context, he was very hopeful that the Secretariat would be able to disburse those arrears at the earliest opportunity.

25. Furthermore, recently, the Government of India had enhanced the gratuity payable to employees on the cessation of their employment. In that context, he informed that as there were no pension schemes for Secretariat employees, the quantum of gratuity for an outgoing employee held great importance to their financial security. Therefore, he earnestly, requested the Member States to approve his proposal of following the prevalent rules of Government of India for its employees for the disbursement of the terminal gratuity award.

26. The Secretary-General also brought to the attention of the Meeting that following the endorsement of his proposals relating to the Permanent Observer Missions of AALCO at the United Nations Offices in New York, Geneva and Vienna, Dr. Roy S. Lee and Prof. Georges Abi-Saab were appointed as AALCO's Permanent Observers at the UN Offices in New York and Geneva respectively. While the Permanent Mission at New York was now fully functional, owing to the Swiss Government's requirement of maintaining a permanent office in Geneva and Prof. Abi-Saab's residency status, the required accreditation process with the UN Offices in Geneva could not be accomplished. Therefore, for activating AALCO's presence in Geneva that was host to apart from UN, several other important inter-governmental organizations, such as WTO, ILO, WIPO, etc. means and mechanisms had to be explored to activate AALCO's presence in Geneva.

27. The Secretary-General informed the Member States that a “Regional Training on Treaty Law and Practice and the Drafting of International Legal Instruments”, was being jointly organized by the Indonesian Government, UN Office of Legal Affairs and the AALCO Secretariat in Jakarta from 13 to 15 October 2010. Treaty Law held vital importance in international legal matters and therefore, in that regard, he earnestly requested the Heads of Delegations of the Member States to nominate their concerned officials for participating in that programme. He assured the Member States that the capacity building programme would prove to be highly beneficial for Member Governments.

28. The Secretary-General emphasized that if the ability of any Organization to carry out its function effectively, and convince others of the importance of its role, represented a basic criteria on which to measure its success, AALCO had managed, as the sole organization which brought the two continents of Asia and Africa at the level of governments, to perform its mission so effectively and practically as to contribute to serving international legal issues by giving sincere technical consultation and serious research and studies which represent a valuable heritage for establishing clear legal concepts to safeguard the interests of African and Asian countries in general, and its Member States in particular, and at the same time gain continuous international support.

29. The large attendance at AALCO's Annual Sessions was a testimony of its growing importance. The business like discussions in a friendly and cordial atmosphere had always been fruitful. The variety of items on its agenda attracts experts from different walks of life such as judges, lawyers, Government officials and distinguished academicians.

30. The Secretary-General said that over the years, despite perennial financial problems, AALCO, as a living institution, had succeeded in maintaining its vitality by adapting itself to the changing environment with maximum flexibility and cost-effective management. He was quite confident that the future had much better prospects in store for the Organization. In that regard, he felt that the Forty-Ninth Annual Session, would give further impetus in the efforts for revitalizing and strengthening the Organization.

31. Finally, the Secretary-General emphasized that the AALCO deserved the unreserved support, encouragement and wider utilization by its Member States.

32. The **Leader of the Delegation of Malaysia** appreciated the efforts of Secretary-General in promoting the work of AALCO and stated that the Memorandum of Understanding entered by the Secretariat of the AALCO with the Xiamen Academy of International Law, Wuhan University Institute of International Law of Wuhan University and the proposed MoU to be concluded during the Forty-Ninth Annual Session with the International Council of Environmental Law (ICEL) were most admirable and most serious efforts to improve and enhance the work of AALCO. Therefore, Malaysia fully endorsed the signing of those MoUs and said that any future effort should be done in accordance with the AALCO's Statute's and Statutory Rules.

33. Concerning the Capacity Building and Training programmes, the Leader of the Delegation recalled the operative paragraph 2 of the Resolution on the Special Meeting on “Transnational Migration; Trafficking in Persons and Smuggling of Migrants”, (AALCO/RES/48/SP 1 dated 20 August 2009) that encouraged Member States to consider holding regional and intra regional meetings in order to coordinate efforts to combat these offences. The same resolution had mandated the Secretary-General to constitute an open-ended Committee of Experts to conduct a study on ways and means to enhance mutual legal assistance in criminal matters among Member States. He hoped that such an open-ended Committee of AALCO Member States could soon be constituted and Malaysia was willing to collaborate in this regard. He urged upon the Delegates to sincerely partake in the discussion of this Committee. Malaysia also appreciated the work done by the Secretariat of AALCO to promote capacity-building and training programmes.

34. The **Leader of the Delegation of Kenya** praised the efforts undertaken by the Secretary-General to revitalize and strengthen the AALCO in accordance with the mandate received from the Putrajaya Declaration. His Delegation also fully endorsed and supported the MoUs concluded by the Secretary-General.

35. The **Leader of the Delegation of the Gambia**, at the outset congratulated the President and Vice-President on their election. He said that he had to put in special efforts to be within the AALCO forum as his predecessors were not cognizant of the importance of AALCO. Concerning the arrears of contribution of the Gambia, he stated that serious efforts were underway and the Gambia would expeditiously clear its arrears.

36. The Leader of the Delegation stated that the AALCO was a wonderful institution that brought together the two great continents of Asia and Africa that had the largest population and the largest resources. There was nothing that could not be found here, yet it was a pity that the countries in the two continents were third world. They had to plead for loans and aid from development agencies. He declared that countries of these regions could no longer be subservient and they had to unite in the way Europe or the American continent was unified. It was time that these countries were unified to develop themselves. He urged the AALCO to pay particular attention towards bringing cooperation for combating the crimes of terrorism, money laundering, piracy and corruption.

37. The Leader of Delegation informed that the Gambia had commemorated on the 20<sup>th</sup> of July, the anniversary of its Revolution. That Revolution had changed the nature and course of developments in the Gambia and made remarkable difference. Their Head of State as a pragmatic and patriotic leader had taken the lead in taking the Gambia out of corruption and zero development. Despite allurements by multi-national corporations, to exploit oil in the Gambia, he had refused to grant permission for such extraction and declared that the Oil would stay till eternity. The theme during their revolution's anniversary that year was “Say no to Drugs and Corruption”. There was a zero tolerance policy in that regard and any person caught for those offences would regret for the rest of life, as such offences had severe punishment.

38. The Leader of Delegation said that he was full of enthusiasm for AALCO and gave assurance to pay last of dollars that the Gambia owed to AALCO to come of its indebtedness.

39. The **Leader of the Delegation of Bahrain**<sup>1</sup> applauded the efforts made by Secretary-General in enhancing the work of the Organization, and he was of the opinion that it was going forward and fulfilling the objectives of AALCO. He assured full cooperation to the AALCO.

40. The **Leader of the Delegation of Brunei Darussalam** informed that her delegation from Brunei arrived on the 4<sup>th</sup> of August in Darussalam. Incidentally, that was the first anniversary of her appointment, as well as the first time she was in Tanzania and the first meeting of AALCO that she was attending. She thanked Tan Sri Abdul Gani Patail for his efforts in encouraging her to attend the Forty-Ninth Annual Session of AALCO, and the deliberations of the past days, testified that it was worthwhile to attend the Annual Session. She applauded the commendable work done by the Secretariat under the leadership of its Secretary-General. She emphasized that despite financial constraints the AALCO was doing very useful work and assured the Organization of Brunei's continuous support. Her delegation was convinced that the AALCO was a great and highly relevant Organization.

41. The Leader of Delegation stated that as a Member State, Brunei had always made their contributions on time, however, for the current year, the process was being expedited, as due to revised contribution, it was resubmitted to the Treasury. Her delegation fully endorsed the MoUs between AALCO and other international bodies but of course with the consent of Member States. She strongly supported the Training programmes conducted by the Secretariat and said that she would encourage her officers to attend those that could benefit them.

42. The Leader of Delegation noted the sad financial crisis faced by the Secretariat and fully sympathized with the Secretariat. She supported any revision to be made where necessary and financially possible, including the pension scheme and salary scheme of the officers and staff, in recognition of their tireless efforts, despite financial constraints.

43. The **Leader of the Delegation of the United Republic of Tanzania** stated that in accordance with the goals and the core function of AALCO, as stipulated by the founding fathers of AALCO, the Secretary-General had followed it completely. His delegation welcomed the signing of the MoUs, and appreciated the initiation of the capacity building programmes. He also welcomed the proposal for the constitution of an Eminent Persons Group. The Permanent Mission of AALCO at United Nations Offices was important, as AALCO's presence at the centre of business should be effectively registered. Their delegation supported all the initiatives proposed by the Secretary-General for strengthening the Secretariat. The realization of those ideas required human and financial resources. In that regard, he called upon the delegations to make voluntary contributions.

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



Those Member States that were in the capacity to pay more should be encouraged by to do so.

44. The **Leader of the Delegation of the Islamic Republic of Iran** welcomed the proposal of the Secretary-General to constitute a Group of Eminent Persons and on that regard, he desired that the proposal may be clarified.

#### **Report on the Financial Situation of AALCO**

45. The **Vice-President** invited the Secretary-General for presenting his report on the financial situation of AALCO.

46. The **Secretary-General** stated that a firm financial base was of vital importance for the sustainability and effective functioning of any Organization. Hence, ever since, he assumed the office, his efforts had been directed towards improving the financial situation of AALCO. To ensure sound and healthy financial management, principle of transparency and accountability had been completely observed.

47. In that regard, he began on a positive note and recalled that in December 2008, the Organization was faced with an imminent situation of bankruptcy. It had moved out of that situation and presently with the support of Member States and sincere efforts undertaken by the Secretariat, the financial situation had improved. However, challenges remained for the future and therefore he was "cautiously optimistic".

48. Thereafter, he proceeded to place for the kind consideration of the Member States a realistic assessment of the current financial situation of the Organization and presented an update on the various measures undertaken in accordance with the Action Plan adopted by the Extraordinary Session on 1 December 2008 and the Putrajaya Declaration adopted by the Forty-Eighth Annual Session of AALCO on 20 August 2009.

49. The Secretary-General informed that at the Forty-Eighth Annual Session vide AALCO/RES/48/ORG 2 the "revised scale of assessed contribution of Member States" was adopted. Pursuant to that decision, until 30 June 2010, annual contribution from 18 Member States, amounting to 50% of the Annual Budget had been received. He expected that in the later part of the year, contributions from the remaining Member States would also be forthcoming and he took the opportunity to request the Member States that had yet not paid their annual contribution for the year 2010 to expeditiously do so.

50. The Secretary-General stated that the on-going efforts to collect arrears of contribution from the Member States in arrears of contribution were on-track. A systematic and continuous follow-up, through the Diplomatic Missions of those Member States had been put in place. The results were evident, as the following update demonstrated:

First, MoU with the Republic of Iraq had been signed in November 2009. He was hopeful that Iraq, in accordance with the MoU soon remit its first instalment.

Second, the Libyan Arab Jamahiriya had paid three years of contribution. Negotiations for entering into an MoU for the remaining period were underway.

Third, an MoU with The Sudan and the Republic of Yemen with arrears of 20 and 10 years, respectively was expected to be signed during the Annual Session. The Republic of Yemen had desired that its arrears for 2-years (1988 and 1989) may be written off, and the arrears may be counted for Yemen only after the unification of the Republic of Yemen.

Fourth, positive replies had been received from Sierra Leone, The Gambia, the State of Palestine and Senegal. He expected that an MoU with those Member States would also be concluded in near future.

Fifth, more efforts were being put to persuade the Democratic People's Republic of Korea and Mongolia to meet their financial commitments to the AALCO. In negotiating with them it was being impressed upon them that they make a start by paying their current contributions, while the arrears issue could be resolved in due course.

Sixth, as regards, Lebanon, the issue was a bit complicated. The Government of Lebanon denied that it was a Member State of AALCO, while the Secretariat records and their participation in the Annual Sessions brought out their association with the AALCO.

51. The Secretary-General brought to the attention of the meeting that in case, the problem of arrears persisted; a Member State wished that possible "sanctions" that could be imposed on Member States in arrears may be examined. In that regard, he informed that as per the mandate received from the Forty-Fourth Annual Session, certain restrictions, in terms of hosting the Annual Session or other meetings of the Organization and seconding officials to the AALCO Secretariat were already in place.

52. More importantly, to overcome financial crisis another approach that was suggested was to secure "pledges" from the Member States in terms of their financial responsibility. The Secretary-General welcomed that proposal and believed that it was a more amicable and productive way in the spirit of Afro-Asian solidarity to address that issue. Accordingly, he urged upon those Member States in arrears to make a pledge to clear their arrears by 2015.

53. The Secretary-General placed on record his sincere appreciation for Dr. Yuichi Inouye, Deputy Secretary-General of AALCO, for his perseverance and dedication in regularly approaching the Diplomatic Officials of the Member States in arrears and working with them to expeditiously solve the issue of massive accumulation of arrears of contribution. He stated that he was highly confident that those painstaking efforts would soon yield results and flow of funds from the Member States who were in arrears would commence.

54. To promote the activities of AALCO, he particularly urged those Member States that were economically in better position to provide in addition to their regular annual contributions, some voluntary contribution to promote the activities of their Organization. Such voluntary contributions could be towards specific programme oriented activities. The funds so provided would not be merged with the regular budget and would be only utilized for the purpose for which it had been made. In the last year, with the financial

support of the Government of Japan and logistical support of the Government of Malaysia, a Meeting of Legal Experts on International Criminal Court (ICC), from AALCO Member States, prior to the Review Conference was convened. He expressed his gratitude to both these Governments.

55. Furthermore, he stated that the case for replenishing the Reserve Funds, to ensure that it always had a six-month operational expenses in it also had to be ensured.

56. At the previous Liaison Officers Meeting, held on 16 July 2010, the Secretary-General said that he was called upon to make a clear presentation to the Heads of Delegations regarding the Financial Situation of AALCO, including the liabilities and Secretariat's plan in case the issue of arrears was not improved.

57. Therefore, with that objective, a preliminary study of the budgetary estimates and audited expenditure of AALCO for the period 2006 to June 2010 was carried to analyze, the inflow and outflow of funds. Some preliminary inferences that could be drawn from that study were:

*One*, the annual contribution received from the Member States ranged between 60 to 70 % of the total expected contribution;

*Two*, the major outflow of funds was towards revenue expenditure, that included firstly, salary, allowances and emoluments; secondly, expenses relating to the Office and Secretary-General's residence; thirdly, holding of Annual Sessions, Inter-Sessional Activities and Centre for Research and Training; and fourthly, publications and miscellaneous. The capital expenditure had been in that period miniscule.

*Three*, the period 2008 and 2009 was particularly difficult, as liability for rental of office and SG's residence and furnishing of the present residence was paid for during this period.

*Fourth*, there was an increase of expenditure under the salary and allowances head;

*Fifth*, there was a decrease in the expenditure relating to the maintenance of Office and Secretary-General's residence.

*Sixth*, the continuous efforts being made to optimize the use of both the human and material resources available within the Secretariat had helped in streamlining and balancing the operational expenditure.

58. The Secretary-General stated that as the executive arm of the Organization, the Secretariat was entrusted with the responsibility to strengthen cooperation amongst the Member States on international legal matters. Their modest Secretariat, as knowledge based Organization, despite constraints of human and material resources, strove to render services of the highest standards.

59. The Secretary-General took the opportunity, therefore to briefly place some information regarding the Staffing pattern in the Secretariat. The Secretariat Staff was broadly classified as Officers in the International Category, Professional Staff, General Services Category and Subordinate Staff. While the Sanctioned Staff strength was in the range of 38 to 51 personnel, the actual staff strength in the Secretariat, for the years 2007, 2008, 2009 and 2010 respectively was 22, 22, 23, and 20. Thus, Secretariat was currently

functional at less than half the sanctioned strength. Despite that constraint the Secretariat strove to efficiently and diligently discharge the mandate entrusted by Member States and also embarked upon taking new initiatives.

60. The Officers in the International Category consisted of Secretary-General and Deputy/Assistant Secretaries-General. While for the position of Secretary-General the Organization paid salary and allowances, the salaries and allowances to the DSGs, were paid by their respective Governments. In that regard, he was very much thankful to the Governments of the People's Republic of China, Japan and the Islamic Republic of Iran for deputing their senior officials to serve the AALCO Secretariat. Only certain emoluments were paid to DSGs from People's Republic of China and Islamic Republic of Iran.

61. The Secretary-General stated that as regards, the salary structure and allowances payable to the professional, general services and subordinate staff, it was well-established principle for any inter-governmental organization or diplomatic mission the salary, and other allowances disbursed to the employees had to be according to the standards followed by the host Government, if not more. The AALCO had consistently been following that principle. Therefore, to disburse arrears of salary arising out of the implementation of the Sixth Pay Commission's recommendation an amount of USD 73, 000 had to be raised. In view of the financial constraints the disbursal of arrears to the Staff had been temporarily suspended.

62. The Secretary-General informed that two employees after putting in more than three decades of service to the AALCO Secretariat had retired; while another employee who had also put in more than three decades of service was due to retire next month. Two employees who were earlier on long-leave had tendered their resignations. He wished to place on record appreciation of their useful services to the Secretariat. As of now those positions remained vacant and no fresh appointments had been made.

63. The Secretary-General emphasized that the Secretariat of AALCO perhaps functioned with the lowest budgetary allocation for any inter-governmental Organization. The Secretariat functioned as indicated above with skeletal staff. Despite requirements, no new recruitments had been made.

64. The Secretary-General on behalf of the Secretariat assured the Member States that all efforts and measures were being made to ensure optimal utilization of the resources received from the Member States. With the possibility of countries in arrears paying their contribution in coming years, he was hopeful that the situation was likely to improve. Until then, he most urgently urged those Member States that were economically better placed and valued the work of the Organization to provide the Secretariat with adequate resources. He was fully confident that with the full support and cooperation of the Member States and dedicated work by the Secretariat the situation could be competently handled.

65. The **Leader of Delegation of Japan** stated that the Government of Japan was truly concerned about the serious financial challenges which AALCO currently confronted. The Japanese Government was prepared to cooperate with AALCO to overcome its present financial crisis and revitalize AALCO in the spirit of Putrajaya Declaration. Therefore, the delegation assured that if they were convinced that some particular measure to be proposed were the only measure necessary to save AALCO from its financial crisis, the Government of Japan could cooperate.

66. He stated that such particular emergency measure would be meaningful only when accompanied as a package by a specific mid-term and long-term financial improvement programs. Otherwise, they were concerned that all the delegates would very likely end up discussing the question of some emergency measure at every Annual Session during this time of the year. The delegate made it clear that in the absence of such a specific program for mid-term and long-term financial improvement, Japan for its part was unable to agree to any further increase of contribution or special emergency contribution.

67. It was stated that in accordance with the objective of Putrajaya Declaration, urgent priority task to revitalize AALCO should be that all the Member States fulfill the obligation of their respective financial contribution under the AALCO Statute. They highly valued the efforts made till date by the Secretariat towards that end. The delegation supported discussing on some possible sanction measures against non-complying members.

68. During the General Statement, it was mentioned that there were only two paths before AALCO Member States which were either to keep the current budget size, all the Member States contribute their own share of contribution or concede realistically that AALCO could expect only seventy percent of contributions from its Member States each year, and acknowledge that was the real budget for AALCO. It was emphasized that the financial and budgetary problems were not the matter only to be considered by the members contributing large amounts and the Secretariat, but has to be shared and tackled with by all the Member States in the spirit of crisis management. In particular, at the present session all the participating member states should come to share the need for actions.

69. The Leader of Delegation said that at the 16 July 2010 meeting of Liaison Officers in New Delhi, to help the matter move forward, they had proposed that some sort of pledging session be held during the present or every Annual Session with participation of all participating member states, for expressing the intention of individual members for their respective financial contribution obligatory under the AALCO Statute. That would be an occasion for those members of full payment records only to confirm their intention to do so in the future, but for other members to inform the Secretariat of the nature of their specific difficulties and to clarify their intended actions for contribution in the future.

70. The Leader of Delegation said that with regard to the 2011 budget, Government of Japan wished not to stand in the way if it could be adopted by consensus at this Annual Session, but in that event his country Japan lodged its strong request that the Secretariat would act to restraint the actual expenditure for administrative costs, various projects, trips, etc. to a level of the expected contributions, until such time when more revenues were generated by way of improvement of payment of contribution by Member States which include the past arrears and/or voluntary contributions by any of the Member States.

71. The **Leader of the Delegation of Malaysia** while expressing concerns on the financial situation of AALCO stated that the problem increased due to accumulation of arrears. The Leader of Delegation thanked the Government of the Gambia for their assurance to pay their arrears and expected other countries to follow suit. He appreciated the efforts of Brunei Darussalam to pay their contribution on time. Malaysia and certain other countries had paid voluntary contributions and in that regard, he requested Member States who could afford to do so may do it for the purposes of training the people. Referring to the Proposed Draft Budget for the Year 2011, the projected income was USD 570,268 of the proposed budget which was actual expenditure incurred including the capital expenditure and revenue expenditure. Therefore, the AALCO Secretariat could not make any mistake either in expenditure or collection of arrears. As a food for thought, he said that it could be useful if the delegations could calculate the aggregate amount spent on their travel to that session which was much more than the annual budget of the AALCO.

72. The **Leader of the Delegation of the United Republic of Tanzania** pleaded with the Member States to pay their contribution, because being in association with the AALCO would be more prestigious for them and when they receive such privilege they must be obliged to pay their contributions well.

73. The **Vice-President** thereafter invited the Secretary-General to make introductory statement on the adoption of **Proposed Budget for the Year 2011**.

74. **Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO** introduced the Proposed Budget for the Year 2011. In his introductory statement, he stated that having listed out the details of AALCO's financial position, he would like to invite the attention of the delegates to the Secretariat Report or Budget Document on the "Proposed Budget for the Year 2011" as contained in the document AALCO/49/DAR ES SALAAM/2010/ORG.2. He mentioned that the budgetary papers were adopted at the 306<sup>th</sup> 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.

75. Explaining the details of the allocation of budget under different heads, he mentioned that the total amount of the proposed budget for the year 2011 was USD 570,268 (US Dollars Five Lakh Seventy Thousand Two Hundred and Sixty Eight) which was calculated as per expected assessed contribution of Member States which were

revised and adopted during the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia in the Year 2009 vide resolution AALCO/RES/48/ORG 2.

76. The Proposed Budget could be divided into two main heads namely: (i) Expenses under Centre for Research and Training (CRT); and (ii) Other Expenses. The budget allocated for promoting and conducting Research and Training was USD 73,000. The details of the training programmes and activities for the year 2011 were attached as Annex-I from pages 34-38 to the Budget document. All other expenses in relation to the maintenance of the Headquarters, Pay and Allowances to Secretary-General and Locally recruited Staffs, Emoluments to Deputy Secretary-General, Expenses in relation to annual sessions and inter-sessional meeting, printing, publication expenses and so on were in aggregate amounting to USD 497,268. The amount allocated for research and training was 13% of the total budget.

77. He recalled that to replenish Reserve Fund, the resolution adopted during the Forty-Eighth Annual Session, urged the Member States to ensure that it always has a six-month operational fund. In that regard, he thanked the Government of Malaysia for their voluntary contribution of US\$ 10,000 towards Reserve Fund. He also thanked the Government of the Republic of Korea and Government of Turkey for their voluntary contribution towards the General Fund of the Organization. He urged other Member States to also follow suit. It was stated that currently, to fulfil the other financial obligations of the Secretariat, voluntary contributions from Member States were most welcome.

78. It was essential to assess an Organization through its ongoing activities undertaken, which had repeatedly been the concern of AALCO Member States. In that regard, he mentioned that activities conducted and organized by AALCO in the Year 2009 and till the month of July 2010 was a manifest evidence of promotion of research and training. The budget allocated for CRT in the year 2010 was USD 78,500; however AALCO had to adjust some of the funds from that head in order to meet the expenses incurred for the present session. On a careful analysis of the budget allocation under various heads, especially under the maintenance head, it showed that there had been a considerable reduction in the maintenance cost and till date the Secretariat had reasonably incurred the expenses which were much below than the budget allocated. He emphasized that under constant monitoring, the expenditures had been streamlined. He appreciated the Secretariat staff in extending their full cooperation in reducing the expenses. In the light of those facts, the Proposed Budget for the Year 2011 was placed for final approval.

79. The **Leader of Delegation of the Gambia** congratulated the Secretary-General for preparing comprehensive detailed and meticulous report. He said that the report was very useful and the Gambian delegation expressed their heartfelt gratitude for the same. In case there was consensus, it was proper and appropriate to adopt the Budget, he stated.

80. The **Vice-President** then declared the Budget adopted at the Session. The next item which was taken up for consideration was Report of the Chairman of the Advisory Panel of AALCO. The Chairman of the Advisory Panel was the Head of the Delegation

of Bangladesh. As the delegation was not attending the Session, the Vice President requested Dr. Yuichi Inouye, Deputy Secretary-General of AALCO to read out the Report of the Chairman of the Advisory Panel.

81. **Dr. Yuichi Inouye, Deputy Secretary-General** of AALCO while reading out the Report of the Chairman of the Advisory Panel, recalled that the Advisory Panel ("Panel") was constituted to guide the Secretary-General in discussing the various possibilities to overcome the financial difficulties of AALCO. The Panel held its 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Meetings on 16 December 2009, 3 March 2010, 26 May 2010 and 23 June 2010 respectively. The mandate of the Advisory Panel was to look into the financial matters of AALCO, and to suggest ways and means to collect the outstanding arrears of contributions from Member States in arrears.

82. At the 5<sup>th</sup> Meeting of the Panel, it was clearly mentioned that the mandate for the Advisory Panel till the next Annual Session would be to fulfill the mandate given by the Putrajaya Declaration on Revitalizing and Strengthening the AALCO, as well as the resolution on AALCO's Proposed Budget for the Year 2010 (AALCO/RES/ORG.2) adopted on 20 August 2009. The Putrajaya Declaration *inter alia* in paragraph 8 states "We recognize that it is the responsibility of all member States of AALCO to work together to alleviate the financial hardship faced by the Organization". The resolution on the Budget in operative paragraph states "Also encourages the member States to voluntarily contribute to replenish the reserve Fund so as to ensure it has always a six month operational fund".

83. In that meeting the Deputy Secretary-General thanked all the Member States for the Revised Scale of Contributions that was adopted during the Forty-Eighth Annual Session, however he noted that the adoption of the revised scales alone would not be sufficient to end the financial hardships of AALCO. He emphasized that it was essential that AALCO should be having a reserve fund for the operational costs of the Secretariat.

84. The issue of arrears was taken up and it was mentioned that there were 10 countries in arrears for more than 10 years. It was necessary that as a first step to resolving the issue, AALCO should conclude MoU's with all these countries.

85. Besides that the other Member States were also requested to make voluntary contributions.

86. As an alternate the following three proposals were put forth for the consideration of Member States:

- All the Member States were requested to pay their annual contributions for 2010 and 2011 by the end of June 2010 and June 2011;
- There were 13 Member States in arrears for less than 10 years, and 7 countries who had arrears for either one or two years (2008 and 2009), they could clear the same in 2010;



- There were five countries who had arrears of two years, those could be requested to clear their arrears in two installments in 2011 and 2011; and
- The last proposal was to request all the Member States to make an Advance Payment of USD 5,000 in 2011. This advance payment would subsequently be deducted from their annual contribution in 2016.

87. The idea of getting this advance payment from Member States was to tide over the financial crisis that the AALCO might face in 2011. The Annual Budget was prepared on the basis of expected Annual Income of USD 570, 000. However, in 2011 there could be a possibility of facing a deficit of about USD 1,50,000. Therefore to overcome that deficit the Secretariat had proposed to the Advisory panel to consider the possibility of collecting an advance payment of USD 5,000 from each Member State along with its contribution of 2011. This amount would be deducted from the annual contribution of Member States in 2016.

88. At the 6<sup>th</sup> Meeting of the Panel, the proposal of the advance payment of USD 5,000 was once again discussed. One Member State had readily agreed to that proposal. It was clearly stated that only if the idea was supported in the Advisory Panel would the recommendations of the Panel be placed for consideration at the forthcoming Annual Session. However, it was necessary to get the consensus of the Member States, before proceeding to the Annual Session. A report on the arrears issue was also presented.

89. At the 7<sup>th</sup> Meeting of the Panel the meeting was informed that the Republic of Iraq had signed a MoU last year, however their first installment was still due. The Deputy Secretary-General appreciated the gesture of Republic of Iraq, the Republic of Yemen and Libyan Arab Jamahiriya for understanding the financial situation of AALCO and agreed to do their part of paying up their arrears due.

90. The Deputy Secretary-General informed the Liaison Officers that during the last two months he had visited the embassies of most of the AALCO Member States in New Delhi and sensitized the Deputy Chief's of Missions about the proposal of advance payment of USD 5,000 along with the annual contribution of 2011, and that advance amount would be deducted from the annual contributions in 2016. During those visits to the embassies, he had requested the Deputy Chief's of Missions to explain to their capitals the financial crisis of AALCO and also to try their best to persuade their capitals to support the proposal of the advance payment. Dr. Inouye explained that a payment of USD 5,000 from each Member State in 2011, would be sufficient to cover the deficit of USD 170,000 in 2011.

91. At the 8<sup>th</sup> Meeting of the Panel, the proposal of the advance payment was once again discussed. Thereafter, the Deputy Secretary-General reiterated that since September 2008 he had visited several times to the Embassies of the 11 Member States who were in arrears for more than 10 years. He mentioned that he could not visit the Embassies of Cameroon and Sierra Leone because they do not have their missions in New Delhi. As a

result of his efforts at present all the Member States in arrears were aware of the financial situation of AALCO and had responded in a positive manner.

92. However, there were still some countries that were not willing to respond to the issue. Dr. Inouye was of the belief that some kind of sanctions should be initiated on those countries. He said that currently, Member States in arrears could not hold an annual session of AALCO and could not depute an International Category Officer to the Secretariat. However, he was of the view that this was not sufficient and some more sanctions need to be introduced.

93. The DSG mentioned that during his visits to the Embassies in New Delhi, several Deputy Chief of Missions had asked him what would happen in case the 8 countries in arrears do not sign the MoU with AALCO this year or next year. Dr. Inouye had explained to them that in that scenario, the Organization would face a very difficult financial situation and in the worst scenario, may be in 2012 once again some short term strategy of collecting advance payments would have to be worked upon.

94. Following the factual situation as explained by Dr. Inouye, there was extensive exchange of views on most of the issues raised by him, namely: (1) Situation of Arrears, (2) how to collect outstanding arrears, (3) Proposal of collecting USD 5,000 as advance payment to be placed at the Forty-Ninth Annual Session, (4) Budget of AALCO, and (5) Sanctions of countries in arrears.

95. All the Liaison Officers unanimously praised Dr. Inouye for his tireless efforts in sensitizing the Member States in arrears regarding their dues and about the financial situation of AALCO.

96. All the Liaison Officers agreed that the proposal of USD 5,000 as advance payment for Member States to be deducted from their annual contributions in 2016 could be discussed, as a proposal by the Advisory Panel, by the Heads of Delegations at the Forty-Ninth Annual Session, subject to the condition that enough time would be given for such discussion. Another proposal was that the plan could only be approved provided Member States in arrears would never again default in their payment of annual contribution. Many Liaison Officers said that they had forwarded the proposal to their capitals and were expecting response. The Liaison Officer of Kenya was willing to accept the proposal.

97. All the Liaison Officers agreed that there was a need for effective communication between the capitals and the Liaison Officers so that all necessary information relating to AALCO reaches the capital in time and necessary action could be taken.

98. It was suggested by some Liaison Officers that the collection of advance payment could at best be considered as a "short term plan", the Organization should work towards a "long term solution" to solving its financial problems. It was suggested that seminars and workshops could be funded by some Member States and participants could pay for

attending them. The Organization should explore the possibility of alternate funding. This was suggested by the Liaison Officer of Uganda.

99. The Organization should also make more efforts towards collecting the outstanding arrears and signing the MOU's with countries in arrears. The Liaison Officers realized that the arrears problem would take some time to resolve. One Liaison Officer suggested that the AALCO Secretariat could engage with the Ministers concerned with AALCO affairs in the capitals; however that proposal could not materialize as there was no fund available for such visits.

100. It was suggested that the Budget of AALCO be further streamlined. However, Dr. Inouye explained as earlier that the proposed Budget of USD 5,70,000 was the minimum that the Organization required every year, and that already all measures had been exhausted to further streamlining the budget. The Liaison Officer of Japan suggested that if the Organization received only 70% of its contributions every year, it should restructure its budget for the amount received by it.

101. The Liaison Officers did not fully agree with the proposal of initiating sanctions on countries in arrears as that could pave the way for those members wanting to leave the Organization. Rather it was suggested to engage countries in arrears more constructively with the activities of AALCO so that they would, subject to the improvement in their financial situation would be willing to pay their arrears.

102. The **Leader of the Delegation of Japan** in their statement appreciated the efforts taken by the Secretariat and the DSG in addressing the issue of tackling the arrears of contribution. However, on the proposal of paying USD 5,000 in the year 2011 as an advance payment to be deducted in the year 2016, the Government of Japan's position was that it would not be possible to pay the amount without the consensus. Therefore, they did not agree to such a proposal.

**The Meeting was adjourned for the Prayer Meeting and Lunch Break.**

**V. SUMMARY RECORD OF THE SECOND GENERAL MEETING  
HELD ON FRIDAY, 6<sup>TH</sup> AUGUST 2010, AT 2.30 PM**

**His Excellency Mr. Priyasath Gerald DEP, Vice-President of the Forty-Ninth Annual Session in the Chair**

***Thematic Debate:* “Making AALCO’s Participation in the Work of International Law Commission (ILC) More Effective and Meaningful”**

1. The **Vice-President** in his opening remarks mentioned that after reviewing the Organizational and Financial matters, it was time for them to proceed towards consideration of substantive topics on the AALCO’s work programme. In that regard, he was pleased to commence the proceedings with the thematic debate on the topic “Making AALCO’s participation in the work of the International Law Commission more Effective and Meaningful”.

2. The **Vice-President** recalled that the International Law Commission (ILC) had been established by the United Nations General Assembly in the year 1947, and the ILC Statute provided that the “Commission shall have for its object the promotion of the progressive development of international law and its codification.” Nearly, ten years later, on 15 November 1956, the Statutes for the AALCO, was adopted. The founding Member States with the objective to promote the perspectives of newly independent States of Asia and Africa laid down the statutory obligation that ordained that one of the functions and purposes of the Asian-African Legal Consultative Organization was “to examine subjects that were under consideration by the International Law Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary, to the Member States.” The Organization has in its fifty-four years of work examined the questions under consideration of the ILC. To further, consolidate their work programme on that matter, and to ensure that there was optimal utilization of the limited resources and time available to their Organization, that thematic debate had been conceived.

3. The **Vice-President** stated that the Secretary-General had constituted, in his opinion an excellent Panel for that purpose. It was a unique combination of academic wisdom with practical international legal experience. Following the Introductory Remarks by the Secretary-General, the three Panelists, namely Prof. Shinya Murase, Member of International Law Commission from Japan; AALCO’s Permanent Observer in the United Nations Dr. Roy S. Lee, who had a very distinguished career in the United Nations and had been the Member Secretary of the ILC and distinguished international law academic Prof. V. S. Mani from India would make presentations. Their presentations, followed by Statements from the Member States would help the Organization, in successfully pursuing its work programme on ILC. Thereafter, the Vice-President invited the Secretary-General to make his introductory remarks.

4. **H.E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO** in his introductory remarks expressed his profound thanks to all the distinguished panelists of

the thematic debate on “Making AALCO’s Participation in the Work of the International Law Commission more Effective and Meaningful”. He said that a eminent panel was present to deliberate on that important topic. He was confident that at the end of the discussion some concrete proposal and suggestions would definitely emerge.

5. The Secretary-General stated that the AALCO attached great significance to its traditional and long-standing ties with the ILC. One of the primary objectives of the AALCO, as envisaged in its Statutes was to examine subjects that were under consideration by the International Law Commission and to forward the views of the Organization to the Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary, to the Member States. The mandate had over the years helped forge closer bonds between the two Organizations. In fact, it had now become customary for the Commission and the AALCO to be represented at each other’s Annual Sessions.

6. The Secretary-General gave a background on the relationship between AALCO and the ILC. The formal relationship between AALCO and ILC was established in the year 1961. In 1960, at the Third Session in Colombo, AALCO made its recommendations on the question of Diplomatic Privileges and Immunities, on which a United Nations Conference of Plenipotentiaries was due to be convened. The AALCO’s recommendations on that subject not only contained an evaluation of the provisions of the draft articles prepared by the ILC but suggested certain formulations of its own drawing upon the experience of Latin America and suited to the conditions in the newly independent States in Asia and Africa. At the Conference on Diplomatic Relations in Vienna, the Organization’s recommendations on the subject were officially placed for consideration and some of its recommendations found their way into the Vienna Convention on Diplomatic Relations 1961. That paved the way for establishment of the AALCO’s official relationship with the ILC and its recognition as the competent regional body in the field of international law. Further, it ensured the Organization’s participation on a regular footing in Plenipotentiaries Conference convoked by the UN in the coming years. Since then AALCO had made recommendations on a number of subjects, namely, United Nations Convention on Law of the Sea, Law of Diplomatic Privileges; and Law of Treaties.

7. He said that AALCO as an inter-governmental body with 47 Member States from the two continents of Asia and Africa was uniquely placed to serve the States of these regions in examining and formulating their responses to newly emerging challenges of international law. The expanding scope and variety of issues on AALCO’s work-programme was indicative of the willingness of AALCO to keep up with the increased responsibilities of examining a wide range of newly emerging challenges of international law. Against that backdrop, he emphasized that the relationship between AALCO and ILC should be further intensified. He was confident that the two regions that AALCO represented were of great importance to the ILC, and the AALCO Secretariat was pleased to contribute to the continuing good relations between both the institutions.

8. To have an in-depth discussion on the International Law Commission, apart from the deliberations at AALCO's Annual Session, he informed that, the AALCO Secretariat organized a Commemorative Seminar on the Sixty Years of the International Law Commission on 2 December 2008 at the AALCO Headquarters in New Delhi. Mr. Narinder Singh and Amb. Rohan Perera, Members of the International Law Commission; and Prof. Djamchid Momtaz, former Chairman of the International Law Commission made brilliant presentations. Many concrete suggestions were put forward by the Panelists and the Secretary-General recapitulated once again for the benefit of the distinguished gathering.

9. At the Sixth Committee, the International Law Commission relied on the inputs from the Member States and that was where AALCO could contribute more effectively to the work of the International Law Commission; The AALCO Member States were fortunate that twelve members of the International Law Commission were from its Member States. So there were lot of feedbacks that come at Annual Sessions of AALCO. They also provided an opportunity for AALCO to contribute more effectively to the work of the International Law Commission not only through Governments but also through the members and this could be done by AALCO by taking up more research on matters which were being considered by the International Law Commission. Both matters and also matters on which the ILC had finalized its works, but which were still under consideration of the Sixth Committee. So, on both these cases, the AALCO could contribute by assisting the Member States in examining the rules of the Commission and helping them to respond either to the queries on the first reading or on the final draft articles and assisting Member States in formulating a joint position at the Annual Sessions and Special Sessions. The work of the International Law Commission concentrated or focused for over a period of generally five weeks before the AALCO's Annual Session and after the Annual Session. It would be beneficial if AALCO could help the Member States and the ILC members from its Member countries in studying the reports of the Special Rapporteurs and in responding and presenting their views by providing them some research back-ups. The AALCO could play a very useful role in coordinating the views of the Member countries and assisting them to build upon some joint formulations or positions.

10. The Secretary-General explained that at the Forty-Eighth Annual Session held in Putrajaya, Malaysia, 2009, Leader of the Delegation of the Islamic Republic of Iran while welcoming the Secretary-General's initiative to establish an Expert Group of international lawyers, suggested the following as the duties of the Group, among others: i) to examine and comment on the subjects that are under consideration by the International Law Commission; ii) to recommend the Member States on the points that need attention and observation that could be raised during the meetings of the Sixth Committee of the UN General Assembly; and iii) to provide the Member States with the technical assistance necessary in order to reply to the *questionnaire* of the International Law Commission.

11. He further informed that, with regard to proposals on addressing legal problems or international law issues, the Delegation of Malaysia supported the proposal of

recasting AALCO to work as a consultative forum similar to the International Law Commission, which was consistent with the AALCO Statutes and the original vision of the founding fathers. Also, Malaysia greatly supported the proposals to conduct regular capacity-building programmes by AALCO Secretariat, as well as proposals to institute opportunities for young officials to attend the "International Law Seminar" organised by the International Law Commission.

12. He stated that the ILC was seated at Geneva Headquarters of the United Nations, most of the Asian-African Members found it extremely difficult to sustain the heavy cost and at the same time find research assistance for them. The AALCO as a forum could be used by all the Member States, their view duly presented before the ILC by the Secretariat. Further, AALCO could do more by providing research assistance to Asian-African Members participating in the ILC; organizing expert group meeting to discuss, identify and consolidate the common interests of Asian and African States; etc. Furthermore, ILC work should not be the concern of only the foreign offices of their Member States, but should also sensitize the academia in deliberating those issues along with the contemporary and specialized areas of international law, all of which found its roots in the rules and principles developed under the ILC fora.

13. The Secretary-General also hoped that AALCO could play a more active role in searching for new and emerging issues. Inputs provided by AALCO would be valuable to the ILC in identifying particular issues outside the main topics already considered by the ILC. If AALCO Member States could come up with a common position on the issues, AALCO could make recommendation and forward its legal position on the issues to the ILC. He once again reiterated that the AALCO Secretariat was looking forward for a fruitful and vibrant relationship with the ILC in the years to come.

14. The **Vice-President** said that it was a privilege and honour to have Prof. Shinya Murase, with them as the Representative of the International Law Commission for the thematic debate. Prof. Murase was Professor of Law at Jochi (Sophia) University. He had also briefly served as a Legal Officer in the Codification Division, Office of Legal Affairs, United Nations and had been Judge for six years in the Administrative Tribunal of the Asian Development Bank. Prof. Murase was an accomplished author and had several books and articles to his credit.

15. **Prof. Shinya Murase, Member, International Law Commission**, in his presentation thanked the Asian-African Legal Consultative Organization for extending an invitation to address the Forty-Ninth Annual Session in Dar es Salaam. He stated that the Commission valued its long relationship with AALCO and appreciated the visit by Prof. Mohamad to speak at the ILC Session. ILC believed that effective cooperation with other legal bodies, particularly AALCO, was essential for the Commission to succeed in its mandate to work towards the future codification and progressive development of international law. The Commission's Sixty-Second Session had been a fruitful one, though as they entered the second decade of that century the Commission was in transition. For the first time in the long history of the Commission, a woman was elected as chairman. Ms. Xue Hanqin elegantly presided over the Commission's work during the

first part of its session before resigning due to her election to the International Court of Justice. He informed that, in her place, Mr. Nugroho Wisnumurti has led the Commission as it concluded that session's work in Geneva. The Commission's time had largely been spent continuing consideration of its previous topics, and he updated the members of AALCO on their progress.

16. On "Effects of Armed Conflicts on Treaties", the Panelists informed that the ILC would have to continue the work of the late Sir Ian Brownlie. The Commission considered the first report of Mr. Lucius Caflisch on the topic. His report contained a proposal for the reformulation of the draft articles adopted on first reading, taking into account the views of Governments that the ILC was fortunate enough to receive. The topic engendered lively discussion within the Commission, and, in particular, there was considerable debate amongst members regarding the appropriate definition of "armed conflict." While several options were discussed, the final draft article adopted the more contemporaneous and concise definition of armed conflict used by the International Criminal Tribunal for Yugoslavia, in the *Tadic* decision, which included both international and non-international conflicts. The Commission also reserved extending the scope of the topic to treaties to which intergovernmental Organizations were parties until the completion of its work on the present draft articles.

17. Additionally, the question of what factors made treaties susceptible to termination, withdrawal, or suspension during conflicts occupied much of the Commission's discussion. Currently, draft articles 4 and 5, together with an indicative list, were designed to provide indications for readers to determine whether a treaty survives in totality or in part the outbreak of conflict. In general, the Commission considered the intent of the parties to the treaty as derived from the applicable articles of the Vienna Convention and the nature, extent, intensity and duration of the armed conflict to be particularly indicative. Moreover, the Commission had attempted to provide further guidance by looking to the subject matter of treaties in order to ascertain their operation during armed conflict.

18. One key concern expressed by the Commission, however, was the need for greater analysis of state practice. The need for further input from States and more evidence of relevant State practice was a common problem facing the Commission.

19. Regarding "Reservations to Treaties", the Commission also considered parts of Mr. Alain Pellet's Fourteenth, Fifteenth, and Sixteenth Reports on Reservations to Treaties. A total of 60 draft guidelines to practice on that matter were adopted and there was a sentiment throughout the Commission that the lengthy work on that topic was nearing its completion.

20. Several issues were repeatedly confronted by the Commission in the course of its work on this topic during the session. There was much discussion about how to treat "newly independent States" in the guide to practice. The 1978 Vienna Convention clearly defined newly independent States as dependencies which meant States emerging out of the process of decolonization. The Convention had not been widely adopted and



there was some concern about following it so closely. As some members pointed out, what was more problematic was that the Convention did not cover “new States” in circumstances of State dissolution and secession. Nevertheless, the Commission ultimately decided to retain the formulation provided in the 1978 Convention. The goal of the draft guidelines was not to revisit, or rewrite, the provisions of the Vienna Convention.

21. Nevertheless, that project had called for the Commission to engage in the progressive development of international law in some important ways. Particularly, the topic challenged the Commission on the open question of whether to endorse the existence of a presumption in the case of impermissible, and therefore invalid, reservations. State practice in that area was divergent, varied, and unclear. Some members advocated for a negative presumption. That was, they argued that the Commission should not endorse a position where States could be compelled to be bound to a treaty without the benefit of their reservations. Other members stressed that stability in treaty relations would be undermined unless a positive presumption was adopted. The Commission recognized the situation had no easy answer and offered a potential middle way: a rebuttable presumption that a reserving State intends to become a party to the treaty absent the benefit of impermissible reservation. The guidelines to practice aimed at encouraging dialog between and among State parties to treaties, and it was hoped that such a rebuttable presumption would require States to be explicit about their reservations and their intentions to be bound to a treaty.

22. Regarding “Protection of Persons in the Event of Disasters”, Mr. Valencia-Ospina presented his third report on the topic of “Protection of Persons in the Event of Disasters”. The Commission’s work on that topic during that session focused on two issues: the principles directly relevant to the protection of persons and the question of the primary responsibility of the affected state. The Commission adopted a draft article which emphasized the humanitarian principles of humanity, neutrality, impartiality, and non-discrimination. It was acknowledged that the principles of humanity, neutrality, and impartiality were “core principles regularly recognized as foundational to humanitarian assistance efforts generally.” While there was some debate within the Commission as to whether these principles were firmly established within the context of protection of persons in event of disasters, the Commission did recognize that these principles had been employed within the context of international humanitarian law and the non-use of force in the UN Charter. The view was expressed that principles conceived in general and abstract terms could extend to other, different areas of law from which the concepts originated. In particular, there was much discussion about whether the principle of “neutrality,” which was traditionally asserted within the context of armed conflicts, should be incorporated into the draft articles. It was suggested that the principle be replaced by a reference to the principle of non-discrimination. In the end, the Commission decided to maintain a reference to all the three core humanitarian principles and emphasize the principle of non-discrimination in addition.

23. The second concern arose as a result of the understanding reached in the Drafting Committee last year upon the adoption of draft articles 5 on the duty of States to

cooperate that future provisions on the primary responsibility of the affected State would be formulated. The Commission wanted to reflect that the principles of sovereignty and non-intervention constitute the basis on which the regime for protection of persons in the event of disasters was to be developed. Nevertheless, there was much debate within the Commission as to how to properly balance State sovereignty with the need to protect human rights. Though the fundamental purpose of that topic was to protect persons, the Commission wished to ensure against creating a draft article that could lead to unwarranted intervention. While the use of the term responsibility was intended to convey competency, many members were concerned that the actual term “primary responsibility” had several drawbacks: First, that it might invoke the concept of the “responsibility to protect,” which the Commission excluded from the scope of the applications of its draft articles last year, or, second, that it could suggest that the international community enjoys a “secondary” responsibility. The Commission ultimately decided to use the formulation that the affected State has a duty for the protection of persons and the provision of humanitarian assistance on its territory and, further, that external assistance could only be undertaken on the basis of the consent of the affected State. The Commission intended to develop additional provisions that would explain the scope and limits of the exercise by an affected State of its duty to protect persons affected by a disaster.

24. The Panelist mentioned that progress was also made on the topic, “Expulsion of Aliens”, The Special Rapporteur, Mr. Kamto, presented revisions to draft articles presented last year and, additionally, his sixth report emphasizing the obligation of states to respect the human rights of aliens who are being expelled. Within the drafting committee on that topic, eight articles relating to the protection of the human rights of aliens were provisionally adopted. The Commission hoped to move forward with these articles next year.

25. The ILC also began consideration of how to properly distinguish between lawful and unlawful aliens within a State's territory and, further, what procedural rights each may have. While the Commission left consideration of procedural guarantees for lawful aliens until next year, there was considerable debate about what rights were owed to unlawful aliens. In particular, members were concerned about differentiating between newly arrived and long-term unlawful aliens. Apart from those topics, Responsibility of International Organizations had been on the ILC's agenda for some time for which Mr. Gaja has been the Special Rapporteur. Since ILC finished the first reading last year, ILC did not discuss that topic in 2010, as ILC was waiting for the comments and replies from Member States. He expressed the hope that as many AALCO Members as possible would send their comments on that important topic.

26. He informed that the Commission had also made fruitful progress on other topics under consideration in two Study Groups. The Study Group on Treaties over Time began a discussion on an introductory report prepared by Mr. Georg Nolte. Discussion primarily concerned, first, whether different judicial and quasi-judicial bodies have a tendency to give different weight to subsequent agreement in treaty interpretation and, second, what factors, including the subject, nature, and age of the treaty, were considered when these

bodies look at subsequent behaviour. An additional meeting was held to discuss *travaux préparatoires* of the Vienna Convention on means of treaty interpretation. Particular attention was paid to the historical context and development of Article 31 on the Vienna Convention. Next year, the Study Group would proceed to analyze pronouncements of courts and other bodies under special regimes. The work plan of the Study Group was anticipated to extend into the Commission's next quinquennium, at which point a final decision would be made as to how to proceed on the topic.

27. The Study Group on the 'Most-Favoured Nation Clause', chaired by Mr. Don McRae and Mr. Rohan Perera, considered five papers prepared by members of the Commission on aspects of the MFN Clause, including a paper that he submitted on the review of the ILC Draft Articles on the MFN Clause of 1978. In light of that analysis, the group would investigate whether tentative guidelines or provisions could be developed in the future.

28. In the Working Group on the 'Obligation to Extradite or Prosecute', the Commission considered a survey of the obligation prepared by the Secretariat and continued its discussion with the aim of addressing potential issues to facilitate the work of the Mr. Galicki, the Special Rapporteur on the topic. They reaffirmed the general framework on the topic prepared last year and determined that the Commission's orientation on the topic should be toward the production of draft articles.

29. The panelist said that though the Commission had progressed on many of the topics on its agenda it had to ensure that it was in a position to make a meaningful contribution to the codification and progressive development of the topics it considered. Last year, the Working Group on Shared Natural Resources entrusted him with the responsibility of preparing a study on the feasibility of any future work by the Commission on aspects of the topic relating to transboundary oil and gas resources. After evaluating responses to a questionnaire on oil and gas circulated to governments and looking at political and practical sensitivities, he recommended that the Commission ceased its work on the topic of transboundary oil and gas resources. That was approved.

30. However, he stressed that the Commission maintain consideration of a topic relating to international environmental law, and he put forth a proposal stressing the topic of atmosphere in view of the increasing degradation of the atmospheric environment today. Though there were a number of Conventions which touched upon atmosphere, in total they were a patchwork of instruments, leaving substantial gaps and loopholes in terms of geographic coverage, regulated activities and, most importantly, the applicable principles and rules. Such piecemeal approach was inappropriate for the atmospheric environment which by its very nature warrants holistic treatment. He believed that the Commission could make a meaningful contribution towards more effective lawmaking and dispute settlement in that field, and he looked forward to developing that topic in the future.

31. He explained that a considerable challenge facing the Commission moving forward was to find new topics that were relevant and in need of codification and

progressive development. The overriding goal must be to address topics which could be formulated into draft articles in order to strengthen international law. To that end, the Commission needed both input from States and feedback from Organizations such as AALCO to continue its work.

32. He shared the good news that the four Latin American countries of the Guarani Aquifer have signed on 2 August 2010 in the city of San Juan (Argentina) an Agreement concerning the Guarani Aquifer, which in its third Preambular paragraph, expressly states that they had taken into account the ILC work on the Law of Transboundary Aquifers. The Agreement incorporated several principles contained in the ILC Draft Articles, it created a Commission to deal with aspects of management of the aquifer and foresees the negotiation of a Protocol for establishing an arbitration mechanism for settlement of disputes. Ambassador Chusei Yamada worked very hard as Special Rapporteur on the topic of Aquifer, and he hoped that the Draft Articles would become a Convention in the near future.

33. He stressed on the fact that the Commission desired to receive more documentation from a wider variety of States and regional Organizations. While ILC was eager to receive information and documentation from all States, unfortunately, the absolute number of responses they received from States was limited. Often, the range of responses the Commission considered came from European States and hampered their ability to address State practice around the globe. The mission of ILC was to consider topics from the perspective of all legal systems and regions of the world. He expressed hope that his address to AALCO could help facilitate a greater exchange of information from AALCO Member States.

34. On behalf of everyone in the Commission, he said that they were so pleased to hear Dr. Mohamad discuss AALCO's desire to enhance its cooperation with them. As ILC looked to pursue new topics in international law, suggestions and feedback from AALCO was invaluable.

35. The **Vice-President** introduced the next panelist Dr. Roy S. Lee, Permanent Observer of AALCO to the UN Headquarters in New York and informed that Dr. Lee had worked in various capacities for several decades in the Office of Legal Affairs of the United Nations (UNOLA), including as Director of the Codification Division. He acted as the Secretary of the International Law Commission and of the Sixth Committee of the General Assembly and of three other law-making bodies. He was the Executive Secretary to the Rome Conference for establishing the International Criminal Court and in that capacity was responsible for the organization and management of the Conference and its subsidiary bodies. Since, 1997, Dr. Lee was a Professor of Law at the prestigious Columbia University Law School and from 2003, an adjunct Professor at the Yale School of Forest and Environmental Studies. Since September 2009, Dr. Lee had been serving as Permanent Observer of the AALCO at the UN Headquarters in New York.

36. **Dr. Roy S Lee, Permanent Observer of AALCO to UN Headquarters, New York** thanked the Secretary-General for inviting him as a panelist for the thematic

debate. The panelist also thanked the Member States of AALCO for appointing him as the Permanent Observer of AALCO to the UN Headquarters in New York. He recalled his longstanding relationship with AALCO. Since he had served as the Secretary to the Sixth Committee and to the ILC, he was familiar with the processes and problems involved. Reiterating the concerns raised by delegations of Islamic Republic of Iran and Malaysia, he said that those ideas could be pursued by identifying new topics for ILC and influencing the work product of the Law Commission.

37. In that regard, he said that it was important for AALCO to find ways to reflect its perspectives in the work of ILC. The Panelist observed that based upon the General Statements made by the delegations, he could identify at least 25 topics that were of interest to the AALCO Member States but only few of the topics were also under the consideration of ILC. He emphasised that there were three ways to influence the ILC or provide input to the ILC in its work which were: (i) during the General Assembly and in the Sixth Committee when work of ILC was discussed. Member States could comment upon the work of the ILC. (ii) The ILC also invites UN Member States to transmit their comments on the work of ILC in the written form which must be submitted on a deadline, for example, comments on the draft articles on state responsibility in relation to International Organizations and six other topics, including reservation to treaties, expulsion of aliens, obligation to extradite or prosecute, protection of person in the event of disasters, immunity of states and treaties over time. Governments were asked to comment on those. However, comments from Asian, African and Latin American countries generally were not many. (iii) Out of 34 members of ILC, there are at least 12 members who belong to AALCO Member States; they could work together and strongly influence the ILC.

38. He also highlighted the practical difficulty and problems for AALCO in relation to the work of ILC. The main problem of channelling the AALCO's views was that countries have different concerns. The difficulty was in relation to the process of consolidation and for collecting those ideas. The ideas and comments from Member States must be collected somewhere before April or between May and July. Therefore, it was desirable to have the Annual Session of AALCO earlier rather than later. The Member States of AALCO needed to formulate issues involved and transmitted to the AALCO Secretariat because it was necessary to channelize hard work done by the AALCO Secretariat.

39. The final aspect on which Dr. Lee commented was in relation to the product of ILC and also the procedures used in ILC. First, the ILC formulates draft articles which may be adopted in treaty form, which are then open for signatures and ratifications. ILC formulated some 45 set of draft articles and dozens of them had become treaties which included Convention on Diplomatic Relations, Convention on Consular Relations, etc. In this regard, the ILC had achieved a great deal. But now it was harder and harder for the Commission to prepare draft articles on subjects suitable for codification.

40. The Panelist said that States were generally hesitant to accept legal obligations particularly in treaty form. Some developing countries also might lack capacity in translating and implementing treaties.

41. Mr. Lee also mentioned that in recent years, the Law Commission had adopted guidelines and principles apart from the traditional outcomes of draft articles. He thought the latter forms might be easier for States to accept since they were more flexible and less formal than treaties. States were free to adapt them for their national legislation if they found them useful.

42. He emphasized the importance for member States to give their views and comments to ILC drafts if they wished to influence the ILC products. If comments were not made during the drafting stages, it would be too late to be reflected in the product.

43. Introducing the third Panelist, Prof. V.S. Mani, the **Vice-President** informed that he was currently the Director of the School of Law and Governance at Jaipur National University. For more than three decades he had been Professor of International Law at the prestigious Jawaharlal Nehru University in New Delhi. Prof. Mani was an accomplished author and had 9 books and over 100 articles published in academic journals of repute to his credit. He was also on the Editorial Board of several international legal journals. Prof. Mani had also appeared as the Agent and Legal Counsel for the Republic of Nauru before the International Court of Justice in the *Case concerning Certain Phosphate Lands in Nauru* (Nauru v. Australia) and was the Legal Counsel and Expert for India in the *Case Concerning the Aerial Incident of 10 August 1999* (Pakistan v. India).

44. **Presentation by Prof. V.S. Mani, Director, School of Law and Governance, Jaipur National University:** At the outset, the Panelist sincerely thanked the Secretary-General for thinking it proper to make an academic sit with practitioner to speak on such an important topic. As an academic, he enjoyed the freedom to romanticize and idealize, therefore, he began his presentation by emphasizing that as far as the objective of the progressive development and codification of international law was concerned, there were several international organizations that were contributing to that endeavour. He did not wish that the AALCO should jump into that vast ocean; however, it ought to prioritize on the basis of the interest to its Member States, the issues on which it should work upon. Concerning the ILC, the Panelist stated that the ILC was faced from the very beginning with the question of policy loaded issues. The codification exercise performed by the Commission was an arduous process. Therefore, such exercise happened in several other fora within the UN system. In that context, he drew attention to the negotiation of the UN Convention on the Law of the Sea by the First Committee of the UN General Assembly and the treaties concerning the Outer Space by the Disarmament Committee. The contribution of AALCO, the panelist emphasized to the elaboration of the UNCLOS was highly significant.

45. The AALCO could therefore, he suggested adopt a policy of pick and choose. It should work on those areas that were thought to be of critical interest for its Member

States. In that regard, he urged upon the AALCO Member States to financially empower the Secretariat to embark upon such a crucial task. Referring to the remarks made by his co-panelist that the response by the Afro-Asian Members to the ILC's call for response was not very encouraging, he said that the AALCO Secretariat could be utilized to assist the Member States in this task. Referring to the proposal made by the Attorney-General of Malaysia for setting up an AALCO Working Group for ILC matters, he said that he was fascinated by that idea. The Working Group could be assisted by the AALCO Secretariat in its work. Concerning the idea of providing research assistance the Afro-Asian Members of the Commission, the Panelist said that Prof. James Crawford, a former ILC Member was assisted in his work by two teams of researchers based in Geneva and Cambridge that helped him immensely in his work at the Commission. The Panelist in this regard hoped that the AALCO Secretariat could effectively contribute. If the idea was to contribute to the work of ILC, it was imperative that AALCO should effectively intervene in the work of ILC on issues of immediate concern to its Member States.

**46. Message of Ambassador Chusei Yamada, Special Assistant to the Minister of Foreign Affairs, Japan<sup>1</sup>**

*"It is indeed a great honour and privilege for me to be asked to send you a message for the special session on AALCO and UNILC relations.*

*My association with AALCO goes as far back as 1963 when I became a liaison officer of the then Asian-African Legal Consultative Committee (AALCC). Since I became a member of the UN International Law Commission in 1992, I had devoted myself to strengthening the ties between the two organizations. I am now confident that ILC recognizes AALCO as its most important partner among the regional legal organizations.*

*I would like to share with you some of my thoughts on how to further improve the relations.*

*First of all, I would emphasize the importance of the mandate of ILC which is the codification of customary international law. The States are fully acquainted with the rights and obligations under the treaties as they would carefully examine them before they became parties to them. On the other hand, the customary international law binds all the States of the international community regardless whether they participated in the formulation of such customary law. It is often difficult to ascertain precisely what the customary rules are and there also exist differences of interpretation of such rules among States. Furthermore there exist many lacunae in customary law. These factors present serious difficulties to the States. In order to remove such ambiguity of customary international law, it is essential to promote its codification. Current process of codification encompasses not only the restatement of the existing customary rules which had been put into practice mainly by Western Christian States but also the progressive development*

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<sup>1</sup> The Message was read out by the Vice-President of the Forty-Ninth Annual Session of AALCO.

*which could take into account the interests of the Asian and African States which did not take part in the formulation of the existing practices.*

*My experience in ILC was that we receive most active inputs mainly from Western governments and next from Latin American governments. Comments from Asian and African States are rather few and I always had difficulties in protecting their positions in the codification exercise. Accordingly, I would encourage more active involvement by the member States of AALCO in the works of ILC.*

*ILC meets every year in Geneva from early May to early August. On the last day of the session, it adopts an annual report containing the detailed explanation of the deliberations of each topic and the requests for comments from the States and submits it to the UN General Assembly. The 6<sup>th</sup> Committee of the General Assembly considers the report usually for a week and a half toward the end of October and in the beginning of November. This is the occasion when your Governments could make oral comments. Your Governments could also make written comments by writing to the Secretariat of the UN but it must be done by the end of the year or at latest in January next year so that the comments could be in the hand of the members of ILC before the ILC's next session.*

*I do know that some of the Asian and African States face capacity problems in digesting the report of ILC. I believe that the Secretariat of AALCO can play a role in assisting these Governments. In Europe, there exists the Committee of Legal Advisors on Public International Law (CAHDI). CAHDI obtains the annual report of ILC as soon as it is adopted and transmits it to its members. It organizes a meeting of legal advisors and coordinates their positions before the debate in the 6<sup>th</sup> Committee starts. The Secretariat of AALCO can do similar or more contributions. With the assistance from Asian and African members of ILC, it can post executive summaries of ILC Report on its web-site for the member States. It can also provide member States with studies and recommendations on each topic. It is also entitled as an international organization recognized by the UN General Assembly to directly communicate to ILC its views and recommendations on behalf of its member States. I hope that these measures would strengthen the position of the member States of AALCO in the field of international law.*

*I wish you a very successful session."*

47. The **Leader of the Delegation of India** stated that India attached great importance to the work of the International Law Commission. He thanked the eminent Panelists, Prof. Shinya Murase, Member, International Law Commission; Prof. Dr. Roy Lee, Permanent Observer for AALCO to the United Nations at New York; and Prof. Dr. V.S. Mani from India for their excellent presentations.

48. The Delegate stated that the Panelists had concentrated on the difficulties faced by ILC and AALCO besides discussing from the academic point of view, but unfortunately,



the Panelists did not touch upon the challenges and difficulties faced by the Government's side in providing timely response to the questionnaires of ILC.

49. He pointed out two substantial difficulties which countries faced they were: (i) constraint of resources; and (ii) politically compulsive silence. For example, on the topic of Shared Natural Resources, there had been dispute amongst States and they never wanted to make statements. States sometimes kept silent for the natural death of the draft articles he observed. However, when the draft articles reached near finality, the States would try to play tactics in the Sixth Committee.

50. The Delegate also mentioned that as regards the codification of international law, it did not take place only in ILC as it concentrated only on public international law, but law making was also undertaken by the UNIDROIT, Hague Conference on Private International Law and by other sectoral International Organizations.

51. He highlighted the efforts which could be undertaken by the AALCO. In that regard, he mentioned that AALCO must empower the ILC members of Asian-African region. Towards that objective, his delegation would extend their full support to AALCO and made few suggestions and they were:

- To popularize the draft articles of ILC among the Member States of AALCO;
- To create a platform for academic exercise in discussing the issues relating to ILC;
- Compilation of State practice on international law matters;
- Legal officers of AALCO could be exposed to ILC related matters, and to develop the legal expertise in order to write and comment on the reports of the ILC,
- AALCO should send the legal officers to ILC on rotational basis; and
- AALCO Session should be held in the first quarter of every year.

52. The **Leader of the Delegation of Malaysia** recalled their earlier suggestion to hold AALCO Annual Sessions in the early part of the year. He said that AALCO was already burdened with the organizational matters. Then, he referred about the ILC report and said that the ILC Questionnaire was not provided with proper explanation. Questions should be properly understood by the States. He wondered how many ILC Members understood the importance of the post they hold. Many AALCO Member States follow dualism and therefore the international treaties would not automatically become domestic laws. He suggested that ILC Members should take their responsibility seriously.

53. The delegation submitted their statements and intervention to the AALCO Secretariat. It stated that at the Sixty-fourth Session of the Sixth Committee of the United Nations General Assembly in October 2009, their country had participated in the discussion on works of the ILC at its Sixty-first Session. Their country had noted the call by the Sixth Committee for Governments to submit their views on various aspects of the topics on its agenda, in particular on all the specific issues identified in chapter III of its

report, regarding Responsibility of international Organizations; Expulsion of Aliens and Shared Natural Resources.

54. For purposes of the agenda item, the delegation made intervention on two aspects, namely: (i) the works of the ILC at its Sixty-second Session; and (ii) the Thematic Debate to make AALCO's participation at ILC more effective. In relation to the topics under the consideration of the ILC at its current Sixty-second session, the delegation stated that they had submitted their Intervention Notes to the AALCO Secretariat on the topics of: (i) Shared Natural Resources; (ii) Effects of Armed Conflicts on Treaties; (iii) Nationality of Natural Persons in relation to the Succession of States; (iv) Protection of Persons in the event of Disasters; (v) Reservations to Treaties; and (vi) Expulsion of Aliens.

55. In relation to the topic "Shared Natural Resources", they took note of the paper prepared by Prof. Shinya Murase, the Special Rapporteur on "Shared natural resources: the feasibility of the future work on oil and gas". The delegation noted that the Special Rapporteur had reported on the divergent views of States in relation to the feasibility of the future work on oil and gas.

56. Transboundary oil and gas related to highly technical data, politically sensitive issues and touched on the issue of sovereignty of States. These could better be addressed by bilateral or regional arrangements. The delegation noted that the view was shared by a majority of the States who were not in favour of the ILC proceeding with its work on codification of the law on transboundary oil and gas. At that juncture, their country supported the recommendation of the Special Rapporteur that the topic of oil and gas should not be pursued any further at the ILC.

57. On the topic of "Reservation to Treaties", it recognized that the current international law framework were silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, their country appreciated the work being undertaken by the ILC to clarify and develop further guidance on these matters.

58. The delegation stated that they looked forward positively to the ILC's work on the "Guide to Practice on Reservations to Treaties". The delegation expected that the guides in assisting States in their formulation of reservation or interpretative declaration to treaties. It was noted that some draft guidelines had been further adopted by the Drafting Committee during the Sixty-second Session.

59. On draft guideline 3.4 on "Permissibility of reactions to Reservations", they had certain concerns with respect to the draft guidelines 3.4.1 and 3.4.2 as it appeared to the delegation that the legal effect of a State's reservation to a treaty would be subjected to the test of permissibility of an acceptance or an objection. It was stated that they would provide its detailed views on this draft guideline and also the delegation did not want the proposal to bring about an effect of curtailing the sovereign right of States in expressing their opinion on another State's reservation'.

60. On draft guideline 3.5 pertaining to “Permissibility of an interpretative declaration”, they were of the view that the condition of permissibility of interpretative declarations should only be imposed where interpretative declarations were “expressly prohibited by treaty”.

61. Further, they stressed that the proposed conditions of permissibility should be applied with caution, particularly in the circumstances where a treaty prohibits the formulation of a reservation. Malaysia was of the view that unless a conclusive determination that renders the statement as a reservation was reached, conditions of permissibility under draft guidelines 3.5.1 and 3.5.2 should not be imposed.

62. The delegation noted that the draft guideline 3.5.1 was intended to allow for a treaty monitoring body's participation in providing guidance to States in crafting its interpretative declaration to render it valid for permissibility. They were of the view that the extent and the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained in very clear terms. Those terms should also subject to agreement by all Member States to such treaty.

63. On draft guideline 3.6 relating to “Permissibility of reactions to interpretative declarations”, the delegation noted that it had been reformulated to include draft guidelines 3.6.1 and 3.6.2 with modifications, and had been adopted by the Commission. In that regard, the delegation was of the view that reactions to interpretative declarations should not be subjected to conditions for permissibility, as States should be able to maintain their freedom to express their views. Interpretative declarations, regardless of whether they were prohibited or approved by other States on the same, should be viewed as agreements between States exclusively in their relation to each other.

64. The delegation was further of the view that when a State makes an opposition by proposing an alternative interpretation, such opposition should be treated as an interpretative declaration by itself.

65. The delegation believed that a universally acceptable set of draft guidelines on such an important topic could only be developed if States play their part by providing comments and practical examples of the effects of the draft guidelines to State practice. As such, the delegation urged AALCO Member States to take this opportunity to share and provide inputs on that very important matter. Their input would be critical to improve the current international regime on *Reservation to Treaties*. The delegation stressed the importance of realizing the impact of the works of ILC in establishing the guidelines on States future accession and ratification of international treaties.

66. As that was a pivotal topic of the ILC and had a huge impact on the international community, they proposed that the topic should form an integral part of AALCO's Fiftieth Annual Session agenda and the Secretariat should formulate effective mechanism and platform to allow better understanding of this complex subject-matter amongst AALCO Member States.

67. Article 1(d) of the AALCO's Statutes mandated AALCO to "examine subjects that are under consideration by the ILC and to forward the views of the Organization to the Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary to the Member States". It was noted that in the past, the Member States of AALCO, including their own country, had expressed concerns that Article 1(d) of the Statutes of AALCO have not been able to optimize the means towards achieving the goal of effectively presenting the views of Member States to the ILC.

68. To that end the delegation applauded the Secretariat's effort of placing the important issue of discussing ways and means to improve AALCO's participation in the works of the ILC. The delegation thanked the Secretariat for the Background Paper and also for views of the distinguished Panelists.

69. In order to make AALCO's participation in the work of ILC more effective and meaningful, the delegation proposed that a systematic and coherent method of obtaining AALCO Member States' feedback to be developed. Perhaps AALCO could devise a dedicated inter-sessional meeting on ILC. That inter-sessional meeting would not only be useful to discuss the topics under the consideration of the ILC but it could also be used to discuss appropriate topics, that were of mutual benefit and relevance to the two continents, to be elaborated at the ILC. Due to the work schedule of the ILC, they proposed that this inter-sessional meeting to be held early in the year before the starting of each session of the ILC.

70. As mentioned in the Background Paper prepared by the Secretariat, many members of the ILC come from within the AALCO Member States. Therefore, AALCO should devise a mechanism to fully utilize their expertise that exists amongst the members. The delegation said that their country had done that before and found it to be extremely enriching and useful. Professor Chusei Yamada, former member of the ILC and the Special Rapporteur on the topic of Shared Natural Resources was invited to attend a meeting with officers of the Attorney General's Chambers of Malaysia. The direct interaction with Professor Yamada had allowed them to better understand and appreciate the works of the ILC in general and the topic of Shared Natural Resources. The delegation expressed the hope to have more such opportunity with existing members of the ILC.

71. The delegation also mentioned that their country had attempted to send young officers for attachment or internship programme at the ILC. However, the delegation was sad to learn that the ILC member do not take internship or attachment officers. They were of the view that such programme could benefit the sending countries in the long run. If the rules of procedure governing the works of the ILC members do not prohibit such practice, the delegation urged ILC members who were from Asia and Africa to accept attachment or internship on the recommendation of the governments.

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

72. The delegation expressed their gratitude to the Special Rapporteur, Mr. Lucius Caflish, for the detailed research in the Fourth Report on the topic of Effects of Armed Conflicts on Treaties. The delegation also paid tribute to the remarkable work carried out on the topic by the former Special Rapporteur, the late Mr. Ian Brownlie.

