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**AALCO**  
**Asian-African Legal Consultative Organization**  
**Forty-Seventh Headquarters Session**  
**30 June – 4 July 2008**  
**New Delhi**  
**Republic of India**

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**SUMMARY REPORT**  
**OF THE FORTY-SEVENTH ANNUAL SESSION**  
**OF THE**  
**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**

**1. Introduction**

- 1.1 The following 39 Member States participated in the Forty-Seventh Annual Session of the Asian-African Legal Consultative Organization (hereinafter "the Session"): Arab Republic of Egypt, Bahrain, Bangladesh, Brunei Darussalam, Republic of Cameroon, People's Republic of China, Cyprus, Ghana, India, Republic of Indonesia, Islamic Republic of Iran, Iraq, Japan, Jordan, Republic of Kenya, Democratic People's Republic of Korea, Republic of Korea, State of Kuwait, Libya, Malaysia, Mauritius, Myanmar, Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, State of Qatar, Kingdom of Saudi Arabia, Singapore, Republic of South Africa, Sri Lanka, Sudan, Syrian Arab Republic, Tanzania, Thailand, Turkey, Uganda, United Arab Emirates and Republic of Yemen.
- 1.2 The following Regional Arbitration Centres of AALCO were also present: Cairo Regional Centre for International Commercial Arbitration, Lagos Regional Arbitration Centre, and Tehran Regional Arbitration Centre.
- 1.3 In accordance with Rule 18 of the present Statutory Rules of the Asian-African Legal Consultative Organization, the following observers were admitted to the Session:
- (i) Representatives of the following non-Member States: Greece, Laos, Morocco, Russian Federation and Tunisia.
  - (ii) Representatives of the following regional, inter-regional and international organizations, specialized agencies and subsidiary bodies: International Committee of the Red Cross (ICRC), International Law Commission (ILC), International Tribunal for the Law of the Sea (ITLOS), League of Arab States, United Nations Office for Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR) and United Nations Educational, Social and Cultural Organization (UNESCO). The Indian Council for Arbitration also attended the meeting.

## 2. Inaugural Session

2.1 The Session commenced on 30<sup>th</sup> June 2008 with the President of the Forty-Sixth Session of AALCO Her Excellency Mrs. Brigitte Sylvia Mabandla calling the Forty-Seventh Session of AALCO to order.

2.2 **His Excellency Amb. Dr. Wafik Zaher Kamil, Secretary-General of the Asian-African Legal Consultative Organization** welcomed all the delegates to the Session and thanked **His Excellency, Dr. Hansraj Bharadwaj, Union Minister for Law and Justice, Government of India** for agreeing to inaugurate the Headquarters Session. His gracious presence once again reassured the Organization of India's prominent role in the establishment, development and continued support, of the Indian Government to AALCO. In addition, he thanked the Government of India, for its generosity in gifting to AALCO its Permanent Headquarters Building, located in the prestigious Chanakyapuri Diplomatic Enclave in New Delhi.

The Secretary-General stated that the year 2008 marked the completion of 52 years of the establishment of AALCO. In this period, the Organization had participating through its Member States, contributed immensely to a number of international legal regimes with which the Asian-African States were most concerned. Some of the recommendations that AALCO had made for instance, in the context of law of diplomatic relations, law of the treaties, law of the sea, found its way into the international legal instruments adopted on the subject, namely the Vienna Convention on Diplomatic Relations 1961, Vienna Convention on the Law of the Treaties 1969 and the United Nations Convention on the Law of the Sea 1982 respectively. Furthermore, the contribution of AALCO in some other important areas of international law, for instance, the Refugee Law, International Humanitarian Law, Environment Law, Trade Law, and Migration Law was quite significant and remained well documented.

As the Forty-Seventh Annual Session happened to be his last as the Secretary-General of AALCO, he took the opportunity to thank the Member States for their constant encouragement, guidance and support to him. The able and dedicated Secretariat Staff helped him immensely in completing his mandate successfully and in his endeavors to take the Organization to greater heights.

