



AALCO
Asian-African Legal Consultative Organization
Forty-Ninth Annual Session
5 – 8 August 2010
Dar es Salaam, United Republic of Tanzania

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 5th 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 15th 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 advise 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 306th 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 5th, 6th, 7th and 8th 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 2nd 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 31st May to 2nd 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. Pakiso 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 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 1st 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 65th 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**¹ 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).
- 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

¹ Statement made in Arabic: Unofficial translation from the interpreter’s version.

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 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 20006, 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 (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.
- 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 made 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 25th 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 5th 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 5th 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"

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.