73. It was noted that the concerns and suggestions highlighted during the Sixth committee debate in 2008 and comments submitted to the Commission in May 2010 had been considered by the Special Rapporteur, Mr. Lucius Caflisch in its first report on the effects of armed conflicts on treaties and that the draft articles 1 to 12 had been submitted to the Drafting Committee.

74. On these set of draft articles, the delegation generally accepted and agreed with the retention of the original formulation of draft articles 9 and 10 and noted that draft article 7 had been re-drafted and re-positioned as new draft article 3 bis.

75. Specifically, the delegation found that the remaining draft articles in which language had been reformulated but the essence had been retained by the Special Rapporteur to be generally acceptable subject to further scrutiny by the Drafting Committee.

76. Therefore, their country would wait in anticipation of the second reading of the draft articles by the Commission and further elaboration by the Drafting Committee before Malaysia could further comment and provide detailed analysis of the draft articles.

77. In conclusion, the delegation proposed that the AALCO Secretariat could facilitate the participation of AALCO Member States in the development of those draft articles through further collaboration with the Commission to enable the views of Member States to be forwarded thereto.

## **Shared Natural Resources**

78. In relation to the topic "Shared Natural Resources", the delegation took note of the paper prepared by Prof. Shinya Murase on "Shared Natural Resources: the feasibility of the future work on oil and gas". The paper prepared by Mr. Shinya Murase elucidated the divergent views of States in relation to the feasibility of the future work on oil and gas. They were of the view that transboundary oil and gas related to highly technical data, politically sensitive issues as well as the issue of sovereignty of States that might better be addressed by bilateral or regional arrangements. The delegation further took note that the view was shared by a majority of the States who were not in favour of the Commission proceeding with its work on codification of the law on transboundary oil and gas.

79. Thus, they were of the view that it could support the recommendation of the Special Rapporteur, Mr. Shinya Murase, that the topic of oil and gas should not be pursued any further.

### **Nationality of Natural Persons in Relation to the Succession of States**

80. The delegation took note that UNGA resolution 63/118 had invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States, and had decided to include it in the provisional agenda of its Sixty-Sixth session in October 2011 the item entitled "Nationality of Natural Persons in relation to the Succession of States".

81. They were supportive of the work done by the ILC in that area. However, before it could be agreed that the draft articles be adopted as even a non-binding declaration, further clarification was required on several provisions in the draft articles, which among others touched upon the attribution, withdrawal and granting of the right of option to nationality in the context of State succession.

82. The delegation raised specific concerns on the issue of dual or multiple nationalities which, based on the existing legal framework in Malaysia, was not permitted. Their delegation was of the view that, in the pursuit of ensuring that every person had the right to citizenship, the emphasis should be placed on the prevention of statelessness. The recognition in the draft articles of the possibility of the acquisition of multiple nationalities resulting from the succession of States should not encourage a policy of dual or multiple nationalities.

83. The delegation was further of the view that the consideration of a new legal instrument emanating from the draft Articles should only be undertaken once the practice of other States and regions on that issue points towards clearly established custom and there arose a necessity to codify those rules of custom. At that juncture, they opined that the draft articles should serve as guidance for States.

84. In that regard, the valuable comments and questions posed by several States on the draft Articles was evidence of the need for further debate. In consideration of all the above and recognized that the issue of nationality of natural persons in relation to the succession of States might be relevant to many AALCO Member States, and therefore proposed that AALCO should keep up to date on the topic's current developments pursuant to AALCO's "ILC agenda".

### **Reservation to Treaties (Interpretative Declarations)**

85. The Delegation of Malaysia stated that their Government would record its appreciation of the efforts made by the AALCO Secretariat in the efforts of making AALCO's participation in the work of the International Law Commission (ILC) more effective and meaningful.

86. The delegation recognized that the 1969 Vienna Convention on the Law of Treaties (1969 Vienna Convention), the 1978 Vienna Convention on Succession of States in respect of Treaties (1978 Vienna Convention) and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations (1986 Vienna Convention) set out core principles concerning reservations to treaties were silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification of treaties and problems resulting from particular treaty techniques. Therefore, the delegate appreciated the work being undertaken by the ILC to clarify and develop further guidance on those matters.

87. In that regard, the delegation supported the ILC's work on the "Guide to Practice on Reservations to Treaties". Notwithstanding the many issues which remained unresolved at the Sixty-second session, the crystallizing draft guidelines showed promise to be useful guides to assist States in their formulation of reservation or interpretative declarations to treaties. It was also noted that some draft guidelines had been further adopted by the Drafting Committee during the Sixty-second Session.

88. The delegation stated that their Government followed the development in the work of ILC closely and expressed their views and concerns on the draft guidelines 3.4, 3.5 and 3.6 on "Permissibility of reactions to reservations", "permissibility of an interpretative declaration" and "Permissibility of reactions to interpretative declarations" respectively.

89. The delegation also supported the effort of the ILC to address issues regarding the formulation of interpretative declarations through draft guidelines 3.5, 3.5.1, 3.5.2 and 3.5.3. The draft guidelines needed to be read in entirety.

90. The delegation was of the view that with regard to draft guideline 3.5 on the whole, the condition of permissibility of interpretative declarations should only be imposed where interpretative declarations were "expressly prohibited by treaty" similar to when addressed reservations as in draft guideline 3.1.1 on "Reservations expressly prohibited by the Treaty". It was to avoid wide interpretations by States. Further, it was stressed that the proposed conditions of permissibility should be applied to reservation. In such circumstances, unless a conclusive determination which rendered the statement as a reservation was reached, conditions of permissibility under draft guidelines 3.5.1 and 3.5.2 should not be imposed. It was on the basis of a well established general principle of law that a State was presumed to do a permitted act rather than an act prohibited by treaty. Consequently, the conditions of permissibility of a reservation would be applied to a unilateral statement intended to be an interpretative declaration by the author State as provided under those draft guidelines, which were stricter than the conditions of permissibility of an interpretative declaration.

91. On draft guideline 3.5.3, the delegation reiterated its position expressed during the Sixty-fourth United Nations General Assembly session on draft guideline 3.2.1, particularly on the legal effect of assessment made by the treaty monitoring body established under the respective treaty. They were of the belief that the draft guideline

was intended to allow for a treaty monitoring body's participation in providing guidance to States in crafting its interpretative declaration to render it valid for permissibility. However, it was felt that the extent and the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained in indisputable terms, and agreed by all the relevant Member States to such treaty.

92. With regard to draft guideline 3.6, it was noted that the draft guideline had been reformulated to include draft guidelines 3.6.1 and 3.6.2 with modifications and was adopted by the Commission. In that regard, the delegation maintained that reactions to interpretative declarations should not be subjected to conditions for permissibility as States should be able to maintain their freedom to express their views. It was felt that interpretative declarations, regardless of whether they were prohibited or not and approval by other States on the same, should be viewed as agreements between States exclusively in their relation to each other. In addition, his Government was of the view that when a State made an opposition by proposing an alternative interpretation, such opposition should be treated as an interpretative declaration by itself.

93. The delegation had also submitted its comments and concerns on the said draft guidelines to the ILC for its consideration. They further believed that a universally acceptable set of draft guidelines could only be developed by ILC, if States played their part by providing comments and practical examples of the effects of the draft guidelines to State practice.

94. As such, the delegation urged AALCO Member States to look into the subject matter and share their valuable inputs in relation to the matter in order to improve the current international regime on *Reservation of Treaties* as well as to assist ILC in completing the guidelines. Since, it was a pivotal topic of the ILC and had a huge impact to the international community; his country proposed that the topic should be part of the AALCO's Fiftieth Annual Session agenda and special meetings to be conducted on the said topic for a better understanding of the subject matter.

### **Protection of Persons in the Event of Disaster**

95. Commenting on the third report of the Special Rapporteur on the topic of "Protection of Persons in the Event of Disaster", the delegation expressed their gratitude to him for conducting a detailed research on the subject. On the proposed draft article 6 on "Humanitarian Principles in disaster response", the delegation recognized that it was vital to observe fundamental humanitarian principles in rendering humanitarian relief. The delegation stated that natural disasters had often revealed the core issues involved in the relief process. They were lack of coordination, funding and capacity. In their view, the ability of States to deliver humanitarian assistance and aid was undermined by the politicization of humanitarian aid and the extremely complex political, economic and social side effects associated with them. That had made it very difficult for States to maintain a neutral, impartial or independent stance. Explaining the limited utility of the aid, the delegation opined that although externally driven, humanitarian aid and development assistance programmes inevitably took on roles within the conflict and in



the societies in which they operate. Hence, it was important for all States and humanitarian community to identify that alleviation of human suffering as the prime motivation for humanitarian assistance and that it must be provided based on a need-based approach and not as an instrument of foreign policy. In that context, the delegation stated that all States should work together to reinforce global respect for international humanitarian law and humanitarian principles in an effort to respond adequately to the crises even while respecting the principle of State Sovereignty.

96. With reference to the proposed draft article 7 on “Human Dignity”, the delegation stated that it was an undeniable fact that people inherently possessed a sense of worth and dignity and that was fundamental right in itself. Protection of human dignity needed to be read along with the difficulties and challenges in ensuring humanitarian aid to people. The ultimate objective of humanitarian action, in their opinion was, to save lives and to alleviate suffering during and in the aftermath of natural disasters, which would ensure that human dignity stood protected.

97. Commenting on the proposed draft article 8 on the “Primary responsibility of the affected State”, the delegation affirmed that it was States who had the principal responsibility for meeting the needs of victims of humanitarian crisis within their own borders and that they should decide where, when and how relief operations were to be conducted. In that context, the delegation wanted an understanding to be included to the effect that States should formulate and implement their own Standard Operating Procedures [SOPs] or mechanism to address and deal with disaster relief efforts. They were also of the view that the duty to cooperate within the context of the Draft Articles should be based on the obligations of States and other inter-government organizations to assist. The delegation also added that the mechanisms for coordination and implementation of disaster relief efforts by the affected State should be respected and adhered to by the assisting States and inter-governmental Organizations. Based upon those factors, the delegation emphasized the need for humanitarian organizations to continue their pursuit for enhanced effectiveness, efficiency and accountability on the basis of collective obligation of striving to meet humanitarian needs.

98. Lastly, the delegation stated that their country looked forward to the future work of the ILC in that area, and that it was of the strong view that States must retain the ultimate autonomy in finding the right balance between helping all human beings in dire need according and proportionate to needs alone. In that regard, the delegation called upon the Special Rapporteur to study the circumstances which deemed it necessary to weigh such considerations and to find out the possible exceptions to those rules in terms of when they were defensible and justifiable and when they were not. Any proposed draft articles on specific obligations of States must be based on common platform of effective humanitarian responses to humanitarian crises.

### **Expulsion of Aliens**

99. The Delegation extended its appreciation to the ILC, especially the Special Rapporteur, Mr. Maurice Kamto, for the work undertaken on the topic of expulsion of

aliens. It welcomed the Sixth Report of the Special Rapporteur (A/CN.4/625) and the Addendum to it on this topic and the proposals for four (4) new draft articles which was being considered during the ongoing Sixty-second ILC Session.

100. The delegation noted that the restructured Work plan and the revised draft articles on 'protection of the human rights of persons who have been or are being expelled' (then numbered as draft articles 8 to 16) submitted by the Special Rapporteur on 21 July 2009 (A/CN.4/618) which were also scheduled for further discussion at the Sixty-second ILC Session. Further thereto, the delegation noted the 4 specific issues rose in the 2009 ILC Report to which their government would submit the comments and observations in due course.

101. The delegation appreciated that the restructured Workplan and the revised draft articles as well as the 4 new draft articles proposed by Special Rapporteur were currently being considered by the ILC. However, they noted that the form in which the 4 new draft articles were circulated in the Sixth Report of the Special Rapporteur did not make it clear how they were to be merged with the restructured Workplan and existing draft articles and that caused some difficulty in their analysis.

102. The delegation noted that the draft articles being formulated by ILC on that topic were intended to codify the law and/or develop limitations on the State's rights on Expulsion of 'aliens' as that term was currently defined in draft article 2. The delegation emphasized that although the ILC was mandated to codify international law and develop it where appropriate it was not for the ILC to transgress upon or artificially limit States sovereign rights to deal with aliens in their territory, in particular illegal aliens. It was also emphasized the distinction of treatment based on the status of aliens should be recognized by the ILC in the draft articles. In that regard, they understood that 'alien' was currently defined in draft article 2 to mean a ressortissant of a State other than the territorial or expelling State and 'expulsion' to be defined to mean an act or conduct by which the expelling State compelled an alien to leave its territory. The delegation further stressed that in developing the draft articles, the rules and procedures of a particular region should not be given global application by the ILC without due consideration for the particular circumstances for which they were developed to address.

103. With reference to the other issues arising Special Rapporteur from the earlier discussions on the draft articles as reflected in the Sixth Report of the Special Rapporteur, the delegation agreed that issues such as denial of admission, extradition other transfer for law enforcement purposes and expulsion of aliens in situations of armed conflict should be excluded from the scope. It was also agreed that a clear distinction must be drawn between the right of States to expel aliens and the implementation of expulsion decisions through deportation. The delegation informed that they also reserved the right to deal with its nationals who have had their citizenships revoked in accordance with the law and procedures of Malaysia as was provided under Malaysia's domestic laws.

104. As per the delegation's understanding the revised draft articles 8 to 16 contained in General Assembly document A/CN.4/617 had been referred to the ILC Drafting

Committee of the ILC on 7 May 2010, and they had highlighted their concerns on some of the provisions for the further consideration of the ILC Drafting Committee as follows:

105. In relation to draft article 8 on the general obligation to respect the human rights of persons who have been or are being expelled, the delegation noted the adoption of the neutral term 'human rights' in place of fundamental rights and that it was intended to be complemented by the addition of the phrase 'in particular those mentioned in the present draft articles'. Although the delegation welcomed the former, they reserved their position on the latter phrase pending the finalization of the other specific human rights to be enumerated in the draft articles as recognition of these specific draft articles would have to be consistent with Malaysia's national laws and policies.

106. In relation to draft article 9 on the obligation to respect the dignity of persons who have been or were being expelled, the delegation reiterated its concern that the meaning and the legal implications of the concept of the rights of dignity remained unclear and supported the suggestion that reference be limited to the preamble until and unless the issue could be addressed with sufficient clarity.

107. In relation to draft article 10 on the obligation not to discriminate, they supported the revised position to limit the non-discrimination protection to the persons who had been or were being expelled. Such protection should not be extended to nationals of the States regardless whether they hold single nationality or multiple nationalities. The delegation also agreed that the principle of non-discrimination should only be applied in relation to the expulsion procedure and was without prejudice to the sovereign right of States to control admission to their territories and to establish grounds for the expulsion of aliens under their immigration laws.

108. While the delegation generally supported the right to life of the person being expelled as guided under draft article 11 on the obligation to protect the lives of persons who have been or were being expelled in accordance with international law, they noted that the concepts of the risk factors thereto such as 'torture' and 'inhuman and degrading treatment' were still evolving through State practice. Therefore, they were of the view that the development of that draft article should be without prejudice to these ongoing developments.

109. The concerns of the Commissioners and States in relation to draft article 12 on the obligation to respect the right to family life were noted and they appreciated the Special Rapporteur's attempt to address these concerns by the amended reference to 'as provided for by international law'. The delegation stated that they however remained concerned at the use of the new phrase because it remained unclear what derogations were actually provided for under international law. Concern was also raised on the 'fair balance' test introduced in the draft article due to uncertainty about the mechanism for its implementation at the national level by individual states. Therefore, they were of the view that those were areas requiring further study by the ILC.

110. In relation to draft article 13 on the specific case of vulnerable persons, the delegation noted that it had now been expanded to all 'vulnerable persons' which included children, older persons, persons with disabilities and pregnant women. The revised wordings of paragraph 2 of draft article 13 which emphasized the main principle of the Convention on the Rights of the Child (CRC), that was the best interest of the child must be taken into account in any expulsion measures concerning a child, can generally be supported. Furthermore, their international commitments under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) had been implemented through Malaysia's domestic national policies and laws.

111. In relation to draft article 14 on the obligation to ensure respect for the right to life and personal liberty in the receiving state of persons who had been or were being expelled, the delegation noted that the principle of non-refoulement was a fundamental principle of international refugee law and formed part of the customary international law. However, the delegation believed that the conditions and requirements in invoking the principle of non-refoulement must be strictly adhered to and it should not be extended to all persons in disregard of whether or not they are lawfully present. It was to be further highlighted that there were exceptions to the principle of non-refoulement under the 1951 Refugee Convention as well as under the Universal Declaration of Human Rights. Thus, they did not support the revised wordings of draft article 14 and urged that further discussion and deliberations be undertaken on draft article 14. The delegation was further of the view that in relation to the death penalty issue to be addressed in paragraph 2 of draft article 14, States should not be placed in the situation of being responsible for anticipating the conduct of third parties which they could neither foresee nor control. Further it was the inherent right of sovereign States to determine the commensurate penalty for offences committed within their territory and against their laws.

112. In relation to draft article 15 on the obligation to protect persons who had been or were being expelled from torture and inhuman or degrading treatment, the delegation noted in particular that paragraph 2 was an extension of the non-refoulement principle because the draft article proposed to extend its protection to risks emanating from State authorities. In that regard, it was reiterated that States should not be placed in the situation of being responsible for anticipating the conduct of third parties beyond their control.

113. In relation to draft article 16 on the application of the provisions of draft articles 8 to 15 in the transit state, the delegation reserved its comments pending the resolution of the issues highlighted in those draft articles by Malaysia and other States.

114. With reference to the Sixth Report of the Special Rapporteur, they took note that the proposals to address several issues through the introduction of new draft articles 8, 9 and B and that those proposals were currently under consideration in the ILC. Thus their delegation reserved its substantive comments on these proposals pending the outcome of the deliberations of the Sixty-second ILC Session. However, by way of preliminary views, it was noted as follows:

115. In relation to the issue of collective expulsion, the delegation noted that the wording in the original version of paragraph 3 of draft article 7 appeared to create some overlap or uncertainty with the Fourth Geneva Convention of 12 August 1949. That was because paragraph 3 of draft article 7 referred to foreign nationals of a State engaged in armed conflict which unless they had demonstrated hostility towards the receiving State, they would be considered protected persons under International Humanitarian Law. As such they should more properly be dealt with under International Humanitarian Law in relation to their detention, treatment and where relevant, expulsion.

116. In relation to the new draft article 9 on the grounds of expulsion, the delegation noted the arguments put forward by the Special Rapporteur in paragraphs 73 to 210 of his report. With regard to paragraph 1 of draft article 9 as proposed by the Special Rapporteur, it appeared reasonable to require grounds to be given for any expulsion decision. Further, they supported the recognition and codification of existing States practice that the grounds of public order and public security/national security were recognized as *de jure* grounds for expulsion under international law under paragraph 2 of draft article 9.

117. The delegation further noted that States practice where expulsion was grounded on additional grounds such as the higher interest of the State, violation of law, sentence of imprisonment, failure to fulfil administrative formalities, public health, morality, ideological grounds and political activity, 'cultural ground, illegal entry, breach of conditions for admission, economic grounds, preventive measure or deterrent and reprisal. They also took note of the 10 grounds drawn up by the Institute of International Law in article 28 of its resolution of 1892. They were of the view that those additional grounds merit further study since they appeared to have been consistently relied on by States in accordance with their domestic laws.

118. In respect of the procedural issue reflected in paragraph 2 of draft article 9 by requiring that the expulsion on the ground of public order or public security to be carried out 'in accordance with the laws', would mean the law of the receiving state. Nevertheless, since the right to expel aliens was an inherent right of States, the delegation sought clarification whether the phrase was intended to exclude the exercise of the right to expel in the absence of express law to that effect.

119. Further, in relation to paragraph 3 of draft article 9, they sought further clarification on grounds of expulsion that were supposed to be 'contrary to international law', in particular since as indicated in the Special Rapporteur's Report itself, there were other grounds besides public order and public security/national security which were in use around the world.

120. With regard to the public order and public/national security grounds of expulsion and the assessment criteria laid down in paragraph 4 of draft article 9, they were of the view that states needed to retain flexibility to invoke those grounds according to the exigencies of circumstances before them. That was because the relevant States would be

in a better position to know the proportionality required in balancing the protection of the state and protection of the individual. The invocation of the relevant grounds of expulsion would in any case be guided by the domestic laws of each State. Further the Special Rapporteur's argument that expulsion must be on a basis of continued threat posed to public order and safety must be measured in the light of the personal and present situation of the individual on whom it was imposed. With reference to the Special Rapporteur's contention that courts had dealt with cases of expulsion on public order grounds and had never deviated from the assessment criteria found in the international and regional case law, these criteria as well as the paragraph 4 of draft article 9 criteria served merely as a guide especially in relation to criteria established from regionally based case law.

121. Generally in relation to draft article 9, they re-emphasized that grounds for expulsion were the sole prerogative of the executive authority of a State and it was not for the ILC to develop rules or guidelines or to even define the extent of that prerogative right. The delegation therefore urged study on the entire draft article 9.

122. In relation to the conditions of detentions of aliens being expelled, it was noted that the Special Rapporteur had proposed to address the issues highlighted in his report through the new draft article B. In that regard it was noted that Malaysia uses the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment annexed to General Assembly Resolution 43/173 of 9 December 1988 as a guide in its domestic practices for detention of illegal aliens pending deportation. The delegation also emphasized that illegal immigrant detainees and convicted prisoners were placed in completely different facilities. Where a convicted person was subject to deportation under the immigration laws of Malaysia after serving his sentence, he would be removed to an appropriate detention centre facility at the end of his sentence pending his deportation with due regard to due process and the human rights of the said person. The delegation further stressed that the new draft article B should be limited to expulsion of aliens and should not impinge on the sovereign rights of States to deal with the deportation of aliens under immigration laws. The delegation was of the view that a clear and firm distinction needs to be maintained between a deportation regime and an expulsion exercise.

123. The delegation noted from the Addendum to the Sixth Report of the Special Rapporteur that further clarifications needed to be sought on the distinction between 'legal aliens' and illegal aliens and the proposals to deal separately with the expulsion procedures for the expulsion of aliens illegally entering the territory of a State and the procedural rules applicable to the expulsion of aliens lawfully in the territory of a State.

124. The **Leader of the Delegation of Kingdom of Saudi Arabia**<sup>2</sup> observed that the ILC's topic while being considered and emphasized, there were lot of issues that needed to be addressed like protection of human rights, problems and reasons why countries failed to transmit comments would also need to be realized. There were various reasons like lack of enough resources, and expertise and so on. The delegate posed the query as to

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

whether AALCO had enough human resources in such areas and address the concerns of those countries.

125. The **Leader of the Delegation of Japan** expressed his sincere appreciation to the very comprehensive report of the representative of the ILC, Prof. Murase on the activities of the Commission on the most recent sessions. He mentioned that in that report, he referred briefly to his own proposal of “Environmental Protection of the Transboundary Atmosphere” as a possible future topic. His delegation took due note of that proposal as an interesting topic which would provide a good opportunity to discuss the clarification of international law and rules in the field of environment. He hoped that AALCO members would take interest in the matter and express their views on the feasibility of such topic at AALCO meetings or at the Sixth Committee of the UN General Assembly in the future.

126. The Leader of Delegation made one specific proposal for the AALCO's engagement with the work of ILC. He said that AALCO was established with a strong motivation to have the views of Asian and African countries reflected in the work of the ILC. It was therefore of critical importance to build up constructive relations with the ILC.

127. He pointed out that as one form of contribution which AALCO could make for the codification and progressive development of international law, was to compile State practices which were relevant to the subject matters on the agenda of the ILC and submit them to the UN legal department.

128. For example, with regard to the question of “Reservations to Treaties”, the Leader of Delegation pointed out that the AALCO Secretariat could collect information such as the reservations made by the Member States concerning multilateral treaties and/or their objections lodged against those made by other countries for the past one year or for the recent few years, and submit it to the UN legal department. Such information could bring about an important impact on the work of ILC, and greatly serve to the formation of international law in which the state practices of not only Western countries but also Asian and African countries would be duly reflected upon.

129. With regard to questions other than “Reservations to Treaties”, he suggested that the AALCO Secretariat could make Questionnaires on points which could be controversial in international law, and sent them to member States, and compile responses there from and submit them to the UN legal department. If such action could be taken with cooperation of member States, it could become valuable contribution to the work of ILC.

130. The Leader of Delegation observed that upon submitting the State practices to AALCO Secretariat, some regional consideration might become necessary. If regional institutions such as the ASEAN, Arab League, and African Union could submit one uniform view on one subject item or a legal issue, State practices prevailing in the respective region could be communicated to the ILC. In such cases, AALCO Secretariat

might need to coordinate activities in relation to ILC of those regional institutions like the African Union.

131. Lastly the Delegate highlighted that it was important that in the preparation of the above-mentioned Questionnaires, questions and issues should be confined to purely legal or politically neutral ones, avoiding political orientation.

132. The **Leader of the Delegation of Ghana** stated that ILC since its formation in 1947 had been very instrumental in the codification and development of international law in accordance with its mandate under the UN Charter.

133. International Law and practice had since witnessed in the work of the Commission the codification of such areas of law as the Vienna Convention on the Law of Treaties, the Vienna Convention on Succession of States in respect of Treaties and conventions of which most member countries of the UN and AALCO were party to.

134. The ILC was also working on a number of international instruments. These include Responsibility of International Organizations, Reservation to Treaties, Expulsion of Aliens, Protection of Persons and Immunity of State Officials, among others.

135. The codification and /or progressive development of these international practices have resulted in certainty and clarity in those areas, thus resulting in less disputes between States as to which practice was acceptable in international law. In carrying out its mandate, the ILC had made use of working groups, consultative groups and other sub-committees. These bodies had been responsible for preliminary work, to consider specific issues or to determine the direction of future work on a topic or specific topic. The ILC had also made use of Special Rapporteurs and their work and report have formed the basis of the methods and techniques of the commission in its work.

136. The Commission was required under the Statute to consider proposals for the progressive development and codification of international law brought to it by the General Assembly, the other principal organs of the UN, Member Countries of the UN, specialized agencies or intergovernmental organizations. He suggested that Commission should also do any of the following: recommend to the General Assembly for the codification of a particular topic, which was considered necessary and desirable; and survey the entire spectrum of international law and select appropriate topics for consideration.

137. In the selection of topics for consideration, the Commission had used the following criteria: the topic should reflect the needs of States in respect of the progressive development and codification of international law; the topic should be at a sufficiently advanced stage in terms of State practice to permit progressive development and codification; the topic should be concrete and feasible for progressive development and codification; and the topic should reflect new developments in international law and the pressing concerns of international law as a whole.



138. AALCO, as an intergovernmental body of Asian and African countries set up to present a common platform in international law, has been instrumental in the work of the ILC. AALCO had annually, through its Secretaries-General, been having constant dialogue with the ILC, presenting the views of AALCO Members to the Committee during its annual deliberations in Geneva.

139. The delegation was of the opinion that the AALCO's participation in the work of the Commission could be made more effective and meaningful by taking up the challenge to introduce new topics that reflect the needs of the Asian and African countries and by introducing topics that reflect new developments in international law and the pressing concerns of the international community as a whole.

140. AALCO, as a consultative body could initiate preliminary work in these new areas, consider specific issues\or push for the direction of future work on a topic or specific topic.

141. AALCO could do that by seeking such new topics from Member States. AALCO could also host meetings of Legal Experts from Member countries to deliberate on such topics and come out with a Report which could be submitted to the General Assembly or to the Commission during the annual interactions.

142. It was submitted that in so doing, AALCO would be setting the agenda for debate in such topics and play a meaningful and constructive role on the development and codification of international law in these areas.

143. The **Leader of the Delegation of the People's Republic of China** at the outset expressed sincere appreciation to the Secretariat of the AALCO for closely following the work of the International Law Commission and for producing excellent documents to streamline the deliberations on the item. Those documents, in his view were very helpful for the Asian and African countries in their effort to capture the current developments in international law. He further added that China had always valued and supported the work of the International Law Commission.

144. Commenting on the Chinese representation at the ILC, he stated that since the ILC member from China, Ambassador Xue Hanqin had been elected as the Judge of the International Court of Justice, that position was filled by Dr. Huang Huikang who was elected as a new member of the ILC. He expressed the hope that like his Chinese predecessors, he will also actively participate in the work of the ILC, and make utmost efforts towards upholding the justified rights of the developing countries.

145. Commenting on AALCO's relationship with ILC, he remarked that the sending of representatives of AALCO every year during the Session of ILC played a positive role in enhancing ILC's understanding and interest in the AALCO. While expressing his appreciation on the continuous work and efforts made by the AALCO through these years, he stated that in order to participate in the work of the ILC more effectively and more meaningfully, AALCO needed to study relevant topics that were currently reviewed

by the ILC more comprehensively. He also urged AALCO to support its Member States help them to do advanced research on topics of contemporary concern. In that context, he suggested that, AALCO could consider holding seminars to discuss certain specific topics dealt with by ILC as well as on some new topics identified by it. The outcome documents of these seminars could possibly be transmitted to the ILC for its reference, he added.

146. Lastly, while mentioning that out of the present thirty-four ILC members, twelve came from the Member States of AALCO (Arab Republic of Egypt, India, Republic of Indonesia, Jordan, Japan, People's Republic of China, Qatar, Republic of South Africa, Sri Lanka, Cameroon, Kenya and Nigeria), he added that AALCO should fully leverage on the roles of these Members and let them become the bridges for good communications between the ILC and the AALCO.

147. The **Leader of the Delegation of the Islamic Republic of Iran**, acknowledged the outstanding contribution of the International Law Commission to the codification and progressive development of international law, and made a few comments on some of the substantive topics on the agenda of the International Law Commission.

148. While commenting on the topic of "The Effects of Armed Conflicts on Treaties", he paid tribute in the memory of Mr. Ian Brownlie, the former Special Rapporteur on the topic and thanked Lucius Caflish, the newly appointed Special Rapporteur, for his first report on the subject dated 22 March 2010 (A/CN.4/627). He appreciated the approach taken by the Special Rapporteur in taking into account the comments made by the States before the Sixth Committee in the second reading of the draft articles instead of solely focusing on doctrinal considerations.

149. While the Delegate believed that the draft articles must be limited to international armed conflicts, he agreed that internal armed conflicts might adversely affect the operation of treaties by impairing the ability of the concerned State to respect its treaty obligations vis-à-vis other State(s). While he believed that the provisions of the draft articles on State responsibility adopted by the ILC on the circumstances precluding wrongfulness could cover situations resulting from the non-application of treaties in non-international armed conflict, he also agreed with the Special Rapporteur that the concept of international armed conflict still needed to be defined. Explaining his Country's position, he remarked that his Country concurred with the Special Rapporteur that it would be detrimental to the unity of the law of nations to apply a given definition in the field of international humanitarian law and a completely different definition in the field of treaty law.

150. The delegate opined that the draft articles submitted by the Special Rapporteur did not seem to duly reflect the achievement of international law as regards the legal stability and continuity of international borders. He stated that the treaty which established a boundary belonged by its nature to the category of treaties creating permanent regime or status. Such treaties created *erga omnes* obligations to which the international community as a whole – indeed all States and not only States parties to the treaty – were bound.

151. In his opinion, even a fundamental change of circumstances - armed conflict being one of them - might not be invoked as a ground for terminating or withdrawing from the treaties. This was because of the provisions contained in the Vienna Convention on the Law of Treaties and the Vienna Convention on succession of States in respect of treaties, he added. In this context, he regretted the fact that the draft articles did not follow that approach. Commenting on draft article 5, he stated that it was indeed true that the provision proposed by the Special Rapporteur regarding “the operation of treaties on the basis of implication from their subject matter” included “treaty establishing or modifying land boundaries or maritime boundaries”. Commenting on the fact that the draft articles were accompanied by the annex establishing an “Indicative list of categories of treaties referred in draft article 5” which includes those treaties he stated that the mere reference to such treaties in an annex would not obligate the Parties to an armed conflict. As the Special Rapporteur rightly pointed out in his first report, these treaties did not continue in operation simply because they fell into one of the listed categories and other factors may be taken into consideration, he added.

152. In his opinion, the introduction of “the nature and extent of the armed conflict” as indication of susceptibility to termination or suspension might give a wrong impression. He concluded that the more intensive and expanded an armed conflict became, the more probable it would be that the treaty relations between the belligerent States might be adversely affected. Hence, in his opinion, paragraph b) of article 4 needed to be deleted. As regards the “without prejudice clause” contained in article 14 adopted in first reading, he believed that it was not only superfluous considering article 25 and 103 of the UN Charter, but also dealt with a subject that fell outside the mandate of ILC and hence should therefore be deleted. He was even more convinced that the practice of the Security Council at the recent international armed conflicts had always been compatible with that of territorial integrity of States involved in armed conflicts. In his opinion, those many Security Council’s resolutions that required the parties to armed conflicts to withdraw their armed forces to internationally recognized borders were indicative of such a practice.

153. Commenting on the topic “The Obligation to Extradite or Prosecute (*aut dedere aut judicare*)”, he remarked that given the diversity of international practice existing on that area and the wide range of crimes for which that obligation was prescribed, it was highly advised that the Commission focused on codification of international law instead of venturing into the development of international law. In that regard, he stated that the ILC should take note of three key established practices concerning the topic, namely: 1) States were not obliged to extradite their nationals, 2) States were not obliged to extradite in absence of a treaty between the requested State and the requesting State and 3) States could refuse to extradite when the principle of double criminality was not met. He wished to reiterate that the surrender of suspects to international criminal tribunals should not be examined by the Commission, as it was governed by distinct legal rules.

154. Commenting on the topic “Protection of persons in the event of disaster”, he remarked that it was their understanding that the topic was exclusively aimed at “natural”

disasters and that the definition of “disaster” accordingly should be made enough to denote the same and avoid any interpretation or connotation to the contrary. That was critical in order to clarify that man-made catastrophes would not fall under its coverage, he added.

155. He believed that the topic was principally aimed at providing effective and timely assistance to those who were in need of assistance on account of natural disasters and that the State practice indicated that international assistance had always been provided subject to the request and /or authorization by the affected State. In fact, international assistance supplemented and not substituted the actions of the affected State, he added. In this regard, he opined that the affected State had two obligations to fulfil: firstly and most importantly, it needed to provide assistance to its populations affected by a disaster which had occurred in its territory and secondly, the territorial State must ensure proper coordination of relief measures. Nonetheless, in his view, the affected State was not under an obligation to accept all the offers of humanitarian assistance emanating from international organizations. It could refuse an offer of assistance made with no good intentions. In that context, he remarked that, there was no need to underline the continuing relevance and critical importance of the principles of State sovereignty and non-interference in internal affairs which entailed that the “consent” of the victim State needed to be secured as an essential prerequisite for international cooperation to materialize. He also underlined the fact that the U.N. had a unique status and distinct character compared to any other relief organization. In other words, the affected State could not be obliged to cooperate equally with the U.N. and other international organizations. He also shared the concerns raised over the inclusion of “civil society” in the report prepared by the Special Rapporteur of the topic, on the ground that it was a concept without an established legal understanding.

156. Commenting on the topic of “Responsibility of International Organizations” he commended the ILC for successfully concluding its first reading of the 66 draft articles on the subject along with the commentary. Explaining his country position on the topic he opined that international organizations, as subjects of international law, were obliged to comply with the same international normative rules that States were bound by. Therefore, they should observe all international norms, in particular the peremptory norms of international law as well. He further stated that any measure adopted by an international organization in contradiction to such norms would be *ultra vires* and hence, legally void and without effect. According to him, it was only under such circumstances, the issue of responsibility of international organizations arose. Moreover, when an international organization was unable or unwilling to honour its obligations arising from a peremptory norm of international law (*jus cogens*) due to organizational impediments or any other reasons, the member States should take all necessary measures to enable the organization to discharge its responsibilities.

157. Commenting on the differences that exist between States and the international organizations in terms of their nature, function and status, he stated that these differences rendered unfit a word-for-word transposition of the provisions of the corresponding articles on “State responsibility” adopted by the International Law Commission in 2001

to the international organizations. In that context, he believed that the reference to the self-defense in the draft articles on the responsibility of international organizations was misleading and hence it should be deleted since the concept of self-defense was by nature applicable only to the States. In a similar vein, he believed that the issue of countermeasures by or against an international organization needed to be examined with extreme caution. That was because of the fact that countermeasures were principally acts of States against other States and as such it would be very hard to stretch its application to the domain of international organizations, he added.

158. In his opinion, the issue of the responsibility of a State, Member of an international organization for committing an internationally wrongful act was of high importance. He believed that a distinction should be made between cases where an international organization authorized its Member States to adopt a particular measure and those where it ordered them to take certain action, including coercive measures. If an international organization authorized a Member State to undertake an action, it conferred a right on that Member State. In such cases, the Member State had a right but not an obligation to take action and such action should therefore be considered as its own conduct rather than that of the organization, he explained.

159. The **Leader of the Delegation of the Gambia** appreciated the panelists on their wonderful presentations and the thought-provoking discussion and viewpoints. He pointed out that academic discussion was also very relevant. The delegate stated that international law though was based on principle of sovereign equality and all sovereigns were equal, there has systematic application of double standards while implementing international law. In that regard, territorial independence and sovereignty of Iraq was invaded by the United States of America and United Kingdom. He said that big countries believe in might is right policy and certain countries did not have right to resist on issues like nuclear weapons. He cited the example of International Criminal Court wherein Uganda referred to the Rome Statute whereas US did not ratify it and yet it was maximum participation in the negotiations of the ICC. He also gave the examples of violation of human rights in Guantanamo Bay, environmental law matters where developed countries were the greatest polluters but expects developing countries and rest of the countries to share the burden. However, in conclusion he emphasized on the need for AALCO and ILC to pay attention to the very important issue of double standards and be a responsive and dynamic body.

160. The **Leader of the Delegation of the Republic of Kenya** welcomed the efforts of the Secretary-General in convening the thematic debate on how AALCO could engage more effectively in the work of the ILC.

161. The Leader of Delegation stated that one of the functions of AALCO was to coordinate the views of AALCO on important issues of international law. They were aware that the recommendations of AALCO on matters of progressive development and codification of international law had in the past been very well received in the ILC. The concerted voice of the Asian and African countries at the ILC on legal issues could not be ignored and it was incumbent upon them to ensure that they continued making their

recommendations on the shaping of international legal issues at the global level. That could be achieved through timely submission of comments and observations regarding issues identified by ILC on various topics on the agenda of ILC.

162. He informed that his country had closely followed the work of the ILC and they were proud that the Hon'ble Attorney-General of the Republic of Kenya was a member of the ILC which served well for AALCO since he was able to articulate issues from the AALCO's perspective.

163. He also observed that his country supported the proposal by the Secretary-General to assign Legal Officers to the Permanent Observer Missions at various UN Offices to render assistance to Asian-African Members of the ILC at the annual sessions of the Commission as well as at the annual sessions of the UN General Assembly.

164. The Delegate further welcomed the convening by the Secretary-General of the AALCO-ILC joint meeting on the sidelines of the sixty-fifth session of the UN General Assembly in New York on 1 November 2010.

165. Finally, the delegate stated that his Government would recommend that the views that would be expressed by AALCO Member States in the Session be communicated at the Sixty-third session of the ILC with a view to continued collaboration with ILC.

166. The **Leader of Delegation of Thailand** strongly believed that the contributions and views exchanged among Member States would be valuable in shaping common ideas on the topic of ILC. He said that Thailand recognized the longstanding relationship between AALCO and the ILC as manifest through regular attendance at each other's annual or regular sessions by AALCO and the International Law Commission as well as the presentation of reports on the progress of their respective work and exchanges of views which had helped Asian and African States keep abreast of the latest developments in international legislation, and enabled them to make their contribution to the progressive development and codification of international law. For that reason, Thailand attached great importance to the work of both AALCO and the Commission, and ensured the participation of Thailand where possible. Thailand strongly supported the expansion and further strengthening of cooperation between AALCO and ILC.

167. The Leader of Delegation was of the view that in order to make AALCO's participation in the Work of the ILC more effective and meaningful, there should be more dialogues between them. There should be an appropriate forum where AALCO and the ILC could reflect and exchange ideas on agenda of mutual interests. This may be accomplished through an arrangement similar to the "International Law Week" which is held annually at the Sixth Committee of the UNGA. Furthermore, the ILC may seek information and opinions on various issues through AALCO. By such means, AALCO could facilitate the work of ILC by compiling and consolidating information and views of Member States into appropriate groups which would reflect the concerns and interests of Asian and African countries. In addition, AALCO should propose matters that are of Member States' interests for the ILC's consideration.

168. In conclusion the Leader of Delegation believed that more frequent dialogue between AALCO and the ILC would serve the objective of making AALCO's participation in the Work of the ILC more effective and meaningful.

**The meeting was thereafter adjourned.**

**VI. SUMMARY RECORD OF THE THIRD GENERAL MEETING  
HELD ON FRIDAY, 6<sup>TH</sup> AUGUST 2010, AT 5.00 PM**

**His Excellency Mr. Priyasath Gerald DEP, Vice-President of the Forty-Ninth Annual Session of AALCO in the Chair.**

**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**

1. **The Vice-President** invited Dr. Hassan Soleimani, Deputy Secretary-General, AALCO to present the introductory remarks on the topic.- “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. **Dr. Hassan Soleimani, Deputy Secretary-General of AALCO** introduced the above mentioned topic, and said that following the mandate in the resolution adopted at the Forty-Eighth Annual Session, AALCO/RES/48/S4, the Secretariat had prepared Document No. AALCO/49/DAR ES SALAAM/2010/S 4 related to the topic.
3. He mentioned that the Forty-Ninth Annual Session of AALCO was taking place against the backdrop of a series of disturbing developments, the principal among which was the recent illegal brutality by Israel in the form of a naval attack on the peace flotilla “Freedom Flotilla”, carrying humanitarian aid for the population of Gaza, on 31 May 2010. The incident clearly demonstrated that Israel had violated all established and customary principles of international law and international humanitarian law. He noted that Article 23 of the Fourth Geneva Convention of 1949 recognized the rights of civilians living in the areas under foreign occupation to receive material humanitarian aid. Article 59 of the same Convention also made the occupier duty bound to give permission to the caravans carrying humanitarian aid to enter the occupied territories, if the essential goods available in the occupied territories were not enough for the life of the people under occupation.
4. He noted that the Blockade of Gaza, a very critical aspect of the Israeli/Palestinian conflict, was put in place by Israel in June 2007. Since then it had left more than 1.4 million Palestinian men, women and children trapped in the Gaza strip. The closure of all its borders, had in fact taken away from the Palestinian civilians their “right to seek refuge in other territories”, a situation that had the potential of acquiring yet another violation of human rights of Palestinian people. The blockade of Gaza was a form of “collective punishment”, and Israel’s continuing blockade of Gaza represented a flagrant violation of international law.
5. To highlight the situation arising out of the above mentioned events the AALCO Secretariat, had organized a seminar on 16 July 2010 in the Headquarters on the topic: “The Blockade of Gaza and its International Legal Implications”. He informed that the



presentations at the seminar were made by the learned Ambassadors of the Arab Republic of Egypt, Turkey and the League of Arab States, an eminent academic, Prof. Achin Vanaik, the Head of Department of Political Science, University of Delhi, also made a very thought provoking presentation. All the panelists and the participants at that seminar unanimously condemned the illegal Israeli actions on the civilian population which were a gross violation of the principles enshrined in the Fourth Geneva Convention of 1949 and expressed full solidarity with the Palestinian people. They emphasized that for a just and peaceful settlement of the Israeli-Palestinian conflict, it was essential, that Israel “respect in letter and spirit the bilateral agreements between Israel and Palestine but which have been violated in spirit and letter by Israel itself”.

6. The Deputy Secretary-General said that the continued settlement activities in and around East Jerusalem, in contravention of Israeli obligations under the Road Map was an issue of serious concern. Equally disturbing were the recent developments in East Jerusalem, including the increase in the number of demolitions. He recalled that on 9 July 2004 the International Court of Justice (ICJ) had issued its landmark Advisory Opinion confirming the illegality of building the wall in the West Bank and the illegality of building settlements in the Occupied Territory, it was deplorable that this historic ruling by the international community's highest judicial organ had largely remained a dead letter and the Israeli Government had continued the construction of the wall in defiance of the Advisory Opinion and in violation of the Fourth Geneva Convention of 1949 and the General Assembly resolutions.

7. In view of the gravity of those developments, he emphasized the need to reaffirm that the principal tool to redress the situation and uphold justice and compliance of international law as embodied in international legal instruments such as the Fourth Geneva Convention, the ICJ Advisory Opinion and the relevant United Nations resolutions. Thus, only compliance of international law would allow for the resumption of a genuine engagement with a view to resolve the Israeli-Palestinian conflict.

8. In conclusion, he mentioned that deliberations at the previous Annual Session of AALCO had consistently reaffirmed that the resolution of the Israeli-Palestinian conflict through negotiations should be firmly based on the principles of international law. It was also very important to take into account the widely supported United Nations Security Council and UN General Assembly resolutions 242, 338 and 1515 which affirm the legal obligation of Israel to withdraw from Palestinian territories occupied in 1967.

9. Thereafter, he underlined that deliberations could focus on the violations of international law, particularly international human rights law and humanitarian law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT), with special focus on the renewed Israeli naval and military excesses in the OPT, Fourth Geneva Convention, United Nations Security Council and General Assembly Resolutions, war crimes committed in Gaza by Israeli forces including the blockade of Gaza and the role of the international community to pressurize Israel to comply with its international obligations.

10. The **Delegate of the Islamic Republic of Iran** expressed its appreciation to the Secretariat for preparing the informative report on the topic. The subject he said was of high importance and his delegation acknowledged the timely holding of the seminar on “The Blockade of Gaza and its International Legal Implications” on 16 July 2010 in the AALCO Headquarters in New Delhi.

11. He drew attention to the two important sections of the report; namely Israel's blockade of Gaza and also its illegal action against “Freedom Flotilla”. The harmful and outrageous effects of the blockade and closure imposed on the Gaza Strip was about to enter the fourth year. It had so far had devastating effects on the lives and welfare of Palestinian population living in Gaza. It had turned Gaza into the biggest prison in the world. Israel used starvation as a means of warfare and collective punishment. It had caused immense suffering to the population of Gaza and constituted collective punishment imposed against civilian population. The international community as a whole had expressed condemnation on various occasions on illegality of the blockade.

12. He said that pursuant to the Goldstone report the UN had to take decisive measures concerning the crimes of the occupying regime in Gaza, including those described in the Goldstone report. He expressed concern on the continuing expansion activities in the West Bank and several events of settlers crimes and violence against the Palestinians and their properties and restricting the freedom of movement as well as the Palestinians right to adequate food and work were a few examples in Israel's record for violation of human rights and humanitarian law as underlined in the ICJ advisory opinion on “Legal consequences of the construction of a wall in the Occupied Palestinian Territory”.

13. Thereafter, he condemned the recent deadly attack against the “Freedom Flotilla” engaged in humanitarian cause as another manifestation of the inhuman and barbaric policy of the Zionist regime which continued to occupy the Palestinian territory and territories of other Islamic nations.

14. The grave humanitarian situation in Gaza was getting worse and it was necessary to honestly sympathize for the cause of Palestinians into a robust international action to end the siege of Gaza and at the same time to do whatever could be done to end impunity for the Israeli regimes officials who had a long record of State terrorism, war crimes, and crimes against humanity. He maintained that the Security Council had the primary responsibility in maintenance of peace and security but it continually failed to take concrete actions against atrocities and war crimes that the Zionist regime committed in Gaza and elsewhere in Palestinian territory. He emphasized that it was not sufficient to merely condemn the acts of the Zionist regime, no matter how strong it may be, but to call for concrete actions to be taken by the United Nations and other international bodies. He stated that the following actions need to be taken urgently to save the lives of the civilians in Gaza. (1) lifting immediately the siege of Gaza and reopening of all crossings to Gaza to allow carrying out the provision of humanitarian aid; (2) providing expeditiously humanitarian aid to Gaza through whatever means and whatever path either by land, sea or air; (3) need to call upon humanitarian aid organizations as well as ICRC

to expedite the provision of humanitarian aid including food, medicine, fuel and sanitation to meet the basic needs of the people of Gaza; (4) forcing the Zionist regime to provide compensations for the loss of lives and injury inflicted on the convoy and (5) imposing strong regime of sanctions against the Zionist regime to prevent the repetition of such barbaric acts and crime.

15. In conclusion he reiterated his Government's unwavering and continued support for the Palestinian people in their rightful and legitimate struggle against the occupation and for their just quest for full exercise of their human rights, in particular their right to self-determination.

16. The **Delegate of the Republic of Indonesia** stated that Palestine had been a fundamental and lasting dispute between Israel and Arab countries. Despite the fact that the Road Map to peace as a blueprint for peaceful co-existence for Palestine and Israel frequent armed conflicts between Israeli forces and some of its opposition groups had forestalled any peace progress. As regards that situation, his delegation expressed its deep concern about continuing dangerous deterioration of the situation in the occupied Palestine. Indonesia believed that illegal Israeli actions in the Occupied Palestinian Territories could neither help the cause of peace nor could Israel reasonably expect them to be allowed to stand unchallenged. It was time to halt all illegal policies that only bred resentment and tension, rather than peace and progress.

17. Furthermore, they were particularly alarmed by Israel's unlawful wall construction in the territory, including in and around East Jerusalem, which was a blatant violation of international law, including international humanitarian and human rights law, and also a flagrant disrespect for the relevant advisory opinion of the ICJ, as well as the General Assembly resolution ES-IS of 20 July 2004. Clearly the construction of the wall violated the economic and social rights of the Palestinian people, consequently having grave effects for their economic and social conditions. It could not be ignored that the resource problems include lack of water distribution and water pollution deriving from infrastructure and environmental damages as the result of the policy that had caused waterborne diseases, not to mention the food insecurity that would certainly affect the health of Palestinian people.

18. Indonesia was deeply concerned about the increase of Israel's effort to systematically deport Palestinians. On 13 April 2010, military Order 1650 regarding Prevention of infiltration, was issued by the Israeli Occupation force's central command, and entered into force.

19. Various groups were likely to be the primary targets of the military orders and subjected to the penalties of imprisonment, transfer and deportation. These include thousands of Palestinians living in the West Bank but registered in the Palestinian population registry with Gazan addresses. Many were born in the West Bank or had lived there for decades with their families. The orders effectively served to formalize the process, already begun of transferring Palestinians registered with Gazan addresses from the West Bank of Gaza. Implementation of that new military orders would compound the

humanitarian crisis by unlawfully transferring Palestinians from the West Bank to Gaza. Forcible population transfer would severely frustrate the Palestinians right to self determination.

20. Once again, Israel had conducted a gross violation of international law by its attack against the humanitarian vessel, the Mavi MARMARA. All the Member States of AALCO without exception, shared a deep sense of grief for the losses of life and injuries caused by the Israeli attack. The act was consistent with Israel's practice of creating new obstacles whenever there was fresh prospect for the peace process; Israel fully deserves the universal condemnations for its latest heinous and cowardly act. Indonesia had been swift and crystal clear in expressing their condemnation, he noted.

21. The Palestinian people depended on the international community to ensure respect for international law and pursue peace and justice. It was imperative that the international community acted immediately to ensure that the prevalence of impunity could not permit Israel to undertake the forcible transfer or deportation of Palestinians from the West Bank, attack humanitarian vessel, build illegal wall and settlement in the occupied Palestine Territories.

22. Indonesia reiterated its support to the Palestinians for their legitimate struggle to establish their own state. Indonesia was of the view that it should be based upon the vision of two States – Palestine and Israel living side by side within a secure and internationally recognized border. In this connection, Indonesia underlined the need for directing all efforts to resume the process towards a permanent settlement of the conflicts based on the relevant United Nations Security Council Resolutions.

23. They also reiterated their call on Israel to recognize that there could be no military solution to the situation in Palestine. The path to peace and stability lay through the implementation of United Nations resolutions and working within the ambit of the international community. Indeed, the solution to the core issue of Palestine would accordingly contribute to the comprehensive settlement of all aspects of the problem in the Middle East.

24. The **Delegate of Japan** stated that with regard to Palestinian question, it had 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 right for self-determination including establishment of an independent state should be recognized; and (3) Israel's right for existence should be recognized.

25. Since Oslo agreement was reached, Japan had been supporting the efforts to seek the realization of lasting peace in the Middle East based on the two-state solution through negotiations. He informed that Japan had taken the position that activities for settlement in the west bank including East Jerusalem should be frozen and stopped, including natural increase of inhabitants.

26. As regards the separation wall, on the basis of the information made available so far, it was deemed that the building of a wall in an occupied territory was not consistent with international law. On the report prepared by the UN Human Rights Council Fact Finding Mission led by Mr. Richard Goldstone on Israel's military operations in Gaza in December 2008 to January 2009, in the light of its mandate, Japan considered that the report had been carefully prepared and assessed certain value in its balanced contents. On the other hand, the recommendations contained in the said report were so comprehensive and required careful scrutiny by the parties and international Organizations concerned. When international institutions considered them, it was important that the examination and consideration should be done in a manner to serve constructive dialogue on Gaza.

27. Concerning the incident of conflict between Israeli authorities and the people carrying supplies to Gaza, Japan issued a statement on May 31, saying that: (1) the Government of Japan was shocked at the Report that people aboard boats carrying supplies to the Gaza strip were victimized as a result of confrontation with Israeli Defense Forces. Japan deeply deplored the casualties and the injuries of many people. Japan condemned the violent acts which caused that tragic incident; (2) Japan expressed its deepest condolences to the bereaved families. Japan urged that a full investigation be conducted and the situation is fully clarified; and (3) Japan strongly called upon all parties concerned to refrain from activities that could set off a cycle of violence.

28. Lastly, the delegate of Japan informed the distinguished delegates that in the year 2010 Japan held a series of high level talks with the Palestinian Authority on Japan's cooperation for Palestinian State-building, first in February with Dr. Mahmoud Abbas, Palestinian President during his official visit to Japan and most recently on 25 July in Ramallah with the Palestinian delegation headed by Dr. Salam Fayyad, Prime Minister of the Palestinian National Authority.

29. During these talks, among other things, the Palestinian National Authority welcomed the Japanese initiative to work together with East Asian countries, such as Indonesia, Malaysia and Singapore, to contribute to peace in the Middle East. The Japan-Indonesia summit meeting held in October 2009 and in the Japan-Malaysia summit meeting held in April 2010, the East Asian leaders expressed their willingness to promote their cooperation to contribute to the Palestinian State-building. Consultations would be held to explore ways and means to enhance such cooperation, including training courses in Asian countries conducted by Japan International Cooperation Agency (JICA) and possible development of private business relations among the Palestinian business and East Asian countries.

30. On Japan's assistance to Gaza strip, it was agreed at the above-mentioned high level talks that the Japanese and Palestinian governments would coordinate to resume as early as possible the Japanese funded projects which have been suspended in the Gaza Strip due to the siege and closure.

31. The **Delegate of the Republic of South Africa** stated that South African Government noted with increasing concern the lack of progress with respect to the Middle East Peace Process, given the current developments in the region and Israeli insistence to continue with the annexation and illegal expropriation of Palestinian land and increasing settlement expansion. These actions by Israel were in violation of among others, the 2003 Road Map for Peace and the will of the international community.

32. South Africa noted that Israel continued to reinforce with facts on the ground, a climate of mistrust and suspicion between itself and the Palestinian people. In that regard the continued settlement expansion in the West Bank and East Jerusalem, the continued excavations under the Al Aqsa Mosque, the declaring of certain holy sites as Israeli National Heritage sites and the institution of Israeli Military Order 1650 had necessitated the international community to take a tougher stance against Israel. In addition, the Israeli attack on the "Freedom Flotilla" carrying aid to Gaza, with the resultant loss of life, on 31 May 2010 was a further example of Israel's disregard for international law and sentiment.

33. Indeed with the mentioned attack on the Freedom flotilla, South Africa saw fit to issue a Demarche on the Israeli Ambassador in South Africa and to recall for consultations its Ambassadors in Tel Aviv. It must be stressed that, as an occupying power, Israel had specific and clear obligations under international law and therefore South Africa would continue to condemn all forms of violence directed against civilians by all parties involved in the conflict.

34. The South African Government severely criticized the Israeli assault on Gaza in December 2008 and January 2009 and had been consistently urged the Israeli Government to lift its siege of the enclave, which had been in effect since 2007. South Africa contended that it was this siege which had caused untold suffering to the ordinary people of Gaza and which prompted the international community to organize relief efforts such as the 'freedom flotilla' to the territory. South Africa again re-emphasized the importance of the full implementation of UN Security Council Resolution 1860 and stressed that the situation in Gaza was neither acceptable nor sustainable.

35. The South African Government wished to underscore its position that the only viable solution to the Israeli-Palestinian conflict was an agreement negotiated between the parties and re-emphasis that only a two State solution, with an independent and viable Palestinian State existing side by side in peace and security with Israel and its other neighbours, within internationally recognized borders, could bring peace to the region. However, continued actions by Israel against Palestinians and those seeking to provide humanitarian assistance would have negative repercussions and be counterproductive to finding peace in the region.

36. The South African Government and people had consistently demonstrated their support for the rights of the Palestinian people, to a state of their own. The Government has been repeatedly called for a negotiated solution to the Israeli-Palestinian conflict, in line with the will of the international community, as expressed by United Nations

Security Council Resolutions 242, 338, 465, 681, 1397 and 1515, as well as the Arab Peace Initiative and the "Roadmap for Peace". South Africa noted that the Israeli government continued to expand and aggressively police the separation wall, which cuts through the west Bank, confiscating large chunks of Palestinian farm land, residences and commercial property for that purpose. Israel's continued construction of the Separation Wall runs contrary to the will of the international community, as reflected in UNGA Resolution A/Res-10/L.10 of 21 October 2003. It was also not in the long term security interests of Israel that such a barrier should be in place. In that regard, South Africa presented a written legal argument to the International Court of Justice (ICJ) and also participated in the oral deliberations in The Hague on 23 February 2004.

37. Regarding the UN Fact Finding Mission on the Gaza Conflict under Judge Richard Goldstone, South Africa noted the General Assembly of the UN adopted a resolution on 5 November 2009 in which both Parties were urged to launch credible and independent investigations into serious violations of international law and international human rights law. The Secretary General was requested to report back within five months on the implementation of the resolution.

38. The South African Government also strongly supported all international efforts aimed at re-establishing unity amongst the Palestinian people, in order for there to be a united Palestinian negotiating position with respect to Israel and finding a solution to the Middle East Peace Process.

39. The South African Government reiterated its belief that the primary responsibility for peace and security in Israel-Palestine lies with the two sides. However, it was of the view that the UN Security Council should take a more active role in these processes in terms of its Charter mandated responsibility to assist in the attainment of this goal. The Council had been seized with that matter for more than 40 years. Its failure to find a lasting solution to the crisis was a failure to give hope to the people of Palestine.

40. The delegate said that they stood in deep admiration at the resilience of ordinary Palestinians living in Gaza and the West Bank to try to carry on, against all the odds, a normal daily existence. South Africa also contended that the resolution of the Israeli/Palestinian conflict could possibly resolve other tensions in the region and lead to the normalization of relations between Arab countries and Israel and subsequently must be pursued with renewed vigour by all parties.

41. The **Delegate of Malaysia** noted that the item had remained on the agenda since it was first taken up at the proposal made by the Islamic Republic of Iran in 1987. It was disappointing to note that the Palestinian issue had remained unresolved since the past 62 years and the blatant violations of Israel against the Palestinian people and territory continued in violation of all established principles of international law and the Charter of the United Nations. The latest act of aggression perpetrated by Israel on the humanitarian convoy carrying humanitarian aid for the civilians in Gaza was deplorable. Malaysia strongly opposed the blockade of Gaza and was committed to pressing for its uplift as soon as possible. For this it was necessary to gather the consolidated efforts of the

likeminded state of AALCO to assist Palestine. He also noted with appreciation the timely seminar conducted by AALCO on 16 July 2010 in the Headquarters in New Delhi on "The Blockade of Gaza and its International Legal Implications". He hoped that the AALCO Secretariat would provide a report of the same as well as copies of the presentations made thereat. In conclusion he reiterated that urgent action should be taken by the international community for the severe violations of international human rights and humanitarian law committed by Israel against the Palestinians and called on Israel to lift the blockade on Gaza and comply with the provisions of the Fourth Geneva Convention of 1949. He also called on the parties to take appropriate measures that Israel was held accountable for its illegal actions.

**The Meeting was thereafter adjourned.**



**VII. SUMMARY RECORD OF THE SPECIAL MEETING ON  
“THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS”  
HELD ON SATURDAY, 7<sup>TH</sup> AUGUST 2010 AT 10.00 AM**

**His Excellency Mr. Mathias M. M. Chikawe, President of the Forty-Ninth Annual Session in the Chair.**

1. The **President** welcomed all the delegations and briefly outlined the topics for the Special Meeting and said that the two important issues to be discussed were the post Kampala Review Conference developments particularly, the Principle of Complementarity and the Crime of Aggression. Thereafter, he invited the Secretary-General to introduce the topic.
2. The **Secretary-General** stated that the special meeting was on a very important topic, the report of which was contained in document AALCO/49/DAR ES SALAAM/2010/S 9. Thereafter, he formally thanked the International Committee of Red Cross (ICRC) for readily agreeing to collaborate with AALCO in holding the special meeting and also the International Criminal Court (ICC) for deputing a senior official as a panelist. In his statement which was divided into three parts, he briefly highlighted the work that AALCO has done on that topic since the last Annual Session; thereafter he briefly outlined the outcome of the Kampala Review Conference and pointed out the issues for discussion at that meeting.
3. He mentioned that the Statutes of the Asian-African Legal Consultative Organization (AALCO) mandated it to “exchange views, experiences, and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary”. In pursuance of which the Organization considered the matters relating to the International Criminal Court. Since the adoption of the Rome Statute in 1998, and its subsequent entry into force on 1 July 2002, the AALCO had been continuously observing the developments in the institutions established by the Rome Statute- the Assembly of States Parties, the International Criminal Court and the Office of the Prosecutor. In addition, it also followed up on the work of the Special Working Group on the Crime of Aggression. Those had been successively considered at AALCO's Annual Sessions and various Inter-Sessional Meetings.
4. Being aware of the significance of the Review Conference of the Rome Statute of the ICC which took place in Kampala, Uganda, from 31 May to 11 June 2010 and the issues discussed there, AALCO last year in collaboration with the Government of Japan, convened a one day Seminar in New Delhi on 18 March 2009 on the topic “The International Criminal Court: Emerging Issues and Future Challenges”.
5. Further, mindful of the successful Seminar convened in 2009 and the response it elicited from the Member States, non-Member States and academia and pursuant to the mandate received from the Member States at the Forty-Eighth Annual Session (Putrajaya, 2009) a two-day “Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court” (hereinafter Round Table

Meeting), was jointly organized by the AALCO, the Government of Malaysia and the Government of Japan. It was held in Putrajaya, Malaysia from 30 to 31 March 2010. The objective of that Meeting was to serve as a forum where the Member States could understand each other's position, as also coordinate their respective national positions on the issues that were to be taken up by the Review Conference. Intensive discussions on the agenda for the Review Conference were held among the participants.

6. The Secretary-General said that the Review Conference of the Rome Statute of the International Criminal Court took place in Kampala, Uganda from 31 May to 11 June 2010, and a three-member delegation, led by him, participated at the Review Conference.

7. He addressed the General Debate on 1 June 2010 where he presented the outcome of the Putrajaya Round Table Meeting. He emphasized that the three major challenges facing the ICC were: universality, sustainability and complementarity, and flagged the following three issues for consideration:

8. *Firstly*, concerning the crime of aggression, he emphasized that the Member States of AALCO realized the imperative of having a clear and broadly acceptable definition on the Crime of Aggression and considered it to be indispensable to developing the rule of law in the world. In that regard, the AALCO was hopeful that the major definitional and jurisdictional issues would be successfully resolved at Kampala.

9. *Secondly*, as to the stocktaking of international criminal justice, the concept of complementarity, issues on cooperation with the ICC, and the relationship between peace and justice were of immense significance. Concerning the principle of complementarity, AALCO Member States considered it as constituting the core principle of the Rome Statute, and they were of the view that it needed to be further strengthened and there was a need for maintaining a balanced approach in its application.

10. *Thirdly*, as regards the proposals for amending the Rome Statute: *One*, on the proposal to delete Article 124, the opinion was that it would deprive new States Parties to the Rome Statute the right to defer the acceptance of the jurisdiction of the Court, therefore, it was useful to retain it. Also, it would encourage universalization of Rome Statute; and *Two*, as to the proposals for criminalizing the act of employing certain weapons in internal armed conflict and strengthening the enforcement of sentences, there was not much discussion, as most of the States had not made their positions clear.

11. The Secretary-General also informed that on 2 June 2010, he had hosted an Informal Networking Meeting of the AALCO which was followed by a Reception. During the course of that meeting H.E. Mr. Ichiro Komatsu, Ambassador of Japan to Switzerland launched the "Report of the Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the ICC", held on 30-31 March 2010 at Putrajaya, Malaysia.

12. Thereafter, the Secretary-General briefly pointed out that the main outcome of the Review Conference. He said that at the historic 2010 Review Conference of the Rome

Statute of the International Criminal Court, stocktaking, proposed amendments on war crimes, and the crime of aggression were all on the agenda. Of the 111 States Parties, 84 had gathered in Kampala, Uganda, including 30 Observer states, to make critical decisions regarding the Court's future. He said that he would only focus on the issues that were to be discussed during the special meeting, namely, the Principle of Complementarity and the Crime of Aggression.

13. He noted that the outcome of the Review Conference had clearly demonstrated that the principle of complementarity would remain as one of the pillars for the effective functioning of the Court, and the ICC would be the Court of last resort. This principle needed to be further strengthened. The Kampala Declaration (RC/Decl.1) adopted at the Review Conference in operative paragraph 5 stated: "Determine to continue and strengthen effective domestic implementation of the Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally-recognized fair trial standards, pursuant to the principle of complementarity".

14. Besides that, the other major development in Kampala, the Crime of Aggression was defined, basically, as the planning, preparation and implementation of an act of aggression, by the head of state or military, which clearly violates the UN Charter. Additionally, States Parties to the ICC formally agreed, for the first time, to a process by which the crime itself could be prosecuted in the future. The process included examining an act of aggression that must be very serious, in its character, gravity and scale, for it to rise to the level of consideration by the ICC. That act must also involve the use of force by one State against the sovereign, territorial and political independence of another State.

15. The Secretary-General further added that the amendments to the Rome Statute, especially those related to the Crime of Aggression presented an opportunity to take a step further in the development of international criminal law. Defining the Crime of Aggression would allow the International Criminal Court to exercise jurisdiction with respect to all crimes listed in Article 5 of the Statute, and would allow ending impunity for the most serious international crimes. However, the provision on the actual exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

16. He also said that the retention of Article 124 in the Statute was also to be welcomed. That view was expressed by many Asian-African Member States during the Round Table Meeting of Legal Experts, organized in Putrajaya, Malaysia from 30 to 31 March 2010.

17. Before concluding his statement, the Secretary-General introduced the panelists who were a good combination of academic and practitioners, including Amb. Yasuji Ishigaki, the Special Assistant to the Foreign Minister of Japan; Mr. Phakiso Mochochoko, Senior Legal Adviser, ICC; Dr. Roy Lee, the Permanent Observer of AALCO at the UN HQ in New York; Prof. V.S. Mani, Director, School of Law and

Governance, Jaipur National University, India; and Dr. Srinivas Burra, Legal Adviser, ICRC, Regional Delegation for South Asia, New Delhi.

### **Working Session I: Principle of Complementarity**

18. **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan** fully agreed with the introductory remarks of the Secretary-General that the First Review Conference of the Rome Statute of the ICC held at Kampala was truly historical in many aspects: not only that Review Conference was convened for the first time after the commencement of full activities and operation of the ICC, but also a rare opportunity was provided and fully utilized for taking stock of the progress of the developments in the international criminal justice system and most importantly various amendments to the Rome Statute including the crime of aggression were adopted by consensus.

19. He stated that, Japan actively participated at Kampala in the discussions on various agenda items and could play its part in bringing about a success of the Conference. However he mentioned that the views expressed at the special meeting were his own, and not necessarily an official view of the Government of Japan, although he relied very much on the assessment of the Japanese Delegation on the outcome of the Kampala Conference.

20. Amb. Ishigaki stated that it was well known that the principle of complementarity was one of the most fundamental principles on which the Rome Statute system was based. The preamble of the Statute as well as article 17 provided that the Court shall be complementary to national criminal jurisdictions.

21. At Kampala, it was therefore quite natural that much discussion took place, focusing on that principle, and a resolution (RC/Res.1) was adopted by consensus.

22. That resolution stated in its first five operative paragraphs:

- “1. *Recognizes* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern;
2. *Emphasizes* the principle of complementarity as laid down in the Rome Statute and *stresses* the obligations of States Parties flowing from the Rome Statute;
3. *Recognizes* the need for additional measures at the national level as required and for the enhancement of international assistance to effectively prosecute perpetrators of the most serious crimes of concern to the international community;
4. *Notes* the importance of States Parties taking effective domestic measures to implement the Rome Statute;
5. *Recognizes* the desirability for States to assist each other in strengthening domestic capacity to ensure that investigations and prosecutions of serious crimes of international concern can take place at the national level”

23. The Panelist observed that thus, as often said, the ICC was a Court of the last resort, and it did not replace national proceedings. As much as the crimes stipulated in the Rome Statute were dealt properly with at the national level, the ICC would not exercise its jurisdiction. The ICC would only step in when national authorities were unable or unwilling to investigate and prosecute the most serious crimes of concern to the international community as a whole.

24. He maintained that Japan considered that it was vitally important that the ICC would become the Court which was *effective, efficient, universal and systemically sustainable*, and that notion of ICC could be realized when the Court functioned well, faithful to the principle of complementarity.

25. In his view, in order to implement actually the principle of complementarity, Member States should take necessary measures to enact national legislation whereby all the crimes stipulated in the Rome Statute were made punishable. In Japan's case, when considering the ratification of the Rome Statute, they examined thoroughly whether all the crimes in the Rome Statute were punishable under domestic laws and enacted the necessary legislation. Japan would be ready to provide advice based on its experience to those countries who were considering the ratification of the Rome Statute.

26. The resolution adopted at Kampala which he mentioned earlier included other provisions in the operative paragraphs, such as:

“8. *Encourages* the Court, States Parties and other stakeholders, including international organizations and civil society to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern as set out in the Report of the Bureau on complementarity, including its recommendations”.

“9. *Requests* the Secretariat of the Assembly of States Parties, (in accordance with resolution ICC-ASP/2/Res.3, and, within existing resources), to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and *requests* the Secretariat of the Assembly of States Parties to report to the tenth session of the Assembly on progress in this regard”

27. In conclusion Amb. Ishigaki said that focusing on the principle of complementarity, utmost efforts were called for not only the Court and States Parties but also all other stakeholders, including international organizations such as AALCO to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern, etc. thus it would be indeed no small task to follow up all the actions and recommendations mentioned in the said resolution.

28. **Mr. Pahkiso Mochochoko, Senior Legal Adviser, International Criminal Court** made a presentation titled, **“Overview of the Complementarity Principle and Related States’ Obligations under the Rome Statute”**.

29. In his presentation, he stated that the adoption of the Rome Statute on 17 July 1998 was a historic event for the first independent, impartial, permanent international criminal court, which was able to hold individuals personally accountable for the commission of the most serious international crimes, a court that would provide redress to victims and survivors of those crimes. The deposit of the 60<sup>th</sup> instrument of ratification and the entry into force of the Statute on 1 July 2002, brought an end to the long period of gestation and the ICC was finally born.

30. With the entry into force of the Statute, a new stage had begun; the ICC was transformed from a mere idea on paper to a new institution in the field of international criminal justice. Till that date, 111 States had ratified the Statute and the goal of universal ratification continues to be relentlessly pursued, he observed.

31. He stated that while widespread ratification of the Rome Statute was to be welcomed, it was not to be seen as an end in itself. Full compliance by States with their treaty obligations remained essential for the success of the ICC. All States that had ratified the Rome Statute required some changes in their national laws in order to ensure that the ICC principles were properly incorporated and implemented within their jurisdictions.

32. The Panelist raised a question that why was it necessary for ICC principles to be incorporated into national laws? That was mainly for two reasons: Firstly, despite the creation of the ICC, the majority of prosecutions would take place in domestic courts. This was because of the complementarity provisions of the Statute. Secondly, because the ICC had no independent powers of arrest, it must depend on States to arrest and surrender suspects. The Statute thus placed certain obligations on States Parties in order to ensure that the ICC could carry its investigations and prosecutions efficiently by relying on the expertise and assistance of national authorities whenever required. Implementation legislation could thus be seen as a critical element for the complementarity mechanism as well as for cooperation obligations imposed on States. Further, he stated that the focus of his presentation would be those issues together with some of the approaches taken by the States to implement the Statute.