2.3 **Her Excellency Mrs. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development, Republic of South Africa and President of the Forty-Sixth Session of AALCO** stated that the Forty-Seventh Session of AALCO was taking place at the time when countries in the world, especially developing countries in Asia and Africa were faced with challenges of economic depression, food shortages and price escalations, and inadequate energy supplies. These challenges were a drawback in realizing the Millennium Development Goals, particularly, the alleviation of poverty. Furthermore, these challenges were aggravated by the collapse of the Doha round of talks in the World Trade Organization (WTO). At this juncture, it was more than important for the developing countries of Asia and Africa, that they must recall the spirit of the 1955 Bandung Conference, that required them to join hands and exert their energy to contribute in finding solutions to the current world challenges. She observed that armed conflict, organized crime and terrorism remained challenges of the world. Since some challenges relate to international legal issues, which were of common concern to Asian-African countries, AALCO had a role to play. Member States had since the inception of AALCO, in 1956, striven hard to ensure that these issues were well deliberated in the Organization and thereafter effectively linked into the

International Law-Making process within the forums of the United Nations or its Specialized Agencies or other Intergovernmental Organizations. Despite its diversity in terms of varying cultures and legal systems of its Member States, AALCO had managed to contribute towards the development of new international legal norms, particularly in the field of the law of the sea and other significant areas of international law.

She observed that one of the significant achievements, since the 2006 Cape Town Session, was that the AALCO Secretariat had started functioning from its Permanent Headquarters Building, since April 2008. In this regard, she thanked the Government of India, on behalf of all the Member States of AALCO, on behalf of the Government of Republic of South Africa and on her own behalf, for the gift of the Permanent Headquarters building and the Secretary-General's Residence to AALCO with excellent facilities. She hoped that this would certainly accelerate and revitalize the activities of AALCO with a renewed commitment. She congratulated the Secretary-General, Ambassador Dr. Kamil, for sparing no efforts in ensuring a fully functional headquarters, which met standards required for the Headquarters of an International Organization, and also for successful shifting and functioning from it.

- 2.4 **His Excellency Dr. Hansraj Bharadwaj, Union Minister for Law and Justice, Government of India** in his Inaugural Address welcomed all the delegates to his country, an example of unity in diversity. He observed that India had been a meeting place for all faiths. It was their proud privilege that they had lived in peace and accord and that members of all faiths enjoyed freedom in India.

Mr. Bharadwaj noted that the countries of Asia and Africa had suffered for long under foreign domination. Since now such foreign rule had ended, the time for Asia and Africa had come to occupy centre stage in global affairs and embark upon the path of progress with peace and accord.

**Mr. Bharadwaj** stated that the activities of AALCO had been broadened from time to time to keep pace with the needs and requirements of its Member States. This had been essentially so in the recent years in the field of international trade law matters and economic relations. AALCO was the only organization at intergovernmental level embracing two continents of Asia and Africa, which had oriented its activities to complement the work of United Nations in several areas. It was a matter of common knowledge that in the light of Organization's growing stature and functions, it was accorded a permanent observer status in the United Nations.

- 2.5 The **Vote of Thanks** was delivered by **Mr. Narinder Singh, Joint Secretary and Legal Adviser, Ministry of External Affairs, Government of India** and the President of the Forty-Fifth Session of AALCO. He thanked the Chief Guest Mr. Bharadwaj for delivering an inspiring address. He also thanked Mrs. Brigitte Mabandla for her outstanding leadership of the Organization over the last one-year. He stated that the countries of Asia and Africa shared a common past and AALCO should address the concerns of both the continents. He thanked the Secretary-General, the Deputy Secretaries-General and the Staff of the Secretariat for their work. He recalled the outstanding contribution made by the Secretary-General Dr. Kamil in overseeing and guiding the work of AALCO. He appreciated the contribution made by Dr. Kamil in reviewing constantly the progress of work of AALCO's Permanent Headquarters Building. Since, this was the last Session of Dr. Kamil as Secretary-General, he wished that it would not mark an end of his association with AALCO. He thanked him for all his endeavors. He also thanked the Secretary-General, Deputy Secretaries-General and

the Secretariat, for the excellent arrangements for the Session, and especially for the documentation prepared for the Session that would be helpful in the course of deliberations. Finally, he thanked all the delegates for participating in the Session.

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

#### **3.1 Agenda:**

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

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

1. Consideration and adoption of 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 the AALCO
6. Election of Secretary-General
7. Report on the AALCO's Centre for Research and Training (CRT)
8. Report on the Work of the AALCO's Regional Arbitration Centres
9. Report on the AALCO Headquarters Building
10. Venue of the Forty-Eighth Session

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

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

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

1. Law of the Sea
2. 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
3. International Terrorism
4. Extraterritorial Application of National Legislation: Sanctions imposed against third parties

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

1. Environment and Sustainable Development
2. The International Criminal Court: Recent Developments
3. An Effective International Legal Instrument Against Corruption