33. The Panelist noted that the Complementarity which had been described as a central feature of the Rome Statute system denoted that cases would only be admissible before the ICC if and when States were unwilling or unable to genuinely carry out investigations and prosecutions. According to the Complementarity principle, the primary duty and responsibility for the enforcement of prohibitions of international crimes rest with national criminal jurisdictions. The principle foresaw a division of labour between national courts and the ICC. Enforcement of international crimes was thus dependent on the capability of national courts as courts of first instance. As a

permanent international judicial institution, the ICC was a complement rather than a replacement to national criminal jurisdictions.

34. He informed that the logical consequence of complementarity was that States must ensure that their domestic law which provided for the investigation and prosecution of crimes within the jurisdiction of the Court - those that did not run the risk of being found to be unwilling or unable genuinely to investigate and prosecute. Complementarity, the principle in terms of which primary responsibility for publishing serious crimes of concern to the international community was placed on States, had been made the bedrock of the ICC. The principle as enshrined in the Statute reflected a careful balance between the desire for international justice on the one hand, and the need to respect national sovereignty and the rights of an accused to an expeditious fair trial, on the other. The compromise solution should be viewed against the background of the long standing principles of States sovereign right to exercise their jurisdiction over crimes committed within their territory and their reluctance to relinquish that right despite the impunity that resulted from State's failure to prosecute those crimes. The principle thus emerged from the competing concerns of bringing an end to impunity and the reluctance of States to relinquish their inherent sovereign right to prosecute crimes that fell within their jurisdiction. Complementarity was thus intended to assuage States which were worried about interference with their sovereignty.

35. While it was imperative to give States priority to prosecute and punish perpetrators of international crimes, it was equally necessary to put in place a mechanism that could be used in the event that a State would shield perpetrators or would not have the capacity and means to investigate and prosecute. In the absence of such a mechanism, impunity would continue to reign, he observed.

36. He pointed out that the principle of complementarity was embodied in various Parts of the Statute, beginning with the Preamble. In paragraph 4, the Preamble affirmed that the most serious crimes of concern to the international community must not go unpunished and that their effective prosecution must be ensured at the national level and by enhanced international cooperation. Paragraph 6 recalled the duty of States to exercise their criminal jurisdiction over those responsible for international crimes.

37. In addition, he mentioned that article 1 read together with others such as articles 15, 17, 18 and 19, combined to give emphasis to the centrality of the complementarity principle. From a reading of the Preamble together with other articles of the Statute, it was clear that the drafters intended to establish a system of international justice based on national procedures and complemented by an international court. While the system would ensure the primary responsibility of States to investigate and prosecute serious crimes of concern to the international community, it had also put in place a mechanism that was ready to assume that responsibility, if the States fail to carry out their obligations: a permanent international criminal court to prosecute perpetrators of those serious crimes. Under Article 17, which might be taken as the clearest articulation of the principle of complementarity, the ICC would not act where national criminal jurisdictions had acted or were acting or where the case was not of sufficient gravity.

38. On a practical level, he stated that complementarity also responded to the need to close the impunity gap. Compared to national courts and their greater and tested capacities, the ICC with its limited infrastructure and resources would not be able to cope with the unlimited range of cases from all over the world. To make complementarity the cornerstone of the ICC was thus intended to ensure that prosecution of the few did not result in impunity for the many.

39. The formula of the Rome Statute that a country with jurisdictional competence had the first right to institute proceedings had two practical dimensions to it. The first one was that States that wished to preserve their national sovereignty by prosecuting those responsible for crimes under the Statute had to incorporate the Rome Statute standards in to their national laws and ensure that their legal systems would conform to international standards. The second dimension was that in order for States to cooperate with the Court, they had to introduce comprehensive legislation that would enable them to extend full cooperation to the Court.

40. The Panelist informed that the “Implementing Legislation” had been widely used to encompass the above dimensions. Implementation could thus be viewed as comprising two broad categories: (a) implementation of the complementarity regime, which include the incorporation of crimes under the Statute (for dualist States) or clarification as to their application (for monist States); and (b) implementation of the cooperation regime as expressly envisaged in the Statute.

41. Any State that wished to prosecute ICC crimes must first and foremost ensure that it had national legislation in place that allowed it to exercise jurisdiction over people committed in its territory as well as nationals who had committed crimes abroad. While for some States that might entail a simple amendment to the criminal code, in others it might entail a major overhaul of the criminal justice system. The following were however clear:

- The ability of national courts to investigate and prosecute would depend on whether they could legally assume jurisdiction over a given case, hence the need to extend the jurisdiction requirements through national legislation.
- If the ICC was only supposed to intervene when a national jurisdiction was unable or unwilling genuinely to prosecute, an important issue for the Court would be what type of behaviours/conducts/crimes/facts dealt with at the national level would permit the Court to conclude that no action was required; or in the alternative, what were the situations in which, on the basis of the substantive provisions of a domestic legislation, a national jurisdiction might be considered unable to investigate or prosecute a given international crime covered by the Statute?.

42. He stated that all those reasons would highlight the need for the incorporation of ICC principles in national law. A State which was wishing to prosecute ICC crimes must



therefore ensure that its national law incorporated definitions of the crimes under the Statute. Those definitions were a subject of lengthy consultations amongst States and were accepted after the majority of States were satisfied that the definitions were a true reflection of current international law and that they were based on existing treaty and customary law principles. For States to fulfill their complementarity obligations, they had to incorporate all acts defined in the Statute as crimes under their national laws. States which were having laws concerning some of the crimes under the Statute might need to modify them in order to bring them in line with the Statute so that they were within the same normative system as that of the Court. This would obviate the difficulties in verifying correspondence between the Statute and national laws and thus allowed easy application of the principle of complementarity.

43. The enactment of national implementing legislation would benefit States in many ways: it was a clear expression of a political commitment to cooperate with the Court; it enabled national courts to assume jurisdiction over crimes under the Statute; it would enhance victims remedies and protection under domestic laws; it served to import in to national law, example of “best practices” that could have a positive impact on domestic practices and it paved the way for effective cooperation with Court. All those were crucial for ensuring that the emerging system of international justice achieved its potential in the future, he opined.

44. The Panelist informed that many countries were currently struggling with the many issues of compatibility of the ICC Statute with certain constitutional provisions while others had reached the conclusion that their constitutional provisions and the Statute were consistent and therefore amendments were unnecessary. Customized measures would be required to harmonize States’ approach on those matters. Interaction between the Court with States and civil society, where appropriate and before implementing legislations were crystallized would ensure that the objects and purposes of the Statute were met. The elaboration of standards for effective incorporation which were based on the objects and purposes of the Statute while at the same time sensitive to the differences in domestic legal orders should be the goal.

45. He also informed that many developing and least developed countries lacked the time, resources and capability to undertake necessary legal reforms for complementarity. Raising awareness and providing technical assistance to help the ratifying countries with implementing legislation would augur well for complementarity and the future of international justice. AALCO had an important role to play in ensuring that States to implement the provisions of the Statute.

46. Several non-governmental Organizations mostly operating under the auspices of the NGO Coalition for the International Criminal Court (CICC) were actively involved in reviewing and commenting upon implementing legislation according to pre-defined criteria. Many of them had, however continued to face the difficulties of access to draft legislation of States. The need for Governments to make their implementing legislation accessible to the NGOs for comments to ensure uniform approach and consistency could not be overemphasized.

47. In conclusion, the panelist stated that the ad hoc tribunals before the establishment of ICC prevented the functional relationship with the national courts such as the complementarity regime and to determine the relationship between the national courts and the court was a major challenge for the drafters of the Rome Statute.

48. The Court must not be seen as a panacea and neither it would stand alone, the effectiveness and the integrity of the international measures would depend upon other players, including increased action at national level to investigate and prosecute as well as effective international cooperation in suppressing international crimes. Through complementarity, the international community allowed assistance to the States to fulfil under the Statute to complement to national jurisdictions.

49. The underlying aim of the complementarity provision was to ensure that the ICC did not oust a functional system that was available to the Rome Statute. The importance of the ICC lay in its potential to limit impunity and deter atrocities. Incorporating the ICC principles in national laws would limit the legal, political or procedural difficulties that were likely to arise, if they approach it at the national and international level. Although the Complementarity regime under the Statute was not immune to criticism, it was nevertheless a successful attempt to strike a balance between the consideration and respect for the national jurisdictions, the ability of the Prosecutor to effectively exercise his powers and the Courts discretion to hear the cases admissible whatever the Court at its best authority to intervene the national proceedings such intervention were based on the criteria which were clearly written as a major objective. Ultimately, it would be for the Court to determine its ability to address some of the difficult questions regarding Complementarity as it developed its jurisprudence and regulations to meet the objectives of fairness and justice, where it would also operate efficiently and safeguard the interests of the judges, he observed.

50. He stated that unlike the two *ad hoc* tribunals which were created by the binding decisions of the Security Council, the ICC was founded on the specific acceptance that States would freely and willingly ratify the ICC Statute.

51. He mentioned that while ICC played the central role of international measures to combat the culture of impunity and sustain the values of principles of accountability, it remained part of a larger system it could not do it alone, it had to rely upon the support of other actors, notably at the international level, if it had to succeed in suppressing the international crimes.

52. Finally, he mentioned that fair commitment of the States was essential for the effectiveness of the Court. He hoped that the States would adopt legislations to implement the provisions of the Rome Statute and provided the Court with effective cooperation.

53. The **President** thanked the representative of ICC, Mr. Mochochoko for his thoughtful presentation and invited Dr. Lee to make his presentation.

54. **Dr. Roy S. Lee, Permanent Observer of AALCO at the UN Headquarters in New York** presented his views on the principle of complementarity from the stand point of non-States Parties to the Rome Statute and underlined that they too could derive benefit from the Rome Statute of the ICC. He said that as on that day there were 111 States Parties to the Rome Statute of the ICC and it was a known fact that about 10-15 countries were on their way to ratifying the Rome Statute, thus there was a very solid base of States Parties to support the ICC. On the other hand, it was also well known that there was a significant number of States which for political and legal reasons found it was difficult to join the ICC. Yet the purpose of the ICC was to prevent impunity, therefore it was not inconsistent to look at how non-State Parties could make use of the ICC. With that background Dr. Lee presented four aspects for the consideration of the AALCO Member States. He said that he had spent about a decade in the United Nations for the establishment of the ICC, and he was very supportive of the ICC as an institution promoting criminal jurisdiction and criminal justice for both ICC States Parties and non States-Parties.

55. In his first point, he highlighted that the principle of complementarity applied to non States-Parties as well and it was not just created for States Parties. It was true that States Parties had priority in exercising their national criminal jurisdiction. The ICC could not step in, unless a State Party was unable or unwilling to exercise its jurisdiction. The same privilege applied to non States-Parties as well. He explained that should by chance a national of a non State-Party be involved in committing any of the crimes enshrined in the Rome Statute, that non State-Party would also have priority in criminal jurisdiction over that national accordingly to the complementarity principle. But unless the ICC crimes had already been criminalized in the law of that State, it could not claim priority successfully. He emphasized therefore the need for non States-Parties to criminalize the ICC crimes in their national legislations, in order to exercise jurisdiction. He said the purpose of the Rome Statute was to end impunity and ICC respected the sovereignty of States and that was why it was complementary to national judicial systems as it supplemented them.

56. In Dr. Lee's view, the resolution adopted in the Kampala Review Conference urging ICC States Parties to criminalize the ICC crimes in their national legislation further confirmed what said about the non-States Parties. The resolution made clear that unless the crimes and punishment had been incorporated in the national legislations, even if a State was a Party it could not exercise jurisdiction. He confirmed the statement made by the Attorney-General of Malaysia that although most of the Member States of AALCO were dualists, they still need to criminalize the crimes in their national laws. He said that this was particularly important for those countries engaging in world wide peace keeping engagements. If and when a peace keeper had been accused of committing an ICC crime, unless that country had national legislation that punished that crime, it could not claim complementarity. The ICC would be able to step in. To avoid competing and concurrent jurisdiction, the ICC crimes must therefore be criminalized in national laws.

57. Another point mentioned by him was that the crimes mentioned in the ICC were the most egregious crimes and would not exist in most of the criminal laws. For

example, national legislations would have murder, killings but not mass murders, or mass killings of civilians, which did not fall within the normal scope of criminal law. Moreover, most criminal law did not have genocide, crimes against humanity or aggression. Therefore, there was need to introduce the ICC crimes into the national criminal legislations. He said there were two ways of doing this, one, to harmonize the national laws with the ICC crimes that had been proven to be very difficult. For example, Germany had followed that approach as a State Party. On the other hand, Australia, United Kingdom, Canada had chosen to create special categories to deal with ICC crimes, without having the difficulty of harmonizing those crimes with the other crimes mentioned in their national systems.

58. The third point mentioned by Dr. Lee was that a non State-Party could also take advantage of making ad hoc declaration without being a party and “opt in” to the ICC for a particular situation. This declaration would apply only to one specific case, but not to any other situations not identified in the declaration. So this was an interesting “opt in” approach. Thus, being a non State-Party the country would not be obligated to follow the entire ICC Statute. He illustrated this by giving the example of Palestine, which had made a declaration under Article 12, of the ICC Statute, for inviting ICC to investigate the crimes committed by Israel in Palestine. He understood that the ICC Prosecutor was studying that situation and there was a group of jurists who had given the Court an opinion emphasizing the functional approach that the ICC should exercise jurisdiction and the ICC should not focus attention on whether Palestine is a State or not. In that regard, he referred to Article 12 (3) of the Statute which stated that, “If the acceptance of a State which is not Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9”. He understood that a group of scholars had supported that legal opinion.

59. Dr. Lee also pointed out the advantages in using such an ad hoc declaration as a tool for dealing with crisis situations in a country. At present he said there were three cases involving the situations in Uganda, DRC and Central African Republic. These States Parties had voluntarily referred their domestic situation to the ICC and invited the ICC to investigate those situations and to seek if those crimes had been committed and if so to prosecute those crimes. He said that those were interesting examples illustrating how to use ICC to manage internal situations. Once a situation was referred to the ICC the situation would be internationalized and the ICC would investigate it and take all necessary actions. In doing so the country would save its money and human resources and at the same time it would be able to prosecute those responsible for committing the crimes. Ad hoc declaration by a non-state Party could achieve the same effect but without becoming a party to the ICC.

60. The fourth point put forward by Dr. Lee was that the ICC Statute was also a very valuable source of information. It defined 93 crimes in very clear terms and further elaborated the elements for each of the crime. He illustrated this with “torture”. Since many of the AALCO Member were parties to the Convention against Torture, they could

make use of the ICC definition and elements of torture for their national laws because the definitions of those crimes in the ICC Statute were of international standards, therefore, the ICC Statute was a source of information. He also pointed out that the ICC Statute had some 67 articles dealing with fair trials, collection of evidence, protection of victims and witnesses and the rights of the accused and that all those provisions were very useful and handy and could be extracted for the national legislations. Dr. Lee said that the League of Arab States had prepared a Model Legislation extracting some of the elements from the ICC Statute that was one example of using the ICC Statute for its Member States. He also said that this could benefit some of those countries who had difficulties in implementing the Geneva Protocols of 1977. The “grave breaches” referred to in the Geneva Protocols were defined in the ICC Statute thus they could be incorporated in the national legislations. That was a very convenient technique, nevertheless they were available in the ICC Statute for any state if they wished to do so.

61. The **President** thanked Dr. Roy Lee for his very innovative presentation and called upon Dr. Srinivas Burra, the Legal Adviser of ICRC, in New Delhi, to make his presentation.

62. **Dr. Srinivas Burra, Legal Adviser of ICRC, New Delhi**, in his presentation titled, **Complementarity and the International Criminal Court**, stated that the establishment of the International Criminal Court (ICC) was considered as one of the significant achievements of the international community in terms of regulating the behaviour of individuals. The long period of time taken, since the initial idea emerged, for its realisation was a clear testimony to the significance of the ICC and the complex issues involved in it. The ICC was established with a desire among some States and some quarters of civil society that international crimes must not go unpunished. The establishment of the ICC would necessarily assume that the individuals involved in certain grievous international crimes were left unpunished in certain situations. To prevent such situations the ICC was established.

63. Dr. Burra mentioned that the Statute of the ICC, like any other or many other international law instruments had to confront and concede to the traditional valid issue of sovereignty of States. To address the issue of State sovereignty and to effectively prosecute international crimes, the drafters of the Rome Statute had introduced the concept of complementarity in the form of article 17 of the Statute. Though the word complementarity did not appear anywhere in the Statute, paragraph 10 of the Preamble and article 1 of the ICC Statute refer to complementary nature of the jurisdiction of the ICC. In order to help the delegates to contextualise the principle of complementarity, he briefly attempted to look at as to how a case would become maintainable before the ICC.

64. He informed that for a case to be taken up by the ICC, it would be tested on three grounds. (i) Jurisdictional ground; (ii) Admissibility ground; and (iii) Interest of justice ground.

65. On the jurisdictional ground, in order for the Court to have jurisdiction on a case, it needed to be tested at several levels. They were:

1. The alleged crime should fall under one of the categories of crimes listed in article 5;
2. The crime must have been committed after 1 July 2002, (article 11);
3. The alleged perpetrator must be above 18 years of age (article 26);
4. Either the territorial State on which the crime was committed or the suspect's home State must have accepted the ICC's jurisdiction (article 12); and
5. There should not be any request from the UN Security Council to defer the case (article 16).

66. He stated that once the jurisdiction test was satisfied, the next would be the admissibility test, otherwise known as complementarity principle under the ICC. Articles 17-20 of the Rome Statute dealt with admissibility test. Article 17 of the Statute says that a case was inadmissible before the ICC when it was being investigated or prosecuted by a State that had jurisdiction over it, or when the case had already been investigated and the State had decided not to prosecute. The ICC could proceed only when the State was unwilling or unable genuinely to investigate or prosecute the case.

67. He further informed that the provision was very much in accordance with the purpose of establishing the ICC which had been underlined in the preamble of the Statute, which clearly stated that effective prosecution of most serious crimes must be ensured by taking measures at the national level and it was the duty of every State to exercise criminal jurisdiction over those responsible for international crimes. Therefore even if it met the requirements of the jurisdiction as mentioned earlier i.e., meeting the requirements of articles 5-8, 11, 12, 13, 16, and 26, a case could not be taken up by the ICC if it did not pass the test of admissibility.

68. The third ground on which a case's maintainability before the ICC was based on the 'interests' of justice' test. According to article 53 (1) (c) a case would only be investigated when it served the interests of justice. Further article 53 (2) (c) said that upon investigation, the prosecutor could decide that there was no sufficient basis for a prosecution as it would not serve the interests of justice. Therefore, for a case to be taken by the Court, it had to meet the requirements of jurisdiction, admissibility and interest of justice.

69. The Panelist stated that the three requirements of admissibility test under article 17, otherwise known as complementarity constituted a crucial element as it defined the link and scope of the national and international jurisdictions on a given case.

70. On the significance of the complementarity principle, the Panelist noted that the relationship between the Court and States and their jurisdiction as envisaged in the first draft of an International Criminal Court in 1953 underwent many changes by the time the Rome Statute was adopted in 1998. He said that in 1953, it was visualised that the Court would have jurisdiction over a given case only when the territorial State and the suspect's home State had accepted the jurisdiction on an *ad hoc* basis. However, the opinion changed and at present, under the Rome Statute, the States Parties accepted the ICC's

jurisdiction on ratification. The concerned development could be largely attributed to the complementarity principle which had given priority to States in investigation and prosecution on a particular case.

71. As regards the purposes of complementarity, the first purpose, he mentioned was it addressed the issues relating to State sovereignty. He further stated that it was the system of nation States and sovereign equality of States that governed international relations and a sovereign State had sole authority for its internal affairs including the matters of administration of justice. However, acceding to any international obligation by a State would lead to conceding a space for international regulation, though it happened with the consent of the State concerned. Hence it was obvious that States would look at the creation of an International Court in certain respects, interference in the form of exercising jurisdiction on its citizens which might include higher authorities. Those were fundamental concerns which made the realisation of ICC delayed. The complementarity principle addressed those concerns and gave the first opportunity to the national jurisdiction and made the ICC the last resort.

72. Secondly, it encouraged national jurisdiction. Along with the concerns of State sovereignty, there were also other issues, which favour national jurisdiction. One of them was that prosecuting cases before national courts would have certain benefit in comparison to international prosecutions. The Report of the Ad Hoc Committee on the Establishment of an International Criminal Court had listed the benefits as follows.

(a) all those involved would be working within the context of an established legal system, including existing bilateral and multilateral arrangements; (b) the applicable law would be more certain and more developed; (c) the prosecution would be less complicated, because it would be based on familiar precedents and rules; (d) both prosecution and defence were likely to be less expensive; (e) evidence and witnesses would normally be more readily available; (f) language problems would be minimized; (g) local courts would apply established means for obtaining evidence and testimony, including application of rules relating to perjury; and (h) penalties would be clearly defined and readily enforceable.<sup>1</sup>

73. He informed that for the granting States, a certain margin of appreciation as to how they would carry out the responsibility might be an indirect way of stimulating national proceedings. From a broader perspective, he stated that the existence of an international jurisdiction focused on the responsibility of States might contribute to the gradual development of a legal culture where genuine national proceedings became the norm and not the exception.

74. The Panelist pointed out that enhancing national proceeding was necessary due to the fact that the ICC, a single Court with only limited judges, would have very limited capacity. Besides, the Rome Statute appeared to build on an assumption that prosecuting

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<sup>1</sup> Ad Hoc Committee on the Establishment of an International Criminal Court, Report of the Ad Hoc Committee on the Establishment of an International Criminal Court, UN Doc. A/50/22 (6 September 1995), 31.

the crimes nationally was also preferable, regardless of sovereignty and capacity concerns. Therefore, the success of the court was seen more in national jurisdictions taking up cases defined under the Statute than the Court itself having more number of cases. In that regard, he quoted the statement of the Prosecutor:

"As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success."<sup>2</sup>

75. Thirdly, it would ensure an effective ICC interference. It was equally important to ensure that genuine national proceedings would prevail, and was it to ensure that international proceedings prevail when national proceedings were not being taken up genuinely. The complementarity principle intended to allow the ICC to interfere effectively when States fail. Otherwise, the result would not only be impunity in a given case; the Court would be perceived as less credible, and the enhancing effect on States and the preventive effect on individuals would be diminished. In order to ensure such effectiveness, instances of national failure would be detected, and the ICC Prosecutor would be allowed to obtain information from a variety of sources. As for the admissibility determination, the criteria must be sufficiently broad so as to satisfactorily cover instances of national incapacity and bad faith which might lead to impunity, with no lacunae allowing States to shield the perpetrator. Further, the procedures governing the invocation and determination of the admissibility question must be sufficiently effective so that the ICC proceedings were not compromised.

76. As regards the positive complementarity, the panelist stated that as the Court started to take up the cases, it was expected to confront several challenges encompassing practical aspects and the interpretation of the Statute. To address those challenges and concerns it was suggested that the Office of the Prosecutor (OTP) might be able to resolve some of the issues by interacting more closely and actively with national courts, adopt a policy which had come to be called positive complementarity. The idea was that the Court and particularly the Office of the Prosecutor should work to engage national jurisdictions in prosecutions, using various methods to encourage States to prosecute cases domestically wherever possible. The aim of such a policy was to strengthen domestic capacity. It was therefore argued that traditional complementarity was meant to protect State sovereignty and was built on the idea that State could carry out national prosecutions as a result of the threat of international intervention by the ICC, whereas, positive complementarity looked for a more cooperative relationship between national jurisdictions and the Court. That seem to be some what similar to the 'guiding principles' of the complementarity as highlighted by the 'Informal Expert Paper: The Principle of Complementarity in Practice' of the Office of the Prosecutor.<sup>3</sup>

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<sup>2</sup> Statement by Mr. Luis Moreno Ocampo, June 16, 2003, Ceremony for Solemn Undertaking of the Chief Prosecutor

<sup>3</sup> Informal Expert Paper: The Principle of Complementarity in Practice.



77. He then dealt with the 'The Informal Expert Paper: The Principle of Complementarity in Practice' which highlighted the two 'guiding principles' of the complementarity principle. Those were partnership and vigilance.

78. He explained that the first principle *Partnership* highlighted the fact that the relationship with States that were genuinely investigating and prosecuting could be a positive, constructive one. The Prosecutor could act within the mandate provided by the Statute, encourage the State concerned to initiate national proceedings, help develop cooperative anti-impunity strategies, and possibly provide advice and certain forms of assistance to facilitate national efforts. There might also be situations where the OTP and the State concerned agree that consensual division of labour was in the best interests of justice; for example, where a conflict-torn State was unable to carry out effective proceedings against persons most responsible.

79. As regards the second principle *Vigilance*, he stated that it marked the converse principle that, at the same time, the ICC must diligently carry out its responsibilities under the Statute. The Prosecutor must be able to gather information in order to verify that national procedures were carried out genuinely. Cooperative States should generally benefit from a presumption of bonafide and baseline levels of scrutiny, but where there were indications that national process was not genuine, the Prosecutor must be poised to take follow-up steps, leading if necessary to an exercise of jurisdiction.

80. The panelist informed that the recent Report of the Bureau on complementarity which was discussed as a background paper during the Review Conference had come up with similar views, however, it emphasized more on States to assist with each other on a voluntary basis. The report referred to positive complementarity as 'all activities/actions where by national jurisdictions were strengthened and enabled to conduct genuine national investigations and trials of crimes included in the Rome Statute, without involving the Court in capacity building, financial support and technical assistance, but instead leaving these actions and activities for States, to assist each other on a voluntary basis. The actual assistance should thus as far as possible be delivered through cooperative programmes between States themselves, as well as through international and regional organizations and civil society'.

81. The report of the Bureau further pointed out that such assistance could be in the form of legislative assistance, technical assistance and capacity building and physical infrastructure, which included the draft of the appropriate legislation, training of police, investigators and prosecutors, prison facilities and sustainable operation of such institutions. One example of such nature was that the Commonwealth in cooperation with the ICRC and other organisations had published model legislation for States wishing to carry out that task, he observed.

82. As to the Measures to be taken up by States, the panelist stated that there were many more countries to become parties to it. At the time of drafting of the Statute, some States made certain proposals for inclusion of some categories of crimes/provisions which were not included. There were a few States who made specific objections to some

of the crimes listed in the Statute. For those States who failed to include some of their proposals in the list might not have any difficulty with the existing list unlike those States which had objected to the present set of crimes as they would face the threat of their citizens being prosecuted for those crimes. Therefore, all those States, might be a few exceptions, who had not become parties to the Statute, might not be against the idea of prosecuting the crimes listed in the Statute by one forum or the other. Therefore, there did not seem to be much of principled opposition to the crimes as such being prosecuted. Thus, for those States who were not, in principle, against the crimes listed in the Statute being prosecuted, might rely on the principle of complementarity which provided an opportunity to demonstrate their principled position in favour of crimes being prosecuted and their willingness to investigate and prosecute at the domestic level.

83. The panelist referred to a 2003 OTP Policy Paper on complementarity which described the general rule of complementarity as "taking action only where there was a clear case of failure to take national action" and "a major part of the external relations and outreach strategy of the OTP would be to encourage and facilitate States to carry out their primary responsibility of investigating and prosecuting crimes". Similarly, the resolution on complementarity adopted at the Review Conference recognised 'the primary responsibility of States to investigate and prosecute the most serious crimes of international concern, he noted.

84. However, it was important that for those who had become parties might need to take certain measures. First step in that direction might be to bring in effective national legislation. It was necessary that in order to be able to prosecute violators of the crimes listed in the Statute, and there by avoided a case being brought before the Court due to the inability to prosecute such a crime, to make those crimes punishable at the national level. Therefore, it was essential for effective operation of the complementarity principle to adopt necessary legislation.

85. As a concluding remark, he stated that, further clarifications on the principle of complementarity by the Court in its judgments in the future would help build confidence of the international community, mainly of States, and would encourage active response in the form of adopting adequate national measures and in more States becoming parties to the Statute.

86. The **President** thanked the panelists for their presentations. Then he invited the Delegates to make comments on the presentations.

87. The **Delegate of Malaysia** wanted to know how countries that did not have specific national legislations, incorporating the crimes enlisted in the Rome Statute, criminalize those crimes, and how those crimes could be internalized into their national legislations, without amending their Constitution, which was a very difficult task. She also said that for some grievous crimes death penalty was accorded in her country, whereas the Rome statute did not have any such provision, therefore, would it mean looking at two sets of crimes, one under the ICC and the other under the domestic law?. The delegate was also concerned about the gravity of offences to be tried by the ICC and

the interpretation of the same by the Prosecutor. Further, the **Leader of Delegation of Malaysia** while referring to Articles 6 and 7 of the Rome Statute of the ICC stated that in practice it would be very difficult to comply with all the elements of crimes enlisted in those articles.

88. The **Delegate of the Sultanate of Oman** at the outset extended deep gratitude to the Organization and to both the States of Malaysia and Japan for the efforts made in holding a roundtable meeting of legal experts of the Organization's Member States on the Review Conference of the Rome Statute of the International Criminal Court, at the Attorney General's Chambers in Putrajaya, Malaysia on March 30<sup>th</sup> and 31<sup>st</sup> 2010, which had a great impact on the preparation for the Rome Statute Review Conference and the development of a unified stance regarding the issues to be discussed. To the extent of that coordination and consultation came the harmonized stances of the Organization's Member States at the Review Conference in Kampala in which the Sultanate participated at the end of May 2010. The Sultanate of Oman recorded with interest the resolutions of the conference, including the Kampala Declaration to promote the International Criminal Court, which contained a confirmation of the universality of the Rome Statute of the International Criminal Court and the commitment of the State Parties to it and its full implementation, as well as the determination to put an end to impunity for the perpetrators of the most serious crimes against humanity, and the resolve to continue efforts to support and promote the rights of victims and continue the implementation of the system with its provisions to strengthen the national judicial capacity to prosecute the perpetrators of crimes that concern the international community.

89. He also said that his country had followed the discussions on the principle of complementarity between the jurisdiction of the Court and the national judicial systems, which were keen to stress this principle and recognize that the responsibility for investigating the most serious crimes against the international community and prosecuting the perpetrators rested primarily on the states, and was subject to its jurisdiction. That jurisdiction shall not be withheld if the state's judicial organs were capable of conducting a serious and impartial trial for the perpetrators of those crimes, so that the jurisdiction of the Court became supplementary and was not invoked except in case of the incapacity of the national judicial systems and their regulations in pursuing the perpetrators of the crimes set forth in the Rome Statute.

90. The **Leader of Delegation of the Sultanate of Oman** was however skeptical about the impartiality of the ICC. He also wanted to know the basis on which the independence of the ICC could be judged.

91. The **Delegate of the Republic of Korea** maintained the view that the Asia-Pacific region was under-represented in the ICC and it was important that the goal of universalization of the Rome Statute be achieved. He hoped that more countries in Asia would ratify the Rome Statute. He also maintained that the positive complementarity was integral to the Rome Statute and a global justice mechanism could be built upon that principle. He said that the Republic of Korea supported the activities of the ICC and believed that it was an important institution for achieving the goal of peace and justice.

92. The **Delegate of the Kingdom of Saudi Arabia** stated that despite the fact that Saudi Arabia was not a State Party to the ICC it did not have any problems with the principles of the ICC. He said that the laws in Saudi Arabia were very clear and the ICC could not supplement national jurisdiction in any way. He then asked how countries could relate between national crimes and the crimes within the jurisdiction of the ICC as this movement from one set of court to another itself would amount to interfering with the sovereignty of States.

93. The **Delegate of the United Republic of Tanzania** thanked all the panelists for their useful presentations and said that it had provided valuable insight into the working of the ICC. He desired that seminars on the ICC should be held in individual Member States so that the ICC Statute could not be distorted. He felt that AALCO could assist in the holding of such seminars and this would be consistent with the objectives of AALCO. He maintained that it was important to work closely with the ICC so that it could be further strengthened as an institution to combat impunity. He commended the Government of Bangladesh, a Member State of AALCO for becoming the 111<sup>th</sup> State Party to the ICC. He noted that Tanzania was determined to fulfill its responsibilities and had signed an agreement with the ICC to appear before the Court. It had also signed an agreement to provide refuge to the refugees. It had also signed the Agreement on Privileges and Immunities. Tanzania welcomed the signing of pledges by States during the Kampala Review Conference, so that the principles of the Rome Statute could be domesticated. And the principle of complementarity implemented.

94. Having said that the Delegate of Tanzania said that Tanzania had expressed its concern in the African Union (AU) about the ICC. The AU had adopted a resolution requesting the ICC under Article 16 of the Rome Statute, to defer proceedings in the case against the President of Sudan. However the Security Council had not requested upon that request and it was felt by the Member States of the African Union that it was not a good practice. He said that the case instituted against the President of Sudan was a very critical issue, because the arrest of President Bashir would affect the peace process in Sudan. Therefore, it would be better in Sudan if, "Justice followed Peace", he clarified that their support was only for President Bashir, otherwise in all other aspects Tanzania supported the ICC.

95. The **Delegate of Brunei Darussalam** expressed the same concerns as raised by Malaysia and said she would be grateful if the panelists could address some of those concerns.

96. The **Delegate of Thailand** said that as a signatory to the Rome Statute, Thailand had promoted the aims and purposes of the ICC to bring to justice perpetrators of crimes that threatened the peace, security and well-being of the world. The principles as enshrined in the Rome Statute were reflected in the Thai Constitution which was the supreme law of the land aimed to promote and protect fundamental human rights. With regard to the principle of complementarity, Thailand recognized that national courts must play a crucial role in conducting investigation and prosecution of the crimes under the

Rome Statute and, unless a State was unwilling or unable to carry out investigations and prosecutions, only then the ICC would have jurisdiction to do so to prevent impunity from crimes committed. Thus, Thailand welcomed the Kampala outcome to further explore ways to enhance the capacity of national jurisdictions to effectively prosecute perpetrators, including strengthening regional and international cooperation, as international criminal justice should be a prerogative for States to address at the national level in terms of bringing about reconciliation and reparations to the victims.

97. With regard to universal application of the Statute, Thailand had set up a National Committee for the Consideration of the Rome Statute of the ICC to consider amending domestic law for the purpose of ratifying and implementing the Statute as well as to consider the delicate question of irrelevance of immunity of Head of State relating to the provisions of Article 27 of the Rome Statute. Given that those issues were of a sensitive nature and that concern was shared by many Member States of AALCO, Thailand was of the view that they had to be carefully studied and considered further and perhaps for AALCO to act as a forum to assist States members in their process of ratification.

98. The **Delegate of the Islamic Republic of Iran** referred to the difficulty in applying Article 17 of the Rome Statute. He wanted to know what would be the position of ICC if a State decided to give amnesty in certain cases.

99. The **Delegate of the People's Republic of China** emphasized on the necessity of national capacity building and establishing a working group of experts within AALCO to study the principle of complementarity in greater detail.

100. The **Delegate of the Arab Republic of Egypt** strongly opposed the interference by the Security Council or the International Criminal Court into the internal affairs of a country. He insisted that unless a state was State Party to the ICC, the ICC should not take up any matter pertaining to the internal affairs of a country.

101. In response to the concerns raised by the Member States in relation to the Principle of Complementarity and its application, **Mr. Pahkiso Mochochoko**, Senior Legal Adviser, International Criminal Court briefly addressed those concerns. Firstly, he highlighted that there was need to have another seminar on that topic in order to be able to address all the pertinent concerns raised by the Member States; secondly, responding to the Delegation of Malaysia he said it would be beneficial for the Member States if they could internalise the crimes enlisted in the Rome Statute into their national legislations. Doing that would also be helpful in cases where national legislations had not mentioned a punishment for a particular crime; thirdly, with regard to the principle of positive complementarity he said that this did not/would not amount to interference with the state sovereignty rather it would benefit states on a bilateral basis, as they would learn from the example of each other; fourthly, as regards the gravity of offences and how the Prosecutor of ICC would interpret it, the panelist while referring to the situation of Iraq mentioned that in that situation it was not the gravity of the offences committed rather ICC could not look into that case as Iraq was not a State Party to the ICC; fifthly, regarding the issue of serious crimes, the panelist stated that the crimes enlisted in the

Rome Statute were the most serious crimes and thus the elements to be proved were commensurate with the seriousness of the crime itself, thus the definition of the crime itself met with the highest threshold once it was in the Rome Statute; and finally, Mr. Mochochoko maintained that the ICC was an independent and impartial court which was only guided by law, evidence and facts.

102. In response to the concern raised about the role and functioning of the Security Council and the ICC, the Senior Legal Adviser from the ICC maintained that both were independent bodies, one was a political body and the other a purely legal one. Their roles were clearly defined, and their roles should not be confused. He opined that it was the Member States that had vested the Security Council with a role in the International Criminal Court, now if they were not satisfied with that, it was up to the Member States to amend the Rome Statute accordingly. However, he said that, once a situation was referred to the ICC by the Security Council, in the present instance the situation in Darfur, Sudan, the ICC would look at it from a purely legal perspective. He also made a distinction between a referral from the Security Council and the Security Council not agreeing to defer proceedings in an ongoing case. While referring to the situation of Darfur, he said that it was a situation before the ICC, where the Judges were carefully weighing the evidence before them. Mr. Pahkiso Mochochoko said that under the Rome Statute all the States were under an obligation to cooperate with the ICC, and in that connection said that it remained to be seen what happened with the resolution adopted by the African Union.

103. Lastly, replying to the query about amnesty being granted, Mr. Mochochoko, said that there could be no amnesty for international crimes and that was the position taken by both, the ICC as well as the United Nations. The reason was that the crimes listed under the Rome Statute were so serious in nature that amnesty could not be granted for them under any provision of international law.

104. Mr. Mochochoko also said that seeing the concerns raised by the Member States of AALCO it would be useful to have another meeting some other time specifically on the "Principle of Complementarity" it could be organized by the AALCO and the ICC would be willing to participate in it.

105. **Amb. Yasuji Ishigaki**, appreciated all the comments and statements of the delegates, which showed unanimous support for the concept of the principle of complementarity. Many statements were positive towards the objective and ideas of the principle, although some delegations expressed their reservations towards some activities of the Court. Amb. Ishigaki also appreciated the statement of the Republic of Korea for the Korean activities in the ICC, which were always appreciated by Japan. He also appreciated Korea's efforts to universalize the Rome Statute of the ICC. Japan also joined its voice with Korea for more Asian States to become parties to the ICC.

106. **Dr. Roy Lee** in his remarks briefly said that the independence and impartiality of the ICC and its judges was the most fundamental concern when the Rome Statute was drafted. The tribunals established before the Rome Statute dealt with the nationals of

other nations, the ICC was created to deal with the nationals of the States Parties. Therefore for the drafters of the Rome Statute it was very important that the ICC was independent, and impartial. In order to achieve during that period of negotiations which lasted over 10 years, it was agreed upon was that: (i) it should have a very comprehensive statute thus it has over 120 articles in its Statute; (ii) all the 93 crimes included in the Rome Statute were elaborated and each crime had its elements incorporated which also forms part of the Statute; (iii) several years were spent to come up with the almost 200 rules of procedure which also formed part of the Statute; therefore all this clearly showed that the State's jurisdiction came first and only when a state was unable or unwilling to prosecute its nationals the ICC would step in. He said that the ICC Statute was a very carefully drafted document and that was the reason why State's had adopted it. Having said that Dr. Lee said that there were some areas of ambiguity which could be further refined.

107. **Dr. Srinivas Burra** in his brief concluding remarks said that the principle of complementarity envisaged cooperation between States, International Organizations and civil society; in a way that national jurisdiction was given priority over the ICC.

108. Before concluding the working session on the Principle of Complementarity the **President** invited the **Leader of the Delegation of the Sultanate of Oman** to take the floor. The Leader of Delegation referred to the remarks made by the panelists and said that according to them the ICC was independent and impartial and while judging a case the judges at the ICC would rely purely on proof and evidence. He said that this was very well known fact however equally real was the fact that the judges were influenced by the environment around them. He would apply to situation and persons where a State of an individual was highly influential. He believed that the politics of the day largely determined what was presented to the judges and in turn the judges would make their rulings based on the reports that were presented to them. Thus, in his view the ICC could not keep itself completely aloof from politics and thus could not function impartially.

109. The **President** in his closing remarks said that the issues related to the ICC could take as much time as was possible. Therefore, he suggested that the AALCO Secretariat could establish a working group of experts on the ICC and that group could report back at the next Annual Session of AALCO. Thereafter he thanked the panelists for their valuable presentations on the subject and the delegates for their inputs on that subject matter.

## **Working Session II: Crime of Aggression**

110. The **President** informed that the Working Session II on the Crime of Aggression would begin with the presentation of Prof. V.S. Mani who was the Director, School of Law and Governance, Jaipur National University, India. He also informed that as the time was very short for the second session before lunch, he would extend the session for another 15 minutes.

111. **Prof. V.S. Mani, Director, School of Law and Governance, Jaipur National University, India**, in his presentation stated that aggression was a phenomenon, although tomes had been written on aggression. The concept of aggression came to be considered as a crime when the war of aggression as a crime under international law was stated by Nuremberg Tribunal and also various other documents such as: the United Nations General Assembly Declaration defining Aggression in 1974 and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970. He further mentioned that Dr. K. Krishna Rao, former Legal Adviser to the Ministry of External Affairs, Government of India had described colonialism as permanent aggression.

112. The Panelist noted that there were problems arriving at a definition of aggression, which was reflected in the Rome Statute of the ICC in 1998. Even the International Law Commission (ILC) failed to come up with a definition of aggression and it was left to the Member States to evolve a definition and in that respect, Kampala Review Conference was extremely important. The Kampala Conference approached the definition mainly on three aspects: 1) defining aggression and identifying various acts of aggression; 2) conditions under which the International Criminal Court could exercise jurisdiction; and iii) amending and review process. He viewed that all the above three aspects could work simultaneously.

113. Prof. Mani observed that the definition of aggression which was recently adopted at the Kampala Conference was similar to both Article 2 (4) of the Charter of the United Nations and the definition of aggression adopted by UN General Assembly in 1974. After the adoption of definition, the Kampala Conference identified the aggressive acts, he noted. For the purpose of the definition, he quoted Article 8 *bis* which stated that “the crime of aggression” means planning, preparation, initiation or execution by a person in a position effectively to exercise control over to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. Further, he observed that, going by the definition, all acts were not aggression or not aggressive acts and could be interpreted as, only those acts were aggressive acts, which were by their character, gravity and scale constitutes a manifest violation of Charter of the United Nations. Then, the definition identified the various acts of aggression, which in a sense was a reiteration of 1974 Declaration defining aggression. According to him, it was a good thing, because the 1974 Declaration defining aggression was arrived by consensus at the UN General Assembly.

114. With regard to the conditions of jurisdiction by the Court, Prof. Mani stated that the jurisdiction of the Court had three triggers and they were: i) a State party to a dispute can initiate or move the Court; ii) Prosecutor can move to Court; and iii) Security Council can make a deferral or referral. Many felt uncomfortable about the role of the Security Council in determining the jurisdiction and towards that, he supported the position taken by the Government of India on that matter. Then, he enquired that what role could be given for the determination of the Security Council, because no one could ignore that. In that connection, he quoted Article 39 of the Charter of the United Nations, which stated



that “the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.

115. The Panelist stated that the approach taken by some of those who argued against the inclusion of aggression in the Statute based on the argument that it would be for the Security Council to determine what constituted an act of aggression was not exactly correct. There were certain third world jurists who voiced against it unequivocally. He particularly mentioned on Judge T.O. Elias, a distinguished son of Africa, countered such argument. Further, he cited a case which was decided by the International Court of Justice (ICJ) in 1984, the Nicaragua Case, where Judge Elias was also part of the case in which the Court clearly stated that the Security Council had only primary responsibility and not exclusive with regard to international peace and security. Also it was stated in the judgment that, there were situations that when a dispute was pending before the Court, the Court must exercise jurisdiction, irrespective of the Security Council's decision on the dispute. The role of the Security Council was essentially political and any judicial settlement could not be subservient to the political body. The Panelist mentioned that those were some of the arguments raised by Judge T.O. Elias and the ICJ on the Nicaragua's Case.

116. The Panelist noted that he found broadly the conditions under which the Court could exercise jurisdiction. The Court could take into account a decision by the Security Council, but the decision by the Security Council was ultimately not binding on the Court. Further, he mentioned that this could be viewed in the ICC's situation by the Member States and it could provide a useful progress to move in a right perspective.

117. He also said that the only problem with those trigger mechanisms, was that the Court could not be acted upon on the definition or the amendment to the Statute until 1<sup>st</sup> January 2017. He could understand the political compulsions, but he did not understand why 7 years should be given for States to reconsider that situation through amending process. He viewed that once the decision was taken or adopted with regard to amend the Statute, the Court should have been allowed to act upon on that decision and that was the meaning of Article 5(2) of the Statute of the ICC. Once the amendment was adopted, the Court should be able to act upon it, he further emphasized.

118. In his concluding remarks, the Panelist stated that he had encapsulated the outcome of Kampala Conference with regard to the definition of the crime of aggression. As an academic, he found an interesting problem related to the situation. He referred to a problematic situation, where only the Member States had to solve it. He quoted Hans Kelsen who stated that self-defence was justified against an armed attack. Therefore, if an armed attack was not proved, self-defence would become illegal. Keeping it in view, he questioned that would such illegal self-defence be an act of aggression, would the ICC be in a position to sit in a judgment over Article 51 of the Charter of the United Nations?

119. The **President** thanked Prof. Mani for his presentation and stated that since Prof. Mani had to leave urgently, he would not be able to present their during the discussions. He then called upon Amb. Ishigaki.

120. **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan**, at the outset stated that it was a pleasure for him to make remarks in the Working Session on Crime of Aggression.

121. Amb. Ishigaki pointed out that it was well known that, concerning the definition of crime of aggression, there was a long history of discussions and debate in various international fora. Not to mention much earlier discussions in the UN General Assembly, and to limit himself to only recent years, the Rome Conference, while deciding that the crime of aggression should be included as one of the serious crimes within the jurisdiction of the ICC, failed to reach agreement on a provision defining the crime and set out the conditions under which the Court should exercise jurisdiction over that crime.

122. Hence, Article 5 of the Rome Statute had a second paragraph to that effect and the Special Working Group on the Crime of Aggression (SWGCA) had worked for over five years and arrived at a definition of the crime of aggression for inclusion in Article 5(2) of the Rome Statute.

123. The Panelist noted that his country for its part had its own historical experience deriving from World War II and had considered that the international criminal tribunals should never be operated on the basis of *ex post facto* law but always on the basis of the principle of legality including due process of law.

124. The Special Working Group on the Crime of Aggression, after five years of its deliberation, produced draft amendments to the Rome Statute that were given the Court jurisdiction over the crime of aggression, and left States Parties to resolve a difficult question of a jurisdictional dispute with the Security Council, once agreement had been reached on a definition of the crime, he observed.

125. Further, at the Eighth Session of the Assembly of States Parties (ASP), which was the last one prior to the Kampala Conference, States Parties had come out with a text for consideration at the Review Conference as the provisions for crime of aggression that was included in the Rome Statute. However, due to the wide divergence of views, overwhelming views at that time were that nobody was certain that a final agreed text could be worked out at Kampala.

126. In that regard, the Panelist recalled that at the AALCO Round Table Meeting held at Putrajaya, Malaysia at the end of March, no optimistic view was heard from the participants on the prospect of the final outcome of the Review Conference.

127. At Kampala, intensive discussions took place on the formulation of the provisions on the crime of aggression. The biggest issue was on the conditions for the jurisdiction of the Court. In particular, most time and effort were directed to discussions on the question

of how to define the jurisdiction of the Court in relation to the Security Council's power to determine the existence of act of aggression, he stated.

128. After strenuous efforts were made, on the question of crime of aggression, one resolution (RC/Res.6) was adopted on the last day of the Conference, 11 June 2010, which contained three Annexes:

- (1) Amendments to the Rome Statute of the ICC on the Crime of Aggression (Article 8 *bis* and Articles 15 *bis* and *ter*),
- (2) Amendments to the Elements of Crime (Article 8 *bis*), and
- (3) Understanding regarding the Amendments to the Rome Statute of the ICC on the Crime of Aggression

129. The Panelist did not go into detail of each Annex but mentioned only a few key portions:

130. He stated that Annex I included 3 new provisions: Article 8 *bis* stated the definition of crime of aggression; Article 15 *bis* provided for the exercise of jurisdiction over the crime of aggression in cases of State referral and *proprio motu*; and Article 15 *ter* provided for the exercise of jurisdiction over the crime of aggression in cases of the Security Council referral.

131. It was said in those new Articles that, "it was stipulated that the jurisdiction of the Court over the crime of aggression shall commence one year after the ratification or acceptance of the amendments by thirty State Parties, or subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute".

132. In the operative part of the Resolution, it was stated:

- "That the amendments adopted are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5;
- That any State Party may lodge a declaration referred to in article 15 *bis* prior to ratification or acceptance;
- That the understandings contained in annex III are regarding the interpretation of the amendments adopted, and
- That it is decided that the amendments on the crime of aggression would be reviewed seven years after the beginning of the Court's exercise of jurisdiction"

133. Thus, according to the amendments adopted on the crime of aggression, if certain conditions were met, the ICC could exercise jurisdiction on the said crime even in the event when the UN Security Council does not determine the existence of act of aggression. Since the permanent members of the UN Security Council have hitherto insisted on the prerogative rights of the Security Council concerning the determination of act of aggression, their departure from such position was most significant, he pointed out.

134. Further, he observed that, on the other hand, reflecting on very divergent views and positions of States Parties, the amendments adopted at Kampala were very complex and of unprecedented nature. Therefore, they included some controversial points which needed to be clarified.

135. For that reason, his Government considered that it was important to build up a common understanding on the legal interpretation of the relevant provisions before the ICC and how it would be able to exercise its jurisdiction on the crime of aggression.

136. The Panelist further mentioned that although it was not directly linked to the crime of aggression, it should be noted that, at Kampala, it was decided by consensus to retain Article 124 which would give options to newly acceding countries. The AALCO Round Table Meeting held in March played a critical role in that outcome, he pointed out. In that context, his Government took the opportunity to appeal to non-States Parties to consider positively joining the ICC at an early date.

137. Finally, he concluded by saying that, over all, that was not confined to the question of crime of aggression, but the Review Conference was not a goal point but instead a new starting point. It was of critical importance to endeavour to make the International Criminal Court, an institution truly *effective, efficient, universal and systemically sustainable*.

138. **Dr. Roy S. Lee, Permanent Observer of AALCO to United Nations at New York**, in his presentation raised few points. Firstly, he stated that Article 39 of the Charter of the United Nations gave the Security Council the competence to determine the existence of a breach or threat to international peace and security. But this is in reference to State to State aggression. In the case of the ICC, the focus is individual criminal responsibility, not State responsibility. During the drafting of the Rome Statute, it was not possible to have an agreement to deal with the crime of aggression, primarily because of the interrelationship between State aggression and individual criminal responsibility of aggression. One of the question was: could an individual be accused of committing a crime of aggression without the State being declared to have committed an act of aggression? Very different views were expressed during the negotiation. The compromise at the Rome Conference was that the crime of aggression would be listed in the Statute, but it would not be operational until the definition of crime of aggression and the conditions for the Court to exercise jurisdiction had been decided by the States Parties.

139. As regards the Kampala Review Conference, the Panelist pointed out that the States Parties had adopted the new definition and also the conditions for the Court to exercise jurisdiction. At the Conference, the approach adopted was a stage by stage implement implication. It first adopted the definition and elements which were subject to ratification by States. The processes would then be reviewed in seven years' time. While there were ambiguities, it was clear that if a State had been determined under Article 39 as an aggressor state then its nationals could be prosecuted for the crime of aggression.

140. Further, he pointed out that new provisions on the crime of aggression made clear that the ICC had no jurisdiction over a national of non-State Party so far as the crime of aggression was concerned. Article 15 *bis*, Paragraph 5, stated that, “in respect of a State that is not a Party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression while committed by that State’s nationals or on its territory”. It was a very interesting exception and a perfect guarantee for non-State Parties.

141. Dr. Lee pointed out that a non-State Party could still make an ad hoc declaration accepting the ICC jurisdiction for a situation involving the crime of aggression. Again, that was some thing that non-state parties may wish to bear in mind, he observed.

142. Finally, he referred to comments made by one of the Panelists regarding the length of time that would be required to see the new provisions on crime of aggression to come into effect. He suggested that interested non-States Parties should consider incorporating the definition of crime of aggression into their national laws, which would bring the definition into effect immediately. If this is done by a group of States, it would constitute strong evidence of customary law transforming in a speedy way treaty law into custom.

143. Thereafter, the **President** opened the floor for comments and discussions.

144. The **Leader of the Delegation of India** thanked the panelists for their excellent presentations. He made few observations based on the panelist’s presentation. He stated that the panelists were indirectly indicating that the definition was a non-starter, it had quite a lot of loop holes, and the definition was transitory and it was just a beginning and no body knew whether it would end up with that.

145. Secondly, he stated that the said definition was not the only definition. He pointed out the Understanding, which stated that “it does not limit or prejudice in any way existing or developing rules for the purpose of international law other than the Statute”. So it was meant for only the Parties, since they had accepted it as the definition. But, the other nations might have other definitions also, it does not prevent that.

146. Thirdly, he opined that the definition had another difficulty of not integrating with the national legislation, for example, in dualist countries, international law was not at all applied in the municipal system, he stated. Naturally, if it was a crime, under the rule of law, the lowest of the lower court that would deal with irrespective of the size of the crime and who the person was.

147. He further pointed out the Understanding, where it stated that, “whether act of aggression has been committed, considerations of all circumstances in each particular case including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations”. As per the Understanding, it required the lowest municipal court to interpret the Charter of the United Nations. Hence, he was of the view that there was a major problem and it was very difficult to integrate it in to the national system.

148. He also referred the observation made by the representative of the ICC at the earlier session that when a general amnesty was given, the ICC would not accept it. It was again going to be very difficult in certain countries, because amnesty was given by the government and it was a constitutional guarantee. So, those were some of the problems he could visualize in terms of integration into municipal systems of the State Parties, he noted.

149. The **Delegate of Thailand** stated that as for the adoption of Article 8 *bis*, his country applauded the hard work and effort of all concerned in coming up with a definition to criminalize the crime of aggression including a viable compromise of the relation between the UN Security Council vis-à-vis the Court, which in their view, could be considered a mark of progress for international criminal justice. Subsequently, his country would continue to monitor the developments in completing the substantive or core crimes envisaged by the Statute and the ratification by Member States of the amendment in to their domestic law.

150. In conclusion, he assured that his country would attach full commitment to end impunity for the perpetrators of the most serious of crimes to the international community.

151. The **Leader of the Delegation of Republic of South Africa** raised a question, was it necessary that the term aggression to be defined? Could it not left to the presiding judge, after representation made by the prosecution to ascertain whether it was an aggression or not?

152. The **Leader of the Delegation of Gambia** gave his opinion to the comment made by the Leader of the Delegation of Republic of South Africa. He was of the view that the judge had to determine the law and there was a process of interpretation through that Court, not by the judge to determine what constitutes the offence, it was straight that judges would make law, interpret law based on the process of judicial proceedings.

153. The **Delegate of the Sultanate of Oman** stated that his country had closely followed all the developments and discussions that took place on defining the crime of aggression, and the conditions of the ICC's jurisdiction to prosecute the perpetrators of that crime.

154. The Delegate deeply appreciated the efforts made by the Member States of the Organization in those discussions in cooperation with the group of Member States of the Non-aligned Movement and other international groups which supported the stance of the States of the Organization.

155. The Delegate could not fail to note that the obstacles placed in the resolution issued by the Conference on defining the crime of aggression, which served to limit the jurisdiction of the Court in the eyes of that crime in what the amendment allowed in blocking the jurisdiction of the Court in several cases, and not extended that jurisdiction

to States that declared their non-acceptance of that jurisdiction, especially if they considered that most violations of international law at the present time were committed by States that were not party to the Court, and their acceptance of the jurisdiction of that judicial institution could not be envisaged.

156. In conclusion, he emphasized, strongly, as the delegation of the Sultanate of Oman had done in previous sessions, the importance of ICC adhered to more independence, impartiality and objectivity in its work, furthered itself from its politicization and considered international matters and humanitarian events wherever they occur from one angle and a standard criterion based on justice, in order to achieve the purposes of its establishment as an independent institution concerned with prosecuting the perpetrators of the most dangerous crimes on humanity. The adherence to that would confirm the credibility of the Court and enhance its international position, and render it a real hope that the oppressed in all parts of the world look up to uphold justice and lift oppression from the shoulders of the oppressed. If however, it does not commit to the noble purposes for which it was established and succumbed to political pressures and the exercise of international powers, it would then become, without a doubt, another severe whip in the hands of the executioners of humanity who do not observe any pacts of pledges, the delegate observed.

157. The **President** invited the panelists to make their comments.

158. **Amb. Ishigaki** while thanking the Member States for their comments stated that he did not wish to share the problems that had been raised, but instead, as legal experts, they should analyze the outcome of the Kampala Review Conference, and there was a need for more discussions and debates between the countries who were State Parties and non-State Parties to the Statute on the particular provisions.

159. As regards the questions raised by the Delegate of South Africa, he stated that the Leader of the Delegation of the Gambia answered very rightly. With regard to international criminal justice, the law should have all the elements of crime etc., stipulated and he agreed that judge was only an interpreter of the laws and that was why the international community arrived at such a definition after several rounds of negotiations on the definition of the crime of aggression.

160. **Dr. Roy S. Lee** briefly responded to the question raised by the Leader of the Delegation of India. He stated that he agreed with him completely. Further, as a State party, the Parties had to accept all the provisions adopted. He mentioned that his standpoint was that looking at from non-State Parties perspective, the main difference was that they had full freedom to pick what they wanted and drop what they did not like.

161. The **President** then invited Malaysia to make their comments.

162. The **Leader of the Delegation of Malaysia**, at the outset, thanked the panelists for their brilliant presentations. He noted that there were 192 Member States in the United Nations. Out of which 81 countries had not ratified the Rome Statute of the ICC,

in which 30 countries were AALCO Member States, which were roughly 40 per cent of the non-party members. So, there was something serious there and it needed to be looked at very carefully, he observed. In order to discuss the issues of common concerns of non-State Parties of the Rome Statute from the AALCO Member States, he proposed a workshop in collaboration with ICC and AALCO in Kuala Lumpur. He also stated that the said workshop would be specifically meant to non-State Parties of the Rome Statute of AALCO Member States, to look at how they could enhance their domestic laws, before they ratify or before they wanted to ratify the Rome Statute. He also noted that the AALCO Member States who were non-State Parties to the Rome Statute should sit together and discuss the issues thoroughly and come to the conclusions as to whether their municipal laws were sufficient to meet those legal standards. In that regard, he stressed that, 'a rose is a rose by whatever the name you call it'. He hoped that the distinguished members of AALCO would kindly accede to his proposal for convening a workshop for the AALCO Member States which were non-State Parties to the Rome Statute.

163. The **President** thanked all the panelists and the Member States for their comments and questions. He further stated that there were many unresolved issues which needed to be discussed in detail and it would require lot of time. In that regard, he was confident that AALCO would organize more meetings to deliberate those important issues pertaining to ICC.

**Thereafter the Session was adjourned.**



**VIII. SUMMARY RECORD OF THE SPECIAL MEETING ON  
“ENVIRONMENT AND SUSTAINABLE DEVELOPMENT”  
HELD ON SATURDAY, 7<sup>TH</sup> AUGUST 2010 AT 2:30 PM**

**His Excellency Mr. Mathias M. M. Chikawe, President of the Forty-Ninth Annual Session in the Chair.**

1. The **President** invited Dr. Yuichi Inouye, Deputy Secretary-General, AALCO to make his introductory statement on the agenda item “Environment and Sustainable Development”.

2. **Dr. Yuichi Inouye, Deputy Secretary-General, AALCO** welcomed the panelists and the delegates for the special meeting on “Environment and Sustainable Development” jointly organized by the Government of the United Republic of Tanzania, International Council of Environmental Law (ICEL) and the AALCO Secretariat.

3. He said that the Organization had been following the developments on Environment and Sustainable Development since 1975 with the present focus being on the implementation of the three Rio Conventions namely, the: United Nations Framework Convention on Climate Change, 1992 (UNFCCC); Convention on Biological Diversity, 1992 (CBD); and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994 (UNCCD); and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002 (WSSD). The Secretariat report on these topics for that year was contained in document no. AALCO/49/DAR ES SALAAM/2010/SD/S 10.

4. As regards, the Special Meeting, the DSG informed that, it had two working sessions, namely; Building momentum towards Cancun Climate Change Negotiations; and the Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Covenant on Environment and Development. The convening of that special meeting on building momentum towards Cancun Climate Change Negotiations was a very significant and pertinent one as far as countries from Asia and Africa were concerned. In that regard, he apprised the meeting about some of the recent developments on the issue of climate change. The Copenhagen Climate Conference had met with the goal of adopting a legally binding instrument; however, even the political agreement Copenhagen Accord though negotiated by several world leaders, could not be adopted by consensus at the Conference. Despite that the Accord represented a significant achievement as it was demonstrative of the commitment by most of the nations on a collective, long-term response to climate change, and a set of measures to implement global climate action. It represented a letter of political intent to limit the global temperature rise, it asked countries to record national emission reduction pledges and promised defined short and long-term finance to the developing world. The forthcoming Cancun Climate Change Conference, the DSG observed presented a unique opportunity to translate that political intent into legally binding mandate.

5. The DSG mentioned that there were serious differences persisting between developing and developed countries on the legal form of outcome that was to be considered at the forthcoming Cancun Climate Change Conference that whether the outcome should be an amendment to the Kyoto Protocol or a new single agreement. It was important to arrive at a consensus on the legal form of the outcome. Further, the main sticking points were: how to engage the United States of America and ensuring the comparability of Annex I countries emission reductions efforts; agreeing on the fate of Kyoto Protocol; and finding a legal framework for mitigation and monitoring, reporting and verification that was acceptable to both developed and developing countries.

6. The DSG emphasized that amidst all those issues, to combat the threat posed to the planet Earth by climate change a fair, effective, comprehensive and legally-binding framework on stronger international action on climate change beyond 2012 was the need of the hour. The building blocks for such an outcome should certainly include concepts such as historical responsibility, justice, equity, principle of common but differentiated responsibility, as well as the effective implementation of developed countries commitments and support for developing countries. He hoped that through collective action Cancun could deliver a full, operational architecture to implement effective, collective climate action.

7. Moving on further, Dr. Inouye observed that the direct link of climate change issues with other main environmental issues like desertification and loss of biological diversity could not be overlooked. Though that issue remains the dominant one on international political agenda, the human face of climate change was most evident in the livelihoods of the drylands people. Important in that context, was the imperative of ensuring food security in drylands, wherein the convergence of the fuel, food, financial and economic crisis, against the backdrop of climate change had devastating effects on the world's poorest and most vulnerable. The Desertification Convention sought to address those challenges and alleviate the suffering of the peoples.

8. The DSG stressed that countries must remain united in protecting the environment, but not at the cost of only developing countries who were repeatedly asked to bear the brunt of sharing the burden. The significance for developing countries, Small Island Developing States, least developed states of both Asian and African regions in terms of preservation of biological diversity was more because: *firstly*, of the strategic location which had higher amount of biological diversity; *secondly*, therefore, indigenous communities that depended on them for the livelihood and sustenance was more, and *thirdly*, need for development alongside protection and conservation should be simultaneously happening rather than allowing exploitation of them. In that backdrop, States must be cautious while negotiating on post-2010 biological diversity target at the forthcoming Nagoya Summit in Japan in October 2010. More care must be attributed to the Draft Protocol on ABS because the terms, language, implications and implementation strategies should not be, in future, used against the welfare of the peoples at the cost of biodiversity loss.

9. The DSG said that the two main documents for the Working Session II were the African Convention on the Conservation of Nature and Natural Resources, 2003; and the Fourth Revised Edition of the Draft International Covenant on Environment and Development. The revised version of the African Convention on the Conservation of Nature and Natural Resources that was adopted by the Assembly of the African Union at Maputo on 11 July 2003 in Maputo (Mozambique) was the revision of the original Convention, adopted in Algiers (Algeria) in 1968. The Revision had been qualified as the youngest and most modern amongst the oldest environmental conventions and as the most global amongst the regional. It had not yet entered into force. The African Convention or Maputo Convention encapsulated Africa's distinctive response to changes in attitudes, legal and policy perspectives, scientific developments and international law. It addressed a continent-wide spectrum of issues including quantitative and qualitative sustainable management of natural resources such as soil and land, air and water, and biological resources, and sought to integrate conservation and better environmental management strategies into social and economic development aspirations.

10. The Fourth Revised Edition of the Draft International Covenant on Environment and Development had been a long negotiated draft which originated at the World Charter for Nature; and was adopted and solemnly proclaimed by the UN General Assembly in 1982. For the details of that, the DSG informed that Mr. Donald Kanairu, formerly Director, Environment, Policy and Law Division of the United Nations Environment Programme (UNEP) and currently the Regional Governor of ICEL was with them as panelist.

### **Working Session I: Building Momentum towards Cancun Climate Change Negotiations**

#### **Presentation by Mr. Xiang Xin, Deputy Division Director, Department of Treaty Law, Ministry of Foreign Affairs, People's Republic of China:**

11. The Panelist said that he was very honored to be a member of the panel of the Special Meeting on Climate Change and Sustainable Development. In that regard, he expressed his gratitude to the government of Tanzania, International Council of Environment Law and the AALCO Secretariat for organizing the special meeting.

12. Mr. Xiang observed that global climate change and its adverse effects were common concern of mankind. Ever since the industrial revolution, human activities, especially the massive consumption of energy and resources by developed countries in their process of industrialization, had increased the atmospheric concentrations of greenhouse gases, caused significant global warming over the past 50 years, resulted in substantial impacts on the natural ecological systems of the Earth, and posed severe challenges to the survival and development of human society.

13. The Panelist emphasized that climate change arose out of development, and should thus be solved in the process of development. The problem of climate change should be dealt with through promoting sustainable development so as to achieve a win-

win outcome of pursuing economic development and addressing climate change. Sustainable development was both the means and the end for effectively addressing climate change. Within the overall framework of sustainable development, climate protection, economic development and poverty reduction should be considered in a holistic and integrated manner to ensure the developing countries to secure their right to development.

14. Climate change was a matter of human survival and bore on the well-being of all countries, and was also a matter of the fairness and justice of the world. He said that China had taken an active and constructive part in the negotiation and international cooperation on climate change. China holds that climate change should be addressed in the context of sustainable development and under the principle of “common but differentiated responsibilities”. Equal emphasis should be placed on both mitigation and adaptation. To address climate change, China relied on the advancement and innovation of science and technology, took practical national steps and conducted extensive international cooperation.

15. The Panelist observed that one must thank the concerted efforts of the international community, including China, the Copenhagen Conference had reached positive outcomes. The Copenhagen Accord has locked in the crucial consensus among the parties as regard to long-term goals, quantified emission reduction commitments of developed countries, voluntary mitigation actions undertaken by developing countries, transparency, finance and technology, thus providing the political foundation for future negotiations.

16. The Panelist emphasized that to help reach positive outcomes at the Cancun Conference, Mexico, the future negotiations should, on the basis of Copenhagen Conference, continue to make comprehensive progress in promoting the “Bali Roadmap” dual-track negotiation, especially on the work of AWG-KP (the Ad-hoc Working Group further commitments under the Kyoto Protocol). To be concrete, *firstly*, ambitious quantified emission reduction targets should be set for developed countries for the second commitment period under the Kyoto Protocol, and those developed countries that are not Parties to the Kyoto Protocol should also take comparable emission reduction commitments. In their view, developed countries must reduce their greenhouse gases emission in aggregate by at least 40% below 1990 levels by 2020. *Secondly*, effective institutional arrangements should be established to ensure that developed countries fulfilled their commitments to provide technology, financing and capacity building support to developing countries. *Thirdly*, in the context of sustainable development, developing countries should take nationally appropriate mitigation and adaptation actions, supported by technology, financing and capacity building assistance from developed countries.

17. Presently, it was important for the international community to rebuild mutual trust now. In that regard, China wished to see an active and constructive role played by the international community, by facilitating dialogues and cooperation between developed and developing countries. China viewed developing countries as a major and positive

force in the cooperation for addressing climate change, and was willing to expand consensus by enhancing dialogues and make joint efforts to bring about positive outcomes at the Cancun Conference. China was also willing to expand its pragmatic cooperation with all countries in the area of energy saving and clean energy.

18. Finally, the Panelist said that he was pleased to inform all the distinguished delegates, that in order to advance the Bali Roadmap dual-track negotiation, China would host a negotiation meeting in October 2010. That was the contribution China would make on their way toward Cancun Conference.

**Presentation by Prof. Shinya Murase, Sophia University, Tokyo entitled “Climate Change and International Law Making: Looking beyond Cancun”:**

19. The Panelist observed that he would like to begin his statement with an apology. He thought that he needed to make that apology particularly on that occasion, because the topic of climate change often inspired impassionate political and policy debates. So, first, he made it clear at the outset that his views had nothing to do with those of the Japanese government. He was merely an independent researcher of international law interested in climate change. Although he was independent, it was true that his views were inevitably influenced by the general position of his country. Japan being an industrialized nation was responsible for some 4% of the world's total emission of the greenhouse gases, but it took the climate issues most seriously and was striving very hard to reduce those emissions.

20. Second, his views on the topic were limited to the international legal issues. He said that he had always tried to consider the problem of climate change from the perspective of general international law. The legal principles and rules on climate change cannot be isolated from other fields of international law, and he believed that it was important for them to be always conscious of linkages with doctrines and jurisprudence of international law. The “single issue” approach focusing only on climate change was therefore inappropriate.

21. The Panelist said that he would like to mention that he had served as a lead author of IPCC, the Intergovernmental Panel on Climate Change, for the 4<sup>th</sup> Assessment Report, Working Group III, chapter 13 on policy, measures and international instruments.<sup>1</sup> Also, he was currently serving as the Chair of the Committee on Legal Principles relating to Climate Change of the International Law Association (ILA). Their Committee was presenting the First Report<sup>2</sup> to the ILA Hague Conference in the coming week. The Report was uploaded on the ILA website, and he hoped that the delegates would have a chance to take a look.

22. The Panelist thereafter proceeded to make his two points, one on the substantive aspect of climate change issues, and another on the procedural problems on climate change negotiations.

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<sup>1</sup> IPCC, *Climate Change 2007, Mitigation*, Cambridge University Press, 2007.

<sup>2</sup> <http://www.ila-hq.org/en/committees/draft-committee-reports-the-hague-2010.cfm>

23. On the substantive issues, he believed that they needed to assess the current situation within the historical context of international lawmaking on climate change over the past twenty years or so. The UNFCCC, 1992 provided for rather mild and flexible commitments for mitigation of greenhouse gases by developed countries, or Annex I Parties. The Berlin Mandate of 1995 proposed strengthening the commitments of Annex I Parties through the adoption of a Protocol on the basis of the principle of “common but differentiated responsibilities”.

24. Thus, the Kyoto Protocol adopted in 1997 provided for the rigid obligation of each Annex-I Party to limit its emissions of greenhouse gasses by placing upon each State numerical caps with certain flexibility mechanisms attached. Since the first commitment period of the Kyoto Protocol was to terminate at the end of 2012, the negotiations for a post-2012 climate regime were launched by the Bali Action Plan in 2007 with a view to reaching an “agreed outcome” at COP-15 in Copenhagen in 2009.

25. Indeed, it was a known fact that the COP-15 Conference at Copenhagen held in December last year failed to reach any agreement on a legally binding instrument. The Conference could merely “take note” of the Copenhagen Accord, but that remained merely a political agreement. Nonetheless, it was significant that the Conference recognized “the scientific view that the increase of global temperature should be below 2 degrees Celsius”. Though the Accord did not specify “since when” that increase should be measured, but it was presumed to be since the pre-industrial period. It was also important that the Conference agreed to provide additional funding to meet the needs of developing countries. However, many vitally important issues were left unresolved in Copenhagen for further negotiations.

26. Moving on further, the Panelist explained that in fact, the negotiations of the Parties were continuing in Bonn that week in the framework of AWG-LCA, but unfortunately, it was widely speculated that no legally binding agreement would be produced at COP-16 in Cancun, Mexico, later that year, as well. Perhaps, they should look beyond Cancun, and set their target at COP-17 to be held in South Africa in 2011. The meeting in South Africa would be the last hope to reach an agreement, because otherwise they might not have an international instrument to succeed the Kyoto Protocol after 2012.

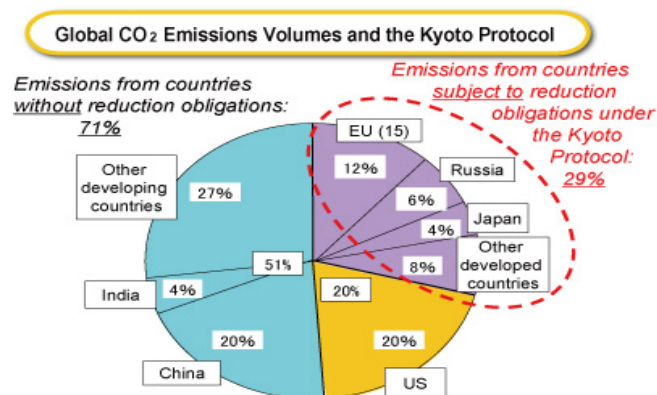
27. In order to set out a viable strategy for a post-Kyoto framework, he believed that they needed to assess primarily the problems with the current Kyoto Protocol. The Panelist observed that while the UNFCCC, 1992 and the Kyoto Protocol, 1997 had definitely been significant first steps to combat global warming, they might note that the Kyoto Protocol had some serious flaws: *First and foremost*, the Protocol imposes obligations to reduce emissions of greenhouse gases only on developed countries, or the Annex-I Parties, while no corresponding obligations were prescribed for developing countries, particularly for large emitter countries. *Second*, the way that the obligations were imposed on developed countries was quite rigid, taking the numerical targets as binding, thus for instance, 6% for Japan, 7% for the United States and 8% for European

countries. He said that these figures were set quite arbitrarily. *Third*, the base year, 1990, was also unfair, because it coincided with the end of the cold war, thus creating “hot air” for Russia and similar “bubbles” favorable for some of the European countries. *Fourth*, he thought it was a mistake that the Conference of the Parties established the rigid non-compliance mechanism, which would penalize the non-complying Annex-I countries. He also pointed out that the current procedure was not fully compatible with the provision of Article 18 of the Protocol on non-compliance.

28. The Panelist stated that in any event, since the United States did not participate in the Kyoto Protocol, and since the large emitter developing countries were not obliged to take mitigation measures under the Protocol, only 29% of global greenhouse gas emissions were covered by the Protocol. The rest 71% of total emissions was not covered by the Protocol. Such a result from the Protocol was far from the ultimate objective that the UNFCCC has set in Article 2 and the mitigation goal that the Kyoto Protocol itself has set in Article 3. In that sense, Kyoto Protocol could not be called a success.

29. Having described the problems of the Kyoto Protocol, he believed that the post-Kyoto Protocol instrument should incorporate the following elements in order not to repeat the mistakes: *First*, it was indispensable to secure participation of all the major emitters, whether developed or developing, which should all come under obligatory commitments. *Second*, the future instrument should incorporate the commitments of these countries in a flexible manner by taking into consideration of the specific situation of each country, while at the same time they should be binding commitments. Flexibility and bindingness were not normally compatible, but they could be happily married as in the case of a system for tariff and non-tariff reductions in the WTO/GATT framework, and he believed that a similar framework could be worked out for emission reduction commitments.

## An Assessment



30. *Third*, the base year should be either 2005 or 2010 to achieve realistic goals for emission control. *Fourth*, the new instrument should provide a facilitative or promotional approach rather than a punitive or enforcement approach for non-complying parties, because, after all, the States which have agreed to join the instrument are “good” States. The enforcement measures should be applied to those “bad” States who would not join the instrument but enjoy the benefits as free riders.

31. Last but not least, he stressed that, for measures of adaptation to climate change, special consideration for vulnerable developing countries should always be their primary concern, and the funding mechanism and technical and technological cooperation with those countries must be adequately implemented.

32. The Panelist thereafter referred to some of the formal and procedural questions. He said that currently, the Copenhagen Accord seemed to be the only basis available to start their discussion for a future instrument, since it was supported by more than 130 countries, although there were a few countries strongly opposing it. However, it was regrettable that the Accord did not give any guidance or indication as to the legal form of the future instrument. It was silent on the fate of the Kyoto Protocol, and did not explicitly support its survival. A range of options for the legal form were considered.

- (i) A legally binding instrument either to supplement the UNFCCC and Kyoto Protocol or replace the Kyoto Protocol
- (ii) An amendment or set of amendments to the UNFCCC including the Annexes, and adding the Annexes
- (iii) A single COP decision or a set of COP decisions to further implement the UNFCCC
- (iv) A Ministerial Declaration containing the elements of the political agreements
- (v) Any combination or package of the above.
- (vi) An instrument agreed upon outside COP: A framework of voluntary nature

Most developed countries favour a single integrated instrument that replaces the Kyoto Protocol which would, in their view, ensure greater participation, particularly by the United States, and therefore effectiveness of the climate change regime. However, most developing countries were opposed to a single integrated instrument as this instrument was likely to have a fundamentally different character to that of the Kyoto Protocol.

33. As an outside COP-watcher, Prof. Murase said, he was skeptical about both possibilities, given the emerging political realities. Frankly speaking, he was skeptical about the capability of the Conference of the Parties to reconcile the differences between the two opposing approaches. In that case, he would not rule out the possibility that none of the above options were possible, and that the new regime building for climate change might be realized outside the COP. The COP's decision-making capability was in part hampered by the absence of its procedure, by which any decision must be based on consensus. So, if a small number of countries opposed for one reason or another, no decision could be taken by the COP, as was witnessed in Copenhagen. But as he was just



an outsider, and it was not appropriate for him to speculate on future developments, and therefore he would leave the matter to government negotiators.

34. Whatever the outcome of the current negotiations might be, he was convinced that they should bear in mind the following elements to be incorporated in the new framework. It should be a binding instrument, since and the international community cannot withdraw to the level of soft-law and voluntary commitments. At the same time, it should be a flexible mechanism, which took into account the special circumstances of each country. In his view, bindingness and flexibility could co-exist. It should be noted that there were certain types of instruments that could offer adequate flexibility in the obligatory regime, as was seen in the WTO/GATT system. He believed that the WTO/GATT model could be adapted to climate change.

#### **A Proposal for the Future Framework: A WTO/GATT Model**

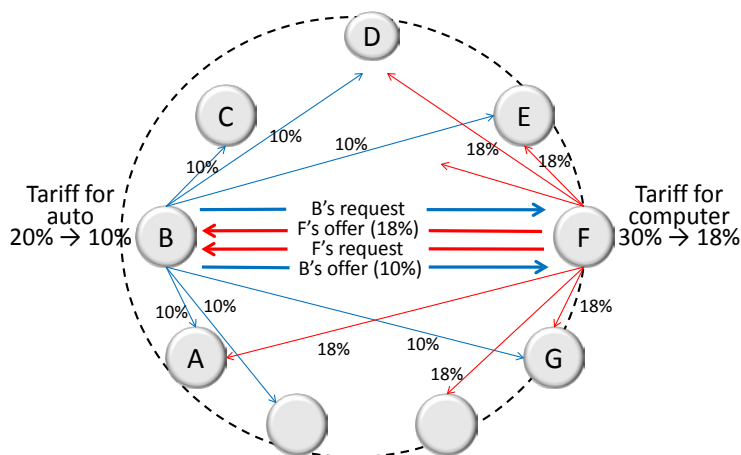
35. The Panelist thereafter proceeded to demonstrate his ideas about a future framework for climate change modeled after the WTO/GATT system. Climate change was a long-term issue which lasted for a long time, and for that reason, he believed that the future instrument should provide a mechanism which lasted for at least 50 or 100 years, ensuring a sustainable forum for continuous negotiations among States. It should also take the bottom-up approach rather than the top-down imposition of commitments, and in that sense, the sector based approach was considered as the most appropriate method.

36. The GATT-model approach to the climate change regime which he was proposing would satisfy all those elements. The GATT had been very successful for the past 63 years in realizing free trade, through lowering tariffs and non-tariff barriers<sup>3</sup>. The GATT was a framework that combined bilateralism with multilateralism. During the early years of GATT, negotiations were first conducted bilaterally under the product-by-product request-offer system, by which country A requests country B, for example, to lower tariffs for automobiles, offering the latter in return to lower its tariffs for steel products. If the bilateral agreement was reached between the two countries, then, the results were extended to all the other contracting parties on a most-favored-nation basis. Countries continue negotiations until the target was reached.

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<sup>3</sup> Countries had considered for a long time up until the middle of the 20<sup>th</sup> century that if their tariff rates were higher, their domestic industries would be better protected. Then they realized that lower tariffs would actually be desirable for the public interests of the international community and also beneficial for the long-term national interests of each State. This appears to be similar to the current climate change issues, attesting the common characteristics, and accordingly common grounds, of trade and climate issues: while States might be inclined to be negative toward lowering the emission levels for protecting domestic industries, they are now in the process of realizing the necessity of emission reduction not only for the international community as a whole but also for their own survival. Although admittedly perception of the distance between the individual national interest and the international public interest in the context of global warming is not yet as close as on issues of trade, it is expected that countries will soon realize the linkage much more acutely.

### WTO/GATT System for Tariff Reduction Request-Offer Method



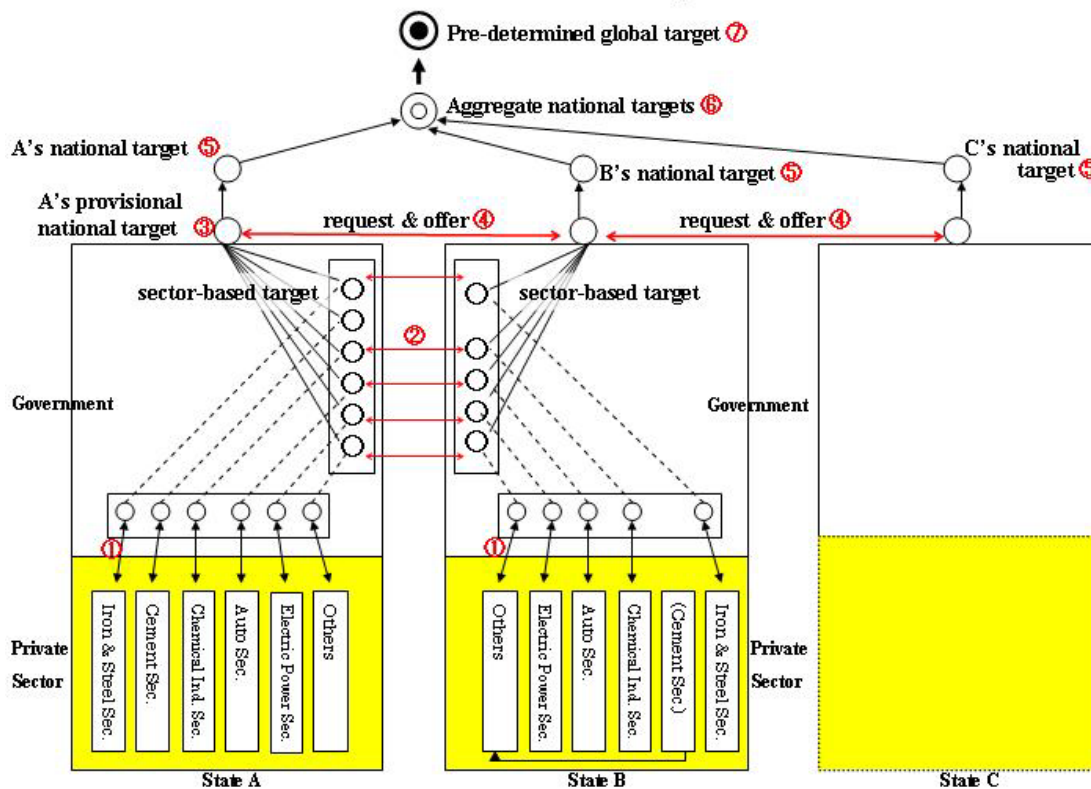
37. Thus, the Kennedy Round negotiations in the 1960s (1963-67), for example, started with the goal of reducing 50% of the tariffs for all the industrial products (which was understood as a working hypothesis), and ended with the result of some 36% average reduction, which were nonetheless a great success. The Tokyo Round negotiations between 1973 and 1979 achieved the overall tariff reductions of 33% in accordance with the so-called harmonization formula approach. The Uruguay Round was conducted by adopting the sector approach in addition to the approaches employed in the previous rounds of negotiations. In the course of such intergovernmental negotiations, the representatives from the related industrial sectors, such as the automobile and steel industries and those on the consumer side, were no doubt involved substantially. Thus, that was essentially a bottom-up, product-based or sector-based approach<sup>4</sup>.

38. That was in his view the model scheme which could be used for the reduction of GHG emissions. The result of those negotiations would be binding on States, but in a different form from the absolute national caps embodied in the Kyoto Protocol. The process was continuous and flexible, and lasted in principle until the set global goal was achieved. For developing countries, they could always consider the possibility of granting preferential treatment, another important GATT experience, which should be subject to individual scrutiny rather than the unqualified, sweeping system of generalized scheme applicable to all developing countries.

39. The figure below showed how the GATT-model approach could be used for climate change negotiations.

<sup>4</sup> Shinya Murase, *Economic Basis of International Law*, Yuhikaku, 2001, pp. 109-179 (in Japanese); Anwarul Hoda, *World Trade Organization: Tariff Negotiations and Renegotiations under the GATT and the WTO: Procedures and Practices*, Cambridge University Press, 2005, pp.26-56; Peter van den Bossche, *The Law of the World Trade Organization*, Cambridge University Press, 2005, pp.395-399.

Fig.1. Conceptual Framework for the GATT-Model Negotiations on Climate Change



40. The figure showed how the national emission reduction targets were accumulated in a bottom-up manner. First, each sector (for example, Automobile Association) of State A decides on its reduction target based on energy intensity (energy conservation efficiency) criteria, and negotiates with the relevant branch of the government (Ministry of Economy, Trade and Industry, METI, in case of Japan), which in turn may request the sector (Automobile Association) to make higher commitments. The METI then conducts consultation with its counterparts of State B and other major countries over each sector's appropriate level of reduction based on energy-intensity. (Note that the size of State B's cement industry is supposed to be so small that the emission from its sector is included in "Others").

41. The sum total of the sector-based targets thus accumulated constitutes State A's provisional national target. The government of State A conducts negotiations with that of State B on the "request and offer" procedure with a view to agreeing on State A's national target and that of State B's. Both States conduct similar negotiations with other countries. The sum total of all the national targets constitutes the aggregate national targets. If there was a difference between the pre-determined global target<sup>5</sup>, (for

<sup>5</sup> Whatever method and procedure the international community may decide to take for the post-Kyoto climate negotiations, it seems indispensable to predetermine internationally the global target before initiating those negotiations. This is the determination of the "level that would prevent dangerous anthropogenic interference with the climate system" (Article 2 of the UNFCCC).

example, 50% reduction in 2050) and the actual aggregate national targets, then, States are under obligation to continue the good-faith negotiations from the beginning until reaching the global target.

42. Thus, if for example the global target was set internationally as “50% by 2050” with the base year being 2000, then, States were expected to conduct four rounds of negotiations with medium-term global targets (for example, 15% by 2020, 13% by 2030, 12% by 2040 and 10% by 2050). It was important to note that each State was placed under international law with the “obligation to conduct good-faith negotiations”, the concept employed by the International Court of Justice in a number of judgments. The key aspect of his proposal was, to place emphasis on the continuous efforts by States toward reaching the final global target rather than setting the target itself.

43. The sector-based round negotiation procedure might appear to be a rather complicated exercise. Actually, it was quite simple. The GATT had been conducting similar negotiations for more than 60 years for tariff reduction, in the course of which necessary techniques and know-how had been sufficiently shared by trade experts.

44. The proposed GATT-model approach, in his view, would satisfy the required elements for a future framework such as binding character, flexibility, continuous and long-lasting procedure, bottom-up and sector-based approach. That should also be an appropriate approach for establishing a mutually supportive relationship between trade and environment for the purpose of achieving sustainable development<sup>6</sup>. Naturally, however, one might question whether some of the major emitter countries would be willing to join in such a regime. It would be necessary to incorporate certain incentive measures or credits for those developed countries that have attained high energy efficiency (such as exemption from international environmental taxes and reduction from the fees for adaptation facilities) and for those developing countries that have made serious efforts to reduce emissions (such as granting preferential treatment in the transfer of eco-technologies and financial assistance). Conversely, it could be considered appropriate to introduce some sort of disincentive measures (sanctions) for those countries that would not join the regime and remain as “free riders”.

45. It went without saying that each country, especially developed industrialized countries, should vigorously implement through domestic law effective environmental protection measures, but at the same time, it should promote industry and trade as much as possible in order to maximize the welfare of its citizens. Economy and environment should not be considered as something mutually exclusive but be considered mutually supportive and supplementary.<sup>7</sup> It was the task of international lawyers to find the proper

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<sup>6</sup> As is well known, “Greening the GATT” has been a popular theme. Conversely, attention should be given to “GATT-ization of a MEA”. It is believed that GATT-ization of the Kyoto Protocol is inevitable in view of the fact that the Protocol is, in essence, much more of an economic and energy treaty than an environmental treaty. See Shinya Murase, “Trade and the Environment: With Particular Reference to Climate Change Issues”, Harald Hohmann, ed., *Agreeing Implementing the Doha Round of the WTO*, Cambridge University Press, 2008, pp. 391f., p.418.

<sup>7</sup> Shinya Murase, “Perspectives from International Economic Law on Transnational Environmental Issues”, *Recueil des cours de L'Académie de Droit international*, vol. 253, 1995, pp. 283-431; *Ditto*, “Conflict of

balance between the two, and he trusted that the international community would reach an agreement in that spirit before it was too late.

**Presentation by Dr. Roy S. Lee, Permanent Observer of AALCO at the United Nations Headquarters in New York:**

46. **Dr. Lee** stated that he was in agreement with the major conclusions reached by the previous speakers. He would like to stress the crisis currently facing the climate negotiations.

47. He first pointed out that climate change was a critical issue for AALCO Member States:

- Many AALCO members were the victim countries because most of the disasters had occurred in Asia and Africa. As well known, many of the small developing countries in the Indian and Pacific Ocean were losing their land areas. Their existence were at stake.
- Because of climate change, the glaciers are melting and causing floods as well as droughts particularly around the major deltas in Asia and Africa. Mass migration in the millions had occurred around the major deltas in Asia and Africa.
- Most of the major oil-producing countries are in Asia and Africa. Initially, climate change negotiation focusing on energy mitigation was regarded detrimental to the interest of oil based economies. Many of them now realized that it was in their interest to conserve energy since oil was finite and to promote renewable energies particularly solar and wind which they had plenty in order to provide a more sustainable new economic basis.

48. Secondly, Dr. Lee pointed out that current negotiations were conducted in different forums with different texts. Unless the negotiation was reduced to one central forum and to one single negotiating text, it would be hard to make closing deals.

49. The reason why there were three major negotiating texts and bodies was that countries had different perspectives of their interests. Some of the developing countries, including our Member States still wanted to extend the mitigation obligations under the Kyoto Protocol. They also believed in such principles like common but differentiated responsibility as embodied in the Protocol. But as Prof. Murase had pointed out in his chart, the KP included only 29% of the global emissions whereas the rest 71% were

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International Regimes: Trade and Environment”, Thessaloniki Institute of International Public Law and Relations, *Thesaurus Acroasium*, vol.31, 2002, Thessaloniki Institute of International Public Law, 2002, pp.297-340; *Ditto*, “Trade and the Environment: With Particular Reference to Climate Change Issues”, Harald Hohmann, ed., *Agreeing Implementing the Doha Round of the WTO*, Cambridge University Press, 2008, pp. 391-419; *Ditto*, “International Lawmaking for the Future Framework on Climate Change: A WTO/GATT Model”, in *Ditto*, *International Law: An Integrative Perspective on Transboundary Issues*, Sophia University Press, Tokyo, 2010 (forthcoming).

outside the Protocol. But under the KP, only most industrial countries were obligated to reduce emissions. The developing countries were not required to do so for economic development reasons and their emissions were also low. The US did not want to join the KP. Surely, the more important question was to find a framework that would include all the major emitters like the United States, China, India and many others. But the KP could not serve that purpose.

50. Next point was that the Kyoto Protocol served the important purpose for carbon trading because it was cheaper for industrialized countries in Europe to have their carbon reduction transferred to developing countries. In past few years, China, India, Korea and Brazil has benefited by the carbon trading scheme in billions of dollars. But, now the Europeans have begun to have turn their carbon trading with Eastern European countries. So, the two basic purposes under the KP -- limitation on emissions and carbon trading – could not really be effective at present. Should it be extended beyond 2012 was a basic question. He hoped that the KP was used as a tactic to induce better things.

51. Another important factor was that the industrial countries needed to work with large emitter developing countries to make carbon trade because of their large markets and low costs.

52. His final point was that the Copenhagen Accord had achieved a lot in substance. For instance, all major emitters representing some 80% of global emissions had agreed to take part in the Accord. They included the US, China, India, Brazil, South Africa and all the industrial countries. The participating States had also committed to a short term funding of 10 billion dollars between 2010 and 2012 and long term financing of 100 billion in 2025. All the other major issues ranging from permitted temperature to capacity building were also covered in the Accord. It was regrettable that the Accord had not become part of official document. Dr. Lee believed that the Accord should be used as the major negotiating instrument as it contained an excellent basis for further negotiation.

53. The **Delegate of Thailand** stated that their government supported the efforts to combat global warming and in that regard both the developed and developing countries were likely to address increasing demands to take greater action to reduce the emission of the green house gases. Governments have been continuously negotiating to conclude an agreement under the United Nations Framework Convention on Climate Change guided by Bali Action Plan to set out medium and long term operative action on adaptation, mitigation, finance and technology transfer. On many occasions, government officials, policy makers, stakeholders in developing countries have met with concern about our potential barrier that intellectual property policies may force for action for clean energy and securities. To address these concerns so as to facilitate the developing countries in the access to climate friendly technologies, developing countries needed the skill and capital that could help them use and reproduce the adaptation policies. Compulsory licensing under the Trade Related Aspects of the Intellectual Property Rights Agreement was one of the available options for the facilitator developing countries for gaining access to creating such energy technologies. She stated that her delegation would like to propose that in order to minimise the social consequences on an economy, there was the need to

avoid climate related trade protectionist measures. Member States should work together towards promoting a supportive common international system which would bring economic growth and development in all the Member States particularly developing countries. Measures taken to combat climate change including unilateral ones should not represent the mean of indiscrimination or hidden restriction on international trade. Furthermore, developed countries should not resort to any form of unilateral climate related trade measure including border adjustment measures of having it used against the goods and services of the developing countries on climate related grounds. Efforts to address climate change must not hamper sustainable development, and their delegation hoped that the idea would appeal to the AALCO Member States.

54. In conclusion, the delegation reaffirmed that the Royal Thai government was ready to support and encourage AALCO to develop its role in international law arena and also as a member State of AALCO would continue to collaborate with all member States in achieving the objectives, purposes and aspirations of the Organization.

55. The **Delegate of the Republic of Korea** informed that from 2008 through 2010, the Korean government had contributed a total of 200 million US dollars under the “East Asia Climate Partnership” program to support developing countries efforts to address climate change in the Asia-Pacific region. In addition, the Korean government founded the Global Green Growth Institute (GGGI) on June 16, 2010 in Seoul to support developing countries shift from traditional manufacturer towards the ‘Green Growth’ paradigm.

56. The Delegate informed that the 18th Conference of the Parties to the UNFCCC (COP 18) was to be held in Asia in 2012 in accordance with the UN’s regional rotation practice. They took the opportunity to contribute to the global agenda of climate change. The Republic of Korea had sought to find a balance between economic growth and environmental sustainability throughout the entire course of its economic development. That experience made Korea well suited to play a bridging role between developed and developing countries. The Korean government believed that by hosting the COP 18, Korea would contribute to rebuilding credibility and increasing cooperation between developed and developing countries.

57. The Delegate said that the Republic of Korea had taken a number of measures to address the issue of climate change in order to make a contribution commensurate with its capabilities. On November 17, 2009, it announced its mid-term greenhouse gas (GHG) reduction goal to cut emissions 30% from its business-as-usual (BAU) emission levels by 2020. Korea had also launched a green growth plan. According to that plan, the Korean government would invest 2% of the nations GDP in the green growth sector on an annual basis over the next 5 years. That was twice the amount recommended by the UN.

58. The delegate said that the sixty-sixth Session of the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP) took place in Incheon, Korea from May 13 to 19, 2010 and adopted the Incheon Declaration on the UN Millennium Development Goals and green growth. As the chair of the Session, Korea supported the

UN ESCAP's efforts to increase green growth strategies in the Asia Pacific region. He also informed that the UNEP had selected Korea's green growth plan as its first case study for the year. The UNEP's assessment of Korea's contribution to international efforts dedicated to fighting climate change was as follows:

- The Republic of Korea had demonstrated dedication and leadership at the international level by boosting global efforts towards achieving a green economy.
- The Republic of Korea was instrumental in the adoption of a Declaration on Green Growth by the Ministerial Council Meeting of member countries of the OECD on 25 June 2009. It was also playing a key role in prompting an East Asia Climate Partnership.

59. The **Delegate of the Sultanate of Oman** stated that their country attached great importance to the Omani environment in the process of its comprehensive development, as the protection of the environment and human health from all types of pollutants as well as laying the foundations for a balanced and sustainable development with equal economic, social and environmental considerations were some of the main objectives of the Sultanate of Oman.

60. In line with that approach, Sultanate of Oman confirmed its commitment to the basic principles adopted by the international community to achieve sustainable development, believing that those principles represented a practical framework to ensure joint action and collective responsibility towards protecting the environment and preserving natural resources. There was no doubt that the choice of the Sultanate of Oman to take the sustainable development approach was not just a concept invoked whenever appropriate, but was a choice imposed by its strategic geographical location as part of the Arabian Peninsula, which was characterized by a dry climate, limited vegetation and a lack of available water resources.

61. In that regard, he pointed out that the Sultanate of Oman had established a national centre for field research in the field of environmental conservation on 6 October 2009 by Royal Decree no. 54/2009, which aimed to organize and promote field research in the field of environmental conservation, encourage Omani practitioners, researchers, specialists and scholars in the environmental field, highlight their scientific abilities and potential and publish their research locally and internationally. In order to achieve those goals, the center had many powers such as the authority to identify and develop research projects in the field of environmental protection and sustainability in the Sultanate and their preservation in all their forms, as well as deepen the concepts of environmental conservation field research and its relevance by including it in academic curricula and the organization of seminars and workshops.

62. In conclusion, they looked forward with optimism to the resolutions that would come out from the Session on that subject, and hoped that the esteemed Organization would find an effective mechanism to ensure among its Members the exchange of information, the transfer of technology and raising awareness of new scientific discoveries in the environmental field.



63. The **Delegate of Japan** stated that it was Japan's firm belief that the environmental issues were very critical problems facing the present world, and, Japan would continue to actively participate in strengthening the efforts of the international community to assist the developing countries to tackle the measures to cope with the climate change.

64. Concerning a quantified economy-wide emissions targets for 2020, the delegate informed that Japan had announced that it would aim at 25% reduction of emissions in 2020, as compared to 1990, which was premised on the establishment of a fair and effective international framework in which all major economies participate and on agreement by those economies on ambitious targets. It should be stressed that whatever ambitious target Japan might adopt, Japan alone could not stop climate change, but it was essential that a fair and effective international framework in which all major economies including the US and China's participation should be established.

65. To establish such international framework, it was therefore of critical importance that a new comprehensive legal instrument should be adopted on the basis of Copenhagen Accord. To that end, Japan wished to exert further efforts with other countries for the success of COP.

66. The **Delegate of the Republic of Indonesia** stated that his delegation would like to convey their sincere thanks to the resource persons who had kindly briefed the meeting on the matter concerning environment and climate change. To that purpose his delegation shared the following views.

67. As they had witnessed very clearly that at the UN Copenhagen Summit last year, the climate process was still facing a difficult uphill battle. Between Copenhagen and Cancun that year, success was not guaranteed. But they must stay the Course in their common endeavours to complete implementation of the Bali Action Plan as set out in 2007.

68. Indonesia, like other tropical forest nations, was determined to promote socio-economic development of its people, some of whom still languish in poverty. But they were also aware that their tropical rainforests served a much larger purpose as the lungs of the world. They capture carbon dioxide and produce oxygen that made human life possible. They provided an invaluable environmental service to the world. That was why Indonesia was also determined to achieve the twin objective of sustainability and creativity.

69. In that regard, his delegation stressed the need for AALCO to observe that the world cannot solely rely on negotiations in international REDD+ mechanism under the UNFCCC to be concluded. The Oslo Climate and Forest Conference in May 2010 was a push for a breakthrough in the interim REDD+ arrangement that would be useful for the UNFCCC process. Through it, Indonesia intended to achieve most of their carbon emission target through REDD+ actions in order to protect Indonesia's globally

significant carbon rich and biodiversity rich tropical rainforests while helping local population become more prosperous.

70. To that end, even though states had various views on what happened in Copenhagen, but there was still need to build on Copenhagen Accord, it's clear overall message: that there was a need to build a momentum and AALCO might have its role in taking part to build the said momentum. To that purpose, the support to the conduct of two working groups namely the AWG-LCA (*Ad Hoc Working Group on Long-term Cooperative Action*) and the AWG-KP (*Ad Hoc Working Group on Further Commitments for Annex I Countries under the Kyoto Protocol*) need to be addressed, so that both working groups might complete their tasks in time for Cancun at the end of 2010.

71. The delegate said that he could not agree more with the Speaker that international legally binding instrument was needed as a result of Cancun. Although several countries might not feel optimistic for the Cancun meeting, he invited the delegates to be optimistic about the outcome.

72. The delegate said that other than climate change but still related to the environment issue; his delegation would like to draw attention on the issue of Montara oil spill that was an oil and gas leak and subsequent slick that took place in the Montara oil field in the Timor Sea, off the northern coast of Western Australia. The slick was released of following blow out from the Montara wellhead on August 21, 2009. The effects of Montara oil spill could be catastrophic for marine ecosystems including environment in Indonesia waters. To settle that, his delegation would like to inform the meeting that the Indonesian Government would formalize its claims in due course.

73. The **Delegate of the Arab Republic of Egypt**<sup>8</sup> reiterated the need for AALCO Member States to look at the ongoing negotiations and discussions on climate change. However, it was essential that States must look at other aspects as well. Those include, (i) priority for ensuring financing for certain projects which was very important. Any effort for climate change available resources of energy. Therefore, the developing countries needs to commit themselves to support rest of the third world countries for decreasing emissions and also expenses to be shared side by side. (ii) Further, states must welcome private sector participation to reduce emission; and (iii) Processes must be undertaken to try and help other developing countries reduce the effects of climate change internally also like looking at effects of it in air transport and sea transport, etc...

74. The President then invited the Panelists to respond to the comments and observations made by the AALCO Member States on the Working Session I for the Half-Day Special Meeting.

75. **Mr. Xiang Xin:** The distinguished panelist said that the AALCO Annual Sessions were a very useful platform for information exchange and consultation for negotiations. Unlike other international forums, as it was not a negotiating forum, it was unique and

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<sup>8</sup> Statement delivered in Arabic. Unofficial transcription form Interpreter's version.

contributed significantly in the understanding of respective national positions of its Member States. The Panelist highlighted several important facts like whether the principle of common but differentiated responsibility must be adhered to and while looking at climate change one must look at both sides from present and historical perspective. 80% of the GHG emissions were accumulated emissions from the developed countries. *First*, as emissions were from the western developed countries, he emphasized, on the political point that Common but Differentiated Responsibility (CBDR) was very important. Even though UNFCCC and Kyoto Protocol were not satisfactory to some extent they incorporated vast international consensus. Those two legal instruments must be the basis and through that basis they could move forward.

76. *Second*, to the observation emphasised by certain distinguished delegates stating that developing countries like China and India must also take responsibility, he said that China could also share/jointly take the responsibility to take concerted efforts in combating climate change provided there must be distinction between China's and US's emission reduction rates. China in that matter was still a developing country, wherein it was still in the early industrialization phase. With huge population, state needs to support the unemployed by creating jobs for the 10 million new labour force.

77. *Third*, there was a vast distinction between development process of both China and the US. Small rural areas of China still remain manifestation of process of development. Protection of environment vis-a-vis development, from the viewpoint of the policymakers would be to ensure better life and standard of living. Hence, economic development was the first priority.

78. *Fourth*, in spite of all these pressures, China has taken substantial national measures to combat climate change, like national climate change programme set an ambitious target of reducing the energy consumption by 10-15% in the year 2008-2010, planting lot of trees or rather creating man-made forest, trying to increase the share of renewed energy in the supply, and reducing the carbon dioxide emissions by 40-50%.

79. *Fifth*, therefore, the government was striving to balance economic reforms with developing green economy to protect environment. The general public was well aware that they need to protect and conserve environment.

80. **Prof. Murase** very briefly responded to the observations made on intellectual property and financing by the delegates of Thailand and Arab Republic of Egypt and stated that these were very important in terms of adaptation measures. He said that States must focus upon adaptation as well mitigation measures. He said that the delegate of Republic of Korea had mentioned about the partnership arrangement in Asia-Pacific region, wherein countries like China, India, Japan, US, Australia, Korea, etc., voluntarily participate in the sector-based approach. That was a realistic approach. Therefore, there were many ways to combat climate change.

81. After the observations from distinguished Panelists, the President thanked them and invited the attention of the distinguished gathering to Working Session II.

**Working Session II: Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Covenant on Environment and Development**

**Presentation by Mr. Donald Kanairu, Regional Governor, ICEL**

82. The Panelist representing the International Council of Environmental Law (ICEL), said that it was a privilege and honour for him to take part in that august meeting, to represent his Executive Governors, Wolfgang Burhenne and Amado Tolentino – who, on account of other urgent previously arranged business were unable to be there. He therefore brought their greetings and best wishes to all the delegates.

83. The Panelist informed that the ICEL had elected Governors from 10 regions of the world. He represented Region 6 (Southern Africa) and in that capacity it was his task to convey their regards to the President and Secretary-General of the Asian-African Legal Consultative Organization. He said that they were very happy to have the opportunity to increase cooperation between their two organizations, especially following the Secretary-General's participation in the meeting last January in Bonn (Germany) where they decided on the necessary amendments and additions to the Fourth Edition of the Draft International Covenant on Environment and Development.

84. It was also noteworthy to add that AALCO's Permanent Representative to the United Nations, Roy S. Lee, who had prominently participated in that and other sessions of the Conference, was a long-time ICEL Member. Furthermore, he was a member of the Board of Trustees of the Elizabeth Haub Foundations for Environmental Law and Policy (which supported ICEL) and a member of the jury of the Elizabeth Haub Award for Environmental Diplomacy sponsored by ICEL and Pace University.

85. These were only a few examples of their most recent and direct interaction and he would not mention all of the regional and local cooperation between the numerous environmental lawyers throughout AALCO's Member States.

86. The Panelist said that it was not the first time that he had participated in AALCC, now AALCO. He first represented Kenya at AALCO's Eleventh Annual Session in Accra, Ghana, in 1970, and then represented UNEP, again in Accra, during the Thirty-Eighth Annual Session in 1999 when the Organization and UNEP jointly lodged an important compilation - *Asian-African Handbook on Environmental Law* published by Asian-African Legal Consultative Committee and United Nations Environment Programme in 1999 which included 43 legal and policy instruments as well as global and regional conventions of interest to Asian and African countries which AALCO had captured in the documentation before the Conference, and at their last Nairobi session in 2005.

87. Thereafter, the Panelist proceeded to make his two presentations on:

- first, on Revised African Convention on the Conservation of Nature and Natural Resources, Maputo 2003, and

- second, the Fourth Edition of the Draft International Covenant on Environment and Development.

88. The Panelist informed that at the request of the Organisation of African Unity – now African Union – work on the Maputo draft started following concerns of African states that with the developments of numerous global and regional conventions, it was time to update the Algiers Convention of 1968.

89. The Algiers Convention was itself a progressive instrument of some 7 preambular paragraphs and 25 articles that made the 1933 London Convention on Species substantively relevant to Africa, well ahead of the Stockholm process of articulating policies and laws on the environment. The OAU asked the IUCN – ICEL, UNEP to assist in the review, and that was done, including also the ECA, and experts that actually worked on the 1968 draft joined by UNEP senior lawyers, including the speaker. Thereafter experts from African governments in meetings in Nairobi, Kampala and Maputo sealed the additions and update to the Algiers Convention.

90. The Maputo Convention, was the most comprehensive regional biodiversity instrument: its 13 preambular paragraphs and 43 articles were cognisant of the principles, (Stockholm and Rio); global and regional instruments developed after 1968 (Convention on International Trade in Endangered Species, 1973; Convention on Migratory Species, 1979; United Nations Convention on the Law of the Sea, 1982; and Regional Seas Conventions), Basel and Bamako Conventions on Transboundary Movement on Hazardous wastes of 1989 and 1991 respectively, Convention on Biological Diversity, 1992; United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994; and provides, when in effect, for continuing governance in establishing the Conference of Parties mechanisms, including a Secretariat and reporting procedures.

91. The Convention had been signed by some 37 African States, and ratified by 8 of them, namely, Burundi, Comoros, Ghana, Lesotho, Libya, Mali, Nigeria, and Rwanda. It requires 15 ratifications to come into force.

92. Africa recognized that it had developed many (35) multilateral agreements, and needed to operationalise them to enhance and safeguard, in common, African natural resources. The Kampala Summit of the African Union recognized and urged that, reiterating the decision earlier adopted in Libya that anticipated the year 2010 as acknowledging 50 years of independence of many African states.

93. The instrument mainly concerns the African States, but the issue of implementation and enforcement of MEAs (global and regional) was certainly broader and embraced Asian States as well. It would be in order, therefore, to focus some time on the increasing number of such environmental instruments. Compliance was certainly an important component, often lacking in follow-up of numerous instruments. If African states had acted together they would have had a solid contribution to make during the year of Biodiversity, which is 2010.

94. As regards, the Draft International Covenant, the Panelist said that there was a bit more of historical background on the process and its development, the different players, and the public bodies that had continued to support that effort, which should in due time be adopted as stated '*a basis for multilateral negotiations*'. The present draft contained 79 articles, and would be reinforced with detailed scholarly commentary. Thus it would be an invaluable authoritative reference text and checklist for legislatures, diplomats and civil servants, and scholars, translating sustainable principles into action.

95. They were convinced that it would be a crucial tool consolidating key principles and developments in the field of sustainable development from the 1980s to date. He pointed out, that the 4<sup>th</sup> Edition would be ready by month end and would be presented to member states of the UN on the occasion of the high level event on biodiversity during the sixty-fifth session of the UN General Assembly.

96. While concluding he said that anyone wishing to know more about the history of ICEL and the IUCN Environmental Law Programme was encouraged to read a recent publication titled: "Weaving a Web of Environmental Law" by Barbara Lausche, that captured some 50 years of effort through International Union for Conservation of Nature and Natural Resources (IUCN) and friends in the World Bank and FGB. That book had been so well-recognized that it was now being translated into Chinese.

97. The **Delegate of the Arab Republic of Egypt**<sup>9</sup> thanked the panelist and said that the key aspects of such discussions were to make the participation of the developing countries at the forthcoming sessions on environmental law matters to be more effective. It was observed that European countries get benefited from all such meetings. He stated that developing countries must be making use of meetings like the forthcoming Nagoya Summit in October 2010. The delegate emphasized with respect to Revised version of the African Convention that the countries which were rich in natural resources may consider ratifying legal instruments protecting natural resources in accordance with their country positions.

98. The **Observer delegate from United Nations Environment Programme (UNEP)** on behalf of Executive Director of the UNEP expressed greetings and wished for success of the Annual Session. He stated that the UNEP had been assisting the developing countries in their sustainable development activities, by providing assistance. It was highlighted that one of the major activities that the UNEP undertook was to finance through European Union the African, Caribbean and Pacific countries to implement the development provisions. In that regard, over one million dollars have been spent over five years. UNEP also supported the ratification of the Maputo Convention by the African countries and Bamako Convention by Asian countries and also to have a proper coordination between various ministries in the member countries like the Ministry of Foreign Affairs, Ministry of Law and Justice, etc, in order to promote the need to ratify those legal instruments that were relevant to the countries. Such regional conventions

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<sup>9</sup> Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

would be significant in terms of promotion of economic growth and poverty eradication. There must be exchange of ideas or circulation of ideas among developing countries on increasing economic growth, socio-economic development in sustainable manner and so on. He strongly urged member countries from African region to ratify the Maputo convention stating that, even after eight years of its coming into force wherein one could witness that the President and Heads of States pledged or urged themselves to implement the same, it has not come into force. There must be a link between the different ministries dealing with environment and sustainable development related matters in the member countries.

99. Mr. Kanairu then thanked the delegate of Arab Republic of Egypt for highlighting the importance of the work ongoing in Nagoya Summit and the Cancun Climate Change negotiations. He agreed that those were the very important initiatives wherein climate change was really the most critical and biodiversity was very important environmental issues before States. The speaker briefly mentioned about his close association with Mr. Mostafa Tolba, former Executive Director of UNEP, whose contribution in the field of international environmental law was very significant as he was one of the champions of the interest of the third world countries and humanity which would be passed on to the coming future generations. He stated that it was a privilege to be part of such an annual session where States work for making the future of the next generation enjoyable and for making a difference in their lives.

#### **Signing Ceremony of Memorandum of Understanding between AALCO and ICEL:**

100. A Memorandum of Understanding was signed between the AALCO and ICEL by Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO and Mr. Donald Kanairu, Regional Governor, ICEL on behalf of their respective organizations; after the meeting. The MOU reflected the initiatives of the AALCO in enhancing its activities by establishing stronger relationship with research institutes and public interest organizations that were engaged in international environmental law and sustainable development.

**The Meeting was thereafter adjourned.**

**IX. SUMMARY RECORD OF THE FOURTH GENERAL MEETING  
HELD ON SUNDAY, 8<sup>TH</sup> AUGUST 2010 AT 10.00 AM**

**His Excellency Mr. Mathias M. M. Chikawe, President of the Forty-Ninth Annual Session in the Chair**

**A. WTO as a Framework Agreement and Code of Conduct for the World Trade**

1. **Dr. Xu Jie, Deputy Secretary-General, AALCO** introduced the topic and observed that the World Trade Organization had completed fifteen years since its establishment on 1 January 1995. The WTO was born out of negotiations, and everything the WTO does was based on negotiations. The bulk of the WTO's current work comes from the 1986–1994 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO was currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001. After highlighting the importance of the negotiations, the DSG raised the query that how far the negotiators from the Asian-African region, particularly, the developing and Least Developed countries were equipped to handle the highly technical negotiations undergoing in the WTO, especially, the Doha Round of Negotiations. He stated that the trade negotiators need training and research guidance to effectively participate in the negotiations. In that regard, he emphasized that the AALCO Secretariat, through its Research and Training Division, Centre for Research and Training (CRT) was willing to undertake research studies, and training workshops for trade negotiators from the Asian-African region, in collaboration with the AALCO Member States and international organizations, particularly, the WTO Secretariat. Financial resources and subject experts were required to undertake those projects.

2. In that regard, he recalled that the Centre for Research and Training (CRT) of AALCO had successfully organized a “Basic Course on the World Trade Organization” from 1 to 5 February 2010 at the AALCO Headquarters in New Delhi. Sixty seven participants, including Diplomats, Officials, Law Teachers, and Research Scholars representing twenty four countries, participated in the Training Programme. Experts in the field of WTO delivered lectures. He expressed his gratitude to the WTO Secretariat for deputing a resource person from the Trade Negotiations Committee (TNC) Division for delivering lectures. The AALCO Secretariat believed that these initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. He informed that “The Basic Course on the World Trade Organization” was a first step in that direction and many such initiatives would follow in the near future.

3. The DSG stated that the Doha Round of Negotiations had reached a critical stage and the Secretariat wished AALCO Member States to actively participate in the Doha Round of Negotiations and make meaningful contributions for its successful conclusion. Negotiations on Agriculture and Non-Agriculture Market Access (NAMA) remained central to the success of the negotiations and were crucial for many of AALCO Member



States. He said that the real challenge was how to protect the interest of the Developing and Least Developed countries in the ongoing negotiations.

4. The **Delegate of the Sultanate of Oman**<sup>1</sup> stated that the Sultanate of Oman joined the WTO in the year 2000. The WTO Agreements and the Gulf Cooperation Council (GCC) Treaty were the main factors underlying Oman's trade policy, which was directed at diversifying its economy by reducing its dependence on oil and focusing on the improvement of its educational and health services and the modernization of its infrastructure. Oman recognized the importance of trade and investment to its goals and had been reviewing and amending its laws to meet that end. As a result of its liberal trade regime, its macroeconomic reforms and its development strategy, as well as its high earnings from exporting oil and gas, Oman had an impressive economic performance in the last decade.

5. The delegate informed that during 2008, the Trade Policy Review Body carried out a review on Oman, the purpose of these reviews being to encourage Member States to adhere to the WTO rules and commitments. The final report noted that Oman enjoyed a relatively open market and the bulk of its trade takes place on a most-favoured nation (MFN) basis, a treatment which it grants to all its trading partners. It was a strong believer and advocate of the multilateral trading system. The report concluded that Oman had an impressive economic performance that continued reform could help sustain. Oman was participating actively in the current round of multilateral trade negotiations and had particular interest in NAMA and services. Oman enjoyed a special treatment with regard to the reduction of customs duties as it was exempted from reducing its customs to below 5%. It was also a member of the Sectoral Initiative for the liberalization of the fisheries sector. GCC Member States have also liberalized services trade within the GCC, in terms of Article V of the GATS. It was in favour of further substantial liberalization of trade in agricultural, non-agricultural products and services. In accordance with Oman's long-term development strategy (Vision 2020), the contribution of agriculture and manufacturing to GDP were expected to increase, whereas the shares of services and oil and natural gas were expected to fall.

6. The delegate stated that in a further effort to liberalize its market, Oman concluded a Free Trade Agreement with the United States, which came into effect in 2009, and concluded Free Trade Agreements, as a member of the GCC, with Singapore and EFTA. It had not been involved in any dispute under the WTO Dispute Settlement Mechanism yet, either directly or as a third party. Oman was a strong supporter of the WTO and was participating actively in the multilateral negotiations. It was continuously working towards bringing its trade regime into greater conformity with the WTO. The delegate supported the objectives of the negotiations and desired its early conclusion. However, it was noted that the rules and procedures should be equitable and the benefits of the system should be shared with small developing countries.

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<sup>1</sup> Statement delivered in Arabic. The AALCO Secretariat expresses its gratitude to the Delegation of the Sultanate of Oman for providing English translation of the statement.

7. The **Delegate of the People's Republic of China** informed that in the nine years after its accession, China had essentially fulfilled its obligations within the multilateral trading system. China had set up economic and trade mechanisms in line with the WTO rules and requirements, and became one of the most open markets in the world. By 2010, China had honoured all the commitments it made when it joined the WTO. China was of the view that trade disputes should be primarily addressed through amicable dialogue on equal footing, in accordance with WTO rules and principles. In that spirit, China had properly accommodated and resolved many issues with its trading partners and maintained the stability of international trade relations. China was firmly opposed to trade protectionism and any discriminatory measures that run counter to the basic WTO spirit. For those trade disputes which could not be settled by dialogue, the WTO dispute settlement mechanism provided a platform for both parties of dispute to pursue a peaceful, rule-oriented manner to settle the issue. The delegate stated that the WTO dispute settlement mechanism had complicated procedure and needed adept debate skill which was difficult to most developing countries. In that regard, capacity building and technical cooperation were increasingly important to them. The delegate observed that an earlier conclusion of the Doha Round, which fully accommodated the aspirations of developing countries, would bring long-standing benefits to all Members, developed and developing alike.

8. The **Delegate of Japan** observed that when AALCO discusses the issues relating to the WTO, focus should always be upon the legal aspects of the problems, leaving substantive questions relating to actual negotiations for consideration by those engaged in such negotiations in Geneva. One important question relating to the legal aspects of the Doha multilateral negotiations currently underway was what would be a modality of ensuring an appropriate consideration to the developing countries. He said that what was making it a very complex issue was that there exist differences in the ability to implement obligations among the developing countries, making it a big issue how to stipulate those in international legal instruments. It was certainly not fair to treat equally those major emerging countries and other developing countries, particularly least developing which require special considerations.

9. Another question of legal nature was related to the Dispute Settlement Understanding (DSU). Although it was considered formally outside of the single undertaking of the final package of Doha Round, Japan had been playing an important role by actively participating in the ongoing negotiations, submitting concrete proposals on the DSU. Japan was of the view that the DSU negotiations were of systematic nature. Considering the fact that the present DSU was functioning rather well, it was important to endeavour to improve the WTO dispute settlement system with a view to further improving it.

10. The **Delegate of the Republic of Indonesia** expressed his sincere thanks to the AALCO Secretariat for preparing the Report on the topic. The delegate observed that the Doha Round was a fundamental part of their stake to maintain confidence in the multilateral trading system, reduce threats of rising protectionism and stimulus to global recovery. There was a great deal of consensus, as well as political support at the highest

levels, for the necessity to conclude the eight year negotiations of the Doha Development Round. In accordance with the 7<sup>th</sup> WTO Ministerial Meeting, groups such as G20, G33 and the Informal Group of Developing Countries (which make up 70% of WTO Members), have stated key messages, which were: First, an early and successful conclusion of the Doha Development Round based on the development mandate and what was already on the table; second, expressing hope for concluding the negotiations by 2010; third, to transform political will into action so that it could be used as the basis for the way forward to concluding the negotiations before the end of 2010; Fourth, to utilize all available processes. Those include constructive and real engagement to address remaining issues as part of the technical processes. The G33 had been working on that front and would stand ready to engage constructively on one of the remaining issues, namely, Special Safeguard Mechanism. It also includes ongoing informal, bilateral and plurilateral processes at all levels to seek greater understanding and transparency, as long as the process was then multilateralized.

11. In order to conclude the Round, major players were expected to exercise leadership as flexibility and pragmatism were expected from all Members. Future negotiations should also be conducted based on the draft modalities texts of December 2008 and not deviate from that path as it would complicate and delay rather than simplify and facilitate the process of conclusion. In that regard, the delegate appealed to all Member's utmost political will and readiness to conclude the Round as soon as possible.

12. Apart from the global financial crisis, concluding the Round was also important so that other profound global challenges, which require global attention and a more responsive WTO could be addressed. That includes food and energy security as well as climate change. These were the challenges, which required rapid, comprehensive and sustainable responses, and would necessitate capacity building and technical assistance for developing countries. Developing countries need to be able to conduct their trade-related activities in a manner that was consistent with environmental goals and sustainability and they must also ensure that there would be consistency and coherence between the WTO framework and the emerging international climate change regime.

13. The delegate expressed hope that through AALCO, they also could contribute with a clearer sense of how to move forward in light of the current global situation and where negotiations stand and to ensure the aspiration of developing and least developed countries be accommodated in the conclusion of negotiation.

14. The delegate gave an update concerning Indonesia's request for the establishment of a Dispute Settlement Body (DSB) of WTO on *United States Measures affecting the Production and Sales of Clove Cigarettes*. After the consultations on that matter, it did not resolve the dispute causes from the prohibition or sale of so-called "clove cigarettes" in the United States pursuant to section 907 (a) (1) of the Family Smoking Prevention and Tobacco Control Act of 2009. Indonesia requested the Dispute Settlement Body (DSB) of WTO to establish the Panel to settle the dispute. Indonesia believed that the said section 907 (a) (1) of the Act and its implementation by the United States was inconsistent with various rules and principles of WTO, including, but not limited to, the GATT 1994 and

the TBT Agreement. The establishment of the panel mark as an example of effort by developing countries toward a fair treatment in international trade system. The delegate invited AALCO member States to follow closely the development of the said panel.

15. The **Delegate of the Republic of Kenya** informed that Kenya had been actively participating in the WTO negotiations under the Doha Development Agenda (DDA) adopted at the fourth Ministerial Conference of the WTO in 2001. Kenya participated in the seventh WTO Ministerial Conference that was held in 2009 and the session presented an opportunity to assess gains made so far by the WTO Members. Areas of concern for Kenya were the state of play in Agriculture, Non-Agricultural Market Access (NAMA), Trade in Services, Aid for trade, Trade Facilitation and the WTO Rules. The delegate recalled that the long-term objective of the WTO Agreement on Agriculture (AOA) of 1995 was to establish a fair and market oriented agriculture trading system through a programme of fundamental reform, reducing all trade distorting policies and measures in three pillars namely Domestic Support (DS), Market Access (MA) and Export Competition (EC). Agriculture therefore remained as one of the most important sectors for Kenya in the WTO negotiations as it contributed substantially to the economy and rural development of their country.

16. While participating in the past negotiations in NAMA, Kenya's main concern had been improved market access for Kenya's products in external markets, removal or disciplining of non-trade barriers, industrial development and raising the standards of living of Kenyans. Much more was required to be done to ensure that developing nations gain greater market access to developed member nation's markets.

17. Trade in services was another important sector for the Kenyan economy-which made an impact both to the GDP as well as employment. Trade in services had been a fast growing sector of the Kenyan economy since 1980s and it was estimated to contribute about 60% of their GDP to date and its contribution today of employment was estimated to be about 68%. The sector had always had an overall surplus in the current account in the country's balance of payments. The most important sectors for export in Kenya over the years had been tourism, transport, travel, communications, insurance, royalties and licenses fees, other business. These have been and were likely to remain main sectors of export interest in the near future.

18. Kenya's position on Aid for Trade was that it should be effective in its delivery and management. It was important to have country-led approaches for assisting them in maximizing the benefits of trade, and ensuring that financial commitments directed to Aid for Trade were maintained in times of crisis. Furthermore, negotiations should also take into account the regional dimension of projects and programs initiated while implementing Aid for Trade initiatives.

19. The delegate stated that he realized that trade facilitation in so far as it could be a powerful source of growth and development. Trade could expand markets, facilitate competition and disseminate knowledge, raise productivity and facilitate assimilation and exposure to new technologies. No country had developed by turning its back on trade and

long-term capital flows. Whereas trade liberalization would not automatically lead to growth and development, a development friendly and conducive multilateral environment could lead to increased trading opportunities. For these opportunities to be converted into actual gains trading partners have to look beyond mercantilist gains and even more importantly, the global community would need to work together to help developing countries.

20. The **Delegate of India** thanked the AALCO Secretariat for providing basic information on Developments in the Doha Round of Negotiations. The delegate stated that the WTO dispute settlement system was clearly one of the greatest achievements of the Uruguay Round. The DSU, in fact, would be an antidote to the procedural deficiencies of Article XXII and Article XIII of the GATT. The clearly defined rules of the DSU have enabled the Dispute Settlement System to effectively interpret the covered Agreements. In that process, a body of jurisprudence was emerging that had lent solidity and predictability rule based multilateral trading system. WTO's system of adjudication was widely applauded as one of the most efficacious; certainly mitigate the imbalances that were persisting by settling the disputes on the basis of the rules. The delegate observed that the WTO Dispute Settlement System had established itself probably as the most successful international tribunals in resolving international trade disputes. The Member's experience for the last fourteen years had been generally positive. However, that was not to say that the system does not require further improvements. The delegate stated that if one had to analyse the system in the context of greater legalism, the system was adopting and the evolving jurisprudence, Members should certainly explore the possibility for reforming the system for better participation especially from the perspective of developing countries.

21. The delegate stated that India was fairly active in the DSM over the last 13 years. Overall, India had participated in 17 cases as a complainant and in 19 cases as a respondent and many cases as a third party. Most of these cases have been filed against the US and EU, the major trading partners for India. The products on which these cases have been filed particularly reflect important sectors of India's exports-textiles and clothing, steel, pharmaceuticals, shrimp and rice. As far as the 19 cases filed against India were concerned, there were three which required important policy changes in India, such as removal of the QRs regime on imports, the automobiles investment regime, and the introduction of the mail box mechanism under the TRIPS Agreement etc. implementation of the decisions in the 3 cases posed many policy as well as political issues for India. However, as a mature participant in the multilateral trading system, as in other inter-governmental forums, India complied by meeting the challenges. With the three cases involving policy changes, India's trade openness had been rapidly increasing for the last two decades leading to greater liberalization of the Indian economy.

22. The delegate informed that India had complied with all the dispute rulings against it, complied with pain, but complied. The delegate stated that that was not the case with some larger WTO Members, as we continued to observe in the DSB meetings where we were subjected to repeated but shallow justifications for non-compliance. In India's view, compliance was a crucial achievement of the stronger DSM that emerged out of the new

DSU, and that advantage had to be preserved. For developing countries, the stress on compliance was even more important as it may be very difficult for them to retaliate without themselves suffering adverse economic consequences. With regard to the coordination among different stakeholders, unlike the advanced countries where the cooperation between the business community and the government was highly institutionalized, in India that coordination was still in the evolving stage. The delegate opined that all the developing countries including India need to develop institutional mechanisms or support systems to assess and manage the pre-litigation and post-litigation.

23. The delegate emphasized on development of legal capacity in developing countries which lack adequate financial, institutional and human resources indeed remain as a challenge. The delegate observed that with the exception of few, dispute settlement as an option had not been exercised by many developing countries. While there could be many reasons for the lack of trade interest, fear of adverse consequences of challenging the large countries, the most important factor was getting access to the system. The developing countries often lack adequate financial, institutional and human resources to access the system. To address such issue, India had a proposal for a Dispute Settlement Fund in the ongoing DSU reforms. India, along with other "Like Minded Group" including the African Group Members, proposed several "Special and Differential Treatment" provisions for the developing country members, which include constitution of "Dispute Fund" to address the issue of "access" to the system.

24. Under that proposal, the proponents suggested that a WTO Dispute Fund should be constituted under Article 28 of the current Legal Text, to facilitate the effective utilisation of the dispute settlement procedures by the developing country Members. This fund financed from the regular WTO budget and extra budgetary sources, which might include voluntary contributions from the Members, was available to all developing country Members for all disputes where they were parties to the dispute as complainants as well as respondents. As a Special and Differential treatment (S&D), that proposal was a matter of capacity building for developing countries.

25. The delegate observed that the concept of Special and Differential Treatment was conceived in the acknowledgment of the fact that developing countries were at very different stages of economic, social and technological development and therefore have entirely different capacities as compared to developed countries in taking on multilateral commitments and obligations. The proposal of the like minded group in the ongoing DSU review was particularly focused to make these provisions in a more conceptualized and concrete way so that they were more effective and mandatory. Those proposals would include strengthening the S&D provisions regarding consultations and establishment of Panels.

26. The delegate stated that one of the major challenges, the WTO Members were facing at the moment was implementation of the disputes settlement decision. Members were aware that WTO was a set of self-enforcing agreements. From that perspective, the final outcome of a dispute settlement would depend on how effectively the winning party

could force the losing one into compliance with the rulings. WTO provided a choice between trade compensation and retaliation. Trade compensation was possible only with the consent of the non-complying Member to bring its measures into conformity with WTO Law. It was possible only when the non-complying country offers it and the parties to the dispute agree on its scope and implementation. There was a need to ensure that DSU provided incentives to comply as soon as possible. The delegate was of the view that, there was a clear case for developing countries to be exempted from the long list of requirements in Article 22.3 on cross retaliation. The procedural burdens to “convince or prove” how the circumstances were serious enough was prohibitively expensive. Developing countries should therefore be allowed to retaliate when there was non-compliance by developed countries in cases of which involved by the developing countries.

27. The delegate also urged that Members could also consider the possibility of dispute avoidance. That was particularly important as many developing countries lack the required resources or capacity to take advantage of the System. Many developing countries face a number of measures in the nature of trade irritants or trade barriers. Those could be discriminatory regulatory or administrative measures. In most cases such measures, due to low trade volumes of the exporting countries or other constraints including capacity issues, were not brought before the WTO. A horizontal mechanism which essentially involved a non-confrontational and mediatory approach to discuss and resolve such issues were also worth exploring. If they it carried through, it would provide a significant relief to a large number of developing countries, especially the smaller ones.

28. The **Delegate of the United Republic of Tanzania** observed that the major promise of the Uruguay Round (UR) generation was the welfare benefit for all countries through strengthening of the multilateral trading system. However, in that process there were two distinctive trends among the developing and developed countries. On one hand, the developing countries were trying to pursue a proactive approach in their effort to more effectively integrate their economies in the Multilateral Trading System (MTS), in the face of their continued marginalization in the global trade and investment. On the other hand, the developed countries, filtering on their commitments towards their weaker trading partners, have stepped up their efforts to an early launching of a new round of Multilateral Trade Negotiation (MTN) and broadened its scope through inclusion of new issues. Dispute Settlement System was the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rule based system would be less effective because the rules could not be enforced. The operation of the dispute settlement system in the WTO had been a remarkable success. It was clear that Members found it useful to utilise the new system as a tool for enhancing their trade diplomacy and securing solid and reasonable timely responses to practical trade problems.

29. The relatively lower level of development and integration in international trade of the Least Developed Countries (LDCs) have impeded or limited their participation into the system. Although the importance of an adequate trade-policy infrastructure among others was difficult to underestimate, some of the more specific problems facing most of

the LDCs seemed to be rooted in the nature of the Dispute Settlement Mechanism (DSM) itself. The delegate pointed out the limited participation as panellists, limited or non-representation in the Appellate Body from LDCs and limited or non representation of LDC nationals in the WTO Secretariat.

30. Least Developed Countries, particularly, African countries have traditionally not been considered as important players who should be consulted in the negotiations. Thus, the concern likely to be pursued was linked with certain countries and which might not be in the direction of other countries. As such, lack of know-how on bargaining and negotiations was the result of many factors including non-involvement of those countries. Even other rules were not drafted with LDCs in mind and therefore, there were of little or no use to them. For example, the rule on retaliation. Yet, demand and proposals which these countries table, were pursued with difficulties or considered unrealistic. One example was on special and differential treatment. Still, LDCs have no disputes as complainants or respondent apart from attending as third parties. Thus, despite of their limited capacity in terms of resources, both human and financial, their institutional; participation was of paramount importance. The delegate stressed the need to build their internal coherence and capacity to cooperate with other countries.

31. *WTO as framework Agreement Vis-à-vis Economic Partnership Agreements (EPAs)*: The ACP-EU Partnership Agreement which was signed in Cotonou in June 2000 provided for the conclusion of WTO compatible trading arrangements between the ACP countries and the EU. One of the key requirements of the agreement was to progressively remove barriers to trade between the two parties and enhancing cooperation in all areas relevant to trade. These new trade arrangements were called Economic partnership Agreements (EPAs). The primary objectives of economic and trade cooperation under the Cotonou Agreement (CA) were reduction and eventual eradication of poverty; sustainable development; and to foster smooth and gradual integration of ACP economies into the world economy without compromising their national objectives. One of the main instruments of this enhanced economic and trade cooperation was the EPA. Article 37 of the Cotonou Agreement lays down the principles of the EPAs. The EPAs were most likely to undermine the negotiating positions of the ACP in multilateral forums. The agreement tend to grab what the ACP countries have gained in the WTO. A real example was the recently concluded full EPA between the EU and the Caribbean countries (Cariforum). It was a learning platform to other LDCs and developing countries in their ongoing negotiations with the developed countries towards the EPAs. The following areas form part of the fully signed EU-Cariforum EPA; and they mostly constituted areas for future or ongoing EPA negotiations:

32. *Intellectual Property*: It has been agreed at WTO that developing countries implement Trade Related Intellectual Property Rights (TRIPS) by 2005 and LDCs by 2013. However, the EPA required both LDCs and developing countries to make commitments that go substantially beyond TRIPS. That was the case with Cariforum that had signed a full EPA.



33. *Investment:* It was not an agenda in the WTO; but it was included in the EPA. Cariforum had negotiated it in the same text with Trade in Services. The EPA was requiring ACP countries to open up markets and treat foreign (EU) investors in a similar manner like locals.

34. *Competition:* That area was not included in the WTO agenda while substantive commitment was required in the EPAs to enforce competition policies in ACP countries including the area of services. That was also included in the EU-Cariforum EPA.

35. *Trade in Services:* It was also an area for future EAC-EU EPAs negotiations. Under WTO, developing countries were not required to make further market access and national treatment commitments in addition to what they have made. While LDCs were under no obligation in the WTO to make further commitments, both developing and least developed countries were required in the EPAs to make commitments that go beyond the existing WTO's General Agreement on Trade in Services (GATS) commitments in terms of opening up and regulations.

36. In conclusion, the delegate stated that WTO represented an institutionalized mandate to establish a global rule based trading regime evolving through various rounds of negotiations. LDCs anticipation of accession to the WTO, as per LDCs perspective was that it should be different in terms of coverage, of commitments, the degree of commitment, capacity required to face the challenges emerging from globalization and strength required to take advantage of the opportunity. However, this was not the only case, as in WTO, countries get what they negotiate but not what they deserve.

37. The delegate observed that the LDCs and developing countries were still positioned to argue for their demands and put feasible proposals for discussion. That was due to the fact that, most of these countries were faced with common problems and could adopt common positions that were practical. United spirits are stronger than the bomb. The delegate highlighted that LDCs and developing countries should undertake accession from a position of strength that would enable them to face emerging challenges adequately and exploit the opportunities, meanwhile should strive to retain what they have already secured under the WTO.

38. The **Delegate of the Kingdom of Saudi Arabia**<sup>2</sup> highlighted the issues involved in the negotiation process and wanted to know the problems faced by the AALCO Secretariat in training people in these areas.

39. The **Delegate of Thailand** submitted the statement to the Secretariat. The delegate stated that it was undeniable that international trading regime was essential to the stimulation and enhancement of economic growth in every country and that was particularly true for developing countries. The delegate stated that all recognized that the WTO was the only global international organization dealing with the rules of trade between or among nations and economies. Such rules establish a framework and code of conduct for international trade which had influence on the economic well-beings of our

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

countries. It was observed that the effective participation of developing countries in WTO Negotiations was a very important means of leading to a truly free and fair global trading system.

40. Although the completion of the Doha Round of Negotiation had been prolonged and several WTO Member States have sought other alternatives particularly bilateral Free Trade Agreement. Thailand still maintained its firm belief in the importance of the multilateral negotiation through the WTO, especially for the specific issues of subsidies, rules on Free Trade Agreements and the monitoring of protectionism that required multilateral discussion. Therefore, Thailand continued to fully support the multilateral trading system and would continue to be actively engaged and lending constructive support in moving the Doha Development Agenda forward towards a successful conclusion. The delegate strongly believed that a successful round would provide the global economy with assurances against the threat of new protectionist measures being introduced against international trade. It could also ensure a fair and reliable multilateral trading system that was a powerful instrument for poverty alleviation and prosperity elevation for every country.

41. In conclusion, the delegate believed that to resolve the current global economic crisis, it strongly believed that multilateral efforts would be required. The delegate was convinced that in order to find a global solution to the current global economic crisis through the strengthening of multiculturalism, every state should take the Doha Development Agenda (DDA) forward. Since a lot of work had been done and much progress had been made in the Doha Round, it would be a lost opportunity if the progress we have made so far were futile. The delegate was therefore hoping that WTO Member States could settle differences as quickly as possible in order to reach the fair and balanced outcome.

## **B. Expressions of Folklore and its International Protection**

1. The **President** invited the Deputy Secretary-General of AALCO, Dr. Hassan Soleimani to make introductory remarks on the agenda item “Expressions of Folklore and its International Protection”.

2. **Dr. Hassan Soleimani, the Deputy Secretary-General of AALCO** introduced the agenda item “Expressions of Folklore and its International Protection” and recalled that the topic had been on the agenda of the Organization since its Forty-Third Annual Session held at Bali, Indonesia in 2004.

3. The DSG stated that folklore was an important element of the cultural heritage of every nation. For Asian-African countries, matters related to Folklore were extremely important because they own most of the world's biological resources and also a great heritage of folklore. Therefore, it was important to negotiate a legally binding instrument to prevent the misuse and misappropriation of folklore at international level.

4. He pointed out that the Secretariat prepared the Report on the agenda item which provided an overview of the work of the World Intellectual Property Organization (WIPO) Intergovernmental Committee (IGC) since its inception in 2001, focusing its attention on the recently concluded Fourteenth, Fifteenth and Sixteenth Sessions of the Committee and the documents circulated at the Sessions for the consideration of the Member States. The report also reflected upon the WIPO Secretariat's draft policy objectives and core principles for the protection of Expressions of Folklore, the recent text in the discussion of which had been annexed to the Secretariat's Report.

5. He stated that the WIPO's IGC, which had so far convened Sixteen Sessions, made considerable progress in formulating flexible policy objectives and core principles for the protection of Expressions of Folklore. At those Sessions, discussions focused on different options available to States to effectively protect Folklore and prevent its misuse and misappropriation. However, there were many outstanding issues on which the Committee was yet to evolve a consensus, which was considered at the First Inter-sessional Working Group Meeting of the IGC held from 19 to 23 July 2010 and it would be considered again during the Seventeenth Session scheduled in December 2010.

6. He recalled that at the Fourteenth and Fifteenth Sessions of the Committee, the major focus was on renewal of the mandate of the IGC. Towards fulfilling that objective, the Member States of WIPO, despite their differences worked together for an extension of the period of IGC to two more years. A concrete proposal was made by the African Group and it was supported by many of the Asian countries to win over a mandate for an extension of the IGC. The new mandate of the WIPO General Assembly called for "text based negotiations" by which, an effective protection of Expressions of Folklore *inter alia*, through the development of an international legal instrument was agreed largely by the Member States. The new mandate also received a clearly defined work program and made provision for four formal Sessions of the IGC and three Inter-Sessional Working Group Meetings.

7. The DSG informed that under the new mandate, the IGC had to submit the texts of the international legal instrument or instruments to the WIPO General Assembly in September 2011. The Assembly later decided to convene a Diplomatic Conference.

8. Further he stated that AALCO would be the appropriate forum for further discussion on the effective protection of folklore. The deliberations at the Session could focus on: (i) Prevention of the misuse, misappropriation and protection of expressions of folklore, (ii) Establishing an internationally binding legal instrument to protect the Expressions of Folklore, and (iii) on the Revised Provisions on the Protection of Expressions of Folklore and Policy Objectives and Core Guiding Principles.

9. It would help in consolidating the position of Asian-African countries on the substantive aspects of the future international instrument for the protection of Expressions of Folklore.

10. He also noted that discussions among AALCO Member States for keeping AALCO as a forum was necessary bearing in mind that the IGC was at the final stage of convening a Diplomatic Conference in 2011, in order to formulate an international legal instrument on Expressions of Folklore along with Traditional Knowledge and Genetic Resources, a joint seminar or expert meeting on the protection of Expressions of Folklore would be pertinent at the juncture. He welcomed on behalf of the AALCO Secretariat any such proposals from the Member States to organize such seminar or expert meeting in the near future.

11. The **Delegate of the Sultanate of Oman** in her statement stated that folklore was an important element of the cultural heritage of every nation. Due to the development of a lucrative international trade in indigenous heritage which had seen most of the economic benefits diverted to non-indigenous persons and institutions, the protection of indigenous folklore and knowledge had become a pressing issue. She stated that since 1967 many developing countries attempted to regulate the use of folklore creation in the framework of their copyright law. However, as copyright was author-centric while folklore was the result of impersonal creativity of unknown members of the nation or communities thereof, attention turned to the possibility of *sui generis* protection.

12. The delegate informed that there were various international efforts to address the inadequacies of intellectual property in the protection of folklore. One of the earlier international attempts was the 1967 Diplomatic Conference of Stockholm, which resulted in the insertion of Article 15 (4) in the Berne Convention. The Article provided protection of the unpublished works of unknown authors presumed to be citizens of Convention members.

13. The delegate noted that UNESCO and WIPO also had fostered some major developments in the protection of folklore, the most notable being the 1976 Tunis Model Law on Copyright for Developing countries and the 1982 Model provisions for National law on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions.

14. The delegate explained that the Tunis Model Law widened the ambit of copyright law to accommodate the special features of folklore. The Model Provisions on the other hand represented a protection mechanism which were lying outside copyright laws, and that was said to be, *sui generis* protection, hence the use of the term “expressions of folklore” as opposed to works of folklore.

15. She stated that the protection under the Model Provisions takes the form of:

- (i) prohibition on the unauthorized use of expression of folklore where authorization was required;
- (ii) prohibition on the misrepresentation of the source of expressions of folklore;
- (iii) prohibition on the willful distortion of folklore in a way prejudicial to the interests of the relevant community; and

- (iv) a provision for international extension of protection based on reciprocity.
16. The delegate added that the Model Provisions maintained a proper balance between protection against abuses of expressions of folklore, on the one hand, and of the freedom and encouragement of further development and dissemination of folklore, on the other.
17. Another initiative from UNESCO and WIPO was the World Forum on the Protection of Folklore. In particular the following actions were recommended in the Forum's Plan of Action:
- (i) The Establishment of a Committee of Experts to look into the conservation and protection of folklore;
  - (ii) The holding of regional consultative fora;
  - (iii) The drafting of new international agreement on the *sui generis* protection of folklore by the Committee of Experts by the second quarter of 1998.
18. In order to implement the above recommendations, she stated that WIPO and UNESCO undertook the following measures:
19. In 1999, they conducted four Regional Consultations on the Protection of Expressions of Folklore, each of which adopted resolutions or recommendations with proposals for future work. Recommendations for the legal protection of folklore focused on the development of a *sui generis* form of legal protection at the international level and also considered the Model Provisions to be an adequate starting point and relevant groundwork for future work.
20. In October 2000, WIPO established an Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
21. In 2008, IGC through an open commentary process, prepared "gap" analyses in the protection available. It was expected that the analyses would help prioritize issues and identify substantive areas for the committee to focus upon.
22. During May 2010 WIPO IGC session, Inter-sessional Working Groups (IWGs) were agreed to be established, IWGs were meant to provide legal and technical advice and analysis to IGC. During the session, delegates had negotiations on the newly revised WIPO paper on "Objectives and Principles" for the protection of TCEs/EoF where many comments were raised. Another meeting would take place in December 2010.
23. The delegate also mentioned that from the above efforts it could be seen that things were underway to develop an international legal instrument/instruments for effective protection of folklore and traditional knowledge as well as genetic resources.
24. With regard to her country position, she stated that heritage, culture and arts had long been an efficient method of building bridges between her country and other nations.