##### **V. One day AALCO-ICRC Special Meeting on "Contemporary Issues in International Humanitarian Law"**

##### **VI. Any Other Matter**

- 3.2 ***Election of President and Vice-President:*** The Secretary-General **Amb. Dr. Wafik Z. Kamil** stated that normally the President elected for the Session was one of the high-ranking officials from the host country. However, this being a Headquarters Session the Secretary-General outlined that there were three options which could be exercised by the current President of the Forty-Sixth Session: (a) continuance by the President and Vice-President in office for another year; (b) to share the Presidency with the host country of the Organization; or (c) handing over the Presidency to the host country of AALCO (India). **Her Excellency Mrs. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development and President of the Forty-Sixth Session,**

stated that it would indeed be an honour for her to continue as the President of AALCO, however, she wished to hand over the Presidency to India and therefore, proposed the name of **His Excellency Mr. Narinder Singh, Joint Secretary, Legal and Treaties Division and Legal Adviser, Ministry of External Affairs, Government of India** as President of the Forty-Seventh Session. Thereafter, Mr. Singh was elected by acclamation.

The **Leader of the Delegation of Japan** proposed the name of **His Excellency Mr. Wanjuki Muchemi, the Solicitor General of the Republic of Kenya** to be the Vice-President of the Session. The proposal was seconded by the **Leader of Delegation of Republic of South Africa**, following which Mr. Muchemi was elected as Vice-President. Thereafter, the newly elected President and Vice President assumed their position on the dais..

- 3.3 **The President of the Forty-Seventh Session, Hon'ble Mr. Narinder Singh, Joint Secretary and Legal Adviser to the Ministry of External Affairs** in his statement after election, thanked the outgoing President Her Excellency Ms. Brigitte Sylvia Mabandla for her able leadership during the past year. The President observed that his Government, together with other African Member States of AALCO, would encourage more countries from the African continent to join AALCO. The Organization was not only an important professional body, but also a platform for friendship and solidarity.
- 3.4 **Admission of Observers:** The Admission of Observers to the Session, pursuant to Statutory Rule 18(1), was unanimously approved.
- 3.5 **Report of the Secretary-General on the Work of AALCO: Amb. Dr. Wafik Zaher Kamil** stated that as following the completion of his mandate, this was his last Report; therefore, he wished to take the opportunity to express his gratitude to the Member States for entrusting him with the responsibility of steering AALCO's activities since his appointment in May 2000. He recounted the following five important milestones attained during the course of his tenure: (i) the decision by the Member States, at the Fortieth Session in 2001, based upon his proposal, to upgrade the then Asian-African Legal Consultative Committee (AALCC) into a full-fledged International Organization, namely the Asian-African Legal Consultative Organization; (ii) the inauguration of the Permanent Headquarters Building of the Organization, after several years spent in its finalization by His Excellency Mr. Anand Sharma, Minister of State for External Affairs, Government of India, on 6<sup>th</sup> April 2006, during the Forty-Fifth Golden Jubilee Session of the Organization; (iii) Adoption of the Revised Bangkok Principles relating to Status and Treatment of Refugees in 2001; (iv) the commencement of the functioning of the Secretariat from the AALCO's Permanent Headquarters Building from April 2008; and (v) Revision and adoption by Member States of the Statutes of AALCO.

Further, the Secretary-General elaborated about the success achieved, following the adoption of the rationalization policy of consideration of substantive items on AALCO's agenda by categorizing them into deliberated and non-deliberated categories and outlined salient aspects of the non-deliberated topics, namely (1) The Status and Treatment of Refugees; (2) Legal Protection of Migrant Workers; (3) Report on the work of UNCITRAL and other International Organizations in the field of International Trade Law; (4) WTO as a Framework Agreement and Code of Conduct for World Trade; and (5) Expressions of Folklore and its International Protection, on the agenda of the Forty-Seventh Session. He also highlighted the importance of the Drafting Committee in finalizing the preparation of documents for adoption by the Member States, on the concluding day of the Session.

As regards the activities of the Organization, since the Forty-Sixth Session the Secretary-General, *inter alia* mentioned about presenting before the International Law Commission, in July 2007, the crux of the views of AALCO Member States during their deliberations at the Forty-Sixth Session and the convening of the Meeting of Legal Advisers of AALCO Member States and the Joint AALCO-ILC meeting at the United Nations Headquarters, in New York, on 5<sup>th</sup> November 2007. He also mentioned about his and Deputy Secretary-General Dr. Xu Jie's participation at the thirtieth anniversary of the Kuala Lumpur Regional Arbitration Centre of AALCO on 7<sup>th</sup> and 8<sup>th</sup> April 2008; Deputy Secretary-General Dr. Xu Jie's participation in the workshop on "The Role of International Tribunal for the Law of the Sea in the Settlement of Disputes relating to the Law of the Sea in the Gulf Area", held in Bahrain from 4<sup>th</sup> to 6<sup>th</sup> February 2008; and Deputy Secretary-General Amb. Tabatabaei Shafiei's participation in the "Non-Aligned Movement Ministerial Meeting on Human Rights and Cultural Diversity, held in Tehran, Islamic Republic of Iran, from 3<sup>rd</sup> to 4<sup>th</sup> September 2007.