Apart from the national laws which protect national heritage, her country had signed a number of international conventions on protection heritage and promoting Culture Expressions. In recognition of the Sultanate's global cultural role, she informed that UNESCO declared Muscat as the culture capital in 2006.

25. The delegate further noted that her country had signed a number of bilateral agreements to strengthen relationship in the field of culture and arts very recently. Under the agreements the parties, among other things, cooperate in the conservation of historical monuments, documents, and manuscripts; and hold cultural weeks and exhibitions. She also informed that her country was taking part in Shanghai Expo in China where millions of people were attracted to the Oman stall.

26. The **Delegate of the People's Republic of China** stated that there was no legally binding instrument on the protection of Expressions of Folklore at international level. He also welcomed on behalf of the Delegation, the 2 years renewal of the IGC mandate by the WIPO and he hoped that IGC would continue to fulfill its mandate and achieve substantial progress in drafting international legal instrument on the issue.

27. The delegate cited the outline of Government's National Intellectual Property Strategy, 2008, which provided for the ways and means to protect the Expressions of Folklore and also emphasized the benefit sharing mechanism which would ensure a reasonable balance between conservators of Expressions of Folklore and those who use the resources, in order to protect the lawful interests of the individual and communities. Since the establishment of IGC, his Government had actively participated in the relevant negotiations and aligned itself with the developing countries. The Asian-African countries were facing common problems and sharing similar interests and positions on Expressions of Folklore, he observed.

28. The Delegate hoped that the Member States would impress upon the international community to have cooperation on the issue through the platform of AALCO, so that the interest of Member States could be safeguarded in a better way.

29. The **Delegate of the Republic of Indonesia** made few remarks on the issues related to the topic of Expressions of Folklore and its International Protection, including issues related to Genetic Resources, Traditional Knowledge which otherwise would be mentioned in short as GRTKF.

30. His delegation thanked the AALCO Secretariat for the preparation of the document AALCO/49/Dar Es Salaam/2010/S 14 which reflected the recent developments of the Folklore discussions in the forum of WIPO up to 16<sup>th</sup> IGC-GRTKF Meeting.

31. The delegate mentioned that the efforts for the protection of Genetic Resources, Traditional Knowledge and Folklore assumed greater significance and had drawn the attention of the international community over the past decade.

32. His country attached great importance to the protection of GRTKF as it had been increasingly exposed to misappropriation and misused as a result of the continuous vacuum of the legal international regime for its protection. He also observed that as they move in to the future, they witnessed strong protections for the new creation in the area of intellectual property rights, but on the other hand, they were facing the continuous absence for the protection of GRTKF.

33. The delegate stated that his delegation was fully aware of the high economic and cultural value of the GRTKF, and wealth should appropriately be utilized for the socio-economic development of the people to whom it belonged. Studies indicated that the annual global market for genetic resources, traditional knowledge and folklore had reached hundreds of billions of dollars annually and the benefit of utilization of their creations and inventions would legitimately reach to those rightful holders only, he stressed.

34. The delegate highlighted the fact that his delegation commends highly the mandate given by the WIPO General Assembly "to undertake text-based negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments) which would ensure the effective protection of Genetic Resources, Traditional Knowledge and Folklore".

35. The delegate further stated that as regards the recent development of inter-sessional Working Group (IWG) held in Geneva from 19 to 23 July 2010, his country was pleased to see the development of the documents on Traditional Cultural Expressions (TCEs) developed by the experts although further development was required in the scope of future negotiations in the IGC.

36. The delegate also shared his views on the discussions held in the inter-sessional working group meeting which focused on the protection of expressions of folklore and stated that the following measures were needed to be considered and observed by the AALCO:

- (i) Protection of TCE against unauthorized reproduction and other misappropriations;
- (ii) Prevention of derogatory and offensive uses and failure to acknowledge source;
- (iii) Prevention of false indications as to authenticity/community endorsement;
- (iv) 'Defensive' protection (protection against acquisition of IP rights over TCEs adaptations); and
- (v) Prevention of unauthorized disclosure of confidential/secret TCE.

37. The delegate stated that the present development was encouraging and his country looked forward to see an international legal instrument emerging from those negotiations.

38. He also pointed out that his delegation would like to take the opportunity to reiterate the commitment to the efforts aimed at the establishment of a desired international legal instrument (or instruments) with regard to the protection of Genetic

Resources, Traditional Knowledge and Traditional Cultural Expression as a whole. In connection to it, he also called upon AALCO that the Organization should observe the development pertaining to the GRTKF not only in the topic of Expressions of Folklore but also on the topics of Genetic Resources and Traditional Knowledge.

39. At the end, the delegate reiterated that the issues were of utmost importance and they hoped that the mandate of WIPO General Assembly could be fulfilled within the already agreed timeline. To that end, the role of Asian and African countries was important in fulfilling the objective and mandate of the WIPO General Assembly towards the international legal instrument (or instruments) on the protection of GRTKF.

40. The **Delegate of the United Republic of Tanzania**, at the outset, acknowledged and expressed their sincere gratitude for the great work done by AALCO till then in trying to prevent the misuse, misappropriation and protect the expressions of folklore at the international level. They also acknowledged several comments given by delegates who helped in the previous sessions to try refine the developed Draft Instrument "Provisions on the Protection of Expressions of Folklore/Traditional Cultural Expressions" and development of the Policy on the same.

41. The delegate in her statement stated that they agree with AALCO Secretariat report on the Protection of Folklore that folklore has always been taken to be the common heritage, of the community without sense of ownership.

42. It was true that almost all developing countries do not have legal set up mechanism whether formal or informal to protect folklore.

43. In compliance with the foregoing comments, they wished to share the following comments:

- (i) Definitional problem: It was our concern to note that the community of the developing countries did not have or share the common definitions of folklore and that include full description of its legal rights.
- (ii) On the Policy Objectives and core principles:
  - (a) where the principle of the responsiveness to aspiration and expectations of relevant communities was explained, her concern was related to the deploying of indigenous and customary laws to tangible and intangible properties. Among the factors that undermine the property rights was the limitation to concept of tangible and intangible property itself. For example, the concept of protection of intangible property like traditional songs was not inherent in traditional/customary jurisprudence.
  - (b) Principle of balance: Among the strategies of enhancing the equal rights balance was to establish regulatory system that would cover and exhaust all dimensions of diverse individuals, communities, and other stakeholders to ensure equitable rights and interest of those who develop, preserve and thus benefit from them. Regulatory system would also reconcile diverse,



policies and concepts to ensure that stakeholders benefits at maximum and hence satisfy their needs including maximum protection measures.

- (iii) Article 6 Terms of Protection from the Draft p.39: Article 6 did not clearly showed the right of the governorship and protection of traditional and cultural folklore in period when such folklore and culture would no longer be practiced. The question to be discussed there would be “what was the legal effect upon the folklore and cultural traditions that would not be practiced at particular period in life in relation to the definitions given in Article 6 (1) if one compare it with Copyright Law that specified the extension of the copyrights ownership to 50 years after death of right owners then the copyrights ownership would go to the public domain.
- (iv) Article 7-Formalities (Pg 39): In Article 7 Formalities, specifically on the issues of the registration or notification of traditional and cultural folklore in the area of recording the brief history of the period of existence of cultural folklore, such necessary information for registration might be as when it started existing and who originated culture. Such challenges and questions might only be answered through extensive social research.
- (v) They also recommended for the reconciliation of Article 1. (55&57 on heritage) with regard to conflicting and different specified life period of the traditional heritage. These facts were to be reconciled and harmonized with experts definitions of life period.

44. The **Delegate of Japan** in his statement shared the importance of protection of traditional cultural expression/folklore. He stated that in their view, in order to obtain an appropriate outcome from the work at the WIPO, it was important to fully discuss basic questions such as: what should constitute traditional cultural expressions/folklore eligible for protection and what kind of protection was required and to what extent. It could be hoped that as regards such basic questions, a common understanding would be formed through discussions as the WIPO-IGC and its inter-sessional IWG meetings in accordance with the mandate approved by the WIPO. With regard to the public domain, he said that it was a new primary source for creative activities and everybody should be aware that it should not restrain creative activities which would serve the development of culture.

45. The **Delegate of the Kingdom of Saudi Arabia**<sup>3</sup> appreciated the statement made by the DSG of AALCO and also the report prepared by the Secretariat of AALCO on the agenda item. The Delegate stated that their Government attached great significance to the matters relating to the protection of Expressions of Folklore. He informed that the Ministry of Culture and Information deals with the issues relating to protection of Expressions of Folklore, copyrights and also issues relating to the culture in his country.

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

46. The **President** thanked all the delegations for their comments on the agenda item and thereafter he invited Dr. Xu Jie, DSG of AALCO to introduce the agenda item: Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption.

**C. Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption**

1. **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Secretariat's Report on the topic "*Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption*" contained in Document AALCO/49/DAR ES SALAAM /2010/S.11.

2. At the outset, he remarked that the title of the agenda item had been changed from "An Effective International Legal Instrument against Corruption" to the current one. Dwelling on the reason for this he remarked that, this was done in pursuance of the consensus reached by the delegates of Member States at the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia that a new title be proposed by the Secretariat that took into account the entire gamut of issues thrown open by the United Nations Convention Against Corruption [UNCAC].

3. While briefly highlighting the previous works of AALCO on this agenda item, he remarked that AALCO had prepared two Special Studies on the topic viz, *Combating Corruption: A Legal Analysis* which was published in 2005 and the *Rights and Obligations under the United Nations Conventions Against Corruption* that was published in 2006. These were prepared with a view to providing an in-depth analysis of the international anti-corruption instruments, especially the UN Convention Against Corruption and giving a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the UNCAC into their national jurisdictions, he noted. On the utility of the UNCAC in the fight against corruption, he stated that the Convention, which had entered into force in 2005 and has got 145 State Parties to it, represented the most comprehensive anti-corruption instrument available on the global scene. He also stated that the UNCAC offered all countries a comprehensive set of standards, measures and rules which can be applied to strengthen their legal and regulatory regimes to prevent and root out corruption.

4. As regards the newly established 'review mechanism' that was adopted at the Third Conference of State Parties to the UNCAC held at Doha in November 2009, he remarked that with its adoption, the international community had found an answer to one of the principle challenges facing the fight against corruption, namely, the failure to establish an appropriate review mechanism so as to enforce the provisions of the UNCAC effectively. He expressed hope that the review mechanism would go a long way in not only enforcing compliance with the provisions of UNCAC but also would enable the international community to monitor the anti-corruption efforts undertaken by its State Parties in a more effective and transparent manner.

5. Commenting on the current Report prepared by the Secretariat of AALCO on the agenda item, he pointed out that the Report, besides highlighting the salient features of the UNCAC, narrated the core aspects of the review mechanism, its modalities, along with its strengths and weaknesses. He was of the hope that a strong and effective review mechanism would not only assist the State Parties in identifying gaps in the implementation of UNCAC, but also would increase the prospects of achieving the full potential of the UNCAC in its fight against corruption. The report also dealt with other areas of critical concern to the developing countries such as the issues of Asset Recovery and Technical Assistance, he added.

6. As regards the need to forge international cooperation in the fight against corruption, he remarked that the fight against corruption could only be won by extensive international cooperation and that every effort should be made to operationalize the provisions on international cooperation which were found in the UNCAC. He also added that to the extent international cooperation was embedded within the modalities of review mechanism, it represented a significant step forward in the eradication of corruption.

7. In conclusion, he hoped that the Member States of AALCO would use the occasion to deliberate upon the various facets of the fight against corruption with a special emphasis on the recently established review mechanism with a view to making a substantial contribution towards the international efforts on finding the best practical ways and means to implement the provisions of the UNCAC in their respective societies.

8. The **Delegate of the State of Qatar**<sup>4</sup> at the outset remarked that the UNCAC represented an important milestone in the anti-corruption efforts of the international community and that any effort towards the eradication of corruption should adopt the multi-disciplinary approach that it prescribed.

9. Commenting on the position of his Country vis-à-vis UNCAC, he mentioned that Qatar had ratified the UNCAC in 2007 with a reservation on the dispute settlement clause of the Convention contained in Article 66 of the UNCAC to the effect that it did not consider itself bound by the jurisdiction of International Court of justice. He remarked that Qatar had enacted a lot of measures in order to domesticate the obligations flowing from the Convention. These included among other things; the establishment of the National Committee for Integrity and Transparency in 2007 which was charged with not only overseeing the financial transactions and other public procurement measures, but also tasked to combat corruption in the country, he added. He pointed out that Qatar enjoys a respectable position amongst the international community of States and particularly within the Arab world for its transparency standards and that it had established judicial cooperation with a number of Countries so as to make sure that perpetrators of corruption were penalised promptly.

10. He explained that Bribery was a crime in Qatar and that laws imposed penalties for public officials who engaged in covert or overt corrupt acts either in return for monetary or personal gain. Any one who took action to influence or attempt to influence

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<sup>4</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

a public official through monetary or personal gain was also subject to grave punishment, he added. He informed that the current Penal Code (Law No. 11/2004) which governs corruption, stipulated that individuals convicted of corruption may receive up to ten years imprisonment and/or a fine of substantial amount. Though corruption investigations were handled by the Qatar State Security Bureau (QSS) and Public Prosecution, final judgments were made by the criminal court, he added.

11. Commenting on the initiatives taken in the field of money-laundering, he stated that Qatar had adopted the National Anti Money-Laundering Law with a view to curb money laundering and other corrupt practices. In pursuance of this law, the National Anti Money Laundering and Combating Terrorism Committee (NAMLC) had been established to manage and combat money laundering and combating efforts. He also mentioned that after a thorough review of the legislative framework on anti-money laundering and combating financing of terrorism issues, Qatar had enacted a new Law No. (4) of 2010 on Anti-Money Laundering and Combating the Financing of Terrorism (Law) which commenced on April 30.

12. Explaining it further, he stated that in 2004, the Qatari Financial Intelligence Unit was established with the primary responsibility of reviewing all financial transaction reports, identifying suspicious transactions and financial activities of concern, guaranteeing that all government ministries and agencies had measures and standards to ensure appropriate oversight of financial transactions. Commenting on the need to forge international cooperation in the fight against corruption, he stated that his country was willing to cooperate with all the Member States of AALCO in order to find effective strategies for combating corruption. While noting that Qatar would soon be adhering to the Arab Convention Against Corruption, he stressed that political will was critical in the fight against corruption.

13. The **Delegate of Bahrain**<sup>5</sup> remarked that the UNCAC represented a monumental achievement in the fight against corruption and that his Country was willing to take critical measures in order to tackle that menace in all its manifestations. Commenting on the domestic measures taken in his country in the fight against corruption, he pointed out that in 2002, the Public Sector Administrative and Finances Monitoring Committee was created to regulate the operation of public institutions. Its first task was to investigate the usefulness of existing policies in countering corruption and to propose legislation to amend any inadequacies discovered. He added that his country was willing to cooperate with other Member States of AALCO to forge common strategies to fight corruption.

14. The **Delegate of the Sultanate of Oman**<sup>6</sup> stated that corruption is a multi-faceted evil that not only affected the national economy but also the world economy adversely. Upon this realisation, he stated that his country had enacted a number of laws not only to criminalize corruption, but also to punish various forms of trafficking. In that regard, he noted that the Sultanate of Oman had recently adopted the Combating of Money Laundering and Financing of Terrorism Act 2010, by virtue of Royal Decree No 79 of

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<sup>5</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

<sup>6</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

2010. According to this law, the Minister of National Economy shall issue the executive regulations that were needed to effectively enforce the law, he added. He also expressed the view that the combating of corruption required effective international cooperation at various levels and that the Sultanate of Oman was willing to extend such cooperation to the Member States of AALCO in this regard. In conclusion, he noted that the Sultanate of Oman was in the process of ratifying the Arab Convention against Corruption in an effort to tackle corruption more effectively.

15. The **Delegate of the Republic of Korea** remarked that as a State Party to the UNCAC her country had enacted national implementing legislation [“Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices”] and established various institutional frameworks in order to incorporate the obligations contained in it. As required by Chapter VI of the UNCAC, the Republic of Korea had provided technical assistance and support to developing and transition countries in implementing the Convention including training, material and human resources, research and information sharing, she added. In this regard, Korea, besides cooperating with the UNDP in assisting Bhutan and Bangladesh, had also signed Memorandum of Understandings [MOUs] with Indonesia, Thailand, Mongolia and Vietnam, she pointed out. She also informed that her Country held a symposium in Seoul on the theme: “2009 APEC Anti-Corruption & Transparency Symposium on Systematic Approach to Building Anti-Corruption Capacity: Diagnosing & Evaluating Corruption and Sharing Best Anti-Corruption Policies” with a view to find out ways and means to combat corruption. On international cooperation, she stated that Republic of Korea shared with other Member States of AALCO the understanding that corruption could not be eliminated without regional and international cooperation and that it would extend its full cooperation to the Members of AALCO in this regard.

16. The **Delegate of the Republic of Indonesia** maintained that corruption was a global problem requiring both global and national solutions. He remarked that one could not only seek to blame the corrupt officials from the developing Countries, but also needed to dissect the reasons why the monies and funds stolen from the developing countries were disappearing in world financial centres which allow money laundering and stealing to go unpunished.

17. Commenting on the laws and strategies put in place by his country in the fight against corruption, he pointed out that his country had adopted the National Strategy to Eradicate Corruption [2010-2015] recently. Explaining this strategy, he remarked that it rested on six pillars which included: developing and strengthening prevention system; enhancing law enforcement; reforming laws at the national and international level; recovering stolen assets; strengthening cooperation at the provincial, national and international level and developing a reporting mechanism at the national and provincial level. The main thrust of this strategy was to encapsulate the provisions of the UNCAC into his country's legislative framework, he added. He further stated that Indonesia recognized that legal reform was one of a key components in achieving the goals and aspirations of the National Strategy, and that the draft law on non-conviction based forfeiture, amendments to the laws on money laundering, criminal procedure and on the

eradication of corruption were pursued in that direction. These reforms, in his view, should be undertaken in conjunction with institutional reforms, especially in the area of special courts for anti-corruption. He added that his country's national efforts could be complemented by the best practices of the other States Parties to the UNCAC.

18. While supporting the recently adopted review mechanism to implement the provisions of the UNCAC at Doha, he opined that it was an on-going and gradual process which would ultimately culminate in the adoption of a progressive and comprehensive approach to tackle this menace taking into account all the fundamental principles of the UNCAC, particularly, international cooperation and asset recovery. He added that Indonesia was optimistic that if countries worked towards the compliance of their national legislation in accordance with the requirements of the UNCAC, barriers in international cooperation could be significantly reduced.

19. The **Delegate of the People's Republic of China** at the outset pointed out that the fact that the agenda item on corruption had been under discussion during the previous eight Annual Sessions of AALCO, clearly demonstrated the importance that the Asian-African States attached to the fight against corruption and the need for international cooperation. In his view, the deliberations that took place in those Sessions facilitated the implementation of the UNCAC. He also appreciated the efforts of the Secretariat of AALCO in that regard.

20. As regards the provisions of UNCAC, he remarked that the building of legal regime for the implementation of the Convention should be enhanced and that Countries should make their domestic laws on corruption consistent with the Convention. Commenting on Chapter VI of the UNCAC that deals with technical assistance, he noted that this not only had been one of the great concerns of the developing countries including China, but also was one of the important conditions to safeguard the implementation of the Convention. In this regard, he wanted the international community to give priority to the real demands of the developing countries, particularly on the difficulties found in the process of review and to listen carefully to the voice and appeal of developing countries. This, he noted, would help developing countries in improving their capability to implement the Convention.

21. As regards the threat posed by corruption, he remarked that corruption threatened the stability and security of all societies besides retarding sustainable development and rule of law. While expressing commitment to fight corruption not only at the domestic level but also at the global level through international cooperation, he welcomed the newly adopted review mechanism to implement the provisions of the UNCAC at Doha in November 2009. While highlighting the modalities of the working of the review mechanism, he stated that all States Parties to the UNCAC would be reviewed by governmental experts by two other State Parties and that the latter could exercise their sovereign right concerning matters such as 'country visit', publishing of country review report and the participation of non-governmental organizations. However, during the review process, the sovereign rights of the State Parties to the UNCAC must also be respected, he cautioned. In that regard, he was pleased with the concerted efforts of all

Asian-African Countries for striking a balance between universal review and non-interference in domestic affairs. The mechanism, which not only had set up a safety valve of state sovereignty but also provided for an independent implementation mechanism, satisfied the interests of Asian-African Countries, he added. He expressed hope that the start-up of the review mechanism would promote the effective implementation and function of the Convention. He also expressed his Country's willingness to work together with all Asian-African Countries and to actively participate in the review process. Commenting on the provisions of international cooperation contained in the UNCAC, he stated that those provisions, particularly, the content of 'asset recovery' 'extradition' and 'mutual legal assistance' laid a solid legal basis for international cooperation in the fight against corruption. In that regard, he also pointed out the challenges that still remained namely, the mustering of political will for international cooperation.

22. In conclusion, citing an old Chinese saying: "there are other hills whose stones may serve to polish jade" which meant that advice from others may help one overcome difficulties, he noted that China was ready to learn from the experiences of other Asian-African Countries in that area and that it was willing to develop south-south cooperation on anti-corruption efforts in an effort to fully utilize the provisions of the Convention to combat corruption.

23. The **Delegate of Kenya** remarked that the social vice of corruption had infiltrated the very fabric of society and that corruption as a social problem was multi-faceted. The uprooting of its social, political and cultural roots required a fundamental change in people's attitudes and behaviour- a social transformation, she noted. In her view, one of the most effective ways for anti-corruption authorities to prevent corruption was by identifying corruption-prone areas and putting into place policies, procedures and regulations which could seal corruption loopholes. In that regard, she drew attention to some of the most vulnerable areas where corruption could take place, which, in her view, included: public procurement, hiring retention and promotion of public officials, management of public finances, construction projects and revenue collection.

24. Commenting on the gravity of corruption as prevailing in Kenya, she stated that corruption networks had permeated several aspects of its lives which posed a great challenge to the development of Kenya. In that regard, she pointed out that the Government of Kenya had accorded a high priority to the fight against corruption and to that effect, had put in place a core strategy for fighting corruption by establishing effective institutions for prevention, investigation, prosecution and the punishing of corruption.

25. Commenting on the measures that Kenya had taken in its fight against corruption, she pointed out that her country had put in place the necessary legal and institutional framework for fighting corruption in various manifestations. She gave an illustration of those measures which included: the establishment of the Kenya Anti-Corruption Authority, a statutory body to fight against corruption; the enactment of the Public Officers Ethics Act which prohibited public officials from engaging in unjust enrichment and from accepting any personal benefit in the performance of public duty; the enactment

of the Proceeds from Crime and Anti Money-Laundering Act of 2009 as well as the Witness Protection Act which aimed at protecting whistle blowers. She also noted some other initiatives that Kenya had taken in its fight against corruption which included: the Anti-Corruption policy which supplemented legal provisions and other government initiatives for preventing and fighting corruption in Kenya; Public Anti-Corruption Initiatives; prosecution by the Attorney-General of corruption-related matters; inquiries by the Public Accounts Committee and Public Investments Committee; Ad-Hoc Investigatory Committees; and the Parliamentary Select Committee on Corruption.

26. As regards the need for international cooperation in the fight against corruption, she stated that Kenya was aware of the fact that corruption had an international and cross-border dimension and that Kenya, as a State Party to both the UNCAC and the United Nations Convention on Transnational organized crime, was ready to cooperate with other States in the fight against corruption, particularly in the context of the recovery of stolen assets.

27. While highlighting the problems that Kenya faced in its fight against corruption, she remarked that her Country's war against corruption had been hampered by a number of factors that included: lack of cooperation on the part of those States where the stolen money was situated, the limited human resources available for the institutions charged with undertaking anti-corruption efforts and the inability to totally eradicate the networks of corruption which are far wide spread. In this regard, she reiterated the need to intensify global cooperation and solidarity so as to effectively tackle the fight against corruption.

28. The **Delegate of Japan** remarked that his country was fully aware of the importance of international cooperation in the fight against corruption which endangered rule of law and sustainable development, besides adversely affecting social and economic order. In his view, in order to deal effectively with this issue, it was vital to establish a framework of comprehensive international cooperation and that this necessitated the effective implementation of the provisions of the UNCAC.

29. While welcoming the recently adopted review mechanism to implement the provisions of the UNCAC, he expressed hope that, it would certainly serve the objective of enhancing international measures taken against corruption. While stressing the need to carry out official development programmes to the developing countries in their fight against corruption, he stated that Japan had been doing it for a long time. As regards the UNCAC, he pointed out that the Japanese Diet had already approved the Convention and that the adoption of a concomitant domestic legislation was being considered by the Diet.

30. Commenting on the need to provide technical assistance either bilaterally or through appropriate international agencies for countries struggling in their fight against corruption, he pointed out that such technical assistance programmes were being carried out by Japan in collaboration with the UNODC for the Countries of Southeast Asia in an effort to help them ratify and /or implement the provisions of UNCAC.



31. The **Delegate of Thailand** at the outset appreciated the Secretariat of AALCO for having prepared the background paper on the item in an excellent manner. He maintained that its comprehensive and lucid summary of the developments relating to the work of the Conference of State Parties to the UNCAC was particularly valuable for the deliberations. While welcoming the introduction of a new title for the agenda item, he noted that, it not only reflected aptly the recent developments in the field of prevention and suppression of corruption but also represented a positive gesture towards a more proactive role of the AALCO in this regard.

32. Commenting on the challenges facing the fight against corruption, he remarked that the challenges facing the fight against corruption were manifold that *inter alia* included; the lack of necessary legal and technical expertise and the lack of financial resources needed to make a dent on corruption. Securing full implementation of the provisions of the UNCAC was also problematic, he added. In his view, it was this aspect of the problem that triggered the adoption of the newly created review mechanism to implement the provisions of the UNCAC, at Doha in November 2009. He was of the firm view that the review mechanism represented a very important step forward in the fight against corruption and that it was time to ensure compliance with the requirements this mechanism.

33. As regards the need for technical assistance and capacity-building in the fight against corruption, he pointed out that they must be tailored to the specific needs of each State. He stated that Thailand, being aware of the importance and benefits of those capacity-building programmes, had been working in close cooperation with the UNODC through its National Anti-Corruption Commission in the organization of the Asset Tracing and Asset Recovery Programmes which were lastly conducted in July 2010. In that regard, he also informed that Thailand would be hosting an International Anti-Corruption Conference on the theme: "Restoring Trust: Global Action for Transparency" in November 2010 at Bangkok, which would bring together thousands of experts from all sectors and regions of the world in order to engage in a solution-oriented debate on corruption.

34. He was of the view that any legal regime would not be fully effective in itself and that appropriate supplementary social and educational policies focussing on raising public awareness and education for rule of law, should be put in place in order to foster a culture of accountability and integrity. He noted that a multi-disciplinary approach, that took into account the complex nature of corruption and supported by bilateral, regional and international cooperation, was indispensable for waging an effective fight against corruption.

35. Commenting on the UNCAC, he mentioned that the Convention provided the international community with an excellent framework with which to construct a comprehensive regime against corruption and that the adoption of the review mechanism for the implementation of the UNCAC at the recently concluded Third Conference of State Parties to the UNCAC at Doha, would go a long way in strengthening the fight against corruption. While reaffirming his country's commitment towards the fight against

corruption, he stated that Thailand was looking forward to participating in the review mechanism once it became a Party to the UNCAC. In that regard, he highlighted that a series of amendments to the Thai Penal Code and the International Cooperation on Criminal Matters Act were pending before its National Assembly for approval. He was optimistic that Thailand would be able to ratify the UNCAC once these laws were adopted by the Assembly. In conclusion, he added that Thailand would not only continue to lend its full support to the international community in its fight against corruption but also continued to adhere closely to the goals and guiding principles of UNCAC in the formulation of its laws and policies.

36. The **Delegate of the United Republic of Tanzania** remarked that since corruption was a global problem it must be fought not only at the domestic level but also at the international level, using drastic, serious and structural policy reforms.

37. On his Country's position vis-à-vis the UNCAC, he informed that his country had ratified the UNCAC in May 2005 and adopted the Prevention and Combating of Corruption Act in 2007 so as to incorporate the obligations flowing from it. That law, which not only mirrored the UNCAC in all its facets, but also revised the existing anti-corruption legislation, penalised twenty four distinct cases of corruption, he added. Commenting on the utility of the UNCAC, he stated that the adoption of the Convention was not a panacea in itself and that it should be accompanied by political, economic, judicial and administrative commitment at the national level.

38. Dwelling upon the anti-corruption efforts undertaken in his country, he remarked that much of his Country's anti-corruption efforts could be traced back to the Warioba Commission Report of 1996 which assessed the state of corruption in Tanzania and which had identified areas where corruption occurred and revealed those mechanisms in society that generated corruption. The National Anti-Corruption Strategy and Action Plan 2000- 2005 [NACSAP I] which was adopted by the Tanzanian government in 1999, was only in response to that Report, he added. That plan, he pointed out, was mandated; to carry out relevant institutional reforms to eradicate corruption; to implement a public awareness campaign against corruption; and to bring together stakeholders working on rooting-out corruption in Tanzania.

39. Elaborating further, he stated that NACSAP had triggered the adoption of sector-specific action plans on the part of all the twenty two government ministries of Tanzania, to address specific corruption-prone areas falling within their respective ambit by promoting transparency, simplifying rules and procedures and making information accessible to the general public. He also pointed out that NACSAP was also instrumental in the establishment of a number of institutions that included; the Office of a Minister of State in the Office of the President with responsibility for good governance and coordinating the anti-corruption activities; a Good Governance Coordination Unit; the Prevention and Combating of Corruption Bureau; the Ethics Inspectorate Department and in the strengthening of the Office of Controller and Auditor General. He further informed that NACSAP II, which was launched in 2006 covering a period until 2010, was adopted with the aim of including local government authorities, who were charged with the duty

to implement anti-corruption measures, civil society and the private sector within the purview of the national anti-corruption strategy.

40. Commenting on the provisions of the Prevention and Combating of Corruption Act 2007, he noted that it had established the Prevention and Combating of Corruption Bureau [PCCB] with powers of investigations and prosecuting persons accused of offences relating to corruption. The PCCB, which grants power to the Director-General of the PCCB to authorize his officers to investigate the bank accounts of any person suspected of obtaining property corruptly, also acts as an advisor to the government and the public at large on issues relating to the control of corruption in Tanzania and has a duty to sensitize the public accordingly, he explained.

41. Under that Act, the Government could enter into agreements with other States to facilitate the tracing, forfeiture and confiscation of the property used or relating to the commission of offences relating to drugs, he added. Besides this Act, the Tanzanian Government had also adopted or put in place several policy and legal instruments aimed at fighting corruption, that included the Public Procurement Act 2004, the Anti Money-Laundering Act 2006, the Proceeds of Crime Act 1991 and the Election Expenses Act 2010, he pointed out.

42. As regards the positive effects that the Prevention and Combating of Corruption Act 2007 has had in Tanzania, he pointed out that the Act, besides leading to the successful prosecution of many petty corruption cases, had also brought a lot of high-profile individuals to book. The investigation into the External Payment Arrears Account [EPA] at the Bank of Tanzania was one of the notable examples, he added.

43. Commenting on the review mechanism adopted at the Third Conference of State Parties to the UNCAC at Doha, he remarked that his Delegation supported some form of reporting mechanism as envisaged in the UNCAC in the same way how they have been accepted in the field of human rights. While accepting the concept of peer review mechanism, he noted that Tanzania participated in a pilot review programme to test methodologies for the UNCAC in accordance with the review mechanism. On the challenges facing Tanzania in its fight against corruption, he stated that despite all the institutional frameworks and laws on anti-corruption that existed in his country, corruption, both petty and grand, remained a challenge for his country and the biggest challenge in this regard revolved around changing the mindset of people who engaged in corrupt practices, he added. He further added that his Country was willing to cooperate with the international community in the fight against corruption.

44. As regards the nexus between the international arms trade and corruption, he pointed out that, the former, which constituted a source of grand corruption, needed to be tackled and monitored more effectively. He was of the view that international arms trade, which was an area surrounded by secrecy, commissions and omissions, needed to be cleansed from corruption.

45. Commenting on the policy reforms needed to combat corruption in the broader African context, he recalled that the "Global Coalition for Africa" had adopted a set of anti-corruption principles<sup>7</sup> in 1999, at Washington DC for its Members much before the enactment of the UNCAC. He added that, in the formulation of these principles he did play a part.

46. **"ANNEX: I. THE TEXT OF THE WARIOBA/WEREME PAPER**

**Text: Policy Reforms Needed To Combat Corruption in Africa**

Drastic policy and international reforms are needed to deal with grand corruption in Africa and internationally because corruption is a worldwide problem. That is just one important point stressed in a paper co-authored by two Africans presented February 23 at a one-day anti-corruption conference here at the World Bank co-sponsored by the Global Coalition on Africa (GCA) and the U.S. Department of State.

Former Tanzanian Prime Minister and Minister of Justice Joseph S. Warioba and Frederick Werema, Tanzania's acting director of constitutional affairs and human rights, collaborated on the paper entitled "Principles and Guidelines to Combat Corruption."

In their paper, presented by Werema, the two Africans stressed that "Difficulties arising out of broad-based reforms should not be used as an excuse for delay in tackling corruption."

Representatives from **11** African countries were present at the World Bank, along with their counterparts from Europe and others representing international organizations, to draft a convention to combat corruption in Africa.

The African representatives also were in Washington to attend the February 24-26 "International Conference on Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials," hosted by Vice-President Al Gore at the State Department. African Countries represented at the GCA event included Benin, Botswana, Ethiopia, Ghana, Malawi, Mali, Mozambique, Senegal, South Africa, Tanzania and Uganda.

Following was the **Text of the Warioba Paper**, prepared by Frederick and Joseph S. Warioba

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<sup>7</sup> The Delegate wanted these principles to be incorporated into the Report. Hence, the text of the Principles is added at the end of the Report on Corruption as an Annex. Also attached is the text of the Paper (with a brief background) that was co-authored by the Former Tanzanian Prime Minister and Minister of Justice Mr. Joseph S. Warioba and Frederick Werema, Tanzania's former Director of Constitutional Affairs and Human Rights, entitled: "*Principles and Guidelines to Combat Corruption*" which was presented at the meeting convened to adopt the above mentioned anti-corruption principles in 1999.

### **Principles and Guidelines to Combat Corruption**

It is generally agreed that the crusade and measures against corruption be undertaken simultaneously with the more general national efforts to improve economic governance. The reforms should be seen as neither a necessary nor sufficient condition for eliminating corruption. Difficulties arising out of broad based reforms should not be used as an excuse for delay in tackling corruption.

At the national level concerted efforts are required to address the causes of corruption and take effective action against all its manifestations. The levels of this action for a short-term would be:

- (a) Systematic reforms geared towards addressing underlying weaknesses in policy, administration and politics, and create a strong economic base conducive to elimination of corruption;
- (b) Formulate a specific and focussed national anti-corruption strategy upon which the war against corruption would be based.

In many African countries corruption is very pervasive. Petty corruption is rampant in the provision of social and economic services. Bribery is very common in medical services, schools, courts, licensing institutions, the police etc. It is the ordinary people who suffer most under petty corruption. High officials are normally not solicited to bribe in order to see a doctor for consultation or treatment, to register children in school or to obtain some permit. The ordinary people are, however, compelled on numerous occasions to bribe in order to obtain basic services.

The common man does not have full protection from public institutions because in those institutions there are corrupt officials. In many cases when an individual reports to law enforcement officials about a corrupt official the alleged corrupt official will be informed by his fellow officials to whom the report is made either for purposes of soliciting bribe or because the law enforcement officials and the culprit are part of the same corrupt system.

With regard to large scale corruption the resources lost through corruption would have been spent on programs and projects for the advancement of the people, the vast majority of whom are poor people in the rural and urban areas. The result is that rural roads are poorly constructed or not well-maintained, drugs are in short supply at dispensaries and clinics, water systems are poor etc. Even when investment is discouraged as a result of corruption the real sufferers are the common people. In addition the repayment of foreign loans becomes a burden to the tax payers, including the poor.

One of the causes of corruption among officials commonly advanced is the inadequate remuneration of public officials. This includes officials working in

rural areas where such officials live above the poverty line while the majority live below the poverty line. So bribery is exacted from those who have nothing by those who have something.

The perversity of bribery and the lack of protection from authorities have created public apathy towards corruption. The ordinary people cannot get services without bribing and they also feel the authorities condone corruption. In the circumstances they scrap whatever they can manage and bribe, sometimes without being solicited. This mindset has created a belief and expectation that the public is also entitled to inducement whenever they are expected to perform some duty or exercise a right. Thus during elections voters expect to be bribed by candidates and political parties. As a result corruption is growing into a culture in many countries and corrupt people can easily be elected in positions of leadership, including the higher levels of leadership.

The truth of the matter is that the public has withdrawn and taken an apathetic stance because of the perception that the political leadership does not take an active role in combating corruption and other vices. They believe corruption is perpetrated and condoned by the leadership in the government, political parties and by every state organ including the judiciary which is an institution responsible for dispensation of justice and upholding the rule of law; the police who are responsible for the preservation of law and order; and the public delivery of services generally. It is not difficult to understand the reason for the level of apathy if the leadership is perceived to be non-committal; or if the public cast doubts on the integrity and sincerity of their leaders.

Flowing from the above the real stakeholders in efforts to eradicate corruption are the common people and consequently a meaningful strategy to combat corruption must involve them. Such strategy must include measures to deal with the current mindset.

In terms of amount of resources huge sums of money are lost through large scale corruption perpetrated by high officials. The causes of grand corruption are poor economic policies, discretion, cumbersome regulations and procedures (red tape) and lack of transparency and lack of accountability. The result of all this is bribery, favoritism, nepotism, embezzlement of public funds, waste of resources and, generally, lack of good governance.

Drastic policy and institutional reforms are needed to deal with grand corruption. Since corruption has become a global problem, to fight it international cooperation and collaboration is important. The starting point is however national action. International action against corruption will of necessity concentrate on international relations and the global economy. Indeed most of the current action at international level has impact on the leveling of the playing ground for competition at global level. This strategy will not succeed unless the playing field is level at the national level. It is therefore suggested that the starting point in

combating corruption must start at the national level.

Circumstances vary from one country to another. Regional and international measures must be adjusted to the conditions existing in each country. However, the issue of national leadership and economic strength of each country transcends national borders, regional and global alignment. Practices that are regarded as corrupt in some countries are tolerated in others. For instance, the American Foreign Corrupt Practices Act (FCPA) prohibits bribery of foreign officials for the purposes of obtaining or retaining business. It provides for severe criminal penalties including fines and imprisonment. This law tolerates goodwill payments to persons holding ministerial jobs for facilitation of paper processing on the basis that they are not based on quid pro quo. Such payments are referred to as "greasing payments" and are not criminalized. In developing countries such payments form the bulk of public complaints and have adverse impact on social and economic development.

The arguments for the sustainability of anti-corruption drive within countries as made above are:

- (a) That the efforts must be internally driven and the public and civic society must be mobilized and their confidence in the administration restored;
- (b) That the leadership must be committed to fight corruption and leaders integrity and moral standing must be unquestionable. Leaders should avoid conflicts of interest between their public office and private endeavors;
- (c) That systems must be created to spearhead the war against corruption on the basis of tripartite cooperation-operation and collaboration between the government, civic society and business community. This entails issues of transparency, accountability and open-mindedness in all sectors.
- (d) That in order to achieve what is stated in above, legislative measures be taken, rules and regulations be promulgated in the most simple language to guide the war against corruption. In this regard, codes of conduct for different professions should be promulgated if there are none or reviewed if out dated. Members of the professions should be encouraged to do so.
- (e) That monitoring and enforcement systems be enhanced or created where they do not exist. Enforcement of the law; rules; regulations and codes is the most important measure that can revive public confidence and prove to the public that corrupt people do not benefit from the proceeds of corruption. Corruption should not be regarded as an incentive but generally that "it does not pay".

In summary the following general principles were suggested:

1. Each country should undertake systematic reforms to correct weakness in

policy, administration and governance generally. This includes meaningful economic reforms. Such reforms should be diligently undertaken and carefully monitored. There should be checks and balances as experience shows that the reforms could be influenced and affected by corruption.

2. Governments should develop a national good governance strategy focusing on the eradication of corruption. The strategy must be nationally owned and popularly supported by those with the strongest resentment against corruption, that is the general public.

3. The national strategy should be comprehensive, have clear objectives, expressed in clear and simple language and accessible to the majority of people. It should address specific issues, providing milestones of activities, phasing and interplaying of activities as well as indicating forward and backward linkages.

4. Effective instruments should be created for implementation of the strategy and there should be mechanisms for the monitoring of implementation.

5. States should establish programs to mobilize popular support by the people against corruption, including mechanism for the general participation of the public and civil society in the formulation, execution and monitoring of anti-corruption programs and measures.

6. There should be established mechanisms for the public to submit allegations of corruption and corrupt practices such as independent commissions. Informants and witnesses should be protected in order to move towards the elimination of the mindset that corruption is condoned.

7. Reform of local government should be undertaken, where necessary, in order to empower people to fight corruption. Those who suffer most are the ordinary people, so they need to have power to deal with corruption at their level.

8. Good and committed leadership is a necessary condition to success. Government needs to demonstrate necessary leadership and political will to fight corruption. Integrity and honesty in leadership is essential. Governments should therefore establish codes of conduct and guidelines which should include provisions for declaration of assets and gifts by leaders and disclosure of conflict of interest. Political accountability should be clearly elaborated.

9. Governments should undertake reform to reduce rent-seeking opportunities and policy-induced scarcities. This should include reduction of political discretion and bureaucratic controls and simplification of regulations and procedures to remove red tape.

10. Administrative reform should be undertaken by Government to restore the morale and integrity of public service. This should include regulations for merit-



based recruitment and promotion, adequate benefits, including remuneration and pension schemes and capacity building.

11. The independence and integrity of the judiciary is of crucial importance. States should review their legal regimes and carry out reforms to maintain the independence of the judiciary and restore high standards of integrity, honesty and commitment in the dispensation of justice.

12. Corruption is a serious offense. Governments should adopt laws which will deal with corruption offenses effectively. Laws should impose severe penalties, make provision for seizure, forfeiture or confiscation of property acquired through corruption and blacklisting of persons or business entities convicted of corruption or corrupt practices.

13. Anti-corruption agencies are very useful in fighting corruption. Such agencies should be autonomous and operationally independent and free from interference in the discharge of their functions. Those agencies should have power to initiate and conduct investigations and prosecute offenders. The establishment of anti-corruption agencies should not however detract from the traditional law enforcement agencies which should be strengthened in their functions.

14. One of the most important tools in fighting corruption is transparency. Without transparency it will be impossible to eradicate corruption. Governments should review regulations and procedures to make them simple and clear of bureaucratic red tape, especially in areas such as public procurement. The use of open and competitive bidding for government contracts should be strengthened and provision should be made for the challenge of an award of a contract by a losing bidder should there be lack of transparency or suspected corrupt practices.

15. Transparency will also enable the public to effectively participate in the fight against corruption. Freedom of the press is an important ingredient in the general crusade against corruption. Freedom of the press and freedom of expression enable the public to express; seek; receive; and impart or disseminate information and ideas on corruption. Investigative journalism will identify or reveal corrupt transactions done under the carpet or contracts that are made without taking the greater public interests into account. It is therefore suggested that the right to information should be guaranteed in the laws of each state, including provisions in the constitution of the country if necessary. This will enable:

- (i) Disclosure and examination of public finances by the people through parliamentary scrutiny;
- (ii) Media access to information regarding government finances;
- (iii) Publication of information on government audit reports and evaluations of projects.

- (iv) Laying before legislatures all important international agreements, including agreements with international financial institutions.

### **International Cooperation**

16. Since corruption has become a global problem it is important to promote regional and international cooperation in fighting it. One way to promote such cooperation is to adopt a convention with provisions which include all or most of the above principles. In addition at the regional level states can cooperate by harmonizing laws and procedures, render mutual assistance in investigations and prosecutions, including extradition, establish mechanisms for the exchange of ideas, information and intelligence on anti-corruption techniques and cooperate in training.

17. Corruption is criminalized in many countries. Many countries engage in mutual assistance in criminal matters. At the international or regional level therefore, governments should establish a mechanism for cooperation. Prominence in such an arrangement should not only be given to grand corruption but also to petty corruption or "grease" payments as are known in some countries. The following could be the scheme of international cooperation:

- (a) Assistance in obtaining evidence; documents; articles; records that are suspected to be in one country;
- (b) Assistance in investigation; forfeiture and confiscation of property in respect of proceeds of corruption, and enforcement of forfeiture orders;
- (d) Freezing of assets or interdicting of dealings in property suspected to have been corruptly acquired;

18. International cooperation-operation is also required in detection of corruption in international business transactions, procurement etc. This is where leaders and decision making authorities are influenced to make decisions that are not compatible with national interests. In particular, the following measures should be taken:

- (a) Cooperation arrangements (at the regional or global level) should provide for standards or conduct for those holding public offices;
- (b) Cooperation schemes should detail systems of government procurement of goods and services that assure transparency, equity and efficiency. These systems must be harmonized or where this is not possible, approximated for the purposes of consistency;
- (c) The arrangements or convention should have provisions that require states to make provisions in their internal income tax laws to deny tax deductions in or

favorable tax treatment for expenditures made contrary to anti-corruption provisions;

19. International arms trade is perceived to be a source of grand corruption. This area is surrounded by secrecy, commissions and bribes. International cooperation is required to cleanse arms trade from corruption.

20. International mechanism for cooperation should contain provisions on reporting obligations on efforts and measures that an individual country has or undertakes to do to stamp out corruption. The mechanism should also allow non-governmental organizations to participate in reporting incidences of corruption.”

47. The **Delegate of the Islamic Republic of Iran** at the outset expressed his appreciation for the Report prepared by the AALCO Secretariat on the agenda item for being very informative.

48. Commenting on the measures that his country had taken on anti-corruption front, he remarked that his Country had adopted a lot of anti-corruption initiatives so as to tackle this global problem. This included the new Anti-Money Laundering Law of 2008 which required the establishment of stricter mechanisms to verify the lawfulness of the origins of any financial transaction particularly in the banking system. In accordance with Article 4 of this law, a Supreme Council had been established in the Ministry of Economic and Finance Affairs, he pointed out. This law had been complemented by an Executive By-Law approved by the Government which mandated the credit institutions, insurance companies and stock exchanges to create a data base with the aim of identifying information relating to customers. In pursuance of the fight against corruption, a Financial Intelligence Unit had also been established which was tasked mainly with tracking the suspicious transactions and reporting it to the Judiciary, he added. Furthermore, he pointed out that the Islamic Republic of Iran has also established ad-hoc specific courts to investigate prosecute and punish cases of money-laundering. In an effort to raise awareness about this menace, his country had convened several workshops and seminars which included the one on Anti-Money Laundering and Countering Financing of Terrorism which saw the participation of individual experts, relevant officials and the media, held last year, he added.

49. Commenting on the need to forge international anti-corruption cooperation in the fight against corruption, he stressed that it was critical as it could help build support for fighting corruption with the will and to some degree with the capacities. In this regard, he stressed the need to evolve mutual legal assistance, the forms of which could include the power to summon witnesses, to compel the production of evidence and other relevant documents, to issue search warrants and to serve process. In addition, countries must have both the judicial capacity and legal infrastructure in place to effectively address transnational bribery and money laundering issues, he added.

**D. “Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law”: Proposal from the Republic of Korea**

1. The **Delegate of the Republic of Korea** made a proposal that a new agenda item on: “Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law” be included and dealt with by AALCO in the coming years. In his view, this was closely related to the UN programme of Assistance in the teaching, study, dissemination and wider appreciation of international law. Explaining the various rationale underlying the proposal, he remarked that a better knowledge of international law would serve “as a means for strengthening international peace and security and promoting friendly relations and co-operation among States”, and that it was as true in the Asian-African regional context as it was to the international context. With the rapid increase of globalization, issues such as environment, human rights which were once regarded as domestic matters are now being governed by international law. This had created a situation wherein States were more and more obliged to solve their problems by reference to international law and international institutions, he reasoned. In his view, without international laws, it would become impossible to maintain relations on the basis of peace, harmony and mutual cooperation.

2. Commenting on the lack of awareness and appreciation for international law, he stressed that its importance was not sufficiently realised even by law students and lawyers, much less the common man. Illustrating this, he pointed out that legal education in Korea was primarily focussed on domestic laws as opposed to international law and that national Courts rarely dealt with international law issues even when a case required the application of international legal principles. In this regard, he pointed out that the Korean Government was cooperating with various faculties of law and domestic international law societies in an effort to strengthen international law. In this regard, he remarked that his Government runs various programmes to increase the knowledge and capabilities of future lawyers in international law. Explaining these programmes, he stated that the first programme was the *Thesis competition* which required students to research and write a thesis on any current topics of international law. The second programme was the *Korean version of the Jessup Moot Court Competition* intended to increase the knowledge about the practical application of international law. The third programme was the *Seminar or Symposium with Overseas Experts* in which international law experts were invited to speak on and debate about issues relating to Korea.

3. Commenting on the survey conducted by the Korean Government to ascertain how law students perceived international law, he informed that the results of that survey were mixed in that, while many did appreciate the importance of international law, some were pessimistic about the enforcement mechanisms found in international law. It was also agreed by a large number of students that international law should be introduced into the curriculum as a compulsory subject, he mentioned.

4. Finally, he expressed the wish of the Korean Government that it would like to hear and share the experiences of other countries who had also been undertaking efforts to promote awareness about international law so that it could be used by other countries

and forums pursuing those objectives. While noting that his Government would continue to do its best to increase awareness about international law amongst the general public, he informed that, in this regard, the Government was carefully considering to establish a Government-Sponsored Research Centre for International Law which would not only provide employment opportunities for students specializing in international law, but also enhance mutual dialogue and understanding between government experts and scholars in international legal affairs.

5. This proposal which was intended to create awareness about the working of the international law was actively supported by the **Delegates from Malaysia and Japan**.

6. Commenting on the proposal, the **Delegate of Japan** remarked that promotion of rule of law in the international community was one of the very important pillars of Japan's diplomatic policy and that the Government of Japan was committed to continuing its engagement with various activities to establish and expand the rule of law in the international community. He noted that Japanese government was aware of the fact that this subject had been a topic of discussion at the Sixth Committee of the UN General Assembly every year and that Japan had been a supporter of the series of resolutions adopted under the topic of United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. In this connection, he informed that Japan, as one of the major donors, had contributed financially to the UN Audio Visual Library that was established in 2008. He was of the view that this Audio Visual Library was a remarkable programme with which to disseminate international law throughout the world. Furthermore, via internet, one would be able to access the ample volume of the historic archives, lecture series on various areas of international law, and research library anywhere in the world, he pointed out. While encouraging everyone from AALCO Member States to take advantage of this programme, he added that, Japan was prepared to continue working with AALCO Member States and other countries in order to promote wider dissemination of international law.

**X. SUMMARY RECORD OF THE THIRD MEETING OF DELEGATIONS OF  
AALCO MEMBER STATES AND CONCLUDING SESSION HELD ON  
SUNDAY, 8<sup>TH</sup> AUGUST 2010 AT 4.30 PM**

**His Excellency Mr. Mathias M. M. Chikawe, President of the Forty-Ninth Annual Session in the Chair**

**A. Report on the AALCO's Regional Arbitration Centres**

1. **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Secretariat's "Report on the AALCO's Regional Arbitration Centres" which contained the background relating to the establishment of the five AALCO's Regional Arbitration Centres and also contained the Reports of the Directors of Tehran, Lagos, Kuala Lumpur and Cairo Regional Arbitration Centres.

2. The Deputy Secretary-General recalled that one of the major achievements of the Asian-African Legal Consultative Organization (AALCO) in the economic field was the adoption of its "Integrated Scheme for Settlement of Disputes" in 1978 at Doha (Qatar) Session, with a view to creating stability and confidence in economic transactions with the countries of the region. The Scheme envisaged the development of national arbitration institutions, establishment of Regional Centres under the auspices of the AALCO and making available the services of the specialized arbitration institutions to the countries of the Asian-African region within the framework of the Integrated Scheme.

3. He stated that pursuant to the scheme, the Regional Centres for Arbitration at Kuala Lumpur, Malaysia for the Asian region and at Cairo, Arab Republic of Egypt for the African region were established in 1978 and 1979 respectively, on an experimental basis for a period of three years. As they were found to be successful in realization of the objectives, they were made permanently functional. Later two new 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.

4. He observed that the Centres had been established on the basis of an agreement between the respective host Governments and the AALCO. The objectives of the Centres were to promote international commercial arbitration in the respective regions and conduct arbitration and facilitate enforcement of arbitral awards. The Centres functioned as independent and neutral international arbitral institutions and for that purpose had been conferred upon with certain diplomatic privileges and immunities by the respective host Governments. The Centres were headed by a Director, appointed by the Host Government in consultation with the Secretary-General of AALCO. The Directors would present their reports on the functioning of the Centres at the Annual Sessions of AALCO.

5. He stated that the Regional Arbitration Centres were unique because they represented an effort on the part of developing countries at an inter-governmental level,

to provide for the first time, a dispute resolution system on an integrated pattern with regard to international transactions of a commercial nature in the Asian-African region. The Arbitration Centres were also organising seminars, workshops and training programmes to promote arbitration culture and expertise in the Asian-African region, he mentioned.

6. He took the opportunity to congratulate the Directors of all the Regional Arbitration Centres for their cooperation and efforts in taking the AALCO Regional Arbitration Centres from strength to strength and thanked the Host Governments for the support, assistance and guidance to the Centres in respective countries.

7. He informed that Mr. Sundra Rajoo, who was also an acclaimed arbitrator, had been appointed as the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) in March 2010. On behalf of the AALCO Secretariat, he took the opportunity to express his sincere wishes for his appointment as the Director of KLRCA. At the same time, he placed on record of his sincere appreciation to the former Director Dato Noorashikin Binti Tan Sri Abdul Rahim for her valuable services rendered to the KLRCA.

8. Finally, he welcomed the Directors of Kuala Lumpur and Lagos Regional Arbitration Centres and invited them to present their respective reports.

9. The **President** thanked the DSG, Dr. Xu Jie for his presentation on the “Report on the AALCO's Regional Arbitration Centres” and invited the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) to present the report of the Kuala Lumpur Regional Centre.

10. **Mr. Sundra Rajoo**, Director, Kuala Lumpur Regional Centre for Arbitration (KLRCA) highlighted the activities of the Kuala Lumpur Centre since the last Session. During his presentation, he mentioned that the year 2009 saw 30 years of existence of KLRCA. He also informed that ever since he assumed the office of the Director of the KLRCA, he had joined in several Malaysian Government sponsored delegations in promoting investment and business opportunities in Malaysia. The cities visited by the delegations included Frankfurt, Milan, London, Melbourne, Los Angeles, Munich and San Francisco.

11. He informed that KLRCA was approached to appoint arbitrators and mediators. In 2009, the total number of international arbitration and domestic arbitration was seven (7) and sixty six (66) respectively. In addition to that, there were two (2) mediation cases and four (4) domain name dispute cases.

12. He further informed that KLRCA entered into two co-operation agreements in October 2009 which were graced by the presence of H.E. Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO, namely:

- (1) KLRCA-UKM Agreement - KLRCA and Universiti Kebangsaan Malaysia (UKM) entered into a co-operation agreement to conduct Post-Graduate Diploma course in Arbitration under the "Continuing Professional Development" program (CPD); and
  - (2) KLRCA-ADNDRC Agreement - KLRCA and the Asian Domain Name Dispute Resolution Centre (ADNDRC) entered into a co-operation agreement wherein a branch of ADNDRC was to be located in KLRCA.
13. KLRCA participated in the Law Asia's inaugural Moot Court Competition by allowing the use of its premises to host the event. KLRCA also participated in other activities including attending conferences and seminars both locally and overseas.
14. As regards the Review of the 2009 Accounts of KLRCA, he stated that the Fixed Assets (Property, Plant and Equipment) for 2009 was RM590,919.00 (2008: RM753,434.00). The decrease was mainly due to the disposal of a motor vehicle for RM 90,406.00 and a depreciation of RM169,934.00.
15. The Centre's total current assets were RM10,436,552.00 (2008: RM6,348,885.00) due to increased cash and current account bank balances totaling RM6,062,865.00 (2008: RM2,169,382.00) held. The increase was reflected in a corresponding increase in Client's Deposits of RM8,204,135.00 (2008: RM3,698,225.00).
16. With regard to income and expenditure, Dr. Rajoo informed that the total income for 2009 was RM1,268,572.00 (2008: RM1,277,656.00). Despite an increase in the rental income of RM75,995.00 for 2009, there was no material increase in the total income as interest income from fixed deposit was reduced to RM25,543.00 against that for 2008 (RM132,247.00) as substantial credit balances were left in KLRCA's non-interest bearing current account.
17. The total expenditure for 2009 saw an increase of RM446,792.00 due to an the increase in the: (i) Salaries, bonus and allowances; (ii) Directors' remuneration; and (iii) Traveling and accommodation of RM106,525.00, RM17,866.00 and RM121,485.00 respectively.
18. The Centre had also introduced a new system and procedures of financial accounting. In view of that the Centre had reviewed previous financial records, and introduced new processes to enhance accountability and transparency in financial reporting, he informed. The Director also mentioned that they appointed an independent accounting firm to undertake and provide a financial assessment report as on 28th February 2010 and also procured early completion of the audited accounts of KLRCA for the period ended 31 December 2009. The Centre implemented a computerised accounting system to replace the manual entry system. It had boosted overall efficiency and enabled strategic financial planning. They also instituted authorization limits on financial transactions.



19. The Director stated that KLRCA was undergoing a complete re-branding of the Centre based on three pronged exercise: 1. Rebranding, 2. Public relations, and 3. Events management in support of the first two exercises.

20. Presently, his objective was to position the KLRCA as the globally recognized arbitration centre in Malaysia and the region; to draw arbitration and other forms of ADR cases to KLRCA to increase income and revenues; and to gain support from the business community for KLRCA. For that his target audience would be: Arbitrators and arbitral institutions; Governmental institutions and Policy makers.

21. As part of the rebranding exercise, KLRCA has adopted a new logo and tagline, he informed. He explained that the Logo emphasizes the letter 'A' as a modern triangle with a high peak to resemble KLRCA's high commitment, achievement, stability and reliability as a world class dispute resolution services provider. The new tagline was "*Regional Resolution, Global Solution*".

22. The Director also briefed that a new information kit had been finalised and the same would be used to promote KLRCA services to stakeholders, listed companies, government linked companies, missions, large corporate companies etc. KLRCA's website had been upgraded to be more visually arresting and user friendly. A corporate video was also being finalised to be included in the information kit.

23. He explained that the KLRCA adopted the UNCITRAL Arbitration Rules 1976 with modifications i.e. the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration (KLRCA Rules). KLRCA was now reviewing its arbitration rules and fees structure and would be the first of such Centre to adopt the latest UNCITRAL Arbitration Rules 2010 which was then approved by the UNCITRAL Commission in New York on 25 June 2010. The effective date of the new KLRCA Rules would be 15 August 2010 which was the same date as when the latest UNCITRAL Arbitration Rules 2010 would come into force.

24. KLRCA was currently drafting short form arbitration rules for use for smaller disputes which would limit the number of hearing days, cap the arbitrator's fees and aim to provide an alternative to the Malaysian subordinate courts' whose monetary jurisdiction had been increased tremendously. Those rules should be ready for use by the end of August 2010, he briefed.

25. As regards the Panel of Arbitrators, he described that the exercise to update the KLRCA's Panel of Arbitrators were now 273. He further explained that the deceased arbitrators and those arbitrators who could not be contacted had been removed from the Panel. All the Arbitrators had been asked to update their curriculum vitae. New qualified arbitrators had been added to the Panel. The updated Panel of Arbitrators would be uploaded on the KLRCA's website and accessible to users.

26. KLRCA was able to provide a list of translators and transcribers for the use at the request of the parties, he informed.

27. Further, he stated that KLRCA had selectively replaced outdated office equipment to improve productivity and efficiency including:

- (i) Installation of compactors for Case Management Files;
- (ii) Procurement of new notebooks to replace desktops for selected executive staff;
- (iii) Procurement of three in one Canon color printer, scanner and copier;
- (iv) The Resource Centre had been relocated to the vacant old Director's room for better space utilisation;
- (v) Case Management Department relocated to the previous Resource Centre which had more space;
- (vi) Arbitrator's Lounge was upgraded and supplied with additional equipment like microwave ovens, toaster, fridge etc.
- (vii) New caterers were appointed to provide better quality of food.
- (viii) Maintenance of the Resource Centre were outsourced with the re-listing, retagging and updating of books, journals and resource materials.

28. Mr. Rajoo stated the administration of arbitration cases were one of the core functions of KLRCA. The emphasis was on the level of service offered as evidenced by their targeted 48 hours turn around time to appoint the arbitral tribunal.

29. He also updated that since March 2010, KLRCA had undertaken several initiatives which were as follows:

- (1) KLRCA's bid to host the next Asia Pacific Regional Arbitration Group (APRAG) conference tentatively scheduled on April 2011. The previous three conferences were held in Sydney (2004), Hong Kong (2006) and Seoul (2009). On 10 May 2010, KLRCA made an application to host the above event.
- (2) KLRCA's unsolicited bid to host the secretariat for the Court of Arbitration for Sports, Lausanne in late March 2010 when the International Council of Arbitration for Sports (ICAS) was considering the setting up of a Court of Arbitration for Sports (CAS) Branch Secretariat in the Asia Pacific region. As the housing of such a secretariat would without doubt give KLRCA a much needed boost and mileage in the international as well as the Asia Pacific region, KLRCA made the unsolicited bid for it on 7th April 2010. The outcome of the bid has yet to be decided by ICAS.
- (3) On 16 April 2010, KLRCA accepted MYNIC Berhad's request that it would be the independent administrator of the Sensitive Name Dispute Resolution Policy (SNDRP).

30. He mentioned that there was a departure of all senior staff personnel between middle to end February 2009. As of beginning of March 2010, there remained only four staff namely, two secretaries, one clerk and a receptionist. Therefore, as of March 2010, it became necessary to immediately recruit new management, executive and support level staff in order to repair and upgrade the disrupted services offered by KLRCA. The Centre

now had a team of qualified personnel in their respective fields of expertise. The number of KLRCA staff grew from four (4) as at end February 2010 to sixteen (16) as of July 2010.

31. The Director informed that the present premises of the KLRCA would be relocated to suitable premises to house its activities.

32. Finally, he concluded by saying that the KLRCA was established 32 years ago, and was undergoing a transformation exercise to make itself relevant to the world of arbitration. The Centre had to capitalize on the several advantages available to it. The challenge was now to make KLRCA the preferred arbitration centre in the Asia Pacific region. Success was achievable by employing an appropriate marketing strategy and was increasing the level of service. KLRCA was grateful to the continuing support of AALCO and the Malaysian Government in its endeavour to reclaim its rightful place as the most experienced arbitral service provider in the Asia Pacific region.

33. The **President** thanked the Director of the KLRCA for his elaborate presentation and invited the representative from the Lagos Regional Centre for International Commercial Arbitration.

34. On behalf of **Mrs. Eunice R. Oddiri**, Director, Lagos Regional Centre for International Commercial Arbitration, a representative presented the report on the activities of the Centre since the last Session and also the anticipated activities in the remaining segment of 2010.

35. He reported firstly, the Centre's Case Load for 2009, in which he informed that there were 8 disputes/cases arbitrated at the Centre; 2 International arbitrations and 6 *ad-hoc* ones involving Nigerian registered companies with subject matter ranging from oil and gas, telecommunications, hospitality services, construction works and also environmental pollution management and aviation. The latter two areas of disputes were the new additions to the more traditional disputes encountered at the Centre, he informed.

36. During the year under review, the Lagos Centre had participated in number of events and they were:

A. International Congress of Maritime Arbitrators (ICMA XVII) (5 –9 October, 2009), Empire Riverside Hotel Hamburg, Germany

37. The Centre's General Counsel delivered a paper on "Party Autonomy in Arbitration"-as practiced in Nigeria under the Arbitration and Conciliation Act of Nigeria. Practical issues in party autonomy under the Lagos Centre's Arbitration Rules were also addressed.

B. Section on Business Law of the Nigerian Bar Association - 5<sup>th</sup> Business law Conference (5 - 8 April 2010), Abuja Sheraton Hotel and Towers, Abuja, Nigeria

38. The Centre was represented at the 5<sup>th</sup> Business Law Conference of the Section on Business Law of the Nigerian Bar Association titled, “Regulating the Business Environment in Emerging Markets”. The Arbitration and Alternate Dispute Resolution (ADR) Session discussed the topic “Nigeria: Arbitration and the States”. The panel of discussants addressed the relationship between the Federal arbitration law of Nigeria, and the arbitration laws of some States. Similarly, the rationale for the establishment of other arbitration and ADR institutions by some States in Nigeria was also discussed.

39. The panel which consisted mainly of Attorneys General of some States agreed that since Nigeria was a federation of States, Nigerian law recognizes the powers of the component States to legislate in areas of State competence.

40. Accordingly, arbitration and ADR, being among the areas of both federal and State legislative competence, both the federal government and State governments could make arbitration laws; and also set up parallel arbitration institutions.

C. The Commonwealth Regional Law Conference 2010 (8 – 11 April 2010), Transcorp Hilton Abuja, Nigeria

41. The Centre was well represented at that Conference, which had the theme-“The 21<sup>st</sup> Century Lawyer: Present Challenges-Future Skills”. During the session on Arbitration and ADR, the topic “Model Systems of Dispute Resolution in West Africa” was discussed by a panel of mixed Arbitration and ADR practitioners from Nigeria, United Kingdom and Canada. The practice of court connected ADR model of the Abuja-(Nigeria) Multi-Door Court House was compared with British civil mediation by court mediator experience based on the Exeter Group of Courts.

42. As regards the educational activities, in the previous year’s Annual Report, the Lagos Centre reported that the collaboration of the Regional Centre for Arbitration, Lagos with Alternative Dispute Resolution (ADR) Consultants from the School of Oriental and African Studies (SOAS), University of London, some of who facilitated the Annual William C. Vis Arbitration Moot in Vienna Austria, for the purpose of initiating ADR Moot Competitions among Universities within the sub-Saharan African region.

43. The Centre was happy to report that the Moot Court Competition was in its concluding stages such that participating students from the African States would be sponsored by the Lagos Centre to future competitions.

44. He also informed that expectations were that more universities from the sub-Saharan African countries would indicate greater interest in that Competition, in order to maximize the promotion by the Centre of the Law and Practice of various ADR mechanisms within sub-Saharan Africa and the rest of the African region.

45. The representative explained that the following promotional activities were embarked upon by the Centre in the period under reference:

A. International Bar Association Conference (23–25 June 2010), Eko Hotel, Lagos, Nigeria

46. The Centre sponsored an International Bar Association (IBA) Section on Energy, Environmental, Natural Resources and Infrastructure Law (SEERIL) and Arbitration Conference entitled, "Resolving International Energy and Infrastructural Disputes", held on 23-25 June 2010 in Lagos, Nigeria.

47. The Director of Centre delivered a paper at that event titled, "Making Africa an Attractive Destination for International Arbitration". In her paper the Director observed that in making Africa attractive to international arbitration; it was critical that business executives and the Lawyers called upon to negotiate an International Contract be familiar both with the process of International Arbitration and with the specialized institutions and rules available for conducting arbitration. According to her, the pre-requisites for the development and attraction of international arbitration to Africa could be classified into five broad categories namely: legal framework, judicial, practice, political and social. The presence and optimum exploitation of these factors would ensure the attractiveness of Africa as an international arbitration destination.

B. The Intellectual Property Dispute Resolution (IP ADR) Scheme

48. The Project on IP ADR Scheme of the Centre and the Intellectual Property Lawyers Association of Nigeria (IPLAN) aimed at entrenching a dispute resolution scheme for the intellectual property industry in Nigeria was still ongoing.

C. Domain Name Dispute Resolution Scheme

49. In furtherance of the Centre's work in Domain name dispute registration, the Centre was being proposed as the appointing authority for arbitration matters by the newly registered Nigeria Domain name registration body; in addition to making the Centre the dispute resolution centre for the industry.

50. He further informed about the future activities of the Lagos Centre and they were:

A. Training on Arbitration for Law Officers

Duration : 3 weeks

Venue : Regional Centre for International Commercial Arbitration, Lagos

B. Arbitration Workshop for Federal Legislators in Nigeria

Duration : 2 days

Venue : Lagos

C. Moot Arbitration for African Universities: ongoing from 2009/2010

Duration : 2 Weeks

Venues : Nigeria/Vienna

51. The **President** thanked the representative of the Lagos Arbitration Centre for his presentation. Then he opened the floor for comments and discussions.

52. The **Delegate of the Sultanate of Oman** while expressed their continuous support to the Arbitration Centres and urged the Member States to utilize fully the Arbitration Centres in their respective regions. Further the delegate enquired about the Medico-legal disputes and whether the Arbitration Centre's would be dealing such issues.

53. The **Delegate of the United Republic of Tanzania** noted that the area of commercial arbitration was one of the areas in which the rate of Competition was very high and the AALCO Regional Arbitration Centres were facing competitions from the other Centres particularly, from the International Chamber of Commerce (ICC). In order to counter such competition, the Centres must be efficient and worthy for money, he opined. He said that for the Member States of AALCO, he did understand that it was an area for private activities, but it was very important for those who were aiming like in Tanzania, was for public-private laws. Therefore, he concluded that it was the right forum for commercial cases to go in to the Regional Arbitration Centres provided, the Centres themselves actually would ensure that they were efficient and also they were not too expensive for the parties. He also enquired about the status of the Nairobi Regional Arbitration Centre established under the auspices of AALCO.

54. The **Delegate of Malaysia** stated that Arbitration was another form of dispute settlement and it was designed to have mediation and conciliation process to take off the weight from the courts. In Malaysia, the courts were overburdened with the backlog of number of cases. For that Arbitration was the way forward, and he agreed fully that there were serious competitions and the Arbitration Centres had to move forward in a positive manner and address it properly, involve the Centres who were capable in doing that. The other matter he agreed upon was the issue of private partnership. In Malaysia, the Government had incorporated a particular clause in which they had to put into the agreements, in any form of arbitration, if there was a case of arbitration, that it must be referred to Kuala Lumpur Regional Arbitration Centre. The Centre was funded by the Malaysian Government and established under the auspices of AALCO. That was the exact reason why he always requested the Member States of AALCO to fully utilize the Centres, because it belonged to them.

55. **Mr. Sundra Rajoo, Director of the Kuala Lumpur Arbitration Centre** while replying to the question raised by the **Delegate of the Sultanate of Oman**, with regard to Medical-Legal disputes stated that they were trying to pursue in KLRCA, such kind of Medico-legal disputes. They would like to follow the method adopted by the advanced jurisdiction of Arbitration, for e.g., Britain, where they had Medical-Legal Arbitration and the Medical defense fund that actually required Arbitration to be initiated. So, they wanted to regularize it in such a way to stick to all the stakeholders. The KLRCA was in the process of framing the rules, in which they were under consultation with the Medical professionals, the lawyers who were specializing in Medical-Legal disputes and so on, he added.

56. The **President** invited Dr. Xu Jie, Deputy Secretary-General of AALCO to respond to the query raised by the Delegation of the United Republic of Tanzania.

57. **Dr. Xu Jie, Deputy Secretary-General of AALCO** replied on the question referred to the status of the Nairobi Regional Arbitration Centre. He informed that the Nairobi Centre had been established on the basis of the Agreement which was concluded between AALCO and the Government of the Republic of Kenya in 2007, at Cape Town Session, South Africa. He also requested the Leader of Delegation of the Republic of Kenya to update on the present status of the Nairobi Arbitration Centre.

58. The **Delegate of the Republic of Kenya** informed that there were two documents signed, a Memorandum of Understanding in 2006, followed by an Agreement in 2007. He further stated there was no conflict between the two agreements. The Memorandum of Understanding's intention was that there was an agreement between the AALCO and the Republic of Kenya to establish a Centre. That agreement was signed in 2007 in Cape Town, Republic of South Africa. He recalled in his opening statement made on 5 August 2010 that the arrangements for the establishment of the Centre were on track and it got delayed because they were involved in the Constitutional debate in their country. He further informed that the matter relating to the Constitutional debate was resolved and the arrangements of the establishment of the Nairobi Centre were put on track. In that regard, the Attorney-General had already constituted a Committee for the establishment of the Centre and he would report the implementation of the Centre's work at the earliest.

59. The **Delegate of the Islamic Republic of Iran** informed that the new Director of the Tehran Arbitration Centre had been appointed recently. But unfortunately, he was unable to participate at the Annual Session. Further, he highlighted that the Tehran Arbitration Centre prepared their Report for the year 2009 and the future plans for 2010 and it was reflected in the Secretariat's Report.

60. The **President** thanked the representatives of the Regional Arbitration Centres and also the Delegations who made very valuable comments and suggestions. .

## **B. Report on AALCO's Centre for Research and Training**

1. The **President** invited the Deputy Secretary-General Dr. Xu Jie to introduce the Report on the Centre for Research and Training of the AALCO.

2. **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Organizational Agenda Item "Report on the Centre for Research and Training of the AALCO". He stated that the Centre for Research and Training (CRT), functioning in the Secretariat of AALCO since November 2001, evolved from the 'Data Collection Unit' which was established based on a proposal made by the Government of the Republic of Korea at the Twenty-Eighth Annual Session of AALCO held in Nairobi in the year 1989. The conversion from 'Data Collection Unit' to CRT had manifested with a new chapter in the efforts of the Member States towards undertaking research, as well as training activities within the AALCO.

3. The DSG informed that in compliance with one of its primary objectives, the Centre successfully organized a Training Programme on “Basic Course on the World Trade Organization (WTO)”, from 1 to 5 February 2010 at the AALCO Headquarters, New Delhi. He also informed that more such training programmes were in the pipeline. The CRT would also be organizing a Training Programme on a specialized topic of the WTO in the first quarter of the year 2011 in collaboration with the WTO Secretariat. A Training Programme on International Humanitarian Law was proposed in collaboration with the International Committee of the Red Cross (ICRC).

4. He also informed the Meeting that the “Regional Training on Treaty Law and Practice, and the Drafting of International Legal Instruments” would be held in Jakarta, Indonesia from 13 to 15 October 2010. The programme would be jointly hosted by the Ministry of Foreign Affairs, Republic of Indonesia; the AALCO, in collaboration with the Treaty Section of the United Nations Office of Legal Affairs, United Nations Institute for Training and Research (UNITAR), United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC). The Secretariat was grateful to the Government of the Republic of Indonesia for agreeing to host the Regional Training and to the Chief of the UN Treaty Section for positively responding to the proposal for collaboration. The Secretariat urged the Member States to nominate their officials to enrich their knowledge base on that important aspect of international law.

5. He stated that during the period under review, eight students from India and Malaysia had completed their internship programme at the AALCO Secretariat. That was part of the Centre's effort to encourage young students of law to get familiarized with the functioning of inter-governmental Organization and Asian-African perspectives of International law. The CRT encourages AALCO Member States to nominate and sponsor Research Scholars and Law Students from the respective countries to undergo internship with the AALCO Secretariat.

6. He observed that since its inception, the Centre had made great efforts to provide Member States with in-depth research on topics of international law. The details of the Special Studies and recent publications brought out by the CRT had been explained in the Secretariat's Report on the item. Apart from the studies, the Centre was in the process of bringing out compilation of National Legislations of AALCO Member States on select agenda items. The DSG recalled that in the Forty-Eighth Annual Session held in Putrajaya, Malaysia, 2009, a new agenda “Managing Global Financial Crisis: Sharing of Experiences” was introduced. During the deliberations, observations were made by the Member States that the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental authorities. Towards fulfilling that objective, the AALCO Secretariat proposed to bring out a compilation of the national regulatory mechanism (Legal framework) of its Member States. That would give an opportunity to the Member States to share their regulatory framework and could be used in addressing the present and future financial crisis. Hence, the Member States of AALCO were requested to



forward their national regulatory framework developed by the concerned Ministries and the Central Banks to the AALCO Secretariat.

7. The DSG pointed out that one of the mandates of the Centre was to update and improve the website. In accordance with that, the website of the AALCO had been completely redesigned with a professional outlook so as to make it more user-friendly and interactive. As the website was completely overhauled, the CRT planned to create a database on national legislations on relevant topics of international law and upload it in the website for the easy reference for Member States. In that context, he requested all the Member States to provide necessary information on their national legislations for creating such database under the auspices of CRT. Further, the Member States were requested to provide the name and address of the focal point with e-mail and internet addresses of the Ministry concerned and Officials in charge of AALCO, in their respective governments as well as in New Delhi. This would facilitate in improving communications between the Secretariat and its Member States.

8. He further pointed that the Centre had a larger role to play in the study and research, in the light of Organization's objectives; it should be placed in a financially firm footing. While the infrastructure, in terms of Seminar and Conference rooms with modern facilities and equipments had been provided by the Government of India in the Headquarters Building, the operational cost of the CRT was still depended on the regular budget of the AALCO. However, the regular budget itself had many difficulties due to non-payment of the contributions on time and huge arrears by the Member States for many years. Therefore, the Member States were requested to fund adequately to the 'CRT Fund' in order to facilitate its future activities effectively.

9. Finally, he took the opportunity to invite the Member States to provide the CRT with necessary directions and recommendations regarding research topics as well as specific training programmes and would also suggest topics of common interest and concern for conducting in-depth research studies.

10. The **President** thanked the Deputy Secretary-General Dr. Xu Jie for his presentation on the Report of the CRT and invited the Delegations to make comments on the agenda item. As there were no other comments, the President invited the Chairman of the Drafting Committee Mr. Casmir S. Ryuki to present his Report on the Working of the Drafting Committee.

### **C. Report of the Chairman of the Drafting Committee**

1. **Mr. Casmir S. Ryuki**, the Chairman of the Drafting Committee stated that it was his privilege and honour to present, his report on the Working of the Drafting Committee as well as the tasks accomplished by it. He said that it may be recalled that the Drafting Committee for the Forty-Ninth Annual Session of AALCO, was constituted on the 5<sup>th</sup> August 2010, the first day of the Session. The main task entrusted to the Drafting Committee was to prepare documents of the Session, draft resolutions, summary reports and a text containing a Message of Thanks to the Head of State of the host country of the

Annual Session of AALCO, His Excellency Jakaya Mrisho Kikwete, the President of the United Republic of Tanzania. As it was a customary practice that a Representative of the host country chaired the Drafting Committee, therefore he was honoured to perform the duty of Chairperson entrusted on him. He mentioned that the Drafting Committee met in the morning, before the plenary, after social events in the evening, and where necessary, skipping part of the Sessions of the Plenary Meeting, the discussions took place in a spirit of harmony and cooperation.

2. The Chairman said that with a view to facilitating the adoption of the drafts by the Plenary Meeting, the Committee Members had done their best to prepare the Draft resolutions in such a way that would be acceptable to all the delegations.

3. The Chairman of the Drafting Committee took the opportunity to congratulate all the delegates who had participated and enriched the discussion. He said that he was truly indebted to them for the confidence reposed in him in discharging his responsibility in a very able manner. Indeed their useful contribution had augmented the quality of the documents ably produced by the Drafting Committee. He said that it was his onerous duty to extend his sincere appreciation to all the delegates for the maximum flexibility exercised during the deliberations. He also said that he wished to put it on record that, the work of the Drafting Committee would not have been efficient and effective without the kind cooperation of the members of the AALCO Secretariat and for that he was grateful for their excellent work, and assistance, extended to the Drafting Committee.

4. Finally, he said the manifest proof of the work achieved by the Drafting Committee was reflected in the fully Revised documents, namely Draft resolutions; Summary Report; and Message of Thanks that had been circulated to all the delegations, and were placed for consideration by the Member States for final adoption at that Plenary Meeting.

### **Concluding Session**

1. The **Leader of Delegation of Thailand** observed that Thailand always valued the works of AALCO and its role in contributing to the development of international law. Spelling out a practical method to formulate AALCO's common position on important issues of international law, he recommended that the Secretariat of AALCO, firstly, identify and prioritize, a list of working issues in order to draft AALCO's common position. Thereafter, the Secretariat might subsequently identify Member States who will be working in different working groups. This would mean, each working group will be made in charge of drafting a common position on each issue identified. Upon the adoption of draft common positions, each working group will be communicating the same to the Secretary-General of AALCO. Once that process was over, the Secretariat of AALCO would circulate the draft common position to all the Member States for their comments, he explained.

2. He further added that, at the next Annual Session of AALCO, the draft resolution for the AALCO's common position could be presented, deliberated and finally adopted

by Member States. With the adoption of the AALCO's resolution reflecting the concerns and interests of Asian and African States, he believed that AALCO would be able to enhance its role in cooperation with the United Nations and other international organizations.

3. The proposal advocated by the delegation of Thailand was supported by the **Leader of Delegation of the Republic of Indonesia**. He stated that it would pave way for a more focused deliberations on the agenda items. The **Leader of Delegation of Malaysia**, while terming the proposal advanced by the delegate of Thailand as a good idea, remarked that, in that regard, some countries could take the lead on those topics in which they had a critical stake and that taking of common stance and the coordination that it involved, could be facilitated through e-mail.

4. Commenting on the proposal, the **Leader of Delegation of Japan** opined that AALCO was a consultative forum which advanced a free exchange of views on those issues found on its agenda. He noted that the proposal of Thailand could infact change the nature of the Organization. While cautioning against the hasty implementation of the proposal, he added that Member States should be given ample time to reflect on the proposal.

5. The **Leader of Delegation of the Islamic Republic of Iran** also stated that Member States should be given sufficient time to consider this proposal.

6. The **Leader of Delegation of India** pointed out that AALCO, being an Organization which was consultative in nature, should not take any hasty decisions on the proposal of Thailand. He added that one could not force States to take a common position on all issues of critical nature.

7. The **Leader of the Delegation of the Sultanate of Oman** observed that the suggestion of Thailand could have been made at the beginning of the Session and not at the end of the Session, as the delegations did not have enough time to deliberate upon it. In his final remarks, the **President** of the Forty-Ninth Session stated that as the proposal was given at the last moment it would not be possible to discuss it in its entirety and suggested that Member States could take more time to look into it. Having heard all the views expressed by the Member States, the delegation of Thailand said that they would send their proposal to the Secretary-General for consideration.

### **Adoption of Resolutions and Summary Report**

8. The **President** then stated that the resolutions on Organizational matters would first be taken up for adoption followed by the Substantive matters. Accordingly the President placed for consideration **AALCO/RES/49/ORG 1** entitled "Report of Secretary-General on Organizational, Administrative and Financial Matters". The **Leader of Delegation of Malaysia** opined that Memorandum of Understandings should be signed by AALCO and then, should subsequently, be ratified by the Annual Session of AALCO. As there were no comments, the resolution was adopted unanimously.

9. The next resolution to be taken up for consideration was **AALCO/RES/49/ORG 2** entitled “AALCO’s proposed Budget for the Year 2011”. As there were no comments on the resolution, it was adopted unanimously.

10. The **President** then placed for consideration **AALCO/RES/49/ORG 3** entitled “Report on AALCO’s Regional Centres for Arbitration”. As there were no comments on the resolution, it was adopted unanimously.

11. The **President** then placed for consideration **AALCO/RES/49/ORG 4** entitled “Report on the Centre for Research and Training of the AALCO”. As there were no comments on the resolution, it was adopted unanimously.

12. The **President** then placed for consideration **AALCO/RES/49/ORG 5** entitled “Venue for the Fiftieth Annual Session of AALCO”. At that juncture, the Vice-President of the Annual Session, His Excellency Mr. Priyasath Gerald DEP, expressed the readiness of the Government of the Republic of Sri Lanka to host the Fiftieth Annual Session of AALCO at Colombo, Sri Lanka. The Member States wholeheartedly welcomed that proposal and it was adopted unanimously.

13. The **President** then placed for consideration **AALCO/RES/49/S 1**, the resolution on the Thematic Debate on “Making AALCO’s Participation in the Work of International Law Commission More Effective and Meaningful”. As there were no objections on the part of Member States, the resolution was adopted unanimously.

14. During the adoption of this Resolution there was an exchange of views as to the timing of holding the Annual Session of AALCO vis-à-vis the meetings of the International Law Commission. The **Leader of Delegation of Malaysia** stated that ideally, the Annual Session of AALCO should be convened before the ILC meeting since, it would, then be easy for the Secretary-General of AALCO to convey the view points of the Member States as revealed at the Session to the Commission. He added that after the ILC Session the Member States of AALCO could still submit their comments on the Report of the Commission to the AALCO Secretariat. That position was supported by **Kenya** whose delegate remarked that Annual Session of AALCO should be convened in the first part of the year as has been the tradition, so that the comments of the Member States could be transmitted to the Commission and that the Commission could then, add those inputs into its report to be submitted to the UN General Assembly. The delegate from **India** also supported this proposal.

15. Commenting on the issue, the **Leader of Delegation of the Islamic Republic of Iran** remarked that Member States needed to take a common position at the time when the Report of the ILC was being placed at the UN General Assembly. While agreeing that the timing of the Session has a critical bearing on the inputs to be submitted to the ILC, the delegate of **Japan** noted that the timing of the Session depended on the convenience of the host country. In his opinion, it was safer to leave the issue to the country hosting the Session so that it could explore the possibility of holding the Annual Session earlier than the ILC Session.

16. The **President** then placed for consideration **AALCO/RES/49/S 2** entitled “The Law of the Sea” (non-deliberated). As there were no objections, the resolution was adopted unanimously.

17. The **President** then placed for consideration **AALCO/RES/49/S 3** “The Status and Treatment of Refugees” (non-deliberated).

18. While introducing the Resolution the **President** made a proposal as regards the Operative Paragraph that called upon the Member States to adhere to the relevant legal instruments, that it should be read thus: “calls upon the States that have not done so to consider ratifying or acceding to the relevant legal instruments”. Commenting on the issue, the **Leader of Delegation of the United Republic of Tanzania** pointed out that according to international norms one could not force a Country to do what it did not want to do. Hence he agreed with the proposal. While agreeing with the proposal, the **Leader of Delegation of India** noted that this was practice followed in all other Resolutions and hence should not be tampered with. The **Leader of delegation of Malaysia** stated that the Resolution on the Legal Protection of Migrant Workers also has used the word ‘consider’ and hence it should be used in that Resolution as well. The President then declared that the Resolution stood adopted with the amendments proposed and as accepted by the Member States.

19. The **President** then placed for consideration **AALCO/RES/49/S 4** entitled “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” (Deliberated).

20. While introducing the Resolution the President stated that Paragraph 9 of the Resolution has been drafted in a manner acceptable to all the Member States of AALCO. Agreeing with this view, the **Leader of Delegation of Japan** noted that the said paragraph has been drafted carefully and that we needed strong denouncements.

21. At that juncture, the **Leader of Delegation of the State of Kuwait** made a brief intervention. His delegation called upon the Member States of AALCO to support the directives and initiatives of the international community and the United Nations towards conducting necessary investigation into the attacks on the Freedom Flotilla peace ship carried out at the shores of Gaza by the Israeli armed forces. He added that investigations would determine the international responsibility of Israel in this context and that it could lead to the imposition of appropriate international sanctions. While supporting the rationale underlying the proposal advanced by the delegate of Kuwait, the delegate from **Arab Republic of Egypt** opined that the word “strip” occurring in the Resolution needed to be replaced with the Blockade of Gaza. The **Leader of Delegation of Kenya** pointed out that Paragraph 9 should be referring to Israeli Blockade and that the word ‘vessel’ needed to be removed from the Resolution. The **President** then noted that the proposal of Kuwait would be incorporated as part of the Report of the Session. With these changes the resolution was adopted unanimously.

22. The **President** then placed for consideration **AALCO/RES/49/S 5** entitled “The Legal Protection of Migrant Workers” (non-deliberated). As there were no comments or objections on the part of Member States, the resolution was adopted unanimously.

23. The **President** then placed for consideration **AALCO/RES/49/S 6** entitled “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties” (non-deliberated). The **Leader of Delegation of the Democratic People's Republic of Korea** stated that his Country's name should also be added in the list of Countries on which sanctions had been imposed by the United States of America in contravention of principles of international law. The **Leader of Delegation of Japan** maintained that as this was a non-deliberated item, the Resolution had been carefully formulated with the consensus of the Drafting Committee. Therefore, as the matter had not been discussed in the Drafting Committee, at this stage they could not agree to any further changes in the Resolution. The **Leader of Delegation of Democratic People's Republic of Korea** in response stated that in his view it was not a pre-condition that every suggestion had to be discussed in the Drafting Committee. However he realized that at this stage it would be difficult for the Drafting Committee to take a re-look at the issue. The **Leader of Delegation of Republic of Korea** also supported the view taken by the Leader of Delegation of Japan that at the last moment a resolution on a non-deliberated item could not be revised.

24. The **President** was of the view that after four days of discussions, areas which had not been discussed could not be re-opened. Since that item required serious negotiations, he requested the leader of Delegation of Democratic People's Republic of Korea to let the Resolution on the item stand as it is for that Session. Thereafter, **AALCO/RES/49/S 6** entitled “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties” (non-deliberated), was adopted.

25. The **President** then placed for consideration **AALCO/RES/49/S 7** entitled “International Terrorism” (non-deliberated). As there were no comments or objections on the part of Member States, the resolution was adopted unanimously.

26. The **President** then placed for consideration **AALCO/RES/49/S 8** entitled “Establishing Cooperation against Trafficking in Women and children” (non-deliberated). As there were no comments or objections on the part of Member States, the resolution was adopted unanimously.

27. The **President** then placed for consideration **AALCO/RES/49/S 11** entitled “Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption” (Deliberated). As there were no comments or objections on the part of Member States, the resolution was adopted unanimously.

28. The **President** then placed for consideration **AALCO/RES/49/S 12** entitled “Report on the Work of UNCITRAL and other International Organizations in the field of International Trade Law” (non-deliberated). As there were no objections on the part of Member States, the resolution was adopted unanimously.

29. The **President** then placed for consideration **AALCO/RES/49/S 13** entitled “WTO as a Framework Agreement and Code of Conduct for World Trade” (Deliberated). As there were no objections on the part of Member States, the resolution was adopted unanimously.

30. The **President** then placed for consideration **AALCO/RES/49/S 14** entitled “Expressions of Folklore and its International Protection” (Deliberated). As there were no objections on the part of Member States, the resolution was adopted unanimously.

31. The **President** then placed for consideration **AALCO/RES/49/S 16** entitled “Managing Global Financial Crisis: Sharing of Experiences” (Non-Deliberated). As there were no objections on the part of Member States, the resolution was adopted unanimously.

32. The **President** then placed for consideration the resolutions on the Special Meetings. Accordingly, the President first placed for consideration **AALCO/RES/49/SP 1** entitled “International Criminal Court: Recent Developments”. As there were no objections on the part of Member States, the resolution was adopted unanimously.

33. The **President** then placed for consideration **AALCO/RES/49/SP 2** entitled “Environment and Sustainable Development”. As there were no objections on the part of Member States, the resolution was adopted unanimously.

34. Thereafter, the **Summary Report** of the Forty-Ninth Annual Session was also placed for consideration of the Member States.

35. Thereafter, the **President** invited the Secretary-General of AALCO to read out the Message of Thanks to the Hon’ble President of the United Republic of Tanzania which was unanimously adopted by Member States with applause.

36. The text of message reads as under:

*“Excellency,*

*On behalf of all the Delegations of the Member States and Observers attending the Forty-Ninth (2010) 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 United Republic of Tanzania:*

*“We, the participants in the Forty-Ninth 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 United Republic of Tanzania for hosting the Forty-Ninth Annual Session of AALCO, under the auspices of the Government of the United Republic of Tanzania, in this beautiful city of Dar es*

*Salaam, the commercial capital of Tanzania, once called as “Mzizima” – the healthy town of this country. Excellency, I thank the Government of United Republic of Tanzania, on behalf of AALCO, and on my own behalf, for hosting this Session.*

*Your Excellency, we are aware that the United Republic of Tanzania attaches great importance to the AALCO and it has always remained active in the activities and work programme of the Organization be it substantive, administrative or financial matters, ever since it joined the Organization in 1973. This is the second Session hosted by the United Republic of Tanzania, the previous one was the Twenty-Fifth Session of AALCO, in the year 1986. Besides this, the United Republic of Tanzania has always taken very 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. The unanimity among Member States in implementing and adhering to the “Putrajaya Declaration on Strengthening and Revitalization of the Asian-African Legal Consultative Organization” which was adopted at the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia was witnessed during this Session. Among many factors which paved way for the success of the conference, one of the prime factors was the excellent cooperation from the Government of the United Republic of Tanzania, which contributed significantly towards the excellent achievements of our deliberations.*

*In this beautiful city named also as “Haven of Peace” famous for its picturesque harbour, exotic beaches and serene beauty, we the delegates of the Forty-Ninth Annual Session of AALCO would like to place on record our sincere gratitude for full cooperation since the acceptance of our offer to conduct this Session till the concluding of this Session.*

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

37. Then, the **Leader of the Delegation of the United Republic of Tanzania** proposed that the issue of “Piracy” which has got a number of international legal issues involved in it, be kept at the Provisional Agenda of the next Annual Session of AALCO.

38. The **President** then invited the **Leader of Delegation of the People's Republic of China** to propose the vote of thanks on behalf of the Asian States, participating in the Forty-Ninth Annual Session.



39. The **Leader of Delegation of People's Republic of China** deemed it a great honor and privilege to be called upon to propose the vote of thanks on behalf of the Asian Member States of AALCO to the gracious host of the Forty-Ninth Annual Session of AALCO. He expressed his profound gratitude and appreciation to the President of the Forty-Ninth Annual Session of AALCO His Excellency, Mr. Mathias M.M. Chikawe for inviting the Delegates to the historic city of Dar es Salaam to attend AALCO's Forty-Ninth Annual Session. He also deeply appreciated the warm hospitality accorded to them by the government and the people of the United Republic of Tanzania.

40. He saluted the President on behalf of the Asian Delegates, for the excellent manner in which the former had steered the course of the proceedings of the Forty-Ninth Annual Session with his skillful guidance and able leadership. He also expressed his warm and deep gratitude to the Vice-President His Excellency Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka, for the insightful interventions and remarks that he had made during the course of the Session. He added that without the stellar role played by both of them, the Session would not have been a success.

41. He also extended his profound appreciation to the National Organizing Committee (NOC) of the Host Government which had made all the necessary arrangements with great care and efficiency. He also highly appreciated the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad for taking a number of initiatives to promote the cause of AALCO at various levels. He expressed optimism that under his stewardship, AALCO would progress significantly towards the objectives for which it was established. In that context, he was pleased to extend his sincere and heartfelt appreciation for all the staffs of the Secretariat of AALCO for producing a lot of documents of quality which, he stated, made the deliberations easy for all the delegates. Finally, he also thanked the interpreters and the Drafting Committee for performing their job with considerable skill and professionalism.

42. The **President** then invited the **Leader of Delegation of Kenya** to convey vote of thanks on behalf of the African States, attending the Forty-Ninth Annual Session of AALCO.

43. The **Leader of Delegation of Kenya**, on behalf of all African Member States of AALCO, expressed his profound gratitude and appreciation to the President of the Forty-Ninth Annual Session His Excellency Mr. Mathias M. M. Chikawe for the invitation extended to the delegates to attend the Session and thereby visit the historic city of Dar es Salaam. He extended his heartfelt gratitude to the government and the people of United Republic of Tanzania for the warm and exceptional hospitality that had been bestowed on the delegates.

44. He commended the President immensely for the excellent manner in which the latter had guided the proceedings of this Annual Session which ensured that the Session was a success. He also extended his profound gratitude to the Vice-President of the Forty-Ninth Annual Session H. E. Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka for his constant cooperation and leadership which had inspired all

the delegates. The comments and interventions that both of them had made were indeed critical and very insightful, he pointed out.

45. He also thanked profusely the Members of the National Organizing Committee (NOC) who had made all the possible efforts and worked with great dedication to make the Session a resounding success.

46. He also extended his warm appreciation to the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad for his vision and commitment towards the cause of the third world which, he stressed, had been steering AALCO in the right direction. In this regard, he expressed his willingness to work closely with the later and his team in all their future endeavours. He also deeply applauded the Secretariat staff of AALCO for working so hard in order to produce a lot of documents which were very useful for their debates and deliberations.

47. Finally, he thanked the Chairman and the Members of the Drafting Committee and the Interpreters for accomplishing their respective jobs with considerable skill and utmost efficiency.

48. The **President** then invited the Observer from the International Council of Environmental Law (ICEL) to propose a vote of thanks to the host government on behalf of International Organizations.

49. The observer from the ICEL, **Mr. Donald W. Kaniaru, Regional Governor, International Council of Environmental Law (ICEL) and formerly Director, Environment, Policy and Law Division of the United Nations Environment Programme (UNEP)** expressed his deep gratitude and profound appreciation to both the President and the Vice-President of the Forty-Ninth Annual Session for performing the onerous task of steering the deliberations of the Session in a commendable and professional manner. That, he was of the firm view, was instrumental in the successful convening of the Session. He also thanked profusely the Government of the United Republic of Tanzania and all the Members of the National Organizing Committee for their tireless efforts to put the Delegates at ease in every respect. He also highly appreciated the people of Tanzania for according a warm and exceptional hospitality to the delegates.

50. He also deeply appreciated the Secretary-General of AALCO H. E. Prof. Dr. Rahmat Mohamad for tirelessly promoting the Asian-African solidarity in the international arena and showing admirable leadership in steering the Organization. He expressed hope that under his tenure AALCO would reach new heights. He also applauded all the Secretariat Staff of AALCO for preparing a lot of documents and making it available to all the delegates whenever they needed it.

51. He also thanked the interpreters for accomplishing the demanding and grueling job so wonderfully well. Finally, he commended the Drafting Committee for performing its task in a skillful and professional manner.

52. Thereafter the **President** thanked the Leader of the Delegations from the People's Republic of China, Kenya and the ICEL for their kind remarks. He then invited the Vice-President of the Annual Session H.E. Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka to make an announcement.

53. The **Vice-President** announced that the Government of Sri Lanka was willing to host the Fiftieth Golden Jubilee Annual Session of AALCO at Colombo. In that context, he remarked that Sri Lanka, being a founder member not only of AALCO but also of the Non-Alignment Movement (NAM), considered it to be a honour and privilege to host the Fiftieth Annual Session. While extending a warm invitation to all the Delegates and the participants to attend the Fiftieth Annual Session at Colombo, he expressed hope that the Government of Sri Lanka would do all the necessary things in order to make the Session a grand success and the trip to Sri Lanka, a memorable one.

54. Dwelling on the current political situation of his country, he remarked that after thirty years of an internal conflict, Sri Lanka had finally achieved peace and that peace prevailed in Sri Lanka. He noted that Sri Lanka, which was earlier known as the Pearl of Indian Ocean and was sometimes known as the Paradise Island, represented four major religions of the world, namely, Islam, Christianity, Hinduism and the Buddhism.

55. Thereafter the **President** delivered his closing remarks.

56. The **President** summarized the accomplishments of AALCO at the Forty-Ninth Annual Session and thanked all those who made the Session a grand success. He said that it was his privilege to bring the remarkable Forty-Ninth Annual Session of the AALCO to close. Over those four days, it had been heartening for him to see that the delegates display such a deep and broad commitment to the development of international law. He thanked the representatives who spoke on behalf of Asian and African continents and international organizations for their kind words to his country and himself.

57. The President called upon the delegates to join hands with him in expressing their heartfelt appreciation to the Secretary-General and his team for making the Session not only a reality but also a prosperous one.

58. The President informed that in the last four days they had been able to cover all the agenda items listed for that Session. He noted that the participation of the Member States, Secretariat, as well as experts on all the topics was of very high standard. At the end of the day, if one was to take stock of the outcome, he believed the unanimous judgment would be that the participation was very high.

59. The President recalled the Ugandan proverb that said, "The person who has not travelled widely thinks his or her mother is the only cook in the world". The proverb, he emphasized, encouraged the delegates to go out and find new experiences. The President stated that he must admit that he was personally impressed by the willingness of all of the participants of the session who had shared and patiently discussed experiences, challenges and solutions on all legal issues that came before them. By putting their head

together in dealing with issues on the agenda, they had done the right thing for their people and the entire world.

60. The President said that every goodbye made the next hello closer. The end of that meeting was the beginning of preparations for the next meeting. In that context, he expressed his heartfelt appreciation to the Government and people of Sri Lanka for their timely willingness to host the Fiftieth Session at Colombo. He wished the brothers and sisters of Sri Lanka successful preparations of the next Session. In the spirit of AALCO, he urged all the Member States to take part in that Session.

61. The President fondly recollected that the Forty-Ninth Annual Session at Dar es Salaam had come to a conclusion. The Tanzanian Government would now lead the Organization for a period of one year. The task ahead of them was to put into reality decisions made at that noble Session and also come up with new ideas that would help realize the noble ideals of AALCO. The President declared that one thing that they would do for certain, for which he sought pardon in advance, was to pester the Member States for their subscription, particularly for those it was due or over due.

62. Furthermore, the President declared that he would also like to commit himself to extending AALCO wings to other African and Asian nations with whom they shared interest. As one African proverb says, it takes a village to raise a child. Therefore, the President explained that what he was driving was that although AALCO had made notable progress since its inception, they must admit that there was a need to approach other States, both in Asia and Africa to join AALCO and thereby jointly raise their child. He committed himself to make that happen.

63. The President said that “smooth seas do not make skilful sailors”. In organizing and managing that Session, they might have lapsed in their duties and their stay difficult. He called for forgiveness in that regard and appealed to the delegates to take back with them the good memories and leave the bad ones. On behalf of the AALCO Secretariat and the National Organizing Committee (NOC), the President assured that the organization and management of that Session had made them more skilful and they were set to organize another AALCO Session anytime they were requested.

64. The President said that he did not wish to bid good-bye because that would mean he was never going to say hello again. He wished the delegates safe journeys back home and said that they would be happy to welcome them back in Tanzania anytime they felt like visiting it.

65. Finally, the President said that it was his singular honour to declare the Forty-Ninth Annual Session of the AALCO officially closed.

**The meeting was thereafter adjourned.**



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**AALCO**  
**Asian-African Legal Consultative Organization**  
**Forty-Ninth Annual Session**  
**5 – 8 August 2010**  
**Dar es Salaam, United Republic of Tanzania**

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**XI. SUMMARY REPORT**  
**OF THE FORTY-NINTH ANNUAL SESSION**  
**OF THE**  
**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**

**1. Introduction**

- 1.1 Thirty Member States of the Asian-African Legal Consultative Organization (AALCO) participated in the Forty-Ninth Annual Session (hereinafter "the Session") namely, Arab Republic of Egypt, Kingdom of Bahrain, Brunei Darussalam, People's Republic of China, The Gambia, Ghana, India, Republic of Indonesia, Iraq, Islamic Republic of Iran, Japan, Republic of Kenya, Democratic People's Republic of Korea, State of Kuwait, Malaysia, Nigeria, Sultanate of Oman, Pakistan, State of Qatar, Republic of Korea, Republic of Yemen, Kingdom of Saudi Arabia, Somalia, Republic of South Africa, Democratic Socialist Republic of Sri Lanka, The Sudan, United Republic of Tanzania, Thailand, Uganda and United Arab Emirates.
- 1.2 Representatives of the following Regional Arbitration Centres of AALCO were also present: Kuala Lumpur Regional Centre for Arbitration (KLRCA), and Lagos Regional Arbitration Centre (LRAC).
- 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: Azerbaijan and Russian Federation.
  - (ii) Representatives of the following international organizations: International Law Commission (ILC), International Criminal Court (ICC), International Committee of the Red Cross (ICRC), League of Arab States, Food and Agricultural Organization (FAO), International Council of Environmental Law

(ICEL), Saudi Fund for Development and United Nations Environment Programme (UNEP).

## **2. Inaugural Session**

2.1 The Session commenced on 5<sup>th</sup> August 2010 by the Master of Ceremonies welcoming all the Delegations to the United Republic of Tanzania for the Forty-Ninth Annual Session. Then, the following dignitaries were invited to make their addresses.

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. Phillip S. Marmo, the Minister of State of the United Republic of Tanzania representing His Excellency Jakaya Mrisho Kikwete, President of the United Republic of Tanzania, and the people of Tanzania for hosting the Forty-Ninth Annual Session of AALCO. He stated that the United Republic of Tanzania since its joining the then AALCC in 1973, has actively contributed to the work of AALCO. Its commitment to the AALCO's objective of increasing the Afro-Asian influence in the progressive development and codification of international law was further demonstrable from the fact that it was for the second time that it had hosted the Annual Session, earlier one being the Twenty-Fifth Annual Session of AALCO held in Arusha, in 1986. He recalled the words from the Message of Late Tanzanian President and the Father of the Nation Julius Nyerere on the occasion of twentieth anniversary of AALCC in 1976 in which he had stated that, 'the founding of the Asian-African Legal Consultative Committee was a turning point in organizing the struggle for justice of the peoples of two continents.' Prof. Dr. Mohamad highlighted the significance of the activities of AALCO in the contemporary world, taking into account the current practice of international law making. He emphasised that the role and range of activities required to be undertaken by AALCO had multiplied several fold, thereby it was imperative that the Organization remained on a strong ideological foundation and enjoyed firm financial support from its stakeholders- the Member States.

2.3 **His Excellency Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO** during his address informed about the activities undertaken by the AALCO during his Presidency of the Organization. He stated that the realization of the objectives laid down in the Putrajaya Declaration on Revitalizing and Strengthening the AALCO, adopted at the Forty-Eighth Annual Session in Putrajaya, 2009, was an achievable task that could be accomplished only with the full determination and equal sharing of responsibility by all the Member States. Tan Sri stressed that in order to strengthen and sustain the Organization, it was essential that Member States paid their annual contribution regularly and those in arrears must fulfill their financial obligations. Further, he listed out certain suggestions to make AALCO more effective from all perspectives, which include: (i) increasing in-depth and open debates in AALCO on the issues of international law; (ii) keeping up with and contributing to the development of international law in the UN and other

international organizations; (iii) expanding the role and influence of AALCO; (iv) training and capacity building; and (v) full utilization of AALCO experts.

- 2.4 Tan Sri also emphasized upon the need for revitalizing the Arbitration Centres under the auspices of AALCO. He suggested to make them part of a common system both administratively and financially. For instance, sharing of resources between the Centres would enable the creation of a pool of competent arbitrators to facilitate efficient Centres with the capacity to compete with new emerging Arbitration Centres. Regarding appointment of the Deputy Secretaries General, he said that he hoped to see a more equal appointment system which should be based on the expertise and geographical distribution. In order to rationalize the agenda items and focus more on key areas, he said that the AALCO Secretariat should not be over burdened with repetition of topics which had been completed and proposed that once the work on a topic was completed by the AALCO Secretariat, the topic should be taken off from the agenda and only, if need be, further taken up by the initiator of the topic.

- 2.5 **His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania and the incoming President of the Forty-Ninth Annual Session of AALCO** in his welcome address, on behalf of the Organising Committee, extended to His Excellency, Mr. Phillip S. Marmo, Minister of State, Prime Minister's Office, United Republic of Tanzania, their profound appreciation for accepting officially to inaugurate the Forty-Ninth Annual Session of the AALCO. He recalled that the objectives for which AALCO was established nearly 54 years ago, as an outcome of the Afro-Asian Conference famously known as the Bandung Conference held in 1955, were to oppose colonialism of all kinds and to promote Afro-Asian economic and cultural cooperation. In furtherance of such objectives, AALCO was formed to serve, among other things, as an advisory body to Member States on international issues with legal dimension. Furthermore, AALCO was meant to provide a forum for Asian and African countries cooperation in legal matters of common concern. The participation of AALCO in several matters under consideration of the United Nations and other international bodies, and its advice to new Member States, has given an impetus for the Third World countries to hold a common position in various international issues with legal dimension, and oppose neo-colonialism and unfavourable trade between continents and western countries.

He then invited the Chief Guest, for the Inaugural address, to officially inaugurate the Forty-Ninth Annual Session of AALCO.

- 2.6 **Inaugural Address by His Excellency Jakaya Mrisho Kikwete, President of the United Republic of Tanzania, delivered on his behalf by, His Excellency Mr. Phillip S. Marmo, Minister of State, Prime Minister's Office, the United Republic of Tanzania**, extended an apology, on behalf of the President of the United Republic of Tanzania for not being personally able to inaugurate the Forty-Ninth Annual Session of AALCO in view of his urgent commitments

relating to the forthcoming General Elections in their country. The Minister emphasized on the importance of that meeting which held significance in contemporary world, even after 55 years of Bandung Conference. He welcomed and thanked the delegates for holding the Forty-Ninth Annual Session in Tanzania after twenty-four years.

- 2.7 Mr. Marmo then read out the speech of the Honourable President. In his speech, the Tanzanian President stated that the idea of formation of the AALCO was to fortify the voice of new States that had just emerged from imperialism. The Bandung Conference represented a nucleus for the emergence of the Third World Non-Aligned Movement, which resolved to promote political and diplomatic autonomy for less developed countries in the face of the International Cold War Politics. The establishment of that Organization on 15<sup>th</sup> November 1956, a short while after the Bandung Conference as Asian Legal Consultative Committee and a year later as Asian-African Legal Consultative Committee (AALCC) which was then renamed as AALCO as a tangible outcome of that historic Meeting, principally, added legal expertise in the initial political and diplomatic drive. He highlighted the achievements made by AALCO during those years, the challenges ahead, in terms of raising voice on evolving international legal regime that would ensure a fair apportionment of obligations among the members of international community, and its established longstanding relationship with the International Law Commission. He wished for fruitful deliberations and declared the Forty-Ninth Annual Session of the Asian-African Legal Consultative Organization open.
- 2.8 **Vote of Thanks by His Excellency Mr. Narinder Singh, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India and the President of the Forty-Seventh Annual Session of AALCO delivered by Dr. M. Gandhi, Head of the Delegation of India** proposed a vote of thanks to His Excellency Mr. Phillip S. Marmo, Minister of State in the Prime Minister's office of the United Republic of Tanzania, for officially inaugurating and gracing the occasion. He stated that the Annual Sessions of AALCO marked the manifestation of mutual cooperation and support extended by Member States of the Asian and African countries. The vision and trajectory envisaged by the founding Member States still stood fresh in its institutional history. For the past five decades and above, the Organization's efforts in bringing together nations from the two continents, in order to address international legal matters which had serious implications in international relations streams also was remarkable. The common platform that AALCO provided in those matters would add to the formation of a just and equitable world order. He extended sincere gratitude to the Government of the United Republic of Tanzania, for hosting the mega event and through them to express gratitude to the people of Tanzania for extending warm hospitality. He thanked the outgoing President of AALCO and extended whole-hearted support and cooperation to the incoming President of AALCO. He appreciated the efforts of the Secretary-General of AALCO for all efforts to revitalize the Organization.



### **3. First Meeting of the Delegations of AALCO Member States**

His Excellency Tan Sri Abdul Gani Patail, Attorney-General of Malaysia and the President of the Forty-Eighth Annual Session of AALCO, called the Meeting to order.

#### **3.1 Agenda:**

The meeting adopted the following agenda for the Forty-Ninth 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. Admission of New Members
5. Report of the Secretary-General on the Work of AALCO
6. Report on the Financial Situation of AALCO and Proposed Budget for the Year 2011
7. Report on the Work of the AALCO's Regional Arbitration Centres
8. Report on the AALCO's Centre for Research and Training (CRT)
9. Report of the Chairman of the Advisory Panel of AALCO
10. Venue of the Fiftieth Session

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

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

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

1. Expressions of Folklore and its International Protection
2. Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption

#### **IV. Matters under Article 1 (d) of the Statutes: Matters Relating to the International Law Commission**

*Thematic Debate:* Making AALCO's Participation in the Work of International Law Commission (ILC) more Effective and Meaningful

#### **V. International Trade Law Matters**

WTO as a Framework Agreement and Code of Conduct for the World Trade

## **VI. Two half day Special Meetings**

- (i) Special Meeting on “The International Criminal Court” focusing upon the: “Principle of Complementarity” and the “Crime of Aggression”
- (ii) Special Meeting on “Environment and Sustainable Development: focusing upon “Building Momentum towards Cancun Climate Change Negotiations”, the revised “African Union Convention on the Conservation of Nature and Natural Resources”, and the “Draft International Covenant on Environment and Development”.

## **VII. Any Other Matter**

- 3.2 ***Adoption of Tentative Schedule of Meetings:*** The President placed for consideration the Tentative Schedule of meetings during the course of the Forty-Ninth Annual Session of AALCO. There being no comments and observations from the participating delegations, it was declared adopted.
- 3.3 ***Admission of Observers:*** The Admission of Observers to the Session, pursuant to Statutory Rule 18, was unanimously approved.
- 3.4 ***Election of President and Vice-President:*** The President of the Forty-Eighth Session His Excellency Tan Sri Abdul Gani Patail invited the Member States to propose the candidates for the post of the President and the Vice-President of the Forty-Ninth Session of AALCO. The **Leader of the Delegation of the People's Republic of China** proposed the name of **His Excellency Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice of the United Republic of Tanzania** to be the President of the Forty-Ninth Session of the AALCO. The proposal was seconded by the **Leader of the Delegation of Ghana**. As regards for the position of the Vice-President the **Leader of the Delegation of the Republic of South Africa** proposed the name of **His Excellency Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka** to be the Vice-President of the Forty-Ninth Annual Session of AALCO. The proposal was seconded by the **Leader of Delegation of Brunei Darussalam**. The Member States unanimously elected with acclamation, **His Excellency Mr. Mathias M.M. Chikawe, Minister for Constitutional Affairs and Justice of the United Republic of Tanzania** and **His Excellency Mr. Priyasath Gerald, DEP, the Hon'ble Solicitor General of Sri Lanka**, as the President and the Vice-President of the Forty-Ninth Annual Session of AALCO, respectively.
- 3.5 The **Outgoing President** in his farewell remarks thanked the Member States for the cooperation extended to him in efficiently discharging his duties as the President of AALCO. He also expressed his gratitude to the Secretary-General of AALCO and the Secretariat for faithfully observing the mandate entrusted to them by the Forty-Eighth Annual Session of AALCO. The outgoing President called upon the Member States to render full support to the Secretariat so that it was able to perform the responsibilities entrusted to it in an efficient manner. Commending the election for the posts of the President and Vice-President, the

outgoing President stated that there could not have been better choice than those elected for those positions.

- 3.6 Thereafter, the newly elected **President** and the **Vice-President** assumed their positions on the dias.
- 3.7 The newly elected **President** in his opening speech thanked the Member States for the support rendered to him in his election for the position of the President. The President appreciated the agenda of the Forty-Ninth Annual Session and hoped that with the cooperation of the participating delegations the deliberations would be conducted in a friendly spirit to achieve consensus. He also warmly welcomed the Delegations to the historic city of Dar es Salaam and hoped that they would also find time during their hectic schedule to see some of the places of historical and tourist interest in Tanzania. The President applauded the efforts made by the National Organizing Committee and the AALCO Secretariat in preparing for the Forty-Ninth Annual Session and appreciated that despite the short time for preparing for the Annual Session the efforts made had been fruitful and the presence of delegations from several Member States testified it.
- 3.8 The newly elected **Vice-President** in his opening remarks thanked the delegations for the support extended to him for his election for the position of Vice-President. The Vice-President stated that his country as one of the founding Member States of AALCO wished to extend an invitation to the Organization to hold its Fiftieth Annual Session in Sri Lanka in 2011.
- 3.9 ***Establishment of Drafting Committee:*** The President announced the establishment of an open-ended Drafting Committee to prepare the drafts of resolutions, Summary Report and the Message of Thanks to the President of the United Republic of Tanzania. Mr. Casmir S. Kyuki, Chief Parliamentary Draftsman, Attorney General's Chambers, United Republic of Tanzania was appointed as Chairperson of the Drafting Committee to steer its activities.

#### **4 *First General Meeting***

- 4.1 The Delegations from the following Member States made General Statements during the First General Meeting: the **Sultanate of Oman**; the **Republic of Indonesia**; the **People's Republic of China**; **Japan**, **Malaysia**; the **State of Kuwait**; **Republic of Kenya**; the **Republic of Korea**; the **Arab Republic of Egypt**; **Ghana**; **Thailand**; the **Islamic Republic of Iran**; the **United Republic of Tanzania**; the **Kingdom of Saudi Arabia**; **Sri Lanka**; **India** and **Nigeria**. The Observer delegations from the International Committee of the Red Cross (ICRC); and the League of Arab States also made general statements.
- 4.2 The delegations congratulated H.E. Mr. Mathias M. M. Chikawe, Minister for Constitutional Affairs and Justice, United Republic of Tanzania, on his election as President of the Forty-Ninth Annual Session of AALCO. Delegations also congratulated H.E. Mr. Priyasath Gerald DEP, Hon'ble Solicitor General of Sri Lanka, on his election as the Vice-President of the Forty-Ninth Annual Session of

AALCO. The delegations also thanked the host Government and the AALCO Secretariat for the hospitality and the excellent preparation of the meeting.

- 4.3 The **Delegation of the Sultanate of Oman** proposed as an essential step that the esteemed Organization encourage carrying out legal research of critical importance to the Member States, and to give more consideration to the training of legal researchers of those States in various international law issues through conducting courses and seminars in both English and Arabic languages and other languages of interest to those States.
- 4.4 One delegation felt that there was a greater need to confirm AALCO's role in the development of international law which needs to be continuously renewed to create equal and fair international law system. Towards that purpose, one of the issue on which AALCO could contribute in the international law making process was the effort of developing countries in establishing an international legal instrument or instruments, in order to protect genetic resources, traditional knowledge and folklore that was still under negotiation in WIPO. The delegation recalled the statements made by their delegation as well as other delegations, including the proposal made by the President of the Forty-Eighth Annual Session that suggested the need for AALCO to focus and prioritize on legal issues to be discussed during the meetings which were of particular importance to AALCO Member States, which could be done through streamlining the agenda items of the Annual Sessions. The delegation underscored the need for Member States to clear their arrears, but cautioned that any solution should not create additional burden on the Member States taking into account the financial crisis affecting most of the Member States.
- 4.5 The **Delegation of the People's Republic of China** suggested that AALCO should strengthen its cooperation with the United Nations legal organs so as to reflect the views of Asian-African Countries on issues that concern them most in an effort to increase the influence of AALCO. Further, AALCO needed to conduct in-depth studies on the emerging trends and developments in international law and produce reports where appropriate so as to promote its academic influence and expressed the hope that AALCO should continue to host seminars and training programmes and develop itself into a cradle of talents on international law for Asian-African States.
- 4.6 The **Delegation of Japan** called on the delegates, to pay attention to the need to overcome the financial difficulties and to take actions by all AALCO Member States. While appreciating the emergency contributions by a few generous donors, however, noted that resorting to ad-hoc or temporary stop-gap measures would only postpone the problem and such measures were certainly not be sustainable. Whatever agreements they might reach or the commitments they might undertake for short-term objectives, those would not save AALCO unless they were backed up by effective actions. The delegation reminded the distinguished delegates that only two paths lay in front of them: either all the Member States contribute their

own share of contribution without single default to keep the current budget size, or concede realistically that AALCO could expect only seventy percent of contributions from its Member States each year, and hence acknowledge that was the real budget for AALCO. He also stated, among others, that the holding of Special Meetings on ICC and Environment is quite timely, considering the importance of recent developments. He referred to the COP 10 on Convention on Biological Diversity to be held in Nagoya, in October 2010.

- 4.7 The **Delegation of Malaysia** appreciated the host of activities undertaken by the AALCO Secretariat since the Forty-Eighth Annual Session. In view of the significance of ILC's work towards development of international law, particularly, its codification, the delegation welcomed the existing arrangement with the respective Special Rapporteurs of the ILC on the topics that were under the consideration of ILC in AALCO's annual sessions. However, to strengthen the current arrangement, the delegation proposed that AALCO could also jointly organize with the ILC, seminars and workshops on topics of mutual interests. This proposal would afford more time and opportunity for AALCO Member States to deliberate upon the topics being considered by the ILC. This would also provide appropriate platform to allow maximize interaction between AALCO Member States and the ILC members.
- 4.8 The **Delegation of Kenya** with regard to the principle of complementarity in the Rome Statute of the International Criminal Court said that while they supported the principle, their delegation emphasized that it should be viewed with caution when it came to speedy ascertainment that a Member State was unwilling or unable to handle such matters. He said that Kenya was both willing and able to prosecute alleged crimes that may fall within the ambit of the ICC and options open to the country had been implemented. Those included setting up of the Truth, Justice and Reconciliation Commission. The delegation was therefore, of the view that a hurried determination of alleged inability or unwillingness by an affected country may only exacerbate an already delicate situation.
- 4.9 The **Delegation of the Republic of Korea** hoped that AALCO would discuss further their proposal on, "Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International law", at the Fiftieth Annual Session of AALCO.
- 4.10 The **Delegation of the Arab Republic of Egypt** while highlighting the plight of the Palestinian people and Israeli atrocities on them opined that the International Criminal Court should take up the case.
- 4.11 The **Delegation of the Islamic Republic of Iran** welcomed the Secretary-General's initiative to establish an Expert Group of international lawyers. The delegation was of the view that the subsidiary body of the Organization could contribute a lot to the materialization of the AALCO's purposes. The Group would in appropriate ways and methods to assist the Organization and its

members to contribute to the process of the codification and progressive development of international law and cooperation with the International Law Commission and other organs in charge with these matters. In that respect, the delegation suggested the following as the duties of the Group: (i) to identify, collect and compile the practices of the Member States relating to international Law; (ii) to provide the Member States with the technical assistance necessary in order to reply to the *Questionnaire* of the International Law Commission; and (iii) to examine and comment on the subjects that are under consideration by the ILC and to recommend the Member States on the points that needs attention and observation that could be raised during the meetings of the Sixth Committee of the General Assembly.

- 4.12 The **Delegation of the Kingdom of Saudi Arabia** stated that they were looking forward to workshops and seminars to be conducted by AALCO and supported the suggestion made by the Leader of Delegation of the Sultanate of Oman that interpretation facilities should be provided in the seminars and workshops so as to encourage more Arabic speaking states to participate in them.
- 4.13 The **Delegation of Sri Lanka** while commenting on the proposal of the Republic of Korea on “Assisting in the Teaching, Study Dissemination and Wider Dissemination of International law”, stated that it was a pertinent topic and that the subject of international law should be included into the curriculum of the law schools in every country. The delegation added that in the era of globalization it was an absolute necessity that they possessed knowledge about both the issues of public and private international law.
- 4.14 The **Delegation of India** welcomed Sri Lanka’s offer to host, the Fiftieth Annual Session in Sri Lanka. The delegation also referred to the remarks of the President of the United Republic of Tanzania, in which he made a point that “Piracy at Sea” required a study from the perspective of international law by AALCO. The delegation supported that proposal and also the proposal made by the distinguished delegations of Japan and Islamic Republic of Iran that AALCO must involve in compiling the State Practice in international law at least of its Member States.

## **5 *Second Meeting of the Delegations of AALCO Member States***

- 5.1 ***Report of the Secretary-General on Organizational, Administrative and Financial Matters:*** The Secretary-General stated that on the first day of the Annual Session, the delegations had the privilege to hear the inspiring address delivered on behalf of the Hon’ble President of the United Republic of Tanzania. That speech amongst other things testified that at the highest political level in the AALCO Member States the objective for which AALCO had been founded received utmost attention. The leaders of AALCO Member States held the expectation that the AALCO as an instrument to forge Afro-Asian solidarity would leave no stone unturned in ensuring that the views and perspectives of Asian-African States were adequately reflected in international law-making and its implementation.

- 5.2 The Secretary-General highlighted that perspective found its echo in the General Statements by the Leaders of Delegations of the Member States. The essence of the statements made by the Leaders of the Delegations could be summed up as firstly, the ideological basis of AALCO remained relevant in the contemporary world; secondly, newer and emerging legal issues required that Afro-Asian States remain united to face those challenges; thirdly, the imperative of strengthening the Organization in all its aspects was considered of vital importance; and lastly, and more importantly, for him as the Chief Executive of the Organization, the Member States were fully supportive of the various activities being undertaken by the Organization and wished to further enhance AALCO's profile and promote its role.
- 5.3 The Secretary-General in that context recalled that at the Forty-Eighth Annual Session, the Member States had adopted the historic "Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization". By virtue of that Declaration, the Member States had *inter alia* reaffirmed their commitment to the Organization and recognized its significant contribution towards strengthening Asian-African solidarity, particularly in the progressive development and codification of international law. They had envisioned revitalizing and strengthening AALCO so as to ensure that it remained the "main centre for harmonizing the actions of Asian-African States in international legal matters". The realization of that vision required that AALCO should:

*First*, represent and present the views of Member States in negotiation and codification of international rules;

*Second*, preparing analytical and technical studies for the benefit of Member States to equip them with necessary knowledge while negotiating international law;

*Third*, engage in capacity-building and training for Member States to understand rights and obligations flowing from international obligations;

*Fourth*, provide a forum for exchange of views and experiences which could be consolidated and presented to the law-making process;

*Fifth*, render special legal advice and support for member countries including Least Developed Countries who are lacking in expertise;

*Sixth*, provide specific assistance and technical support to requesting Member States for resolving their and assisting them in negotiation or international adjudication; and

*Lastly*, following and reporting on international legal developments for the benefit of its Member States.

- 5.4 The Secretary-General emphasized that to realize those objectives; various measures had been initiated since the Forty-Eighth Annual Session, as also some new measures were envisaged. The important steps in this regard included the initiation of AALCO Lecture Series; the holding of Basic Course on World Trade Organization at Headquarters in New Delhi from 1 to 5 February 2010; and convening of the Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court from 30 to 31 March 2010 in Putrajaya, Malaysia.
- 5.5 The Secretary-General also informed the meeting about the Memorandum of Understanding concluded with the Xiamen Academy of International Law, Wuhan Institute of International Law of the Wuhan University, in the People's Republic of China and the proposed MoU with the International Council of Environmental Law (ICEL). He requested the Member States to endorse the conclusion of the MoU with the Xiamen Academy of International Law and Wuhan Institute of International Law of the Wuhan University. He further requested the Member States to mandate the signing of the MoU with the ICEL. The Secretary-General also placed for the consideration of the meeting his proposals regarding the constitution of an AALCO Eminent Persons Group as well as the convening of Meeting of Legal Experts on issues of contemporary relevance for the AALCO Member States. The Secretary-General emphasized upon the importance of holding capacity building programmes at frequent intervals for the benefit of Member States.
- 5.6 The Secretary-General also emphasized upon the need for strengthening AALCO Secretariat and of the importance of having an official in the International category from the African continent. He also called upon the Member States to approve his proposal regarding observing the relevant rules of the host Government of AALCO the Government of India for the Gratuity scheme for the locally recruited Staff.
- 5.7 In his concluding remarks, the Secretary-General observed that, despite perennial financial problems, AALCO as a living institution had succeeded in maintaining its vitality by adapting itself to the changing environment with maximum flexibility and cost effective management. He was quite confident that the future had much better prospects in store for the Organization.
- 5.8 In the ensuing debate on the Secretary-General's report on the work of the Organization the Leaders of the Delegations from **Malaysia, Kenya, The Gambia, Bahrain, Brunei Darussalam, the United Republic of Tanzania and the Islamic Republic of Iran** participated. The activities of the Secretariat in discharge of mandate entrusted by the Forty-Eighth Annual Session were



appreciated by the Member States and they applauded the efforts put in by the Secretary-General in that regard.

- 5.9 The **Leader of Delegation of The Gambia** noted that it was the first time that their country was represented at the AALCO Annual Session and being fully aware of the financial commitment of his country towards the Organization committed to pay their outstanding arrears at the earliest. Recalling the Resolution on Special Meeting on “Transnational Migration, Trafficking in Persons and Smuggling of Migrants” (AALCO/RES/48/SP 1) adopted by the Forty-Eighth Annual Session of AALCO, the
- 5.10 The **Leader of Delegation of Malaysia** expressed the willingness of Malaysian Government to collaborate with the AALCO Secretariat for the constitution of an Open-Ended Committee of Experts to enhance mutual legal assistance in criminal matters among Member States. The Member States endorsed the Memorandum of Understandings signed with the Xiamen Academy of International Law and the Wuhan Institute of International Law of the Wuhan University, and the proposed MoU with the International Council of Environmental Law. The Member States welcomed the Secretary-General's proposal for constituting a Group of Eminent Persons. The Member States assured the Secretary-General of their full cooperation in revitalizing and strengthening the AALCO Secretariat.
- 5.11 **Report on the Financial Situation of AALCO:** To appraise the Member States about the financial situation of AALCO the Secretary-General presented a realistic assessment of the situation. He emphasized that a firm financial base was of vital importance for the sustainability and effective functioning of any Organization. Hence, ever since assumption of office, his efforts had been directed towards improving the financial situation of AALCO. To ensure sound and healthy financial management, principle of transparency, accountability had been completely observed. Although, from the situation of imminent bankruptcy in 2008, the situation, on a positive note, had improved, however, challenges remained for the future and therefore he was “cautiously optimistic”. The Secretary-General informed about the progress in efforts in collecting contributions from the Member States in arrears and hoped that such efforts would attain desired results. The Secretary-General called upon the Member States to make voluntary contributions to promote the activities of AALCO as well as replenish the Reserve Fund of AALCO. The Secretary-General also informed the meeting about the staff strength of the Secretariat and highlighted that it was functioning at less than half the sanctioned strength.
- 5.12 Concerning the salary structure and allowances payable to the locally recruited Staff, the Secretary-General said that it was a well-established principle for any inter-governmental organization or diplomatic mission that the salary, and other allowances payable to the employees had to be according to the standards followed by the host Government, if not more. The AALCO has been consistently following that principle. Therefore, arrears of salary arising out of the new salary

structure followed by the Government of India certain arrears were due to be disbursed to the employees.

- 5.13 The Secretary-General emphasized that the Secretariat of AALCO perhaps functioned with the lowest budgetary allocation for any inter-governmental organization. On behalf of the Secretariat, he assured the Member States that all efforts and measures were being made to ensure optimal utilization of the resources received from the Member States.
- 5.14 Delegations from **Japan, Malaysia, the United Republic of Tanzania** and the **Islamic Republic of Iran** made observations on the financial situation of AALCO. Delegates emphasized on the need to tackle the issue of arrears and Member States which were in arrears to consider, as a priority, to comply with their financial obligations.
- 5.15 The **Delegation of Japan** stated that their Government was truly concerned about the serious financial challenges which AALCO currently confronted. The Japanese Government extended its cooperation to AALCO to overcome its present financial crisis and revitalize AALCO in the spirit of Putrajaya Declaration, but an agreement to a particular emergency measure would require that Japan be convinced that such measure would be the only measure necessary to save AALCO from its financial crisis. He stated that such particular emergency measure would be meaningful only when accompanied as a package by a specific mid-term and long-term financial improvement programs. The delegate proposed that some sort of pledging session be held during present or every Annual Session with participation of all participating member states, for expressing the intention of individual members for their respective financial contribution obligatory under the AALCO Statute.
- 5.16 The delegate said that with regard to the 2011 budget, Government of Japan wished not to stand in the way if it could be adopted by consensus at that Annual Session, however, the government lodges its strong request that the Secretariat would act to restraint the actual expenditure until such time when more revenues were generated by way of improvement of payment of contribution by Member States including the past arrears and/or voluntary contributions by any of the member states.
- 5.17 The **Delegation of Malaysia** while expressing concerns on the financial situation of AALCO stated the problem increased due to accumulation of arrears. The delegate thanked the Government of **The Gambia** for its assurance to pay their arrears and expected other countries to follow suit. He appreciated the efforts of Brunei Darussalam to pay their contribution on time. Malaysia and certain other countries had paid voluntary contributions and in that regard the delegate requested Member States who could afford to consider making such voluntary contributions. Referring to the Proposed Draft Budget for the Year 2011, the delegate noted that the projected income of USD 570,268 was totally relying on

- expected payment of annual contribution by all 47 AALCO Member States. Due to the proposed Budget of the exact amount of the capital expenditure and revenue expenditure, the AALCO Secretariat should remain vigilant in the expenditure and collection of arrears and contribution.
- 5.18 The **Delegation of the United Republic of Tanzania** pleaded with the Member States to pay their contribution, because being in association with the AALCO would be more prestigious for them and when they receive such privilege they must reciprocate by paying back their contributions on time.
- 5.19 The **Delegation of the Islamic Republic of Iran** emphasized upon the importance of effective and further cooperation of Member States with the Secretary-General in order to fulfil their statutory and financial obligations to the Organization was necessary.
- 5.20 **Adoption of Draft Budget for the Year 2011:** The **Secretary-General** introduced the Proposed Budget for the Year 2011. He informed that the budgetary papers were adopted at the 306<sup>th</sup> Meeting of the Liaison Officers in accordance with Statutory Rules 24 (2) and were placed for final approval before this Annual Session as per Rule 24 (4) of the Statutory Rules of AALCO. He explained the details of the allocation of budget under different heads, the total amount of the proposed budget for the year 2011 was USD 570,268 (US Dollars Five Hundred and Seventy Thousand and Two Hundred and Sixty Eight) which was calculated as per expected assessed contribution of Member States, which was revised and adopted during the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia in the Year 2009 vide resolution AALCO/RES/48/ORG 2.
- 5.21 The Secretary-General explained that the proposed Budget could be broadly divided into four heads, namely, Salary and Allowances; Maintenance of the Permanent Headquarters Building; Centre for Research and Training; and Other Expenses. The salary, maintenance and other expenses expenditure in aggregate amounted to USD 497,268. The budget allocated for promoting and conducting Research and Training was USD 73,000 that was 13% of the total budget.
- 5.22 He thanked the Government of Malaysia for their voluntary contribution of USD 10,000 towards replenishment of Reserve Fund. He also thanked the Government of Korea and Government of Turkey for their voluntary contribution towards the General Fund of the Organization. He urged other Member States to also follow suit. It was stated that currently, to fulfil financial obligations of the Secretariat, voluntary contributions from Member States were most welcome. On a careful analysis of the budget allocation under various heads, especially under the maintenance head, it showed that there had been a considerable reduction in the maintenance cost and till date the Secretariat has reasonably incurred the expenses which were much below the budget allocated. He emphasized that under constant monitoring, the expenditure had been streamlined. He commended the Secretariat staff for extending full cooperation in reducing the expenses.

- 5.23 The **Delegation of the Gambia** made remarks on the proposed budget. The delegate congratulated the Secretary-General for preparing comprehensive and useful report and in case there was consensus, it was proper and appropriate to adopt the Budget.
- 5.24 The **Vice-President** then declared the Budget adopted at the session.
- 5.25 **Report of the Chairman of the Advisory Panel of AALCO:** The Chairman of the Advisory Panel was the Head of the Delegation of Bangladesh. As the delegation was not attending the session, the Vice President requested Dr. Yuichi Inouye, Deputy Secretary-General of AALCO to read out the Report of the Chairman of the Advisory Panel.
- 5.26 **Dr. Yuichi Inouye, Deputy Secretary-General** of AALCO, while reading out the Report recalled that the Advisory Panel ("Panel") was constituted to guide the Secretary-General in discussing the various possibilities to overcome the financial difficulties of AALCO. The Panel held its 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Meetings on 16 December 2009, 3 March 2010, 26 May 2010 and 23 June 2010 respectively. The mandate of the Advisory Panel was to look into the financial matters of AALCO, and to suggest ways and means to collect the outstanding arrears of contributions from Member States in arrears.
- 5.27 The issue of arrears was taken up and it was mentioned that there were 10 countries in arrears for more than 10 years. It was necessary that as a first step to resolving the issue, AALCO should conclude MOUs with all these countries. Besides this Member States were also requested to make voluntary contributions.
- 5.28 The following proposals were put forth for the consideration of Member States:
- \* All the Member States were requested to pay their annual contributions for 2010 and 2011 by the end of June 2010; and June 2011 respectively;
  - \* There were 13 Member States in arrears for less than 10 years, and 7 countries who had arrears for either one or two years (2008 and 2009) , they could clear the same in 2010;
  - \* There were five countries that had arrears of two years, those could be requested to clear their arrears in two installments in 2011 and 2011; and
  - \* The last proposal was to request all the Member States to make an Advance Payment of USD 5,000 in 2011. That would subsequently be deducted from their annual contribution in 2016.
- 5.29 The idea of getting this advance payment from Member States was to tide over the financial crisis that the AALCO might face in 2011. The Annual Budget was prepared on the basis of expected Annual Income of USD 570, 000. However, in 2011 there could be a possibility of facing a deficit of about USD 150,000. Therefore to overcome this deficit the Secretariat had proposed the Advisory Panel to consider the possibility of collecting an advance payment of USD 5,000

from each Member State along with its contribution of 2011. This amount would be deducted from the annual contribution of Member States in 2016. The Republic of Iraq had signed a MOU last year, however, their first instalment was still due. The DSG appreciated the gesture of Republic of Iraq, the Republic of Yemen and Libyan Arab Jamahiriya for understanding the financial situation of AALCO and agreeing to do their part of paying up their arrears due.

- 5.30 **The Delegation of Japan** appreciated the efforts taken by the Secretariat and the DSG in addressing the issue of tackling the arrears of contribution. However, on the proposal of paying USD 5,000 in the year 2011 as an advance payment for the year 2016, the delegate stated that it would not be possible for the Government of Japan to agree to such a proposal.

## **6      *Second General Meeting***

### ***Thematic Debate on the Topic “Making AALCO’s Participation in the Work of International Law Commission (ILC) More Effective and Meaningful”***

- 6.1 **H.E. Mr. Priyasath Gerald DEP, Vice-President of the Forty-Ninth Session** chaired the Session. In his opening remarks, the Vice-President mentioned that after reviewing the Organizational and Financial matters, it was time for them to proceed towards consideration of substantive topics on the AALCO’s work programme. The Vice-President recalled that the International Law Commission had been established by the United Nations General Assembly in the year 1947, and the ILC Statute provided that the “Commission shall have for its object the promotion of the progressive development of international law and its codification.” Nearly, ten years later, on 15 November 1956, the Statutes for the AALCO were adopted. The founding Member States with the objective to promote the perspectives of New States of Asia and Africa laid down the statutory obligation that ordained that one of the functions and purposes of the Asian-African Legal Consultative Organization was “to examine subjects that were under the consideration by the International Law Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary, to the Member States.” The Organization had in its fifty-five years of work examined the questions under consideration of the ILC. To further, consolidate their work programme on that matter, and to ensure that there was optimal utilization of the limited resources and time available to their Organization, that thematic debate had been conceived. The Vice-President stated that the Secretary-General had constituted, in his opinion an excellent Panel for that purpose. It was a unique combination of academic wisdom with practical international legal experience.
- 6.2 **H.E. Prof. Dr. Rahmat Mohamad, Secretary-General** in his Introductory Remarks, gave a background on the relation between AALCO and the ILC. He said that AALCO as an inter-governmental body with 47 Member States from the two continents of Asia and Africa was uniquely placed to serve the States of the

two region in examining and formulating their responses to newly emerging challenges of international law. The expanding scope and variety of issues on AALCO's work-programme was indicative of the willingness of AALCO to keep up with the increased responsibilities of examining a wide range of newly emerging challenges of international law. Against that backdrop, he emphasize that the relationship between AALCO and ILC should be further intensified. He was confident that the two regions that AALCO represented were of great importance to the ILC, and the AALCO Secretariat was pleased to contribute to the continuing good relations between both the institutions. He recapitulated the suggestions made by the Panelists in the Commemorative Seminar on the Sixty Years of the International Law Commission on 2<sup>nd</sup> December 2008 at the AALCO Headquarters in New Delhi and also suggestions made by delegations at the Forty-Eighth Annual Session of AALCO held in Putrajaya, Malaysia, from 17 to 20 August 2009. He was of the view that ILC work should not be the concern of only foreign offices of AALCO Member States, but should also sensitize the academia in deliberating those issues along with the contemporary and specialized areas of international law, all of which found its roots in the rules and principles developed under the ILC fora.

- 6.3 Following the Introductory Remarks by the Secretary-General, the three Panellists, namely **Prof. Shinya Murase, Member, International Law Commission from Japan; Dr. Roy S. Lee, AALCO's Permanent Observer at the United Nations HQ in New York** who had a very distinguished career in the United Nations and had been the Member Secretary of the ILC; and **Professor V. S. Mani**, distinguished international law academic from India made their presentations.
- 6.4 **Prof. Shinya Murase, Member, International Law Commission**, in his presentation said that the International Law Commission valued its long relationship with AALCO and appreciated the visit by Prof. Dr. Rahmat Mohamad, Secretary-General to speak at ILC Session. The ILC believed that effective cooperation with other legal bodies, particularly AALCO, was essential for the Commission to succeed in its mandate to work towards the future codification and progressive development of international law. He briefed the gathering of the deliberation that took place at the Sixty-Second Session of the International Law Commission.
- 6.5 **Dr. Roy S Lee, Permanent Observer of AALCO to UN Headquarters, New York** thanked the Secretary-General for inviting him as a panellist for the thematic debate. The panellists also thanked the Member States of AALCO for their approval to appoint him as the Permanent Observer of AALCO to UN Headquarters, New York. Concerning the thematic debate, the Panellist stated that there were three ways to influence the ILC or provide input to the ILC in its work which were, (i) during the General Assembly and in the Sixth Committee when work of ILC were discussed. Member States could comment upon the work of the ILC; (ii) the ILC also invites UN Member States to transmit their comments on

the work of ILC in the written form which must be submitted on a deadline and Governments are asked to comment on those; and (iii) Out of 34 members of ILC, AALCO had at least 12 members who belong to AALCO Member States; they should work together and strongly influence the ILC.

- 6.6 Dr. Lee mentioned that the primary concern of AALCO Member States could be listed into 25 topics. However, it was essential to find ways to reflect the work of AALCO in the ILC. The panellist highlighted the practical difficulties and problems for AALCO in relation to the work of ILC. The main problem of channelling the AALCO's views was that countries have different concerns; there were difficulties in relation to process of consolidation and process for collecting those ideas. He suggested that the ideas and comments from Member States in relation to the work of ILC must be collected somewhere between May and July. Therefore, it would be desirable to convene the Annual Sessions of AALCO first quarter of the year. Member States could also send in their views at the earliest for ensuring the inclusion of their concerns into those topics that could be deliberated upon during ILC sessions. He also stated that in order to recognize the hard work by the AALCO Secretariat, it was necessary to channelize the concerns of AALCO Member States well in advance. The other suggestion was to consider the final outcome of the work of the ILC. The formulation of draft articles involves procedures and could be considered as the product which later on becomes treaties when adopted by the States. On that aspect, it was necessary that Member States would deliberate upon those draft articles and raise their concerns. They are consolidated to be deliberated guidelines; principles and long study then entirely incorporated into national legislations. The advantage was that once draft articles are adopted at the General Assembly they could be easily applied in national legislations. Therefore, it would be beneficial for countries to transmit their views early on draft articles prepared by the ILC.
- 6.7 **Prof. V.S. Mani, Director, School of Law and Governance, Jaipur National University** in his presentation, sincerely thanked the Secretary-General for thinking it proper to make an academic sit with practitioner to speak on such an important topic. He began his presentation by emphasizing that as far as the objective of the progressive development and codification of international law was concerned, there were several international organizations that were contributing to that endeavour. He did not wish that AALCO should jump into that vast ocean; however, it ought to prioritize on the basis of the interest of its Member States, the issues on which it should work upon. Concerning the ILC, the Panellist stated that the ILC was faced from the very beginning with the question of policy loaded issues. The codification exercise performed by the Commission was an arduous process. Therefore, such exercise happened in several other fora within the UN system. In that context, he drew attention to the negotiation of the UN Convention on the Law of the Sea by the First Committee of the UN General Assembly and the treaties concerning the Outer Space by the Disarmament Committee. The contribution of AALCO, the panellist emphasized to the elaboration of the UNCLOS was highly significant. AALCO could therefore; he

suggested adopt a policy of pick and choose. Referring to the remarks made by his co-panellist that the response by the Afro-Asian Members to the ILC's call for response was not very encouraging, he said that the AALCO Secretariat could be utilized to assist the Member States in that task. Referring to the proposal made by the Attorney-General of Malaysia for setting up an AALCO Working Group for ILC matters, he said that he was fascinated by that idea. The Working Group could be assisted by the AALCO Secretariat in its work.

- 6.8 **Message of Ambassador Chusei Yamada, Special Assistant to the Minister of Foreign Affairs, Japan** was read out by the Vice-President of the Session. In his message, he encouraged more active involvement by the Member States of AALCO in the work of ILC. He believed that the Secretariat of AALCO could play a role in assisting some of the Asian and African States which faced capacity problems in digesting the report of ILC. In Europe, there existed the Committee of Legal Advisors on Public International Law (CAHDI). CAHDI obtained the annual report of ILC as soon as it was adopted and transmits it to its members. It organized a meeting of legal advisers and coordinated their positions before the debate in the Sixth Committee started. The Secretariat of AALCO could do similar or more contributions. With the assistance from Asian and African members of ILC, it could post executive summaries of ILC Report on its web-site for the Member States. It could also provide Member States with studies and recommendations on each topic. It was also entitled as an international organization recognized by the UN General Assembly to directly communicate to ILC its views and recommendations on behalf of its Member States. He expressed his hope that these measures would strengthen the position of the Member States of AALCO in the field of international law.
- 6.9 The **Delegation of India** highlighted the efforts which could be taken by the AALCO. In that regard, he mentioned that AALCO must empower the ILC members of Asian-African region. Towards that objective, the delegation would extend their full support to AALCO and made few suggestions and they were: i) to popularize the draft articles of ILC among the Member States of AALCO; ii) to create a platform for academic exercise in discussing the issues relating to ILC; iii) compilation of state practice on international law matters; iv) Legal Officers of AALCO could be exposed to ILC related matters, to have a legal expertise in order to write and comment on the reports of the ILC, and on rotational basis AALCO should send the Legal Officers to ILC; and v) AALCO Session should be held in the first quarter of every year.
- 6.10 The **Delegation of Malaysia** stated that his delegation had submitted its views with regard to the topics under consideration of the ILC to the AALCO Secretariat. On the topic of "Reservation to Treaties" the delegate stated that as it was a pivotal topic of the ILC and had a huge impact on the international community, the delegation took the opportunity to propose that this topic shall form an integral part of AALCO's Fiftieth Annual Session agenda and the Secretariat should formulate effective mechanism and platform to allow better



understanding of that complex subject-matter amongst AALCO Member States. In order to make AALCO's participation in the work of ILC more effective and meaningful, the delegation proposed that a systematic and coherent method of obtaining AALCO Member States' feedback be developed. Perhaps AALCO could devise a dedicated inter-sessional meeting on ILC. This inter-sessional meeting would not only be useful to discuss the topics under the consideration of the ILC but it could also be used to discuss appropriate topics, that were of mutual benefit and relevance to the Asian and African continents, to be elaborated at the ILC. Due to the work schedule of the ILC, the delegation proposed that this inter-sessional meeting to be held early in the year before the starting of each session of the ILC. The outcome of the inter-sessional meetings should be presented to the AALCO Annual Session for deliberation and consideration.

- 6.11 The **Delegation of Japan** pointed out that as one form of contribution which AALCO could make for the codification and progressive development of international law, it was suggested that AALCO Secretariat could compile state practices which were relevant to the subject matters on the agenda of the ILC and submit them to the UN legal department. For example, with regard to the question of "Reservations to Treaties", the Delegation pointed out that the AALCO Secretariat could collect information such as the reservations made by the Member States concerning multilateral treaties and/or their objections lodged against those made by other countries for the past one year or for the recent few years, and submit it to the UN Legal Department. The delegation suggested that the AALCO Secretariat could make Questionnaires on points which could be controversial in international law, and sent them to Member States, and compile responses there from and submit them to the UN legal department. If such action could be taken with cooperation of Member States, it could become valuable contribution to the work of ILC. If regional institutions such as the ASEAN, Arab League, and African Union could submit one uniform view on one subject item or a legal issue, state practices prevailing in the respective region could be communicated to the ILC. In such cases, AALCO Secretariat might need to coordinate activities with the ILC and/or the African Union.
- 6.12 The **Delegation of Ghana** was of the opinion that the AALCO's participation in the work of the Commission could be made more effective and meaningful by taking up the challenge to introduce new topics that reflected the needs of the Asian and African countries and by introducing topics that reflected new developments in international law and the pressing concerns of the international community as a whole.
- 6.13 The **Delegation of the People's Republic of China** while expressing appreciation on the continuous work and efforts made by the AALCO through these years stated that in order to participate in the work of the ILC more effectively and more meaningfully, AALCO needed to study relevant topics that were currently reviewed by the ILC more comprehensively. The delegation also urged AALCO to support its Member States help them do advanced research on

- topics of contemporary concern. In that context, the delegation suggested that, AALCO could consider holding seminars to discuss certain specific topics dealt with by ILC as well as on some new topics identified by it. The outcome documents of these seminars could possibly be transmitted to the ILC for its reference.
- 6.14 The **Delegation of the Islamic Republic of Iran**, acknowledged the outstanding contribution of the International Law Commission to the codification and progressive development of international law, and made comments on some of the substantive topics of the agenda of the International Law Commission, namely the Effect of Armed Conflicts on Treaties; Protection of Persons in the Event of Disasters; and Responsibility of International Organizations.
- 6.15 The **Delegation of the Republic of Kenya** observed that their country supported the proposal by the Secretary-General to assign Legal Officers to the Permanent Observer Missions at various UN Offices to render assistance to Asian-African Members of the ILC at the annual sessions of the Commission as well as at the annual sessions of the UN General Assembly.
- 6.16 The **Delegation of the Kingdom of Saudi Arabia** posed the query as to whether AALCO has enough human resources in such areas and address the concerns of those countries.
- 6.17 The **Delegation of Gambia** emphasized on the need for AALCO and ILC to pay attention to very important issues like that of double standards and be a responsive and dynamic body.
- 6.18 The **Delegation of Thailand** submitted their report on the agenda item to the Secretariat for inclusion in the Final Report of the Annual Session.

**7. *Third General Meeting***

***Agenda Item : 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***

- 7.1 **Dr. Hassan Soleimani, Deputy Secretary-General of AALCO** in his introductory remarks stated that the Forty-Ninth Annual Session was taking place against the backdrop of a series of disturbing developments, the principle among which was the recent attack on the peace flotilla, carrying humanitarian aid for the population of Gaza. He said that this incident demonstrated that Israel had violated all established and customary principles of international law and international humanitarian law, in particular Article 23 of the Fourth Geneva Convention of 1949 which recognized the rights of civilians living in the area under foreign occupation to receive material humanitarian aid. He also condemned the blockade of Gaza as a form of collective punishment and the

continuing blockade of Gaza represented a flagrant violation of international law. To highlight the situation arising out of the above mentioned events AALCO Secretariat had organized a seminar on the topic "The Blockade of Gaza and its International Legal Implications". At that seminar the panellists and participants unequivocally condemned the Israeli illegal practices in the occupied Palestinians and emphasized that for a just and peaceful settlement of the Israeli-Palestinian conflict, it was essential, that Israel respect in letter and spirit the bilateral agreements between Israel and Palestine which had been violated in spirit and letter by Israel itself.

- 7.2 He mentioned that there were numerous United Nations Security Council and General Assembly Resolutions asking Israel to abide by international law, particularly international humanitarian law and human rights law. However, the Occupying Power, Israel continued its war crimes with impunity. Further, Israel had rejected the Advisory Opinion of the International Court of Justice and was continuing with its settlement activities which violated international law and its commitments under the different agreements. Thereafter, he noted that deliberations at the previous Annual Session of AALCO had consistently reaffirmed that the resolution of the Israeli-Palestinian conflict through negotiations should be firmly based on the principles of international law. It was also very important to take into account the widely supported United Nations Security Council and UN General Assembly resolutions 242, 338 and 1515 which affirm the legal obligation of Israel to withdraw from Palestinian territories obtained in 1967.
- 7.3 The Delegations of the **Islamic Republic of Iran, Republic of Indonesia, Japan, Republic of South Africa** and **Malaysia** presented their statements on the topic. The delegations condemned the recent attack on the peace flotilla carrying humanitarian aid for the civilian population of Gaza and also condemned the blockade on the population of Gaza imposed by Israel since 2007. They also strongly felt that Israel should not be able to get away for the crimes that it committed with impunity against the civilian population of Israel and felt that AALCO Member States should have a common stance on that issue which whole heartedly supported Palestine. They highlighted that the Palestinian issue should be resolved on the basis of UN Security Council resolutions 242 and 338. According to these Israel should withdraw from all the area which it had occupied since 1967, Palestinian people's right to self-determination including establishment of an independent state should be recognized. They appreciated the report prepared by the UN Human Rights Council Fact Finding Mission led by Justice Goldstone on Israel's military operations in Gaza in 2008 to January 2009; the recommendations contained in the said report had been carefully prepared and were so comprehensive that they required careful scrutiny by the parties and the international organizations concerned. The delegates expressed deep appreciation for the resilience of the ordinary civilians living in Gaza and the West Bank who tried and carried on against all odds, a normal daily existence.

## **8 Special Day Meetings**

***Special Meeting on “International Criminal Court: Recent Developments” in view of the outcome of the Review Conference: Principle of Complementarity and Crime of Aggression” (jointly by the Government of United Republic of Tanzania, International Committee of the Red Cross (ICRC); and the AALCO Secretariat)***

- 8.1 **His Excellency, Mr. Mathais M. M. Chikawe**, President of the Forty-Ninth Annual Session of AALCO briefly outlined the topics for the Special Meeting and said that the two important issues to be discussed were the post Kampala Review Conference developments particularly, the Principle of Complementarity and the Crime of Aggression. Thereafter, he invited the Secretary-General to introduce the topic.

### ***Working Session I: The Principle of Complementarity***

- 8.2 **Prof. Dr. Rahmat Mohamad, Secretary-General** in his introductory statement stated that developments relating to the ICC had been successively considered at AALCO's Annual Sessions and various inter-sessional meetings. Bearing in mind the importance of the Review Conference held in Kampala, recently, AALCO in collaboration with the Governments of Malaysia and Japan had convened a two day Round Table Meeting of Legal Experts in Putrajaya, Malaysia from 30 to 31 March 2010. He noted with satisfaction that the views expressed by the Member States of AALCO at that meeting were largely the outcome of the Review Conference as well. He informed that in view of the importance of the topic for AALCO Member States, a three member delegation led by him had attended the Review Conference in Kampala, from 31<sup>st</sup> May to 2<sup>nd</sup> June 2010. Thereafter, he briefly outlined the outcome of the Review Conference, particularly the adoption of the definition of the crime of aggression, the stocktaking exercise which reemphasized the importance of the principle of complementarity and the retention of Article 124 in the Rome Statute.
- 8.3 **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan** stated that the First Review Conference of the Rome Statute of the ICC held at Kampala was truly historical in many aspects: not only that the Review Conference was convened for the first time after the commencement of full activities and operation of the ICC, but also a rare opportunity was provided and fully utilized for taking stock of the progress of the developments in the international criminal justice system and most importantly, various amendments to the Rome Statute were adopted by consensus.
- 8.4 He mentioned that the principle of complementarity was one of the most fundamental principles on which the Rome Statute system was based. The preamble of the Statute as well as Article 17 provided that the Court was complementary to national criminal jurisdictions. At Kampala, it was therefore quite natural that much discussion took place, focusing on this principle, and a resolution was adopted by consensus.

- 8.5 In his view, in order to implement actually the principle of complementarity, Member States should take necessary measures to enact national legislation whereby all the crimes stipulated in the Rome Statute were made punishable. In Japan's case, when considering the ratification of the Rome Statute, they examined thoroughly whether all the crimes in the Rome Statute were punishable under domestic laws and enacted the necessary legislation. Japan would be ready to provide advice based on its experience to those countries who were considering the ratification of the Rome Statute.
- 8.6 While, focusing on the principle of complementarity, utmost efforts were called for not only the Court and States Parties but also and all other stakeholders, including international organizations such as AALCO to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern.
- 8.7 **Dr. Roy S. Lee, Permanent Observer of AALCO at the UN Headquarters in New York** presented his views on the principle of complementarity from the stand point of non-States Parties to the Rome Statute and underlined that they too could derive benefit from the Rome Statute of the ICC. This was particularly so, because it was clear that many States would not become parties to the Rome Statute. He said that the principle of complementarity applied to non-States Parties as well. Though States Parties had priority in exercising national jurisdiction, the same principle applied to non-States Parties as well. As the purpose of the Rome Statute was to end impunity and ICC respected the sovereignty of States and that was why it was complementary to national judicial systems as it supplemented them.
- 8.8 Dr. Lee also said that non-State Parties needed to criminalize the crimes enshrined in the ICC into their national jurisdiction as that in the long-run it would be beneficial to the States. He also said that the non-State Parties could take advantage of the provision in the ICC related to making an "opt in declaration", as that could if the need arose help to deal with one specific situation. He elaborated that such a declaration could be a useful tool for a country dealing with a crisis situation. Uganda, Congo and the Central African Republic, all States Parties to the Rome Statute of the ICC had voluntarily referred their domestic situations to the ICC. This approach would help them in carrying out investigations, thus help them to save their funds and human resources.
- 8.9 Dr. Lee added that the Rome Statute was a valuable source of information. It elaborately defined 93 crimes and the elements of those crimes in detail. He said that the definitions of some of the crimes like torture and the elements of crime involved therein could be extracted from the ICC for inclusion in some of the national legislations, where they were not included. He informed that the League of Arab States had framed a Model Legislation for its Member States. He further stated that some of the Member States had difficulty in ratifying the 1977

Additional Protocol of the Geneva Conventions of 1949, if those States read the definitions of the crimes under international humanitarian law, the ICC Statute had all those definitions, so reading the Rome Statute could help them in becoming parties to the 1977 Additional Protocol.

- 8.10 **Mr. Pahkiso Mochochoko, Senior Legal Adviser, International Criminal Court** in his presentation on “**Overview of the Complementarity Principle and Related States’ Obligations under the Rome Statute**”, explained that the principle of Complementarity had been described as a central feature of the Rome Statute system. It denoted that cases would only be admissible before the ICC if and when States were genuinely unwilling or unable to carry out investigations and prosecutions. According to the Complementarity principle, the primary duty and responsibility for the enforcement of prohibitions of international crimes rests with national criminal jurisdictions. The principle foresees a division of labour between national courts and the ICC. Enforcement of international crimes was thus dependent on the capability of national courts as fora of first instance. As a permanent international judicial institution, the ICC was a complement rather than a replacement to national criminal jurisdictions.
- 8.11 The formula of the Rome Statute that a country with jurisdictional competence had the first right to institute proceedings had two practical dimensions to it. The first one was that States that wished to preserve their national sovereignty by prosecuting those responsible for crimes under the Statute had to incorporate the Rome Statute Standards into their national laws and ensure that their legal systems conform to international standards. The second dimension was that in order for States to cooperate with the Court, they had to introduce comprehensive legislation enabling them to extend full cooperation to the Court.
- 8.12 The Panellist also highlighted the benefits of enacting of national implementing legislation. He said that it was a clear expression of a political commitment to cooperate with the Court; it enabled national courts to assume jurisdiction over crimes under the Statute; it would enhance victims remedies and protection under domestic laws; it served to import into national law, example of “best practices” that could have a positive impact on domestic practices and it paved the way for effective cooperation with the Court.
- 8.13 He stated that many countries were currently struggling with the issues of compatibility with the ICC Statute with certain constitutional provisions while others had reached the conclusion that their constitutional provisions and the Statute were consistent and therefore amendments were unnecessary. He suggested that there was a need to customize measures required to harmonize States’ approach on those matters. Interaction between the Court with States and civil society, where appropriate and before implementing legislations were crystallized would ensure that the objectives and purposes of the Statute were met. The elaboration of standards for effective incorporation which were based

on the objects and purposes of the Statute while at the same time sensitive to the differences in domestic legal orders should be the goal.

- 8.14 The Panellist observed that many developing and least developing countries lacked time, resources and capability to undertake necessary legal reforms for complementarity. Raising awareness and providing technical assistance to help ratifying countries with implementing legislation would augur well for complementarity and the future of international justice. In this regard, he said that AALCO could play an important role in ensuring that States implement the provisions of the Statute.
- 8.15 Several non-governmental Organizations mostly operating under the auspices of the NGO Coalition for the International Criminal Court (CICC) were actively involved in reviewing and commenting upon implementing legislation according to pre-defined criteria. But many of them continued to face difficulties of access to draft legislation of States, he mentioned. The need for Government's to make their implementing legislation accessible to the NGOs for comments to ensure uniform approach and consistency could not be overemphasized.
- 8.16 The Panellist observed that the importance of the ICC lay in its potential to limit impunity and deter atrocities. Incorporating the ICC principles in national laws would limit the legal, political or procedural difficulties that were likely to arise if the States approached at the national and international level. Although the Complementarity regime under the Statute was not immune from criticism, nevertheless it was a successful attempt to strike a balance between the considerations and respect for the national jurisdictions, the ability of the Prosecutor to effectively exercise his powers and the Courts discretion to hear the cases admissible, whatever the Court at its best authority to intervene the national proceedings such intervention which were based on the criteria which were clearly written. Ultimately, it would be for the Court to determine its ability to address some of the difficult questions regarding Complementarity as it developed its jurisprudence and regulations to meet the objectives of fairness and justice, where it would also operate efficiently and safeguarding the interests of the judges.
- 8.17 He also highlighted the need for the fair commitment of the States which was very essential for the effectiveness of the Court. States would adopt legislations to implement the provisions of the Rome Statute and provide the Court with effective cooperation.
- 8.18 **Dr. Srinivas Burra, Legal Adviser, International Committee of the Red Cross (ICRC), New Delhi, in his presentation on "Complementarity and the International Criminal Court"**, stated that establishment of the International Criminal Court (ICC) was considered as one of the significant achievements of the international community in terms of regulating the behaviour of individuals. The long period of time taken since the initial idea emerged, for its realisation was

a clear testimony to the significance of the ICC and the complex issues involved in its realisation. The ICC was established with a desire among some States and some quarters of civil society that international crimes must not go unpunished. Establishment of the ICC necessarily assumed that the individuals involved in certain grievous international crimes were left unpunished in certain situations. To prevent such situations the ICC was established.

- 8.19 The Statute of the ICC, like any other or many other international law instruments had to confront and concede to the traditional valid issue of sovereignty of States. To address the issue of State sovereignty and to effectively prosecute international crimes, the drafters of the Rome Statute had introduced the concept of complementarity in the form of Article 17 of the Statute. Though the word complementarity did not appear anywhere in the Statute, paragraph 10 of the Preamble and Article 1 of the ICC Statute refer to complementary nature of the jurisdiction of the ICC.
- 8.20 For a case to be taken up by the ICC it would be tested on three grounds. (1) Jurisdictional ground; (2) Admissibility ground; and (3) Interest of justice ground.
- 8.21 For complementarity, he mentioned that the principle addressed the issues relating to State sovereignty, encouraging national jurisdiction, and ensuring effective ICC non-interference.
- 8.22 On positive complementarity, he noted that when the Court starts taking up cases, it was expected to confront several challenges encompassing practical aspects and the interpretation of the Statute. To address those challenges and concerns, it was suggested that the Office of the Prosecutor may be able to resolve some of the issues by interacting more closely and actively with national courts, adopting a policy which has come to be called positive complementarity. The principle of complementarity looked for at more cooperative relationship between national jurisdictions and the Court. This seems to be some what similar to the 'guiding principles' of the complementarity as highlighted by the 'Informal Expert Paper: The Principle of Complementarity in Practice' of the Office of the Prosecutor. The two guiding principles were partnership and vigilance.
- 8.23 It was important that for those who had become parties to the ICC may need to take certain measures. First step in this direction may be to bring in effective national legislation. It was necessary that in order to be able to prosecute violators of the crimes listed in the Statute, and thereby avoid a case being brought before the Court due to the inability to prosecute such a crime, to make those crimes punishable at the national level. Therefore, it was essential for effective operation of the complementarity principle to adopt necessary legislation.
- 8.24 To conclude, it could be arguably said that further clarifications on the principle of complementarity by the Court in its judgments in the future would help build confidence of the international community, mainly of States, and encourage active



response in the form of adopting adequate national measures and more States becoming parties to the Statute.

- 8.25 The Delegations of the following countries presented their views on the topic namely: **Malaysia, the Sultanate of Oman, Republic of Korea, Thailand, the Kingdom of Saudi Arabia, United Republic of Tanzania, Brunei Darussalam, Islamic Republic of Iran, People's Republic of China, Arab Republic of Egypt, and South Africa.** The delegations presented their candid views on the principle of complementarity and agreed that the principle of complementarity was the core principle of ICC which needed to be further strengthened. The delegates cautioned against taking the principle of complementarity too far and using the concept of positive complementarity which might cause confusion with the concept of complementarity as enshrined in the Rome Statute.
- 8.26 The **Delegation of Malaysia** wanted to know how countries that did not have specific national legislations, incorporating the crimes enlisted in the Rome Statute, criminalize those crimes, and how those crimes could be internalized into their national legislations, without amending their Constitution, which was a very difficult task. She also said that for some grievous crimes death penalty was accorded in her country, whereas the Rome statute did not have any such provision, therefore, would it mean looking at two sets of crimes, one under the ICC and the other under the domestic law? The delegate was also concerned about the gravity of offences to be tried by the ICC and the interpretation of the same by the Prosecutor. The Leader of Delegation of Malaysia while referring to Articles 6 and 7 of the Rome Statute of the ICC stated that in practice it would be very difficult to comply with all the elements of crimes enlisted in those articles.
- 8.27 The **Delegation of the Sultanate of Oman** clearly mentioned that the jurisdiction of the ICC was supplementary to national jurisdictions and did not want it to interfere in any way with its sovereignty. The Leader of delegation of the Sultanate of Oman was however sceptical about the impartiality of the ICC. The delegates also wanted to know the basis on which the independence of the ICC could be judged.
- 8.28 The **Delegation of the Republic of Korea** maintained the view that the Asia-Pacific region was under-represented in the ICC and it was important that the goal of universalization of the Rome Statute be achieved, as that would lead to a global justice mechanism.
- 8.29 The **Delegation from the Kingdom of Saudi Arabia** asked how countries could relate between national crimes and the crimes within the jurisdiction of the ICC as this movement from one set of court to another itself would amount to interfering with the sovereignty of States.

- 8.30 The **Delegation of the United Republic of Tanzania** desired that seminars on the ICC should be held in individual Member States so that the ICC Statute could not be distorted. He felt that AALCO could assist in the holding of such seminars.
- 8.31 The **Delegation of the Islamic Republic of Iran** referred to the difficulty in applying Article 17 of the Rome Statute. He wanted to know what would be the position of ICC if a State decided to give amnesty in certain cases. Some other States emphasized on the necessity of national capacity building and establishing a working group of experts within AALCO to study the principle of complementarity in greater detail.
- 8.32 The **Delegation of the People's Republic of China** emphasized that two issues must be taken into consideration when the Court conducts cooperation with relevant States according to the principle of complementarity. Firstly, when judging the jurisdictional capacity and will of the States, the relevant provisions of the Statute should be interpreted strictly according to its literal text. Secondly, when assistance is provided to States to promote their capacity building, the need and characteristics of their legal systems should be respected and interference of their domestic affairs should be avoided.
- 8.33 The **Delegation from the Arab Republic of Egypt** strongly opposed the interference by the Security Council or the International Criminal Court into the internal affairs of a country. He insisted that unless a state was State Party to the ICC, the ICC should not take up any matter pertaining to the internal affairs of a country.
- 8.34 In response to the concerns raised by the Member States in relation to the Principle of Complementarity and its application, **Mr. Pahkiso Mochochoko**, Senior Legal Adviser, International Criminal Court briefly addressed those concerns. Firstly, he highlighted that there was need to have another seminar on this topic in order to be able to address all the pertinent concerns raised by the Member States; secondly, responding to the Delegation of Malaysia he said it would be beneficial for the Member States if they could internalise the crimes enlisted in the Rome Statute into their national legislations. Doing this would also be helpful in cases where national legislations had not mentioned a punishment for a particular crime; thirdly, with regard to the principle of positive complementarity he said that this did not/would not amount to interference with the state sovereignty rather it would benefit states on a bilateral basis, as they would learn from the example of each other; fourthly, as regards the gravity of offences and how the Prosecutor of ICC would interpret it, the panellist while referring to the situation of Iraq mentioned that in that situation it was not the gravity of the offences committed rather ICC could not look into that case as Iraq was not a State Party to the ICC; fifthly, regarding the issue of serious crimes, the panellist stated that the crimes enlisted in the Rome Statute were the most serious crimes and thus the elements to be proved were commensurate with the seriousness of the crime itself, thus the definition of the crime itself met with the

highest threshold once it was in the Rome Statute; and finally, Mr. Mochochoko maintained that the ICC was an independent and impartial court which was only guided by law, evidence and facts.

- 8.35 In response to the concern raised about the role and functioning of the Security Council and the ICC, the Senior Legal Adviser from the ICC maintained that both were independent bodies, one was a political body and the other a purely legal one. Their roles were clearly defined, and their roles should not be confused. He opined that it was the Member States that had vested the Security Council with a role in the International Criminal Court, now if they were not satisfied with that, it was up to the Member States to amend the Rome Statute accordingly. However, he said that, once a situation was referred to the ICC by the Security Council, in the present instance the situation in Darfur, Sudan, the ICC would look at it from a purely legal perspective. He also made a distinction between a referral from the Security Council and the Security Council not agreeing to defer proceedings in an ongoing case. While referring to the situation of Darfur, he said that it was a situation before the ICC, where the Judges were carefully weighing the evidence before them. Mr. Pahkiso Mochochoko said that under the Rome Statute all the States were under an obligation to cooperate with the ICC, and in that connection said that it remained to be seen what happened with the resolution adopted by the African Union.
- 8.36 Lastly, replying to the query about amnesty being granted, Mr. Mochochoko, said that there could be no amnesty for international crimes. This was a position taken by both, the ICC as well as the United Nations. The reason was that the crimes listed under the Rome Statute were so serious in nature that amnesty could not be granted for them under the provision of any international law.

***Working Session II: Crime of Aggression***

- 8.37 **Prof. V. S. Mani, Director, Jaipur National University, India**, in his presentation narrated the historical evolution of the concept of aggression. He stated that the concept of aggression came to be considered as a war crime under international law through Nuremberg Tribunal; United Nations General Assembly Declaration, 1974; and Declaration on Friendly Relations, 1970. He recalled the definitional problems of aggression ever since the period of colonialism. The problems were reflected in the Rome Statute of ICC in 1998 and International Law Commission failed to come up with a definition on aggression and they left it to the Member States to evolve a definition. In that regard, he said that the Kampala Review Conference on the Rome Statute was extremely important on three aspects. They were: i). Defining aggression; ii) identifying various acts of aggression and the conditions under which ICC would exercise jurisdiction; and iii) amending process.
- 8.38 With regard to conditions of jurisdiction of the Court, he stated that it had three triggers and they were: i) State Parties; ii) Prosecutor of the ICC; and iii) the

- Security Council. He mentioned about the role of the Security Council in relation to ICC wherein he referred Article 39 of UN Charter and the ICJ judgment on Nicaragua case. As to the decision of 7 years time for the definition of aggression to come into force, he could not see any valid reason for it. The political compulsion he could understand but once the decision was taken to incorporate the definition in the Rome Statute, the ICC should have been allowed as stated under Article 5(2) of the Statute.
- 8.39 **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan,** concerning the definition of crime of aggression, noted that there was a long history of discussions and debate in various international forums. Not to mention much earlier discussions in the UN General Assembly, and the recent Rome Conference, while deciding that the crime of aggression should be included as one of the serious crimes within the jurisdiction of the ICC, which failed to reach agreement on a provision defining the crime and setting out the conditions under which the Court shall exercise jurisdiction over that crime.
- 8.40 He mentioned that at the Eighth Session of the Assembly of States Parties, which was the last one prior to the Kampala Conference, States Parties had come out with a text for consideration at the Review Conference as the provisions for crime of aggression that could be included in the Rome Statute. However, due to the still wide divergence of views, overwhelming views at that time were that nobody was certain that a final agreed text would be worked out at Kampala.
- 8.41 He recalled that at the AALCO Round Table Meeting held at Putrajaya, Malaysia at the end of March, no optimistic view was heard from the participants on the prospect of the final outcome of the Review Conference.
- 8.42 At Kampala, intensive discussions took place on the formulation of the provisions on the crime of aggression. The biggest issue was on the conditions for the jurisdiction of the Court. In particular, most of the time and effort were directed to discussions on the question of how to define the jurisdiction of the Court in relation to the Security Council's power to determine the existence of act of aggression. Thereafter, he outlined the provisions contained in the Article and stated that according to the amendments adopted on the crime of aggression, if certain conditions were met, the ICC could exercise jurisdiction on the said crime even in the event when the UN Security Council does not determine the existence of act of aggression. Since the permanent members of the UN Security Council have hitherto insisted on the prerogative rights of the Security Council concerning the determination of act of aggression, their departure from such position was most significant.
- 8.43 On the other hand, while reflecting on very divergent views and positions of States Parties, he said the amendments adopted at Kampala were very complex and of unprecedented nature. Therefore, they include some controversial points which need to be clarified.

- 8.44 For that reason, Japan considered that it was important to build up a common understanding on the legal interpretation of the relevant provisions before the ICC would be able to exercise its jurisdiction on the crime of aggression.
- 8.45 Finally, he said that the Review Conference was not a goal point but instead a new starting point. It was of critical importance to endeavour to make the ICC an institution truly *effective, efficient, universal and systemically sustainable*.
- 8.46 **Dr. Roy S. Lee**, in his presentation referred to Article 39 of the UN Charter and said that it talked about State aggression to be determined by the Security Council, before 1998 it was not possible to separate state aggression from individual criminal responsibility with regard to that crime. He said that the adoption of the definition of the crime of aggression in the Kampala Review Conference was a great achievement and the time given to States till 1<sup>st</sup> January 2017 to study the provisions of that crime was a welcome decision.
- 8.47 The Delegations of the following Member States made their comments and presentations namely: **India, Thailand, Republic of South Africa, the Gambia and Malaysia**. A delegate said that having heard the panellists it was clear that the adoption of the definition of the crime of aggression at the Review Conference was a non-starter with loopholes and transitory in nature. In fact it was not the only definition for that crime. Besides it could not be integrated into national legislation in dualist countries where the principles of international law were not applicable at national level. He mentioned that ICC would have problems in dealing with crimes where Government decided to give amnesty as the right to give amnesty was a constitutional guarantee by governments. Another delegation expressed the view that it was not at all necessary to define aggression as that job could be left for judges to determine.
- 8.48 The **Delegation of Malaysia** highlighted the issues relating to principle of complementarity and implementation. The delegate also stated that out of 81 member countries of the UN which had not ratified the ICC Rome Statute, 30 were AALCO Member States which roughly forms about 40% of the total number. This large group could meet to discuss common issues of concerns. To that end, the delegate proposed that AALCO could jointly with the ICC convene a workshop in Kuala Lumpur, especially, for non-States Parties from the AALCO Member States, to look at the concerns of the non-States parties, to what extent their present laws were different from the provisions of the Rome Statute and how they could incorporate the provisions of the Rome Statute of the ICC into their national legislations, before ratifying the Rome Statute.
9. *Special Meeting on “Environment and Sustainable Development” (jointly organized by the Government of the United Republic of Tanzania, International Council of Environmental Law (ICEL) and the AALCO Secretariat)*

- 9.1. A Special Meeting on “Environment and Sustainable Development” was organized jointly by the Government of the United Republic of Tanzania, International Council of Environmental Law (ICEL) and the AALCO Secretariat in the afternoon on 7 August 2010.
- 9.2. The President of the Forty-Ninth Annual Session of AALCO invited **Dr. Yuichi Inouye, Deputy Secretary-General of AALCO**, to deliver introductory remarks. The DSG said that for the special meeting, there were two working sessions, namely; Building Momentum towards Cancun Climate Change Negotiations; and the Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Covenant on Environment and Development. The Working session would be followed by discussions and deliberations on these pertinent issues by AALCO Member States.
- 9.3. He said that convening special meeting on building momentum towards Cancun Climate Change Negotiations was a very significant and pertinent one as far as countries from Asia and Africa were concerned. The Copenhagen Climate Conference met with the goal of adopting a legally binding instrument; however, even the political agreement Copenhagen Accord though negotiated by several world leaders, could not be adopted by consensus at the Conference. Despite that the Accord represented a significant achievement as it was demonstrative of the commitment by most of the nations on a collective, long-term response to climate change, and a set of measures to implement global climate action. He stated that States must be cautious while negotiating on post-2010 biological diversity target at the forthcoming Nagoya Summit in Japan in October 2010. More care must be attributed to the Draft Protocol on Access and Benefit Sharing because the terms, language, implications and implementation strategies shall not be, in future, against the welfare of the peoples at the cost of biodiversity loss.

***Working Session I: Building Momentum towards Cancun Climate Change Negotiations***

- 9.4. The panellists for Working Session I on ‘Building Momentum towards Cancun Climate Change Negotiations’ were; **Mr. Xiang Xin**, Deputy Division Director, Department of Treaty Law, Ministry of Foreign Affairs, the People’s Republic of China; **Prof. Shinya Murase**, Member, International Law Commission from Japan; and **Dr. Roy S Lee**, Permanent Observer of AALCO to the UN Headquarters, New York.
- 9.5. Mr. Xiang stated that global climate change and its adverse effects are common concern of mankind. Climate change arose out of development, and should thus be solved in the process of development. The problem of climate change should be dealt with through promoting sustainable development so as to achieve a win-win outcome of pursuing economic development and addressing climate change. Sustainable development was both the means and the end for effectively addressing climate change. To help reach positive outcome at the Cancun

Conference, the future negotiations should, on the basis of Copenhagen Conference, continue to make comprehensive progress in promoting the “Bali Roadmap” dual-track negotiation, especially on the work of (AWG-KP) (the Ad-hoc Working Group for further commitments under the Kyoto Protocol). To be concrete, firstly, ambitious quantified emission reduction targets should be set for developed countries for the second commitment period under the Kyoto Protocol, and those developed countries that were not Parties to the Kyoto Protocol should also take comparable emission reduction commitments. Stating the position of his delegation, the panellists stated that firstly, developed countries must reduce their greenhouse gases emission in aggregate by at least 40% below 1990 levels by 2020. Secondly, effective institutional arrangements should be established to ensure that developed countries fulfil their commitments to provide technology, financing and capacity building support to developing countries. Thirdly, in the context of sustainable development, developing countries should take nationally appropriate mitigation and adaptation actions, supported by technology, financing and capacity building assistance from developed countries.

- 9.6 **Prof. Shinya Murase**, drew attention to the substantive aspect of climate change issues and the procedural problems on climate negotiations. On the substantive issues, he said that there was a need to assess the current situation within the historical context of international law-making on climate change over the past twenty years or so. The UNFCCC, 1992 provided for rather mild and flexible commitments for mitigation of greenhouse gasses by developed countries, or Annex I Parties. The Berlin Mandate of 1995 proposed strengthening the commitments of Annex I Parties through the adoption of a Protocol on the basis of the principle of “common but differentiated responsibilities”. Thus, the Kyoto Protocol adopted in 1997 provided for the rigid obligation of each Annex-I Party to limit its emissions of greenhouse gasses by placing upon each State numerical caps with certain flexibility mechanisms attached. Since the first commitment period of the Kyoto Protocol was to be terminated by the end of 2012, the negotiations for a post-2012 climate regime were launched by the Bali Action Plan in 2007 with a view to reaching an “agreed outcome” at COP-15 in Copenhagen in 2009.
- 9.7 Expressing concern on the failure to agree upon a legally binding instrument but only took note of Copenhagen Accord which remained merely a political agreement. He said that there was a need to form a legally binding instrument either to supplement the UNFCCC and Kyoto Protocol or replace the Kyoto Protocol; an amendment or set of amendments to the UNFCCC including the Annexes, and adding the Annexes; a single COP decision or a set of COP decisions to further implement the FCCC; a Ministerial Declaration containing the elements of the political agreements; any combination or package of the above; and an instrument agreed upon outside COP. He proposed a WTO/GATT model to tackle the climate change issues.

- 9.8 **Dr. Roy S. Lee** in his presentation stated that countries from Asian-African region were adversely affected by the problem of climate change. The panellist said that there were three negotiating forums and three major texts. However, it was essential to have a single text and a single negotiating body in order to facilitate climate change negotiations. The developing countries still look at the extension of Kyoto Protocol and its principles like Common but Differentiated Responsibility to remain in the text. The Kyoto Protocol exempted developing countries from any emission. Therefore, there was a need to have different purposes for common emission reduction. He said that the existing framework of legal regime must be kept intact to negotiate for post-2012 commitments. Undertaking commitments for developing countries was slightly expensive for the Asian and African countries. He said that under the Copenhagen Accord there was an attempt to transfer the burden to the developing countries however, it must be equally realized that preserving position may delay undertaking commitments and moving ahead. He appreciated the AALCO for having considered the issue of climate change in a special day meeting.
- 9.9 The Delegations from **Thailand, Republic of Korea, the Sultanate of Oman, Japan, Republic of Indonesia and Arab Republic of Egypt** made observations. The delegations explained on the efforts taken by their respective governments in combating climate change. One delegate stated that concerning a quantified economy-wide emissions targets for 2020, they have announced that it would aim at 25% reduction of emissions in 2020, as compared to 1990, which was premised on the establishment of a fair and effective international framework in which all major economies participate and on agreement by those economies on ambitious targets. Another delegate referred to the need to assist countries in mitigating climate change. In that aspect, the developing countries needed to commit themselves to support third world countries in reducing emission and also to expenses which should be shared together. States must encourage private sector participation to reduce emissions.
- 9.10 In response to those observations, panellists explained the need to keep the UNFCCC and Kyoto Protocol as the base for further negotiation, failing which negotiating a new text and setting out commitments would become unrealistic.

***Working Session II: Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Convention on Environment and Development***

- 9.11 **Mr. Donald W. Kaniaru, Regional Governor, International Council of Environmental Law (ICEL) and formerly Director, Environment, Policy and Law Division of the United Nations Environment Programme (UNEP)** in working session II dealt with the Revised African Convention on the Conservation of Nature and Natural Resources (Maputo Convention) and the Draft International Covenant on Environment and Development. The panellist conveyed his greetings on behalf of the Executive Governors of the ICEL. He said



that he was happy to have that opportunity to increase cooperation between the two Organizations. Recalling his association with the AALCO, he said that he first represented Kenya at the Eleventh Session in Accra, Ghana in 1970 and then represented UNEP again at Accra at the Thirty-Eighth Session in 1999, when the AALCO and UNEP jointly published an important compilation - *Asian-African Handbook on Environmental Law* that included 43 legal and policy instruments as well as global and regional conventions of interest to Asian and African countries.

- 9.12 On the Maputo Convention, the panellist narrated that at the request of the Organization of African Unity (now African Union), work on the Maputo draft started following concerns of African states that in view of development of numerous global and regional conventions, it was time to update the Algiers Conventions of 1968, 34 years after its entry into force on 16 June 1969. The Algiers Convention was itself a progressive instrument that built upon the 1933 London Convention on Species and was substantively relevant to Africa. It was well ahead of the Stockholm process of articulating policies and laws on the environment. The Organization of African Unity (OAU) asked the International Union for Conservation of Nature (IUCN), International Council of Environmental Law (ICEL) and the United Nations Environment Programme (UNEP) to assist in the review. In the review process, in addition to these institutions, experts from the United Nations Economic Commission for Africa (UN-ECA) and World Bank also worked on the 1968 draft. The UNEP was represented by senior lawyers including the panellists himself. The Maputo Convention, the Panellist stated was the most comprehensive regional biodiversity, instrument, containing, 13 preambular paragraphs and 43 articles, that were cognisant of the principles (Stockholm and Rio) global and regional instruments developed after 1968 (Convention on International Trade in Endangered Species 1973, Convention on Migratory Species 1979, UNCLOS 1982; and Regional Seas conventions, Basel and Bamako Conventions on Hazardous Wastes, Convention on Biological Diversity 1992, UNCCD 1994) and provides component often lacking in follow-up of numerous instruments.
- 9.13 The Draft International Covenant on Environment and Development consisted of 79 articles and would be a crucial tool consolidating key principles and developments in the field of sustainable development specially intensified from the 1980s to date. He said that the Fourth Edition would be ready by end of month and would be presented to Member States of the UN on the occasion of the high level event on Biodiversity during the 65<sup>th</sup> Session of the UN General Assembly.
- 9.14 The **Delegation of the Arab Republic of Egypt** thanked the panellist and said that the key aspects of such discussions were to make the participation of the developing countries at the forthcoming sessions on environmental law matters to be more effective. He stated that developing countries must be making use of meetings like the forthcoming Nagoya Summit in October 2010. The countries which were rich in natural resources may consider ratifying legal instruments protecting natural resources in accordance with their country positions.

- 9.15 **The Observer delegate from United Nations Environment Programme (UNEP)** on behalf of UNEP expressed greetings and wished for success of the Annual Session. He stated that the UNEP had been assisting the developing countries in their sustainable development activities, by providing assistance. It was highlighted that there was a need to ratify the Maputo Convention by the African countries and also to have a proper coordination between various ministries in the member countries like the Ministry of Foreign Affairs, Ministry of Law and Justice, etc, in order to promote the need to ratify those legal instruments that were relevant to the countries. Such regional conventions would be significant in terms of promotion of economic growth and poverty eradication.
- 9.16 **Signing Ceremony of Memorandum of Understanding between AALCO and ICEL:** A Memorandum of Understanding was signed between the AALCO and ICEL by the Secretary-General of AALCO and Mr. Donald Kanairu, Regional Governor, ICEL on behalf of their respective organizations; after the meeting. The MOU reflected the initiatives of the AALCO in enhancing its activities by establishing stronger relationship with research institutes and public interest organizations that were engaged in international environmental law and sustainable development.

## **10 *Fourth General Meeting***

### ***Agenda Item: WTO as a Framework Agreement and Code of Conduct for World Trade***

- 10.1 **Dr. Xu Jie, Deputy Secretary-General, AALCO** introduced the topic and observed that the World Trade Organization had completed fifteen years since its establishment on 1 January 1995. The WTO was born out of negotiations, and everything the WTO did was based on negotiations. The bulk of the WTO's current work came from the 1986–1994 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO was currently host to new negotiations, under the “Doha Development Agenda” launched in 2001. After highlighting the importance of the negotiations, the DSG raised the query that how far the negotiators from the Asian-African region, particularly, the developing and Least Developed countries were equipped to handle the highly technical negotiations undergoing in the WTO, especially, the Doha Round of Negotiations. He stated that the trade negotiators needed training and research guidance to effectively participate in the negotiations. In that regard, he emphasized that the AALCO Secretariat, through its Research and Training Division, Centre for Research and Training (CRT) was willing to undertake research studies, and training workshops for trade negotiators from the Asian-African region, in collaboration with the AALCO Member States and international organizations, particularly, the WTO Secretariat. Financial resources and subject experts were required to undertake these projects.

- 10.2 In that context, he recalled that the Centre for Research and Training (CRT) of AALCO had successfully organized a “Basic Course on the World Trade Organization” from 01 to 05 February 2010 at the AALCO Headquarters in New Delhi. Sixty seven participants, including Diplomats, Officials, Law Teachers, and Research Scholars representing twenty four countries, participated in the Training Programme. Experts in the field of WTO delivered lectures. He expressed his gratitude to the WTO Secretariat for deputing a resource person from the Trade Negotiations Committee (TNC) Division for delivering lectures. The AALCO Secretariat believed that such initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. He informed that “The Basic Course on the World Trade Organization” was a first step in this direction and many such initiatives would follow in the near future.
- 10.3 The Deputy Secretary-General emphasized that the Doha Round of Negotiations had reached a critical stage and the Secretariat hoped that AALCO Member States would actively participate in the Doha Round of Negotiations and make meaningful contributions for its successful conclusion. Negotiations on Agriculture and Non-Agriculture Market Access (NAMA) remained central to the success of the negotiations and were crucial for many of the Member States. He said that the real challenge was how to protect the interest of the Developing and Least Developed countries in the ongoing negotiations.
- 10.4 The **Delegation of the Sultanate of Oman** stated that Oman was a strong supporter of the WTO and was participating actively in the multilateral negotiations. The WTO Agreements and the GCC Treaty were the main factors underlying Oman’s trade policy, which was directed at diversifying its economy by reducing its dependence on oil and focusing on the improvement of its educational and health services and the modernization of its infrastructure. It was continuously working towards bringing its trade regime into greater conformity with the WTO. The delegation supported the objectives of the negotiations and desired its early conclusion. However, it was noted that the rules and procedures should be equitable and the benefits of the system should be shared with small developing countries. The delegation informed that during 2008, the Trade Policy Review Body carried out a review on Oman, the purpose of these reviews being to encourage Member States to adhere to the WTO rules and commitments. The final report noted that Oman enjoyed a relatively open market and the bulk of its trade takes place on a most-favoured nation (MFN) basis, a treatment which it grants to all its trading partners. It has been a strong believer and advocate of the multilateral trading system. The report concluded that Oman had an impressive economic performance that continued reform could help sustain. Oman was participating actively in the current round of multilateral trade negotiations and had particular interest in Non Agricultural Market Access (NAMA) and services. The delegation stated that in a further effort to liberalize its market, Oman concluded a free trade agreement with the United States, which came into effect in 2009, and concluded free trade agreements, as a member of the GCC, with

- Singapore and EFTA. It has not been involved in any dispute under the WTO Dispute Settlement Mechanism yet, either directly or as a third party.
- 10.5 The **Delegation of the People's Republic of China** informed that in the nine years after its accession, China had essentially fulfilled its obligations within the multilateral trading system. China had set up economic and trade mechanisms in line with the WTO rules and requirements, and became one of the most open markets in the world. By 2010 China had honoured all the commitments it made when it joined the WTO. China was of the view that trade disputes should be primarily addressed through amicable dialogue on equal footing, in accordance with WTO rules and principles. In that spirit, China had properly accommodated and resolved many issues with its trading partners and maintained the stability of international trade relations. China was firmly opposed to trade protectionism and any discriminatory measures that ran counter to the basic WTO spirit. For those trade disputes which could not be settled by dialogue, the WTO dispute settlement mechanism provided a platform for both parties to dispute to pursue a peaceful, rule-oriented manner to settle the issue. The delegation stated that the WTO dispute settlement mechanism had complicated procedure and need adept debate skill which was difficult to most developing countries. In that regard, capacity building and technical cooperation were increasingly important to them. The delegation observed that an earlier conclusion of the Doha Round, which fully accommodated the aspirations of developing countries, would bring long-standing benefits to all Members, developed and developing alike.
- 10.6 The **Delegation of Japan** observed that one important question relating to the legal aspects of the Doha multilateral negotiations currently underway was what would be a modality of ensuring an appropriate consideration to the developing countries. The delegate said that what was making that a very complex issue was that there existed differences in the ability to implement obligations among the developing countries, making it a big issue how to stipulate those in international legal instruments. It was certainly not fair to treat equally those major emerging countries and other developing countries, particularly least developing which required special consideration. The delegate also said that when issues relating to the WTO were discussed at AALCO, legal aspects of the problems should be focused, leaving substantive questions relating to actual negotiations for consideration by those engaged in such negotiations in Geneva.
- 10.7 The **Delegation of the Republic of Indonesia** expressed hoped that through AALCO, they also could contribute with a clearer sense of how to move forward in light of the current global situation and where negotiations stood and to ensure that the aspiration of developing and least developed countries be accommodated in the conclusion of negotiation.
- 10.8 The **Delegation of the Republic of Kenya** informed that while participating in the past negotiations in NAMA, Kenya's main concern had been improved market access for Kenya's products in external markets, removal or disciplining of non-

trade barriers, industrial development and raising the standards of living of Kenyans. Much still had to be done to ensure that developing nations gain greater market access to developed member nation's markets. Kenya's position on Aid for Trade was that it should be effective in its delivery and management.

- 10.9 The **Delegation of India** observed that the WTO Dispute Settlement System had established itself probably as the most successful international tribunal in resolving international trade disputes. Member's experience for the last fourteen years had been generally positive. However, that was not to say that the system did not require further improvement. The delegation stated that if one had to analyse the system in the context of greater legalism the system was adopting and the evolving jurisprudence, Members should certainly explore the possibility for reforming the system for better participation especially from the perspective of developing countries. The delegation informed that India had complied with all the dispute rulings against it, complied with pain, but complied. The delegation stated that this was not the case with some larger WTO Members, as they continued to observe in the DSB meetings where they were subjected to repeated but shallow justifications for non-compliance. In India's view, compliance was a crucial achievement of the stronger DSM that emerged out of the new DSU, and this advantage had to be preserved. The delegation opined that all the developing countries including India need to develop institutional mechanisms or support systems to assess and manage the pre-litigation and post-litigation. The delegation also emphasized on development of legal capacity in developing countries which lack adequate financial, institutional and human resources indeed remains a challenge.
- 10.10 The **Delegation of the United Republic of Tanzania** observed that Least Developed Countries, particularly, African countries have traditionally not been considered as important players who should be consulted in the negotiations. The relatively lower level of development and integration in international trade of the LDCs have impeded or limited their participation into the system. The delegation pointed out the limited participation as panellists, limited or non-representation in the Appellate Body from LDCs and limited or non representation of LDC nationals in the WTO Secretariat. The delegation highlighted that LDCs and developing countries should undertake accession from a position of strength that would enable them to face emerging challenges adequately and exploit the opportunities, meanwhile should strive to retain what they have already secured under the WTO.
- 10.11 The **Delegation of Thailand** observed that the effective participation of developing countries in WTO Negotiations was a very important means of leading to a truly free and fair global trading system. Thailand still maintained its firm belief in the importance of the multilateral negotiation through the WTO, especially for the specific issues of subsidies, rules on Free Trade Agreements and the monitoring of protectionism that required multilateral discussion. The delegation was convinced that in order to find a global solution to the current

global economic crisis through the strengthening of multiculturalism, we must bring the Doha Development Agenda (DDA) forward.

- 10.12 The **Delegation of the Kingdom of Saudi Arabia** highlighted the issues involved in the negotiation process and wanted to know the problems faced by the AALCO Secretariat in training people in these areas.

**11     *Agenda Item: Expressions of Folklore and its International Protection***

- 11.1 **Dr. Hassan Soleimani, the Deputy Secretary-General of AALCO** introduced the agenda item “Expressions of Folklore and its International Protection” and recalled that the topic had been on the agenda of the Organization since its Forty-Third Annual Session held at Bali, Indonesia in 2004.

- 11.2 The Deputy Secretary-General stated that folklore was an important element of the cultural heritage of every nation. For Asian-African countries, matters related to Folklore were extremely important because they own most of the world’s biological resources and also a great heritage of folklore. Therefore, it was important to negotiate a legally binding instrument to prevent the misuse and misappropriation of folklore at international level.

- 11.3 He pointed out that the Secretariat prepared the Report on the agenda item which provided an overview of the work of the World Intellectual Property Organization (WIPO) Intergovernmental Committee (IGC) since its inception in 2001, focusing its attention on the recently concluded Fourteenth, Fifteenth and Sixteenth Sessions of the Committee and the documents circulated at the Sessions for the consideration of the Member States. The report also reflected upon the WIPO Secretariat’s draft policy objectives and core principles for the protection of Expressions of Folklore, the recent text in the discussion of which had been annexed to the Secretariat’s Report.

- 11.4 He stated that the WIPO’s IGC, which had so far convened Sixteen Sessions, made considerable progress in formulating flexible policy objectives and core principles for the protection of Expressions of Folklore. At those Sessions, discussions focused on different options available to States to effectively protect Folklore and prevent its misuse and misappropriation. However, there were many outstanding issues on which the Committee was yet to evolve a consensus, which was considered at the First Inter-sessional Working Group Meeting of the IGC held from 19 to 23 July 2010 and it would be considered again during the Seventeenth Session scheduled in December 2010.

- 11.5 He recalled that at the Fourteenth and Fifteenth Sessions of the Committee, the major focus were on renewal of the mandate of the IGC. Towards fulfilling that objective, the Member States of WIPO, despite their differences worked together for an extension of the period of IGC to two more years. A concrete proposal was made by the African Group and it was supported by many of the Asian countries to win over a mandate for an extension of the IGC. The new mandate of the

- WIPO General Assembly called for “text based negotiations” by which, an effective protection of Expressions of Folklore *inter alia*, through the development of an international legal instrument was agreed largely by the Member States. The new mandate also received a clearly defined work program and made provision for four formal Sessions of the IGC and three Inter-Sessional Working Group Meetings.
- 11.6 The DSG informed that under the new mandate, the IGC had to submit the texts of the international legal instrument or instruments to the WIPO General Assembly in September 2011.
- 11.7 Further he stated that AALCO would be the appropriate forum for further discussion on the effective protection of folklore. The deliberations at the Session could focus on: (i) Prevention of the misuse, misappropriation and protection of expressions of folklore, (ii) Establishing an internationally binding legal instrument to protect the Expressions of Folklore, and (iii) on the Revised Provisions on the Protection of Expressions of Folklore and Policy Objectives and Core Guiding Principles.
- 11.8 It would help in consolidating the position of Asian-African countries on the substantive aspects of the future international instrument for the protection of Expressions of Folklore.
- 11.9 He also noted that discussions among AALCO Member States that keeping AALCO as a forum was necessary bearing in mind that the IGC were at the final stage of convening a Diplomatic Conference in 2011, in order to formulate an international legal instrument on Expressions of Folklore along with Traditional Knowledge and Genetic Resources, a joint seminar or expert meeting on the protection of Expressions of Folklore would be pertinent at the juncture. He welcomed on behalf of the AALCO Secretariat from the Member States any such proposals to organize such seminar or expert meeting in the near future.
- 11.10 The Delegations from **the Sultanate of Oman, People's Republic of China, Republic of Indonesia, the United Republic of Tanzania, Japan** and the **Kingdom of Saudi Arabia** made their statements. The delegations generally observed that the Folklore was an important element of the cultural heritage of every nation. They attached great importance to the protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) as it had been increasingly exposed to misappropriation and was misused as a result of the continuous vacuum of the international legal regime for its protection.
- 11.11 The **Delegation of the Sultanate of Oman** stated that folklore was an important element of the cultural heritage of every nation. The reason being the development of a lucrative international trade in indigenous heritage which had seen most of the economic benefits diverted to non-indigenous persons and institutions, the protection of indigenous folklore and knowledge had become a pressing issue. In that regard, the delegate traced various international efforts to address the inadequacies of intellectual property in the protection of folklore.

- 11.12 The delegate noted that her country had signed a number of bilateral agreements to strengthen relationship in the field of culture and arts very recently. Under the agreements the parties, among other things, cooperate in the conservation of historical monuments, documents, and manuscripts; and hold cultural weeks and exhibitions.
- 11.13 The **Delegation of the People's Republic of China** informed that there was still no legally binding instrument on the protection of Expressions of Folklore at international level. He also welcomed on behalf of the Delegation, the 2 years renewal of the IGC mandate by the WIPO and hoped that IGC would continue to fulfil its mandate and achieve substantial progress in drafting international legal instrument on the issue.
- 11.14 The delegate cited the outline of Government's National Intellectual Property Strategy, 2008, which provided for the ways and means to protect the Expressions of Folklore and also emphasized the benefit sharing mechanism which would ensure a reasonable balance between conservators of Expressions of Folklore and those who use the resources, in order to protect the lawful interests of the individual and communities. Since the establishment of IGC, the Government had actively participated in the relevant negotiations and aligned itself with the developing countries. The Asian-African countries face common problems and sharing similar interests and positions on Expressions of Folklore, he observed.
- 11.15 The Delegate hoped that the Member States would impress upon the international community to have cooperation on the issue through the platform of AALCO, so that the interest of Member States could be safeguarded in a better way.
- 11.16 The **Delegation of the Republic of Indonesia** made few remarks on the issues related to the topic of Expressions of Folklore and its International Protection, including issues related to GRTKF. The delegate stated that his delegation was fully aware of the high economic and cultural value of the GRTKF, and such wealth should appropriately be utilized for the socio-economic development of the people to whom it belonged.
- 11.17 The delegate also shared his views on the discussions held in the Intersessional working group meeting which focused on the protection of expressions of folklore and stated that the following to be considered and observed by the AALCO:
- *Protection of TCE against unauthorized reproduction and other misappropriations;*
  - *Prevention of derogatory and offensive uses and failure to acknowledge source;*
  - *Prevention of false indications as to authenticity/community endorsement;*
  - *'Defensive' protection (protection against acquisition of IP rights over TCEs adaptations); and*
  - *Prevention of unauthorized disclosure of confidential/secret TCE.*



- 11.18 He also called upon AALCO to observe the development pertaining to the GRTKF not only in the topic of Expressions of Folklore but also on the topics of Genetic Resources and Traditional Knowledge.
- 11.19 The **Delegation of the United Republic of Tanzania** appreciated the AALCO Secretariat's report on reporting the efforts in trying to prevent the misuse, misappropriation and protection of the expressions of folklore at the international level and observed that almost all developing countries do not have legal mechanism whether formal or informal to protect folklore. The delegate made pertinent comments on the substantive aspects such as the lack of definition on the subject matter and also on the policy objectives and core principles.
- 11.20 The **Delegation of Japan** shared the importance of protection of traditional cultural expression/folklore. He stated that in their view, in order to obtain an appropriate outcome from the work at the WIPO, it was important to fully discuss basic questions such as: what should constitute traditional cultural expression/folklore eligible for protection and what kind of protection was required and to what extent. It was hoped that as regards such basic questions a common understanding would be formed through discussions as the WIPO-IGC and its inter-sessional IWG meetings in accordance with the mandate approved by the WIPO. With regard to the public domain, he said that it was a new primary source for creative activities and everybody should be aware that it should not restrain creative activities which would serve the development of culture.
- 11.21 The **Delegation of the Kingdom of Saudi Arabia**<sup>1</sup> appreciated the statement made by the DSG of AALCO and also the report prepared by the Secretariat of AALCO on the agenda item. The Delegate stated that their Government attached greater significance to the matters relating to the protection of Expressions of Folklore. He informed that the Ministry of Culture and Information deals with the issues relating to protection of Expressions of Folklore, copyrights and also issues relating to the culture.
12. ***Agenda Item: Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption***
- 12.1 **Dr. Xu Jie, Deputy Secretary-General of AALCO**, while introducing the agenda item stated that the title for this agenda item had been changed from "An Effective International Legal Instrument against Corruption" to the current one. Dwelling on the reason for this he remarked that, this was done in pursuance of the unanimous decision of the delegates of Member States as expressed at the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia, that the new title proposed by the Secretariat should take into account the entire gamut of issues thrown open by the UN Convention Against Corruption (UNCAC).

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

- 12.2 While briefly highlighting the previous works of AALCO on this agenda item, he remarked that AALCO had prepared two Special Studies on the topic viz, *Combating Corruption: A Legal Analysis* which was published in 2005 and the *Rights and Obligations under the United Nations Conventions Against Corruption* that was published in 2006. These were prepared with a view to providing an in-depth analysis of the international anti-corruption instruments, especially the UN Convention Against Corruption and giving a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the UNCAC into their national jurisdictions, he noted. On the utility of the UNCAC in the fight against corruption, he stated that the Convention, which had entered into force in 2005 and has got 145 States Party to it, represented the most comprehensive anti-corruption instrument available on the global scene. He also stated that the UNCAC offered all Countries a comprehensive set of standards, measures and rules which can be applied to strengthen their legal and regulatory regimes to prevent and root out corruption.
- 12.3 As regards the newly established 'review mechanism' that was adopted at the Third Conference of State Parties to the UNCAC held at Doha in November 2009, he remarked that with its adoption, the international community has found an answer to one of the principle challenges facing the fight against corruption, namely, the failure to establish an appropriate review mechanism so as to enforce the provisions of the UNCAC effectively. He expressed hope that the review mechanism would go a long way in not only enforcing compliance with the provisions of UNCAC but also would enable the international community to monitor the anti-corruption efforts undertaken by its State Parties in a more effective and transparent manner.
- 12.4 Commenting on the current Report prepared by the Secretariat of AALCO on the agenda item, he pointed out that the Report, besides highlighting the salient features of the UNCAC, narrated the core aspects of the review mechanism, its modalities, along with its strengths and weaknesses. He was of the hope that a strong and effective review mechanism would not only assist the State Parties in identifying the gaps in the implementation of UNCAC, but also would increase the prospects of achieving the full potential of the UNCAC in its fight against corruption. The report also dealt with other areas of critical concern to the developing countries such as the issues of Asset Recovery and Technical Assistance, he added.
- 12.5 As regards the need to forge international cooperation in the fight against corruption, he remarked that the fight against corruption can only be won by extensive international cooperation and that every effort should be made to operationalize the provisions on international cooperation which are found in the UNCAC. He also added that to the extent international cooperation is embedded within the modalities of review mechanism, it represented a significant step forward in the eradication of corruption.

- 12.6 The Delegations of the following Member States took part in the ensuing deliberations by making their statements on this item: **Qatar, Bahrain, the Sultanate of Oman, Republic of Korea, Republic of Indonesia, People's Republic of China, Kenya, Japan, Thailand, United Republic of Tanzania and the Islamic Republic of Iran.** Almost all the delegates expressed the view that UNCAC remains an important tool in the fight against corruption and that it should be implemented in both letter and spirit by adopting necessary legislation and creating the necessary institutional frameworks and infrastructure. Many delegates welcomed the adoption the review mechanism to implement the provisions of UNCAC at Doha in 2009 and expressed hope that compliance with it would be indispensable in the fight against corruption.
- 12.7 The **Delegation of Qatar** mentioned that his Country had ratified the UNCAC in 2007 with a reservation on the dispute settlement clause of the Convention contained in Article 66 of the UNCAC to the effect that it did not consider itself bound by the jurisdiction of International Court of justice. He remarked that Qatar has enacted a lot of measures in order to domesticate the obligations flowing from the Convention. This included among other things; the establishment of the National Committee for Integrity and Transparency in 2007 which is charged with not only overseeing the financial transactions and other public procurement measures, but also tasked to combat corruption in the country, he added. He pointed out that Qatar enjoys a respectable position amongst the international community of States and particularly within the Arab world for its transparency standards and that it has established judicial cooperation with a number of Countries so as to make sure that perpetrators of corruption are penalised promptly.
- 12.8 He explained that Bribery is a crime in Qatar and that laws imposed penalties for public officials who engage in covert or overt corrupt acts either in return for monetary or personal gain. Any one who takes action to influence or attempt to influence a public official through monetary or personal gain is also subject to grave punishment, he added. He informed that the current Penal Code (Law No. 11/2004) which governs corruption, stipulated that individuals convicted of corruption may receive up to ten years' imprisonment and/or a fine of substantial amount. Though corruption investigations were handled by the Qatar State Security Bureau (QSS) and Public Prosecution, final judgments are made by the criminal court, he added.
- 12.9 Commenting on the initiatives taken in the field of money-laundering, he stated that Qatar has adopted the National Anti Money-Laundering Law with a view to curb money laundering and other corrupt practices. In pursuance of this law, the National Anti Money Laundering and Combating Terrorism Committee (NAMLC) has been established to manage and combat money laundering and combating efforts. He also mentioned that after a through review of the legislative framework on anti-money laundering and combating financing of terrorism issues, Qatar had enacted a new Law No. (4) of 2010 on Anti-Money Laundering

- and Combating the Financing of Terrorism (Law) which commenced on April 30. Explaining this further, he stated that in 2004, the Qatari Financial Intelligence Unit was established with the primary responsibility of reviewing all financial transaction reports, identifying suspicious transactions and financial activities of concern, guaranteeing that all government ministries and agencies has measures and standards to ensure appropriate oversight of financial transactions.
- 12.10 The **Delegation of Bahrain** remarked that the UNCAC represented a monumental achievement in the fight against corruption and that his country was willing to take critical measures in order to tackle that menace in all its manifestations. In the fight against corruption, his Country has adopted a lot of measures and laws, he added. The **Delegation of the Sultanate of Oman** stated that corruption is a multi-faceted evil that not only affected the national economy but also the world economy adversely. Upon this realisation, he stated that his country has enacted a number of laws not only to criminalize corruption but also to punish various forms of trafficking. This included the recently adopted “Combating of Money Laundering and Financing of Terrorism Act 2010”, he added. The **Delegation of the Republic of Korea** remarked that as a State Party to the UNCAC his country has enacted national implementing legislation and various institutional frameworks in order to incorporate the obligations contained in it. As regards the international cooperation he pointed out that his country has been carrying out technical assistance and support programmes to developing and transition countries so as to help them implement the provisions of UNCAC, he added.
- 12.11 The **Delegation of the Republic of Indonesia** pointed out that his Country had adopted the National Strategy to Eradicate Corruption [2010-2015] recently. Explaining this strategy, he remarked that it rested on six pillars which included: developing and strengthening prevention system; enhancing law enforcement; reforming laws at the national and international level; recovering stolen assets; strengthening cooperation at the provincial, national and international level and developing a reporting mechanism at the national and provincial level. The main thrust of this strategy was to encapsulate the provisions of the UNCAC into his country's legislative framework, he added. He further stated that Indonesia recognized that legal reform was one of a key component in achieving the goals and aspirations of the National Strategy, and that the draft law on non-conviction based forfeiture, amendments to the laws on money laundering, criminal procedure and on the eradication of corruption were all efforts pursued in that direction. These reforms, in his view, should be undertaken in conjunction with institutional reforms, especially in the area of special courts for anti-corruption. He added that his country's national efforts could be complemented by the best practices of the other States Parties to the UNCAC.
- 12.12 Commenting on the recently adopted review mechanism to implement the provisions of the UNCAC at Doha, he opined that it is an on-going and gradual process which will ultimately culminate in the adoption of a progressive and comprehensive approach to tackle this menace taking into account all the

fundamental principles of the UNCAC, particularly, international cooperation and asset recovery. He added that Indonesia was optimistic that if countries worked towards the compliance of their national legislation in accordance with the requirements of the UNCAC, barriers in international cooperation could be significantly reduced.

- 12.13 The **Delegation of the People's Republic of China** remarked that corruption threatened the stability and security of all societies besides retarding sustainable development and rule of law. While expressing commitment to fight corruption not only at the domestic level but also at the global level through international cooperation, he welcomed the newly adopted review mechanism at Doha. He pointed out that the mechanism could be used as an effective tool in the fight against corruption, in that it could be used as a vehicle to fully implement the provisions of the UNCAC. In this regard, he expressed his country's willingness to work in close cooperation with other Asian-African States and to participate actively in the review process. During the review process, the sovereign rights of the State Parties to the UNCAC must also be respected, he cautioned.
- 12.14 The **Delegation of Kenya** pointed out that his country has put in place the necessary legal and institutional framework for fighting corruption in various manifestations. Illustrating these measures, he pointed out that these included: the establishment of the Kenya Anti-Corruption Authority, enactment of the Public Officers Ethics Act, Proceeds from Crime and Anti Money-Laundering Act of 2009 and the Witness Protection Act. He remarked that his Country's war against corruption has been hampered by a number of factors that included: lack of cooperation on the part of those States where the stolen money was situated, the limited human resources available for the institutions charged with undertaking anti-corruption efforts and the inability to totally eradicate the networks of corruption which are far wide spread. In this regard, he also stressed the need to intensify the global cooperation and solidarity so as to effectively tackle the fight against corruption.
- 12.15 The **Delegation of Japan** remarked that his country was fully aware of the importance of international cooperation in the fight against corruption which endangered rule of law and sustainable development, besides adversely affecting social and economic order. He emphasized that in order for the international community to eradicate corruption, it was extremely important to put in place a comprehensive international cooperative framework. While welcoming the recently adopted review mechanism to implement the provisions of the UNCAC, he expressed hope that, it would certainly serve greatly the objective of enhancing international measures taken against corruption. While stressing the need to carry out official development programmes to the developing countries in their fight against corruption, he stated that Japan has been doing it for a long time. As regards the UNCAC, he pointed out that the Japanese Diet has already approved the Convention and that the adoption of a concomitant domestic legislation was being considered by the Diet.

- 12.16 Commenting on the need to provide technical assistance either bilaterally or through appropriate international agencies for countries struggling in their fight against corruption, he pointed out that such technical assistance programmes were being carried out by Japan in collaboration with the UNODC for the Countries of Southeast Asia in an effort to help them ratify and /or implement the provisions of UNCAC.
- 12.17 The **Delegation of Thailand**, while welcoming the introduction of the new title to the agenda item remarked that the challenges facing the fight against corruption were manifold that *inter alia* included; the lack of necessary legal and technical expertise and the lack of financial resources needed to make a dent on corruption. While welcoming the newly adopted review mechanism to implement the provisions of the UNCA at Doha in 2009, he stated that it represented a very important step forward in the fight against corruption and that it was time to ensure compliance with the requirements of this mechanism.
- 12.18 As regards the need for technical assistance programme in the fight against corruption, he pointed out that Thailand's National Anti-Corruption Commission has been working in close cooperation with the UNODC in the organization of the Asset Tracing and Asset Recovery Programmes which were conducted in July 2010. He also informed that Thailand will be hosting an International Anti-Corruption Conference on the theme: "Restoring Trust: Global Action for Transparency" in November 2010 at Bangkok, which will bring together thousands of experts from all sectors and regions of the world in order to engage in a solution-oriented debate on corruption. Commenting on the UNCAC, he mentioned that the Convention provided the international community with an excellent framework with which to construct a comprehensive regime against corruption and that the adoption of the review mechanism for the implementation of the UNCAC at the recently concluded Third Conference of State Parties to the UNCAC at Doha, would go a long way in strengthening the fight against corruption.
- 12.19 The **Delegation of the United Republic of Tanzania** remarked that since corruption was a global problem it must be fought not only at the domestic level but also at the international level, using drastic, serious and structural policy reforms. Commenting on the utility of the UNCAC, he stated that the adoption of the Convention was not a panacea in itself and that it should be accompanied by political, economic, judicial and administrative commitment at the national level. On his country's position vis-à-vis the UNCAC, he informed that his Country had ratified the UNCAC in May 2005 and adopted the Prevention and Combating of Corruption Act in 2007 so as to incorporate the obligations flowing from it. This law, which not only mirrored the UNCAC in all its facets, but also revised the existing anti-corruption legislation, penalised twenty four distinct cases of corruption, he added.

- 12.20 Dwelling upon the anti-corruption efforts undertaken in his country, he remarked that it could be traced back to the Warioba Commission Report of 1996 which assessed the state of corruption in Tanzania and which had identified areas where corruption occurred and revealed those mechanisms in society that generated corruption. The National Anti-Corruption Strategy and Action Plan 2000- 2005 [NACSAP I] which was adopted by the Tanzanian government in 1999, was only in response to that Report, he added. This NACSAP has triggered the adoption of sector-specific action plans on the part of all the twenty two government ministries to address specific corruption-prone areas falling within their respective ambit by promoting transparency, simplifying rules and procedures and making information accessible to the general public, he added. He also pointed out that NACSAP was also instrumental in the establishment of a number of institutions that included; the Office of a Minister of State in the Office of the President with responsibility for good governance and coordinating the anti-corruption activities; a Good Governance Coordination Unit; the Prevention and Combating of Corruption Bureau; the Ethics Inspectorate Department and in the strengthening of the Office of Controller and Auditor General. He further informed that NACSAP II, which was launched in 2006 covering a period until 2010, was adopted with the aim of including local government authorities, who are charged with the duty to implement anti-corruption measures, civil society and the private sector within the purview of the national anti-corruption strategy.
- 12.21 Commenting on the provisions of the Prevention and Combating of Corruption Act 2007, he stated that it has established the Prevention and Combating of Corruption Bureau [PCCB] with powers of investigations and prosecuting persons accused of offences relating to corruption. Under this Act, the Government could enter into agreements with other States to facilitate the tracing, forfeiture and confiscation of the property used or relating to the commission of offences relating to drugs, he added. Besides this Act, the Tanzanian Government has also adopted or put in place several policy and legal instruments aimed at fighting corruption, that included the Public Procurement Act 2004, the Anti Money-Laundering Act 2006, the Proceeds of Crime Act 1991 and the Election expenses Act 2010, he pointed out. Commenting on the review mechanism adopted at the Third Conference of parties to the UNCAC at Doha, he remarked that Tanzania participated in a pilot review programme to test methodologies for the UNCAC in accordance with the review mechanism. On the challenges facing Tanzania in its fight against corruption, he stated that despite all the institutional frameworks and laws on anti-corruption, corruption remained a challenge for his country and that the biggest challenge in this regard revolved around changing the mindset of people who engaged in corrupt practices, he added. He further added that his Country was willing to cooperate with the international community in the fight against corruption.
- 12.22 The **Delegation of the Islamic Republic of Iran** remarked that his Country has adopted a lot of anti-corruption initiatives so as to tackle this global problem. This included the new Anti-Money Laundering Law of 2008 which required the

establishment of stricter mechanisms to verify the lawfulness of the origins of any financial transaction particularly in the Banking system. In accordance with Article 4 of this law, a Supreme Council has been established in the Ministry of Economic and Finance Affairs, he pointed out. This law has been complemented by an Executive By-Law approved by the Government which mandated the credit institutions, insurance companies and stock exchanges to create a data base with the aim of identifying information relating to customers. In pursuance of the fight against corruption, a Financial Intelligence Unit has also been established which is tasked mainly with tracking the suspicious transactions and reporting it to the Judiciary, he added. Furthermore, he pointed out that the Islamic Republic of Iran has also established ad-hoc specific courts to investigate prosecute and punish cases of money-laundering. In an effort to raise awareness about this menace, his country had convened several workshops and seminars which included the one on Anti-Money Laundering and Countering Financing of Terrorism which saw the participation of individual experts, relevant officials and the media, held last year, he added.

- 12.23 Commenting on the need to forge international anti-corruption cooperation in the fight against corruption, he stressed that it was critical as it could help build support for fighting corruption with the will and to some degree with the capacities. In this regard, he stressed the need to evolve mutual legal assistance, the forms of which could include the power to summon witnesses, to compel the production of evidence and other relevant documents, to issue search warrants and to serve process. In addition countries must have both the judicial capacity and legal infrastructure in place to effectively address translational bribery and money laundering issues, he added.

**13. *New Proposal made by the Republic of Korea: "Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law"***

- 13.1 The **Delegation of the Republic of Korea** made a proposal that a new agenda item on: "Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" be included and dealt with by AALCO in the coming years. In his view, this was closely related to the UN programme of Assistance in the teaching, study, dissemination and wider appreciation of international law. Explaining the various rationale underlying the proposal, he remarked that a better knowledge of international law would serve "as a means for strengthening international peace and security and promoting friendly relations and co-operation among States", and that it was as true in the Asian-African regional context as it was to the international context. With the rapid increase of globalization, issues such as environment, human rights which were once regarded as domestic matters are now being governed by international law. This has created a situation wherein States are more and more obliged to solve their problems by reference to international law and international institutions, he reasoned. In his view, without international laws, it would become impossible to maintain relations on the basis of peace, harmony and mutual cooperation.



- 13.2 Commenting on the lack of awareness and appreciation for international law, he stressed that its importance was not sufficiently realised even by law students and lawyers, much less the common man. Illustrating this, he pointed out that legal education in Korea was primarily focussed on domestic laws as opposed to international law and that national Courts rarely deal with international law issues even when a case required the application of international legal principles. In this regard, he pointed out that the Korean Government is cooperating with various faculties of law and domestic international law societies in an effort to strengthen international law. In this regard, he remarked that his Government runs various programmes to increase the knowledge and capabilities of future lawyers in international law. Explaining these programmes, he stated that the first programme was the *Thesis competition* which required students to research and write a thesis on any current topics of international law. The second programme was the *Korean version of the Jessup Moot Court Competition* intended to increase the knowledge about the practical application of international law. The third programme was the *Seminar or Symposium with Overseas Experts* in which international law experts are invited to speak on and debate about issues relating to Korea.
- 13.3 Commenting on the survey conducted by the Korean Government to ascertain how law students perceived international law, he informed that that the results of that survey were mixed in that, while many did appreciate the importance of international law, some were pessimistic about the enforcement mechanisms found in international law. It was also agreed by a large number of students that international law should be introduced into the curriculum as a compulsory subject, he mentioned.
- 13.4 Finally, he expressed the wish of the Korean Government that it would like to hear and share the experiences of other countries who have also been undertaking efforts to promote awareness about international law so that it could be used by other countries and forums pursuing these objectives. This proposal which was intended to create awareness about the working of the international law was actively supported by the **Delegations of Malaysia and Japan.**

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

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

- 14.1 **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Secretariat's "Report on the AALCO's Regional Arbitration Centres" which contained the background relating to the establishment of the five AALCO's Regional Arbitration Centres and also contained the Reports of the Directors of Tehran, Lagos, Kuala Lumpur and Cairo Regional Arbitration Centres.
- 14.2 The Deputy Secretary-General recalled that one of the major achievements of the Asian-African Legal Consultative Organization (AALCO) in the economic field was the adoption of its "Integrated Scheme for Settlement of Disputes" in 1978 at Doha (Qatar) Session, with a view to creating stability and confidence in

economic transactions with the countries of the region. The Scheme envisaged the development of national arbitration institutions, establishment of Regional Centres under the auspices of the AALCO and making available the services of the specialized arbitration institutions to the countries of the Asian-African region within the framework of the Integrated Scheme.

- 14.3 He stated that pursuant to the scheme, the Regional Centres for Arbitration at Kuala Lumpur, Malaysia for the Asian region and at Cairo, Arab Republic of Egypt for the African region were established in 1978 and 1979 respectively, on an experimental basis for a period of three years. As they were found to be successful in realization of the objectives, they were made permanently functional. Later two new 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 meet the needs of the Eastern and Southern parts of the African continent.
- 14.4 He observed that the Centres had been established on the basis of an agreement between the respective host Governments and the AALCO. The objectives of the Centres were to promote international commercial arbitration in the respective regions and conduct arbitration and facilitate enforcement of arbitral awards. The Centres functioned as independent and neutral international arbitral institutions and for that purpose had been conferred upon with certain diplomatic privileges and immunities by the respective host Governments. The Centres were headed by a Director, appointed by the Host Government in consultation with the Secretary-General of AALCO. The Directors presented their reports on the functioning of the Centres at the Annual Sessions of AALCO.
- 14.5 He stated that the Regional Arbitration Centres were unique because they represented an effort on the part of developing countries at an inter-governmental level, to provide for the first time, a dispute resolution system on an integrated pattern with regard to international transactions of a commercial nature in the Asian-African region. The Arbitration Centres were also organising seminars, workshops and training programmes to promote arbitration culture and expertise in the Asian-African region.
- 14.6 He took the opportunity to congratulate the Directors of all the Regional Arbitration Centres for their cooperation and efforts in taking the AALCO Regional Arbitration Centres from strength to strength and thanked the Host Governments for the support, assistance and guidance to the Centres in respective countries.
- 14.7 He informed that Mr. Sundra Rajoo, who was also an acclaimed arbitrator, had been appointed as the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRC) in March 2010. On behalf of the AALCO Secretariat, he took the opportunity to express his sincere wishes for his appointment as the

- Director of KLRCA. At the same time, he placed on record of his sincere appreciation to the former Director Dato Noorashikin Binti Tan Sri Abdul Rahim for her valuable services rendered to the KLRCA.
- 14.8 Finally, he warmly welcomed to the Directors of Kuala Lumpur and Lagos Regional Arbitration Centres and invited them to present their respective reports.
- 14.9 **Mr. Sundra Rajoo**, Director, Kuala Lumpur Regional Centre for International Commercial Arbitration (KLRCA) highlighted the activities of the Centre since the last Session. During his presentation, he mentioned that ever since he assumed the office of the Director of the KLRCA, he had joined in several Malaysian Government sponsored delegations in promoting investment and business opportunities in Malaysia. In the year 2009, the Centre had conducted seven international arbitration cases, sixty six domestic arbitration cases, two mediation cases and four domain name dispute cases respectively. During the said period, the Centre also entered in to two cooperation agreements with Universiti Kebangsaan Malaysia (UKM) and with Asian Domain Name Dispute Resolution Centre (ADNDRC) under the presence of the Secretary-General of AALCO, H.E. Prof. Dr. Rahmat Mohamad.
- 14.10 The Director also stated that the Centre was committed to market and develops its services in a more extensive way. Towards that end, the Centre was undergoing a complete rebranding of the Organisation to make it relevant to the world of arbitration by way of three prong exercise of firstly, rebranding, secondly, public relations exercise and thirdly, event management in support of the first two exercises mentioned. Further, he pointed out that the idea was to make KLRCA known and recognised amongst the general public and particularly the target audiences, which include the arbitrators, arbitral institutions, governmental institutional, policy makers, corporate leaders, media and general public.
- 14.11 He also informed that the objective was to draw arbitrators to KLRCA to increase revenue, ensuring that applications for additional funds and facilities were given due and immediate attention and gaining their overall support to place KLRCA in its rightful position as a globally recognized arbitration Centre in Malaysia. Further, the Centre would be showcased through road shows, new logo, taglines, information kits and signages based on a “local and overseas outreach programme” spread over to the next three years, which would serve to build ties with foreign Governments, Bar councils, corporate leaders, the AALCO and other relevant bodies.
- 14.12 The Director also informed the Session about their new logo and tagline in tune with their rebranding exercise. Apart from it, he also informed that the KLRCA was reviewing its arbitration rules and fee structure and would be the first such Centre to adopt the latest UNCITRAL Arbitration Rules 2010 which was just approved by the UNCITRAL Commission in New York on 25<sup>th</sup> June 2010. He further informed that KLCRA was drafting a short form arbitration rules for use

for smaller disputes which would limit the number of hearing days and cap the arbitrator's fees. Among others, the Director also listed out the initiatives which were undertaken by the KLRCA until March 2010.

- 14.13 A representative of Mrs. **Eunice R. Oddiri**, Director, Lagos Regional Centre for International Commercial Arbitration presented the report on the activities of the Centre since the last Session. It was reported that in the year 2009, 8 disputes/cases were arbitrated at the Centre; 2 international arbitrations and 6 ad hoc disputes involving Nigerian registered companies with subject matter ranging from oil and gas, telecommunications, hospitality services, construction works, environmental pollution management and aviation.
- 14.14 During the year in review, the Lagos Centre had participated in many arbitral events such as the International Congress of Maritime Arbitrators (ICMA XVII) at Germany; represented at the 5<sup>th</sup> Business Law Conference of the Section on Business Law of the Nigerian Bar Association and at the Commonwealth Regional Law Conference 2010, held in Abuja.
- 14.15 The Centre also embarked upon several educational and promotional activities under the period of reference. He also listed out future activities of the Centre in 2010 and beyond, viz., training on arbitration for law officers; arbitration workshop for federal legislators in Nigeria and moot arbitration for African universities.
- 14.16 The **Delegations of the Sultanate of Oman, the United Republic of Tanzania and Malaysia** in their statements generally expressed their continuous support to the Arbitration Centres and urged the Member States to utilize fully the Arbitration Centres in their respective regions.
- 14.17 The **Leader of the Delegation of the United Republic of Tanzania** noted that the area of commercial arbitration was one of the areas in which the rate of Competition was very high and the AALCO Regional Arbitration Centres were facing competitions from the other Centres particularly, from the International Chamber of Commerce (ICC). In order to counter such competition, the Centres must be efficient and worthy for money, he opined. But for the Member States, he did understand that this was an area for private activities, but for those who were aiming like in Tanzania, they looked for public-private laws. Therefore, he concluded that it was the right forum for commercial cases to go in to the Regional Arbitration centres provided that Centres themselves actually ensured that they were efficient and that they were not too expensive for the parties. He also enquired about the status of the Nairobi Regional Arbitration Centre.
- 14.18 The **Leader of the Delegation of Malaysia** stated that Arbitration was another form of dispute settlement and it was designed to have mediation and conciliation process to take off the weight from the courts. In Malaysia, the courts were overburdened with the backlog of number of cases. For that Arbitration was the

way forward, and he agreed fully that there were serious competitions and the Arbitration Centres had to move forward in a positive manner and address it properly, involve the Centres who were capable in doing that. The other matter he agreed upon was the issue of private partnership. In Malaysia, the Government had incorporated a particular clause in which they had to put in to the agreements, in any form of arbitration, if there was a case of arbitration, that it must be referred to Kuala Lumpur Regional Arbitration Centre. The Centre was funded by the Malaysian Government and established under the auspices of AALCO. That was the exact reason why he always requested the Member States of AALCO to fully utilize the Centres, because it was belonged to them.

- 14.19 **Mr. Sundra Rajoo, Director of the Kuala Lumpur Arbitration Centre** in replying to the question raised by the **Delegate of the Sultanate of Oman**, with regard to Medical-Legal disputes stated that they were trying to pursue in KLRCA, that kind of Medical-Legal disputes. They would like to follow the way where the more advanced jurisdiction of Arbitration, for e.g., Britain, where they had Medical-Legal Arbitration and the Medical defense fund actually required Arbitration to be done. So, they wanted to regularize it in such a way to stick to all the stakeholders. The KLRCA was in the process of framing the rules, in which they were under consultation with the Medical profession, the lawyers who were specializing in Medical-Legal disputes.
- 14.20 **Dr. Xu Jie, Deputy Secretary-General of AALCO** in reply made to the question referred to the status of the Nairobi Arbitration Centre informed that the Nairobi Centre had been established on the basis of the Agreement which was concluded between AALCO and the Government of the Republic of Kenya in 2007, at Cape Town Session, South Africa. He also requested the Leader of Delegation of the Republic of Kenya to say a few words about the Nairobi Arbitration Centre.
- 14.21 The **Leader of the Delegation of Republic of Kenya** informed that there were two documents signed, a Memorandum of Understanding in 2006 and followed by an Agreement in 2007. He further stated there was no conflict between the two agreements. The Memorandum of Understanding's intention was that there was an agreement between the AALCO and the Republic of Kenya to establish a Centre. That agreement was signed in 2007 in Cape Town, South Africa. He recalled his opening statement made on 5<sup>th</sup> August 2010 that the arrangements for the establishment of the Centre were on track and it got delayed because they were involved in the Constitutional debate in their country. He further informed that since the matter relating to the Constitutional debate was resolved and the arrangements of the establishment of the Nairobi Centre were put on track. In this regard, the Attorney-General had already constituted a Committee for the establishment of the Centre and he would report the implementation of the Centre's work at the earliest.
- 14.22 The **Delegation of the Islamic Republic of Iran** informed that the new Director of the Tehran Arbitration Centre had been appointed recently. But unfortunately,

he was unable to participate in the Annual Session. Further, he highlighted that the Tehran Arbitration Centre prepared the Report in the year 2009 and the foreseen plans for 2010 which was submitted to the Annual Session had been reflected in the Secretariat's Report.

**15. Agenda Item: Report on AALCO's Centre for Research and Training**

- 15.1 **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Organizational Agenda Item, "Report on the Centre for Research and Training of the AALCO".
- 15.2 He stated that the Centre for Research and Training (CRT), functioning in the Secretariat of AALCO since November 2001, evolved from the 'Data Collection Unit' which was established based on a proposal made by the Government of the Republic of Korea at the Twenty-Eighth Annual Session of AALCO held in Nairobi in the year 1989. The conversion from 'Data Collection Unit' to CRT had manifested with a new chapter in the efforts of the Member States towards undertaking research, as well as training activities within the AALCO.
- 15.3 The Deputy Secretary-General informed that in compliance with one of its primary objectives, the Centre successfully organized a Training Programme on "Basic Course on the World Trade Organization (WTO)", from 1 to 5 February 2010 at the AALCO Headquarters, New Delhi. He also informed that more such training programmes were in the pipeline. The CRT would also be organizing a Training Programme on a specialized topic of the WTO in the first quarter of the year 2011 in collaboration with the WTO Secretariat. A Training Programme on International Humanitarian Law was proposed in collaboration with the International Committee of the Red Cross.
- 15.4 He also informed the Meeting that the "Regional Training on Treaty Law and Practice, and the Drafting of International Legal Instruments" would be held in Jakarta, Indonesia from 13 to 15 October 2010. The programme would be jointly hosted by the Ministry of Foreign Affairs, Republic of Indonesia; the AALCO, in collaboration with the Treaty Section of the United Nations Office of Legal Affairs, United Nations Institute for Training and Research (UNITAR), United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC). The Secretariat was grateful to the Government of the Republic of Indonesia for agreeing to host the Regional Training and to the Chief of the UN Treaty Section for positively responding to the proposal for collaboration. The Secretariat urged the Member States to nominate their officials to enrich their knowledge base on this important aspect of international law.
- 15.5 He stated that during the period under review, eight students from India and Malaysia had completed their internship programme at the AALCO Secretariat. This was part of the Centre's effort to encourage young students of law to get familiarized with the functioning of inter-governmental Organization and Asian-African perspectives of International law. The CRT encouraged AALCO Member States to nominate and sponsor Research Scholars and Law Students from the respective countries to undergo internship with the AALCO Secretariat.

- 15.6 He observed that since its inception of the Centre, had made great efforts to provide Member States with in-depth research on topics of international law. The details of the Special Studies and recent publications brought out by the CRT had been explained in the Secretariat's Report on the item. Apart from the studies, the Centre was in the process of bringing out compilation of National Legislations of AALCO Member States on select agenda items. The DSG recalled that in the Forty-Eighth Annual Session held in Putrajaya, Malaysia, a new agenda "Managing Global Financial Crisis: Sharing of Experiences" was introduced. During the deliberations, observations were made by the Member States that the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental authorities. Towards fulfilling that objective, the AALCO Secretariat proposed to bring out a compilation of the national regulatory mechanism (Legal framework) of its Member States. This would give an opportunity to the Member States to share their regulatory framework and could be used in addressing the present and future financial crisis. Hence, the Member States of AALCO were requested to forward their national regulatory framework developed by the concerned Ministries and the Central Banks to the AALCO Secretariat.
- 15.7 Dr. Xu Jie pointed out that one of the Centre's mandates was to update and improve the website. In accordance with that, the website of the AALCO had been completely redesigned with a professional outlook so as to make it more user-friendly and interactive. As the website was completely overhauled, the CRT planned to create a database on national legislations on relevant topics of international law and upload it in the website for the easy reference for Member States. In that context, he requested all the Member States to provide necessary information on their national legislations for creating such database under the auspices of CRT. Further, the Member States were requested to provide the name and address of the focal point with e-mail and internet addresses of the Ministry concerned and Officials in charge of AALCO, in their respective governments as well as in New Delhi. This would facilitate in improving communications between the Secretariat and its Member States.
- 15.8 He further pointed that the Centre had a larger role to play in the study and research, in the light of Organization's objectives; it should be placed in a financially firm footing. While the infrastructure, in terms of Seminar and Conference rooms with modern facilities and equipments had been provided by the Government of India in the Headquarters Building, the operational cost of the CRT was still depended on the regular budget of the AALCO. However, the regular budget itself had many difficulties due to non-payment of the contributions on time and huge arrears by the Member States for many years. Therefore, the Member States were requested to fund adequately to the 'CRT Fund' in order to facilitate its future activities effectively.
- 15.9 Finally, he took the opportunity to invite the Member States to provide the CRT with necessary directions and recommendations regarding research topics as well

as specific training programmes and may also suggest topics of common interest and concern for conducting in-depth research studies.

**16 Report of the Chairman of the Drafting Committee.**

16.1 **Mr. Casmir S. Kyuki, Chairman of the Drafting Committee** presented his Report on the Working of the Drafting Committee. He stated that the main task entrusted to the Drafting Committee was to prepare documents of the Forty-Ninth Annual Session, i.e. the draft resolutions on organizational and substantive matters, the summary report and a text containing a Message of Thanks to His Excellency Jakaya Mrisho Kikwete, the President of the United Republic of Tanzania. With a view to facilitate the adoption of the draft documents by the Plenary Meeting, the Members of the Drafting Committee had done their best to prepare the draft resolutions in such a way that it was acceptable to all the delegations and also that the resolutions reflected the ideas and views commonly shared by the delegations.

16.2 In that regard, he seized the opportunity to congratulate all the delegates who participated and enriched the discussion during the Drafting Committee proceedings. He also extended his sincere appreciation to all the delegates for the maximum flexibility exercised during the deliberations. Further, he noted with appreciation the excellent cooperation and assistance of the AALCO Secretariat firstly, in preparing all the aforementioned documents and secondly, coordinating the smooth functioning of the Drafting Committee.

**17 The Leader of Delegation of Thailand** said that his country greatly valued the work of AALCO and its role in contributing to the development of international law. To this, academic documents and commentaries accomplished by the Secretariat should be highly recognized and further deepened by AALCO's common position. He suggested that in order to improve AALCO's participative proceedings more effective, he proposed a practical method to formulate AALCO's common position on important international law issues. As a first step, the Secretariat could identify and prioritize a list of issues in order to draft AALCO's common position. The Secretariat could subsequently identify Member States in different working groups, in this way each working group would be in-charge of drafting common position on each issue and communicate the same to the Secretary-General. After the Secretary-General receives such draft common position, the same would be circulated to all the Member States for their comments. The Leader of Delegation further suggested that in the following Annual Session, the draft resolution for AALCO's common position could be presented, deliberated and finally adopted by Member States. He believed that with the adoption of such resolutions AALCO would be able to enhance its role in cooperation with the United Nations and other international organizations.

17.1 After having heard this proposal the Delegations of the following Member States presented their views: **the Republic of Indonesia, United Republic of Tanzania, Malaysia, Japan, India, Islamic Republic of Iran, and the**



**Sultanate of Oman.** While some of the delegations supported the proposed idea, the **Leader of Delegation of Japan** stated that AALCO was a consultative forum which advanced a free exchange of views on the issues on its agenda. He noted that the proposal of Thailand could in fact change the nature of the Organization and cautioned that it should not be hastily implemented rather Member States should be given ample time consider to the idea. **The delegations of the Islamic Republic of Iran and India** supported the views of Japan. The **Leader of delegation of the Sultanate of Oman** observed that the suggestion of Thailand could have been made at the beginning of the Session and not at the end of the Session, as the delegations did not have enough time to deliberate upon it. In his final remarks, the **President** of the Forty-Ninth Session stated that as the proposal was given at the last moment it would not be possible to discuss it in its entirety and suggested that Member States could take more time to look into it. Having heard all the views expressed by the Member States, the delegation of Thailand said that they would send their proposal to the Secretary-General for consideration.

**18** ***Adoption of Message of Thanks to the President of the United Republic of Tanzania:*** The Secretary-General on behalf of the Member States of AALCO read out the Message of Thanks to the President of the United Republic of Tanzania, the same was unanimously adopted with applause.

**19** ***Venue of the AALCO's Fiftieth Session:*** The Government of the Democratic Socialist Republic of Sri Lanka offered to host the Fiftieth Annual Session in 2011 at Sri Lanka. The offer was accepted by the Annual Session.

**20** ***Adoption of the Resolutions***

**20.1** The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 8 August 2010:

RES/49/ORG 1	Report of Secretary-General on Organizational, Administrative and Financial Matters
RES/49/ORG 2	AALCO's Budget for the Year 2011
RES/49/ORG 3	Report on AALCO's Regional Centres for Arbitration
RES/49/ORG 4	Report on the Centre for Research and Training of the AALCO
RES/49/ORG 5	Venue of the Fiftieth Annual Session
RES/49/S 1	Resolution on the Thematic Debate on "Making AALCO's Participation in the work of the International Law Commission more Effective and Meaningful"
RES/49/S 2	The Law of the Sea
RES/49/S 3	The Status and Treatment of Refugees
RES/49/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/49/S 5	Legal Protection on Migrant Workers
RES/49/S 6	Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties
RES/49/S 7	International Terrorism
RES/49/S 8	Establishing Cooperation against Trafficking in Women and Children
RES/49/S 11	Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption
RES/49/S 12	Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
RES/49/S 13	WTO as a Framework Agreement and Code of Conduct for World Trade
RES/49/S 14	Expressions of Folklore and its International Protection
RES/49/S 16	Managing Global Financial Crisis: Sharing of Experiences
RES/49/SP 1	Resolution on the Special Meeting on "The International Criminal Court: Recent Developments"
RES/49/SP 2	Resolution on the Special Meeting on "Environment and Sustainable Development"

## **21     *Consideration of Summary Report***

- 21.1    The Summary Report of the Forty-Ninth Annual Session of the Asian-African Legal Consultative Organization was placed for consideration of the Member States.

## **22.     *Concluding Remarks by the President of the Forty-Ninth Annual Session of AALCO***

- 22.1    The **President** summarized the accomplishments of AALCO at the Forty-Ninth Annual Session and thanked all those who made the Session a grand success. He said that it was his privilege to bring the remarkable Forty-Ninth Annual Session of the AALCO to close. Over those four days, it had been heartening for him to see that the delegates display such a deep and broad commitment to the development of international law. He thanked the representatives who spoke on behalf of Asian and African continents and international organizations for their kind words to his country and himself.
- 22.2    The President called upon the delegates to join hands with him in expressing their heartfelt appreciation to the Secretary-General and his team for making that Session not only a reality but also a prosperous one.
- 22.3    The President informed that in the last four days they had been able to cover all the agenda items listed for that Session. He noted that the participation of the Member States, Secretariat, as well as experts on all the topics was of very high standard. At the end of the day, if one was to take stock of the outcome, he believed the unanimous judgment would be that the participation was very high.

- 22.4 The President recalled the Ugandan proverb that says, “The person who has not travelled widely thinks his or her mother is the only cook in the world”. The proverb, he emphasized, encouraged us to go out and find new experiences. The President stated that he must admit that he was personally impressed by the willingness of all participants to that year’s session who had shared and patiently discussed experiences, challenges and solutions on all legal issues that came before them. By putting their head together in dealing with issues on the agenda, they had done the right thing for their people and the entire world.
- 22.5 The President said that every goodbye made the next hello closer. The end of that meeting was the beginning of preparations for the next meeting. In that context, he expressed his heartfelt appreciation to the Government and people of Sri Lanka for their timely willingness to host the Fiftieth Session at Colombo. He wished the brothers and sisters of Sri Lanka successful preparations of the next Session. In the spirit of AALCO he urged all the Member States to take part in that Session.
- 22.6 The President fondly recollected that the Forty-Ninth Session at Dar es Salaam had come to a conclusion. The Tanzanian Government would now lead the Organization for a period of one year. The task ahead of them was to put into reality decisions made at that noble Session and also come up with new ideas that would help realize the noble ideals of AALCO. The President declared that one thing that they would do for certain, for which he sought pardon in advance, was to pester the Member States for their subscription, particularly for those it was due or over due.
- 22.7 Furthermore, the President declared that he would also like to commit himself to extending AALCO wings to other African and Asian nations with whom they shared interest. As one African proverb says, it takes a village to raise a child. Therefore, the President explained that what he was driving was that although AALCO had made notable progress since its inception, they must admit that there was a need to approach other states, both in Asia and Africa to join AALCO and thereby jointly raise their child. He committed himself to make that happen.
- 22.8 The President said that “smooth seas do not make skilful sailors”. In organizing and managing that Session, they might have lapsed in their duties and their stay difficult. He called for forgiveness in that regard and appealed to the delegates to take back with them the good memories and leave the bad ones. On behalf of the AALCO Secretariat and the National Organizing Committee, the President assured that the organization and management of that Session had made them more skilful and they were set to organize another AALCO Session anytime they were requested.
- 22.9 The President said that he did not wish to bid good-bye because that would mean he was never going to say hello again. He wished the delegates safe journeys back

home and said that they would be happy to welcome them back in Tanzania anytime they felt like visiting it.

- 22.10 Finally, the President said that it was his singular honour to declare the Forty-Ninth Annual Session of the AALCO officially closed.

## **XII. RESOLUTIONS ON ORGANIZATIONAL MATTERS**

**AALCO/RES/49/ORG 1**

**8 AUGUST 2010**

### **REPORT OF THE SECRETARY-GENERAL ON ORGANIZATIONAL, ADMINISTRATIVE AND FINANCIAL MATTERS**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Recalling** the functions and purposes of the Organization as stipulated in Article 1 of the Statutes of AALCO;

**Considering** the Report of the Secretary-General on Organizational, Administrative and Financial Matters pursuant to Rule 20 (7) of Statutory Rules as contained in Document No. AALCO/49/DAR ES SALAAM/2010/ORG 1;

**Noting with** appreciation the introductory statement of the Secretary-General on the Report of the Secretary-General on Organizational, Administrative and Financial Matters;

**Further noting** with keen interest and appreciation the statements of the Heads of Delegations of AALCO Member States on the Report of the Secretary-General;

**Appreciating** the efforts of the Secretary-General to enhance the activities of the Organization and to implement its work programme as approved at its Forty-Eighth Session held in Putrajaya, Malaysia, from 17 to 20 August 2009;

**Further appreciating** the continued practice towards the rationalization of its work programme, including consideration of the agenda items during its annual sessions;

**Taking note** of the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization; and the Action Plan as explained in Document No. AALCO/ES (NEW DELHI)/2008/ORG.1 adopted by the Extraordinary Session of AALCO Member States held on 1 December 2008, in New Delhi (Headquarters), India;

**Commending** the efforts by the Secretary-General for Revitalizing and Strengthening the AALCO;

**Recalling** the Resolution RES/43/ORG 10 dated 25 June 2004, on the Revision of AALCO's Gratuity Scheme for the Locally Recruited Staff adopted at the Forty-Third Session of AALCO, held in Bali, Indonesia from 21-25 June 2004;

**Noting with satisfaction** the increased co-operation between the Organization and the United Nations and its Specialized Agencies, other international organizations and academic institutions:

1. **Approves** the work programme of the Organization as set out in the Report of the Secretary-General.
2. **Urges** Member States to fulfil their statutory and financial obligations, and extend their full support to the implementation of that programme.
3. **Supports** the Secretary-General in establishing an AALCO Eminent Persons Group to assist AALCO Member States in addressing key issues of concern.
4. **Requests** the Secretary-General to continue his efforts and explore the ways and means to enlarge the Membership of the Organization in particular, to increase the representation from the African States and Central Asian States.
5. **Encourages** Member States to make voluntary contributions to support the capacity building activities under the approved work programme of the Organization.
6. **Requests** the Secretary-General to study and to report, on the possible measures that AALCO can take to further rationalize its work programme, including consideration of the agenda items during its annual sessions.
7. **Endorses** the signing of the Memorandum of Understanding between the AALCO and the Xiamen Academy of International Law and the Wuhan Institute of International Law of the Wuhan University, the People's Republic of China.
8. **Mandates** the Secretary-General of AALCO to sign on behalf of AALCO the Memorandum of Understanding with the International Council of Environmental Law.
9. **Requests** the Secretary-General to follow the relevant legal provisions of the Host Government, i.e. the Government of India, for payment of gratuity to the locally recruited staff of the Organization.
10. **Further requests** the Secretary-General to report on the activities of the Organization at the Fiftieth Annual Session.

**AALCO/49/RES/ORG 2**  
**8 AUGUST 2010**

**AALCO's BUDGET FOR THE YEAR 2011**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Noting with** appreciation the introductory statement of the Secretary-General on the Financial Situation of AALCO and the Proposed Budget for the Year 2011 as contained in Document No. AALCO/49/DAR ES SALAAM/2010/ORG 2;

**Further noting** the comments of the Member States and the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization adopted at the Forty-Eighth Annual Session of AALCO held in Putrajaya, Malaysia;

**Noting further** that the Proposed Budget for the Year 2011 was placed for the consideration at the Meeting of Liaison Officers of Member States of AALCO at the 304<sup>th</sup> and 305<sup>th</sup> Meetings held on 16 December 2009 and 3 March 2010 in New Delhi, India; and was adopted at the 306<sup>th</sup> Meeting of the Liaison Officers held on 16 July 2010 and submitted to the Forty-Ninth Annual Session for final approval;

**Expressing deep concern** over the financial crisis faced by AALCO and the need to take appropriate remedial measures like mid-term and long term financial improvement programmes to overcome the immediate crisis including the collection of arrears and for ensuring the future financial stability of the Organization;

**Acknowledging** that there is an immediate need to replenish the Reserve Fund of the Organization, with the objective of ensuring that it always has a six-month operational fund for the functioning of the Organization;

**Considering** all reasons for the financial crisis:

1. **Approves** the Budget for the Year 2011 as proposed.
2. **Requests** Member States who have not paid their annual contribution for the year 2010 in full, to do so at the earliest in order to ensure the effective functioning of the Organization.
3. **Further requests** Member States to make payment of their annual contribution for the year 2011 at the earliest in accordance with their financial year.
4. **Encourages** Member States to make voluntary financial contribution in order to improve the financial situation of AALCO.
5. **Further encourages** Member States to voluntarily contribute to replenish the Reserve Fund so as to ensure it has always a six-month operational fund.

6. **Strongly urges** Member States who are in arrears to fulfill their financial obligations and to expeditiously clear the same in accordance with the Statutes and Statutory Rules of AALCO for the effective functioning of the Organization.
7. **Mandates** Secretary-General to explore ways and means of raising additional resources in accordance with the Statutes and Statutory Rules of AALCO and report the same to the next Session for consideration.
8. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.



**AALCO/RES/49/ORG 3**  
**8 AUGUST 2010**

**REPORT ON AALCO'S REGIONAL CENTRES FOR ARBITRATION**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Report on AALCO's Regional Centres for Arbitration contained in Document No. AALCO/49/DAR ES SALAAM/2010/ORG 3;

**Noting** with appreciation the introductory remarks of the Deputy Secretary-General and the report of the Directors of the Regional Arbitration Centres;

**Reaffirming** the commitment by the Governments of Member States towards enhancing the role of the Regional Arbitration Centres;

**Recalling** decision relating to the Integrated Scheme for the Settlement of Disputes in Economic and Commercial Transactions adopted at its Doha Session in 1978;

**Expressing satisfaction** over the increasing use of the facilities and the opportunities offered for both domestic and international arbitrations under the auspices of its Regional Arbitration Centres;

**Appreciating** the efforts and contributions of the Governments of the Malaysia, Arab Republic of Egypt, Federal Republic of Nigeria, the Islamic Republic of Iran, and Republic of Kenya for hosting the respective Regional Arbitration Centres;

**Further appreciating** the promotional activities undertaken by the Directors of the Centres, including organization of seminars and training programmes, to promote international commercial arbitration in the Asian and African regions;

**Reiterating** the earlier decision of the AALCO on the necessity for the Governments of Member States to promote and support the use of the Regional Arbitration Centres;

**Further reiterating** its proposal that after consultation with the Directors of the respective Regional Arbitration Centres, for the holding of International Arbitration Conference biennially, by rotation in each of the Centres, with the support of Member States:

1. **Requests** that, based on the above mentioned commitments for promoting and supporting the use of Regional Arbitration Centres, the Member States to urge their esteemed Governments and private sector to use the AALCO's Regional Arbitration Centres for their disputes and in particular to consider in their contracts, the inclusion of the Arbitration Clause of AALCO's Regional Arbitration Centres.
2. **Consider** the formation of a common system both administratively and financially between the Centres and common standard for the qualification of arbitrators.

3. **Directs** the Arbitration Centres to meet at every AALCO Annual Sessions to enable an exchange of ideas and to report the outcome to the Organization.
4. **Requests** the Secretary-General to take initiative to promote the Arbitration Centres among Member States and to work toward establishing another Arbitration Centre in the South Asian region.
5. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/ORG 4**  
**8 AUGUST 2010**

**REPORT ON THE CENTRE FOR RESEARCH AND TRAINING  
OF THE AALCO**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Report on the Centre for Research and Training (CRT) of the AALCO, contained in Document No. AALCO/49/DAR ES SALAAM/2010/ORG 4;

**Noting** with appreciation the introductory remarks of the Deputy Secretary-General;

**Recognizing** the need and importance of the exchange of information among AALCO Member States, the United Nations and its Specialized Agencies, and other International Organizations for improving capacity-building and enhancing of legal expertise in areas of international law;

**Bearing in mind** the effective role of research and training in promoting the objectives of the Organization;

**Further bearing in mind** a more proactive role the CRT could play in furthering the mandate of the Organization in making the best use of the Headquarters which is equipped with modern technology and infrastructure facilities;

**Appreciating** the efforts of the Secretariat in preparing special studies on matters of common concern and its plan to hold training programmes in cooperation with International Organizations and to ensure financial support to these programmes;

**Further appreciating** the efforts of the CRT for organizing the Training Programme on “Basic Course on the World Trade Organization (WTO)” at the AALCO Headquarters in New Delhi:

1. **Requests** the Secretariat to maintain, update and improve the technical efficiency of the website for facilitating dissemination of information to the Member States, the United Nations and its Specialized Agencies, and other international organizations.
2. **Further requests** the Secretary-General to foster capacity-building of the Centre to carry out research projects on international law and to organize training programmes for the benefit of the officials of Member States handling international law issues.
3. **Urges** Member States to furnish information and other relevant materials, including the name and address of the focal point with e-mail and the website of the Ministry concerned and officials in charge of AALCO, in order to enhance the activities of the Centre for Research and Training (CRT).

4. **Encourages** Member States to make voluntary contributions to the “Research and Training Fund” established vide RES/45/ORG 4 to promote and strengthen Research and Training under the CRT, and to provide a sustainable financial base to the Centre to undertake its mandated activities.
5. **Directs** the Secretariat to take necessary measures to promote the awareness about the Centre so that the services available in the Centre could be used by the public and private sectors in the Member States.
6. **Further directs** the Secretariat to work towards the realization of its proposal for the training of officials of AALCO Member States.
7. **Requests** the Member States to provide the Secretariat with specific topics for conducting in-depth research studies.
8. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/ORG 5**  
**8 AUGUST 2010**

**VENUE OF THE FIFTIETH ANNUAL SESSION**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Taking note** with great appreciation, of the invitation received from the Government of Democratic Socialist Republic of Sri Lanka to host Fiftieth Annual Session of AALCO in 2011:

1. **Decides** to accept the invitation from the Government of Democratic Socialist Republic of Sri Lanka.
2. **Requests** the Secretary-General to hold consultations with the Government of Democratic Socialist Republic of Sri Lanka to prepare administrative arrangements of the Session, including the dates of the Session and inform the Member States accordingly.

### **XIII. RESOLUTIONS ON SUBSTANTIVE MATTERS**

**AALCO/RES/49/S 1  
8 AUGUST 2010**

#### **RESOLUTION ON THE THEMATIC DEBATE ON “MAKING AALCO’S PARTICIPATION IN THE WORK OF THE INTERNATIONAL LAW COMMISSION MORE EFFECTIVE AND MEANINGFUL”**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Appreciating** the efforts of the Secretary-General in convening the Thematic Debate on “Making AALCO’s Participation in the Work of International Law Commission (ILC) more Effective and Meaningful”;

**Noting with** appreciation the views expressed by the President, the Secretary-General and the Panelists and the statements of Member States of AALCO during the Thematic Debate on “Making AALCO’s Participation in the Work of International Law Commission (ILC) more Effective and Meaningful” held on 6 August 2010 during the Forty-Ninth Annual Session of AALCO held in Dar es Salaam, the United Republic of Tanzania;

**Also Appreciating** the convening of the Commemorative Seminar on the 60th Anniversary of the International Law Commission on 2 December 2008, at the AALCO Headquarters in New Delhi, India;

**Recognizing** the significant contribution of the ILC to the codification and progressive development of international law;

**Commending** the initiative of the Secretary-General in convening the joint AALCO -ILC meeting in conjunction with AALCO Legal Advisers’ meeting held in New York on 28 October 2009, and the fruitful exchange of views on the items deliberated during that meeting;

1. **Requests** the Secretary-General to follow-up on the suggestions and recommendations, subject to availability of resources, made by the Panelists and the Member States of AALCO in the Thematic Debate on “Making AALCO’s Participation in the Work of International Law Commission (ILC) more Effective and Meaningful”.
2. **Recommends** Member States to contribute in the work of ILC, in particular by communicating their comments and observations regarding issues identified by the ILC on various topics currently on its agenda to the Commission.
3. **Requests** the Secretary-General to continue convening AALCO-ILC meetings in future.

4. **Also requests** the Secretary-General to bring to the attention of the ILC the views expressed by Member States during the annual sessions on the items on its agenda during the Forty-Ninth Annual Session of the AALCO.
5. **Decides** to place the item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 2**  
**8 AUGUST 2010**

**THE LAW OF THE SEA**  
**(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 2;

**Recognizing** the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and its legal framework governing the issues relating to the management of the oceans;

**Mindful** of the historical contribution made by the Asian-African Legal Consultative Organization in the elaboration of the UNCLOS;

**Conscious** that the AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements;

**Hopeful** that in view of the importance of the law of the sea issues, AALCO would maintain its consideration on the agenda item and continue to perform its historical role on the law of the sea matters;

**Taking note** of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

**Welcoming** the active role being played by the International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters:

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind.
2. **Urges** the full and effective participation of its Member States in the work of the International Seabed Authority, and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process and also through effective contribution to the work of the Commission on the Limits of Continental Shelf, so as to ensure and safeguard their legitimate interests.
3. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.



**AALCO/RES/49/S 3  
8 AUGUST  
2010**

**THE STATUS AND TREATMENT OF REFUGEES  
(Non-Deliberated)**

**Part 1 on Internally Displaced Persons**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 3;

**Recognizing** the Guiding Principles on Internal Displacement of 1998 as the key international framework for the protection of internally displaced persons;

**Welcoming** the adoption of “The African Convention on the Protection and Assistance of Internally Displaced Persons” (the Kampala Convention) at Kampala, Uganda in October 2009;

**Underlines** the urgent need for unimpeded access for humanitarian assistance to all internally displaced peoples;

1. **Expresses grave concern** about the plight of internally displaced persons in all regions of the world, particularly in Africa.
2. **Further expresses its appreciation** to those Governments and inter-governmental and non-governmental Organizations which have provided assistance and protection to internally displaced persons.
3. **Decides** to place this agenda item on the provisional agenda of the Fiftieth Annual Session.

**Part 2 on Refugees**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 3;

**Reaffirming** the importance of the 1951 Convention relating to the Status of Refugees together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention of 1969, as the cornerstone of the international system for the protection of refugees;

**Stressing** the importance of international solidarity and burden-sharing in reinforcing the international protection of refugees;

1. **Calls upon** all States that have not yet done so to consider ratify/accede to and to implement fully the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and other relevant regional instruments as applicable.
2. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 4  
8 AUGUST 2010**

**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  
(Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 4;

**Noting with** appreciation the introductory remarks of the Deputy Secretary-General;

**Having followed** with great interest the deliberations on the item reflecting the views of Member States;

**Being concerned** with the serious obstacles created by the occupying power, which hinder the achievement of a just and lasting peace in the region;

**Recognizing** that the massive Israeli military operation in the Occupied Palestinian Territories, particularly in the occupied Gaza strip, has caused grave violations of the human rights of the Palestinian civilians therein and international humanitarian law, and exacerbated the severe humanitarian crisis in the Occupied Palestinian Territories;

**Also recognizing** that the Israeli siege imposed on the occupied Gaza strip, including the closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences;

**Welcoming** the international and regional initiatives for peace in the Middle East;

**Condemning** Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of human rights and the Fourth Geneva Convention of 1949;

**Stressing** the need to compliance with existing Israeli – Palestinian agreements concluded in order to reach a final settlement;

**Being concerned** about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the

continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power, including that arising from the excessive use of force, the use of collective punishment, the occupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territories, the destruction of property and infrastructure, use of prohibited weapons and all other actions designed to change the legal status, geographic composition of the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, and about war crimes and crimes against humanity committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people;

**Recalling** the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and related General Assembly Resolution (A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006), as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall;

**Being deeply concerned** about the tenacity of Israel in proceeding with the construction of wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, which is contrary to international law;

**Acknowledging with deep concern** that the Security Council is still unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall;

**Expressing** its support to the Arab Peace Initiative for resolving the issue of Palestine and the Middle East, adopted by the 14<sup>th</sup> Arab Summit held in Beirut (Lebanon) on 28 March 2002 and reaffirmed in the 19<sup>th</sup> Summit Conference of the League of Arab States, Riyadh, 28-29 March 2007 as well as other peace initiatives, including the Quartet Road Map;

**Taking note** of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine;

**Affirming** that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, existing agreement between the parties and the relevant Security Council and General Assembly resolutions, which will allow all the countries of the region to live in peace, security and harmony:

1. **Urges** its Member States to take part in the peace process/efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of relevant Security Council resolutions, including 242 (1967), 338 (1973), 425 (1978), 1397 (2002) and 1860 (2009); and relevant General Assembly Resolutions, including 194 (1949) on the formula of "land

for peace” and the legitimate rights of the Palestinian people, and expressing solidarity with the Palestinian people and their elected leadership.

2. **Takes note** of the United Nations Secretary General’s Board of Enquiry as transmitted on 4 May 2009 to the Security Council as well as the findings of the recent report of the Special Rapporteur of the Human Rights Council and other regional organizations.
3. **Also takes note** of the report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States on 30 April 2009.
4. **Strongly condemns** the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people.
5. **Demands** that Israel, the Occupying Power, comply fully 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 relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians.
6. **Also demands** that Israel positively respond to the 2009 Report of Mr. Richard Falk the Special Rapporteur for the Palestinian Territories Occupied Since 1967 and 2010 Report and Recommendations of Justice Goldstone, United Nations Fact Finding Mission on the Gaza Conflict in order to protect the rights of Palestinians.
7. **Further Demands** that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution (A/RES/ES-10/15 of 20<sup>th</sup> July 2004).
8. **Strongly demands** that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory.

9. **Strongly deplores** the Israeli blockade of the Gaza strip and its consequent human rights and humanitarian law violation and the Israeli attack against the humanitarian aid Flotilla.
10. **Further demands** for an immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction of property and calls for the immediate and full withdrawal of Israeli (occupying) forces from Palestinians territories in implementation of Security Council Resolutions, including 1402 (2002), 1403 (2002), 1515 (2003), and 1544 (2004) as a first step for ending the Israeli occupation of Palestinian territories occupied since 1967.
11. **Calls upon** Israel to ensure the return of refugees and displaced Palestinians to their homes and the restoration to them of their properties, in compliance with the relevant UN resolutions.
12. **Directs** the Secretariat to closely follow the developments in occupied territories from the view point of relevant legal aspects.
13. **Decides** to place the item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 5**  
**8 AUGUST 2010**

**LEGAL PROTECTION OF MIGRANT WORKERS**  
**(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 5;

**Recognizing** that international migration requires a holistic and coherent approach based on co-responsibility;

**Acknowledging** that international migration has brought great benefits to migrants and their families, as well as to receiving countries:

1. **Requests** Member States, in conformity with their respective constitutional systems, to effectively promote and protect the human rights of all migrants, in conformity with the international legal instruments to which they are party.
2. **Urges** Member States to draw up and implement campaigns to combat the increasing instances of xenophobic acts and violence against migrants in the wake of the recent global financial crisis.
3. **Encourages** Member States that have not yet done so to consider ratifying/acceding to the relevant international legal instruments on the situation of migrant workers, particularly the ICMW 1990.
4. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 6  
8 AUGUST 2010**

**EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION:  
SANCTIONS IMPOSED AGAINST THIRD PARTIES  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/ S 6;

**Recalling** its Resolutions RES/36/6 of 7 May 1997, RES/37/5 of 18 April 1998, RES/38/6 of 23 April 1999, RES/39/5 of 23 February 2000, RES/40/5 of 24 June 2001, RES/41/6 of 19 July 2002, RES/42/6 of 20 June 2003, RES/43/6 of 25 June 2004, RES/44/6 of 1 July 2005, RES/45/S 6 of 8 April 2006, RES/46/S 7 of 6 July 2007, RES/47/S 6 of 4 July 2008, RES/48/S 6 of 20 August 2009 on the subject;

**Recognizing** the significance and implications of the above subject;

**Expressing** its concern that the imposition of unilateral sanctions on third parties is not in conformity with the Charter of the United Nations and the general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development;

**Declaring condemnation** as regards the imposition against the AALCO Member States with additional and new series of sanctions against Union of Myanmar, Syrian Arab Republic and Islamic Republic of Iran by the Government of the United States of America;

**Being aware that** extraterritorial application of national legislation in an increasingly interdependent world retards the progress of the Sanctioned State and impedes the establishment of an equitable, multilateral, non-discriminatory rule-based trading regime;

**Reaffirming** the importance of adherence to the rules of international law in international relations:

1. **Directs** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States.
2. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject.



3. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 7  
8 AUGUST 2010**

**INTERNATIONAL TERRORISM  
(Non-deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 7;

**Recalling** the relevant international instruments, where applicable, and resolutions of the United Nations General Assembly and the Security Council relating to measures to eliminate international terrorism and the efforts to prevent, combat and eliminate terrorism;

**Taking note** of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly of the United Nations by its resolution 51/210 of 17 December 1996 to elaborate a Comprehensive Convention on International Terrorism;

**Expressing grave concern** about the worldwide increase in acts of terrorism, which threaten the life and security of innocent people and impede the economic development of the concerned States;

**Recognizing** the need for the international community to collectively combat terrorism in all its forms and manifestations and address the root causes of terrorism;

**Reaffirming** that international effort to eliminate terrorism must be strengthened in accordance with the Charter of the United Nations and in particular, taking into account international human rights law, international humanitarian law, and refugee law;

**Calling for** an early conclusion and the adoption of a comprehensive convention on international terrorism by expediting the elaboration of a universally acceptable definition of terrorism:

1. **Encourages** Member States to consider ratifying/acceding to the relevant conventions on terrorism.
2. **Urges** Member States to participate in the work of the above mentioned Ad Hoc Committee on International Terrorism.
3. **Directs** the Secretariat to follow and report on the progress of work in the Ad Hoc Committee on International Terrorism.

4. **Further directs** the Secretariat to collect national legislation on combating terrorism to facilitate exchange of information among Member States.
5. **Requests** the Secretary-General to hold seminars and joint activities in cooperation with other international organizations, especially UNODC, on dealing with the legal aspects of combating terrorism.
6. **Decides** to place the item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 8**  
**8 AUGUST 2010**

**ESTABLISHING COOPERATION AGAINST TRAFFICKING IN  
WOMEN AND CHILDREN  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 8;

**Mindful of** the increasing number of individuals being exploited through trafficking in persons and smuggling of migrants, including from the Asian-African region;

**Convinced** of the need to eliminate all forms of trafficking in persons and smuggling of migrants and bearing in mind the overlapping nature between trafficking in persons and smugglings of migrants, which are flagrant violations of human rights;

**Noting** the continuing efforts of Member States in combating trafficking in persons and smuggling of migrants, and encouraging them to inform and update the AALCO Secretariat of pertinent developments in their respective States, in order to share experience amongst Member States;

**Being aware** of the on-going work on a model legislation as mandated by the Forty-Third Annual Session of AALCO held in Bali, Republic of Indonesia in 2004 by the AALCO Secretariat;

**Acknowledging** with appreciation that some Member States have submitted to the AALCO Secretariat their national legislations and other relevant information related to the topic, and urges other Member States to do the same:

1. **Encourages** the Member States which are not yet party to consider ratifying/acceding to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000.
2. **Directs** the Secretariat to follow and report on the developments in this regard, including the work undertaken by other fora.
3. **Mandates** the Secretary-General to constitute an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States for their further consideration.

4. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 11**  
**8 AUGUST 2010**

**CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE  
UNITED NATIONS CONVENTION AGAINST CORRUPTION**  
*(Deliberated)*

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat document contained in No. AALCO/49/DAR ES SALAAM/2010/S 11;

**Noting with** appreciation the introductory statement of the Deputy Secretary-General;

**Having followed** with great interest the deliberations on the item reflecting the views of the Member States;

**Recalling** resolution AALCO/RES/48/S 11, adopted at the Forty-Eighth Annual Session held at Putrajaya, Malaysia in 2009, which *inter alia* requested the Secretariat to come up with an updated title for the agenda item;

**Concerned** about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy and ethical values, justice;

**Convinced** that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies;

**Further convinced** that the availability of technical assistance can play an important role in enhancing the ability of States by building and strengthening capacity and institution-building;

**Welcoming** the adoption of a new review mechanism for the implementation of the United Nations Convention against Corruption [UNCAC] at the Third Conference of State Parties meeting in November 2009 at Doha:

1. **Condemns** corruption in all its forms, including bribery, money-laundering and the transfer of assets of illicit origin.
2. **Reaffirms** the commitment to make the fight against corruption a priority at all levels and welcomes all actions taken in this regard at the national and international levels, including the adoption of policies that emphasize accountability and transparency in public expenditure and financial management.
3. **Requests** the international community to support the efforts of all countries to strengthen institutional capacity building and regulatory

frameworks for preventing corruption including bribery, money-laundering and illegal transfer of assets of illegal origin, as well as for the returning of those assets to the countries of origin.

4. **Encourages** all Member States that have not yet done so to ratify/accede to the United Nations Convention against Corruption as a matter of priority in an effort to deal with this issue of corruption effectively.
5. **Approves** the updated title “*Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption*”.
6. **Decides** to continue to consider this agenda item and place it on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 12**  
**8 AUGUST 2010**

**REPORT ON THE WORK OF UNCITRAL AND OTHER  
INTERNATIONAL ORGANIZATIONS IN THE FIELD OF  
INTERNATIONAL TRADE LAW  
(Non-deliberated)**

*The Asian-African Legal Consultative Organization at its Forty- Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 12;

**Taking note**, with appreciation, of the comments included in the Report of the Secretary-General;

**Being aware** of the completion and the adoption of the Practice Guide on Cross-Border Insolvency Cooperation by the United Nations Commission on International Trade Law at its forty-second session:

1. **Encourages** Member States to give due consideration to the Practice Guide on Cross-Border Insolvency Cooperation in cross-border insolvency proceedings.
2. **Expresses** satisfaction for AALCO's continued cooperation with the various international organizations competent in the field of international trade law and hopes that this cooperation will be further enhanced in the future.
3. **Urges** Member States to consider adopting, ratifying or acceding to the instruments prepared by the UNCITRAL.
4. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.



**AALCO/RES/49/S 13**  
**8 AUGUST 2010**

**WTO AS A FRAMEWORK AGREEMENT AND  
CODE OF CONDUCT FOR WORLD TRADE**  
*(Deliberated)*

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 13;

**Noting with** appreciation the introductory statement of the Deputy Secretary-General;

**Recognizing** the importance and complexities of issues involved in the WTO Doha Development Agenda;

**Hoping** that the Doha Round of Negotiations would conclude successfully/expeditiously in the near future:

1. **Encourages** Member States to successfully complete negotiations mandated under the Doha Development Agenda, taking fully into consideration the special concerns of developing and least-developed country Members of WTO.
2. **Directs** the Secretariat to continue to monitor and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding.
3. **Appreciates** the effort of the Centre for Research and Training (CRT) of AALCO in successfully organizing a Basic Course on the World Trade Organization from 1 to 5 February 2010, at AALCO Headquarters, New Delhi.
4. **Requests** the Secretary-General in consultation with Member States, subject to the availability of necessary resources, to organize seminars or workshops to facilitate the exchange of views by Member States on issues currently under negotiation within the WTO and capacity building programs.
5. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 14**  
**8 AUGUST 2010**

**EXPRESSIONS OF FOLKLORE AND ITS INTERNATIONAL PROTECTION**  
***(Deliberated)***

***The Asian-African Legal Consultative Organization at its Forty-Ninth Session,***

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 14;

**Noting with** appreciation the introductory statement of the Deputy Secretary-General;

**Recognizing** the importance of protection of the 'Expressions of Folklore' for the Asian-African countries;

**Welcoming** the World Intellectual Property Organization (WIPO) General Assembly initiative in establishing an Intergovernmental Committee (IGC) with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of Expressions of Folklore (EoF);

**Also welcoming** the renewal of the mandate of the IGC by WIPO General Assembly in October 2009:

1. **Expresses** the hope that the WIPO IGC would be able to reach agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of Expressions of Folklore (EoF).
2. **Requests** the Secretary-General to organize an Expert Meeting in cooperation with WIPO or with any other Member State (s), to facilitate the exchange of views by Member States on the issues relevant to the protection of Expressions of Folklore.
3. **Encourages** Member States to actively participate in the future work of the agenda item at all the WIPO meetings.
4. **Directs** the Secretariat to follow up the developments within the WIPO IGC on 'Expressions of Folklore', and to present the views of the AALCO Member States to the IGC.
5. **Decides** to place the item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/S 16**  
**8 AUGUST 2010**

**MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCES**  
**(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 16;

**Recognizing** the significance of the topic, especially the legal aspects, for the Asian-African countries in the context of the ongoing global financial crisis and its impact on development;

**Being aware** of the adverse consequences of the global financial crisis on the economic growth and development of Member States of AALCO, and their efforts to resolve it;

**Noting** the efforts of the international community to address the global financial crisis, particularly, convening of the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* by the United Nations from 24<sup>th</sup> to 30<sup>th</sup> June 2009 in New York to assess the global financial crisis;

**Taking note of** the Resolution (A/RES/63/303) adopted by the United Nations General Assembly on 9<sup>th</sup> July 2009 on the *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*:

1. **Emphasizes** the need for strengthening the foundation for a fair, inclusive and sustainable global financial system.
2. **Calls upon Member States** to forward to the Secretariat their views and suggestions on this item, so as to guide the Secretariat on the future course of action.
3. **Invites** Member States of AALCO to forward their national regulatory framework/legal framework to the AALCO Secretariat latest by 15 November 2010 so as to enable the Secretariat to bring out a compilation of the national regulatory framework of its Member States.
4. **Decides** to place this item on the provisional agenda of the annual sessions, as and when required.

**AALCO/RES/49/SP 1**  
**8 AUGUST 2010**

**XIV. RESOLUTION ON THE SPECIAL MEETING ON  
“INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS”**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 9;

**Noting with** appreciation the views expressed by the President, the Secretary-General and the Panelists and the statements of Member States during the Special Meeting on “International Criminal Court: Recent Developments”, jointly organized by the Government of United Republic of Tanzania, the International Committee of the Red Cross (ICRC) and the AALCO Secretariat on 7 August 2010 at Dar Es Salaam, the United Republic of Tanzania;

**Having followed** with great interest the deliberations on the item reflecting the views of Member States;

**Taking note** of the deliberations and decisions of the Review Conference of the Rome Statute of the International Criminal Court, and noting the progress in cases before the International Criminal Court (ICC);

**Being aware** of the importance of the universal acceptance of the Rome Statute of the International Criminal Court and in particular, the principle of complementarity;

**Appreciating** the efforts taken by the Secretariat in convening the “Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of the International Criminal Court”, held at Putrajaya, Malaysia from 30 to 31 March 2010;

**Thanking the** Governments of Japan and Malaysia for their financial, logistical and technical support provided for successfully holding the Round Table Meeting of Legal Experts at Putrajaya, Malaysia;

**Welcoming the** Secretariat's effort in bringing out the Report of the above mentioned Round Table Meeting to facilitate the Member States for a greater understanding of issues for those who attended the Review Conference of the Rome Statute of the International Criminal Court at Kampala, Uganda;

**Appreciating** the efforts taken by the AALCO Member State, Uganda, for convening the Review Conference of the Rome Statute of the International Criminal Court at Kampala, Uganda from 31 May to 11 June 2010;

**Welcoming** the General Statement made by the Secretary-General of AALCO at the Review Conference of the Rome Statute of the International Criminal Court on 1 June 2010;

**Taking note** of the outcome of the Review Conference of the Rome Statute of the International Criminal Court held at Kampala, Uganda:

1. **Commends** the Government of the United Republic of Tanzania, the International Committee of the Red Cross (ICRC) and the AALCO Secretariat for earnest efforts in organizing the Special Meeting on “International Criminal Court: Recent Developments”.
2. **Expresses gratitude** to the Panelists who have given valuable insight on the important aspects of the topic on the issues of “Principle of Complementarity” and on the “Crime of Aggression”.
3. **Encourages** Member States which are not yet party to consider ratifying/acceding to the Rome Statute and on ratification/accession consider adopting necessary implementing legislation.
4. **Further encourages** Member States that have ratified the Rome Statute to consider becoming party to the Agreement on the Privileges and Immunities of the International Criminal Court.
5. **Directs** the Secretariat to follow up the deliberations in the forthcoming Ninth Session of the Assembly of States Parties and its meetings, and follow the developments regarding cases taken up by the International Criminal Court, and present a report at the Fiftieth Annual Session.
6. **Requests** the Secretary-General to establish a working group of experts in particular on implementing principles of complementarity at the national level and also conduct a study on the issues relating to the International Criminal Court.
7. **Further requests** the Secretary-General to consider the possibility of convening of a Workshop in collaboration with the International Criminal Court in Kuala Lumpur specifically for the non-State Parties to the Rome Statute of the International Criminal Court.
8. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.

**AALCO/RES/49/SP 2**

**8 AUGUST 2010**

**XV. RESOLUTION ON THE SPECIAL MEETING ON  
“ENVIRONMENT AND SUSTAINABLE DEVELOPMENT”**

*The Asian-African Legal Consultative Organization at its Forty-Ninth Session,*

**Considering** the Secretariat Document No. AALCO/49/DAR ES SALAAM/2010/S 10;

**Noting with** appreciation the views expressed by the President, the Deputy Secretary-General and the Panelists and the statements of Member States during the Special Meeting on “Environment and Sustainable Development” jointly organized by the Government of Tanzania, the International Council of Environmental Law and the AALCO Secretariat on 7 August 2010 at Dar es Salaam, the United Republic of Tanzania;

**Deeply concerned** with the deteriorating state of the global environment through various human activities, and unforeseen natural disasters;

**Reaffirming** that environmental protection constitutes an integral part of sustainable development;

**Welcoming** the adoption of the Johannesburg Declaration on Sustainable Development and the Plan of Implementation at the World Summit on Sustainable Development, held at Johannesburg in 2002;

**Further welcoming** the World Summit 2005 Outcome document adopted by the high level Plenary of the Sixtieth Session of the United Nations General Assembly;

**Recalling** the Nairobi Resolution on Environmental Law and Sustainable Development adopted by the Forty-Fourth Session of AALCO in 2005;

**Underlying** that climate change is one of the greatest challenges of our time;

**Emphasizing** that strong political will to combat climate change in accordance with the principles of the United Nations Framework Convention on Climate Change, especially the principle of common but differentiated responsibilities and respective capabilities is essential;

**Recognizing** the importance of the on-going Bali Road-Map negotiations for stronger international cooperation on climate change for the period beyond 2012;

**Considering** the Copenhagen Accord of which the United Nations Climate Change Conference held at Copenhagen, Denmark from 7 to 9 December 2009, took note;

**Hoping** that the United Nations Climate Change Conference, scheduled to take place at Cancun, Mexico from 29 November to 10 December 2010 would be able to achieve positive outcome for the Bali Road-Map negotiations;

**Taking note** of the legal instruments within the framework of the African Union, including the Revised version of the African Convention on Nature and Natural Resources adopted by the Assembly of the African Union on 11 July 2003 for the protection of environment and sustainable development;

**Appreciating** the efforts made by the International Council of Environmental Law in preparing the draft of the International Covenant on Environment and Development;

**Conscious** of the importance of the conservation of biological diversity for evolution and maintaining life-sustaining systems of the biosphere;

**Affirming** the importance of the United Nations Convention to Combat Desertification:

1. **Commends** the Government of the United Republic of Tanzania, the International Council of Environmental Law and the AALCO Secretariat for earnest efforts in organizing the Special Meeting on “Environment and Sustainable Development”.
2. **Expresses gratitude** to the Panelists who have given valuable insight on the important aspects of the topic on the issues of “Climate Change”, the revised version of the African Convention on Nature and Natural Resources and the draft of the International Covenant on Environment and Development.
3. **Urges** Member States to actively participate in the on-going Bali Road-Map negotiations.
4. **Welcomes** the draft of the International Covenant on Environment and Development.
5. **Requests** the Secretary-General of AALCO in consultation with ICEL to develop a programme of work in the field of Environmental Law and Sustainable Development within the framework of the Memorandum of Understanding signed between the AALCO and the International Council of Environmental Law.

6. **Directs** the Secretariat to follow the on-going Bali Road-Map negotiations for stronger international cooperation on climate change for the period beyond 2012.
7. **Further directs** the Secretariat to continue to follow up the progress in the implementation of the outcome of the Johannesburg Summit as well as follow up the progress in the implementation of the United Nations Framework Convention on Climate Change, Convention on Biological Diversity, and the United Nations Convention to Combat Desertification.
8. **Decides** to place this item on the provisional agenda of the Fiftieth Annual Session.



**XVI. LIST OF PARTICIPANTS AT THE  
FORTY-NINTH ANNUAL SESSION OF AALCO**

1. Arab Republic of Egypt

H.E. Mr. Mamdouh Mareey  
Minister of Justice  
Ministry of Justice of the Arab Republic of Egypt

Mr. Hatem Begato  
Deputy Chairman of Supreme High Court  
Arab Republic of Egypt.

Mr. Ahmed Shehab  
Counsellor  
Ministry of Foreign Affairs  
Legal Department,  
Arab Republic of Egypt.

Ms. Fatma Hassan  
First Secretary,  
Embassy of the Arab Republic of Egypt  
Dar es Salaam.

Mr. Magdy Kiresha  
Counsellor  
Embassy of the Arab Republic of Egypt  
Dar es Salaam

Amr Abdelmoaty Abdel Rehim  
Judge, Member of the Minister's Technical Office  
Arab Republic of Egypt.
2. Kingdom of Bahrain

Mr. Fathi Jasim Alsabt  
Second Secretary  
Legal Directorate, Ministry of Foreign Affairs  
Kingdom of Bahrain.
3. Brunei Darussalam

The Honourable Datin Paduka Hayati Salleh (Mrs.)  
Attorney General

Mrs. Nor Hashimah Md. Taib  
Principal Counsel

Mr. Ak Liyan Pg Mohammad  
Legal Counsel

Mrs. Helyati Mahmud Saedon  
Legal Counsel

Mr. Pg Indera Jaya Shamsu  
First Secretary/Deputy Chief of Mission  
C/o High Commission of Brunei Darussalam  
New Delhi. (India)

4. People's Republic of China

Mr. Xu Hong  
Head of Delegation  
Deputy Director General  
Department of Treaty and Law, Ministry of Foreign  
Affairs, China.

Mr. Tan Qingsheng  
First Secretary  
Embassy of China in India

Mr. Xiang Xin  
Deputy Director,  
Department of Treaty and Law  
Ministry of Foreign Affairs, China.

Ms. Yu Ning  
Deputy Director  
Ministry of Commerce, China.

Ms. Zhou You  
Third Secretary  
Department of Treaty & Law  
Ministry of Foreign Affairs, China.

Mr. Lin Jiecheng  
Desk Officer,  
Department of Treaty & Law  
Ministry of Foreign Affairs, China.

5. The Gambia

Hon'ble Edward Anthony Gomez  
Attorney General and Minister of Justice of the  
Gambia  
Ministry of Justice, Marina Parade  
Banjul, The Gambia

6. Ghana

Hon'ble Mr. Betuuriseeh Cab-Beyuo  
Chief State Attorney  
P. O. Box MB.60, Accra

Ghana.

Mr. Afia Serwah Asare-Botwe  
Principal State Attorney  
P. O. Box M 60, Accra  
Ghana.

7. India

Dr. M. Gandhi  
Director, Legal and Treaties Division,  
Ministry of External Affairs  
New Delhi.

8. Indonesia

Mr. Diar Nurbintoro  
Director for Legal Affairs  
Ministry of Foreign Affairs.

H.E.Mr. Yudhistiranto Sungadi,  
Ambassador of Indonesia to Tanzania

Mr. Syahda Guruh L. Samudera  
Directorate General of Legal Affairs and  
International Treaties, MFA

Ms. Ave Maria Sihombing  
Directorate General of General Law Administration,  
Ministry of Law & Human Rights

Mr. Ricardo S. Ruru  
Directorate General of Legal Affairs and  
International Treaties, MFA

Mr. Rangga Yudha Nagara  
Directorate General of Legal Affairs and  
International Treaties, MFA

Mr. Aufia Widodo  
Directorate General of General Law Administration  
Ministry of Law & Human Rights.

Mr. Hanafi Athena  
Staff  
Embassy of Indonesia, Tanzania.

9. Islamic Republic of Iran

H.E. Amb. Hossein Panahi Azar  
Director General  
International Legal Affairs

Ministry of Foreign Affairs

Prof. Djamchid Momtaz  
Legal Adviser, Ministry of Foreign Affairs

Mr. Bahram Heydari  
Legal Expert, Ministry of Foreign Affairs.

Mr. Mohsen Movahedi  
Ambassador of the Islamic Republic of Iran  
Dar es Salaam, Tanzania.

Mr. Zakaria Motevali  
Counsellor  
Embassy of the Islamic Republic of Iran  
Dar es Salaam

10. Iraq

Mr. Jalal Naser Hassan Al-Kazali  
Official in the Legal Department  
Ministry of Foreign Affairs.

11. Japan

Mr. Yasuji ISHIGAKI  
Special Assistant to the Minister for Foreign Affairs  
(Amb.)  
Ministry of Foreign Affairs,  
Japan.

Mr. Shinya MURASE  
Professor, Sophia University Faculty of Law  
Japan.

Mr. Ken SAKAGUCHI  
Official, International Legal Affairs Division,  
MOFA  
Ministry of Foreign Affairs,  
Japan.

Mr. Takashi SHIBATA  
Second Secretary  
Embassy of Japan in India.

12. Republic of Kenya

Mr. Wanjuki Muchemi, CBS  
Solicitor General

Ms. Njeri wachira Mwangi  
Senior Dept. Chief State Counsel

Mr. Eliphas M. Barine,  
Senior Counsellor (P)  
Kenya High Commission, New Delhi

Mr. Ahmed M. Mohamed  
State Counsel

Ms. Catherine Nyakoe  
Third Secretary

13. Republic of Korea

Mr. Kyungwha BACK  
Second Secretary  
Ministry of Foreign Affairs and Trade  
Republic of Korea.

Mr. Dongeun CHUNG  
Deputy Director General  
Ministry of Foreign Affairs & Trade  
Seoul, Republic of Korea.

14. Democratic People's  
Republic of Korea

H.E. Mr. Hui Jong An  
Ambassador of the Democratic People's Republic  
of Korea  
Dar es Salaam

Mr. Hak Chol Ri  
Secretary  
Democratic People's Republic of Korea

15. State of Kuwait

H.E. Mr. Abdul Aziz Majid Al-Majed  
Assistant Under Secretary (Administration &  
Finance)

Mr. Hani Ali Al-Sebaee  
Legal Researcher

Mr. Muhammad Jassim Al-Qassar  
Legal Researcher

Mr. Saad Sultan Al-Ajami  
Diplomatic Attache  
Legal Department of the Ministry of Foreign  
Affairs

16. Malaysia

The Honorable Tan Sri Abdul Gani Patail

Attorney General of Malaysia

Datuk Azailiza Mohd. Ahad  
Head of the International Affairs Division  
Attorney General's Chambers

Mr. Mohd. Radzi Harun  
Deputy Head II, International Affairs Division  
Attorney General's Chambers

Mr. Azmir Shah Zainal Abidin  
Unit Head, International Affairs Division  
Attorney General's Chambers

17. Federal Republic of Nigeria

Mr. Ahmed Abdullahi Yola  
Leader of Delegation  
Solicitor General of the Federal Republic of Nigeria

Mrs. Ifeyinwa Rita Njokanma  
Deputy Director,  
International Law Department  
Alternate Member  
Federal Ministry of Justice  
Abuja, Nigeria

Mr. Olatunde Busari  
Special Assistant to the Attorney General  
Federal Ministry of Justice  
Abuja, Nigeria.

Mr. Abdullahi Sheshi Umar  
Chief State Counsel  
Federal Ministry of Justice  
Abuja, Nigeria

Mr. Macaulay UDO Williams  
Asstt. Chief Legal Officer  
Federal Ministry of Justice  
Abuja, Nigeria.

18. Sultanate of Oman

H.E. Mohamed Ali Al-Alawi  
Minister of Legal Affairs

H.E. Yahya Moosa Al-Bakri  
Ambassador of the Sultanate of Oman to the  
United Republic of Tanzania

Ms. Suad Mohamed Al-Lamki  
Principal Legal Advisor  
Ministry of Legal Affairs

Mr. Said Ali Al-Riyami  
Counsellor,  
Ministry of Foreign Affairs

Mr. Saif Nasser Al-Humaidi  
Head of the Minister's Office  
Ministry of Legal Affairs.

Mr. Ahmed Khalifa Al-Hosni  
Assistant Advisor and Director of Legislation  
Ministry of Legal Affairs

Ms. Sarah Hamad Al-Sharji  
Senior Legal Researcher and Head of Treaties and  
International Cooperation  
Ministry of Legal Affairs

19. Pakistan

Mr. Najeeb Durrani  
Deputy High Commissioner for Pakistan  
Dar es Salaam, Tanzania.

20. State of Qatar

Mr. Mohd. Fahad Al Qahtani  
Head of Legal Opinion and Researcher  
Qatar.

Mr. Mohammed Rajab Taqi  
Legal Researcher  
State of Qatar, Doha.

21. Kingdom of Saudi Arabia

Mr. Al-gfari Mansour Abdulrahman  
Judge & Advisor in the Ministry of Justice  
(Head of Delegation)

Mr. Mohammad A M Al Shammari  
Director of the Legal Department  
Ministry of Foreign Affairs

Mr. Mohammed Abdulaziz Al-Mutairi  
Director of the Legal Affairs,  
Ministry of Interior

Mr. Ababtain Saud Abdullah  
Asstt. Director of Public Relation  
Ministry of Justice

Mr. Nasser M. Al Mubarak  
Ministry of Interior  
Directorate of International Cooperation

Mr. Mohamed A Al Yousef  
Office of the Deputy Minister for  
Judicial Affairs  
Ministry of Justice.

22. Somalia

H.E. Mr. Ahmed Ali Abdikarim  
Minister of Justice & Judiciary Affairs  
Mogadishu, Somalia.  
(Head of Delegation)

Mr. Mohamed Dirie Elmi  
Charge'd Affaires  
Embassy of the Somali Democratic  
Dar es Salaam, Tanzania.

Mr. Mohamed Aden Sharmarke  
Second Secretary  
Embassy of the Somali Republic,  
Dar es Salaam.

23. Sudan

Mr. Abu Eljasim Omar Ali  
Diplomat  
Embassy of Sudan  
Dar es Salaam.

24. Democratic Socialist Republic  
of Sri Lanka

Mr. Priyasath Gerard DEP PC  
Solicitor General of Sri Lanka  
Head of Delegation

Ms. Dilhara Amerasinghe  
Additional Secretary (Legal)  
Ministry of Justice

Mrs. Nelum Mayadunne  
Acting Legal Adviser  
Ministry of External Affairs, Colombo, Sri Lanka.

25. Republic of South Africa

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