- 3.6 **Budget:** The **Secretary-General** stated that unfortunately the financial position of the Organization was very tight. Several factors, such as rising inflation, fluctuation in the rates of US dollar vis-a-vis Indian rupee; rising arrears of contribution of some Member States; and no change in the scale of contribution made by Member States were some of the factors contributing to that difficult position. He emphasized that AALCO was a non profit Organization and was totally dependent as regards its activities on the contributions received from the Member States for fulfilling its mandate. On his part, he had done his best to streamline the expenses of the Organization and reduce the budgetary deficit to a great extent. He urged upon the Member States to find practical ways in dealing with this situation, particularly, as regards the non-paying Member States. He stressed that a State was admitted to the Organization, by Member States, only after it met the following two criteria: one, full respect for the Statute and Statutory Rules of AALCO; and two, commitment to pay its contribution on time. As regards the Budget for the year 2009, it was the Budget for the next year, and it would therefore be appropriate that the appointed Secretary-General, in consultation with the Liaison Officers studies the problem and finalizes the Budget and seeks the approval of the Member States at the Forty-Eighth Session of the Organization.

The **Delegate of Japan** stated that as an original member of the AALCO, Japan had constantly supported the activities of the Organization and made big financial contribution. Japan was of the view that the activities of the AALCO should be meaningful and efficient and towards that end it would like to work with the other members of the AALCO and the Secretariat to settle the financial problems of the Organization. In this regard, the delegation made following three points: First, it urged the Secretariat to continue its efforts to demand the member countries to honour their financial commitment. Second, rationalization of the expenditure of the Organisation by cutting the expenses that is no longer necessary. The Secretariat had been doing this work and he hoped that this effort would continue under the stewardship of the new Secretary-General. Third, the Organization should consider a more effective external auditing system for sound financial management. This would be beneficial to the Member States as well as to the Secretariat in the long term.

His delegation was not advocating reducing the scope of AALCO activities. Rather it wished that the AALCO should increase its influence in the field of international law. To that end, the delegation believed that the Organization should always consider where the competitive advantage of the Organization is and shift its limited resources to the most desired activities.

- 3.7 ***Election of Secretary-General:*** Following Article 3 of the Statutes of AALCO (Revised and adopted at Bali Session 2004) and Rule 20 (1) of the Statutory Rules of the Organization, the Forty-Seventh Annual Session was mandated to elect a new Secretary-General. Following an invitation from the President, the three candidates for the post, namely **Amb. Dr. Ali Reza Deihim (Islamic Republic of Iran), Professor Dr. Rahmat Mohamad (Malaysia) and Mr. Shair Bahadur Khan (Pakistan)** outlined their vision in steering the activities of the Organization. The President then called upon the delegations of Member States to make all efforts towards achieving a consensus candidate. Upon consultations, the President found that there being no possibility of consensus, he called for an indicative voting to arrive at a consensus candidate.

Thereafter, two rounds of indicative voting took place, where the Heads of Delegations of the 37 Member States present cast their votes. After the counting of the votes in the two rounds were complete, Prof. Dr. Rahmat Mohamad secured the maximum votes. The President then announced to the Session that Prof. Dr. Rahmat Mohamad was appointed Secretary-General by consensus for a four-year term. The Meeting of Delegations endorsed the appointment of Prof. Dr. Rahmat Mohamad as the Secretary-General by acclamation.

- 3.8 ***Report on AALCO's Permanent Headquarters Building:*** The Secretary-General of AALCO while introducing the item informed that the AALCO Secretariat had started functioning from the new Headquarters Building since April 2008. He said that the shifting to the new Headquarters Building marked a new beginning in the history of AALCO. He informed that after occupying the Building the Secretariat had to meet the full expenditure that could be incurred in the maintenance and up-keeping of the Building and this had to be met from the regular budget of AALCO. He drew the attention of the Member States to some of the immediate expenditures in the Building. He noted that the new Secretary-General could shift to the Secretary-General residence only after furnishing it, which had not been done yet. Otherwise, he would have to shift to a rented house or to a hotel. A way out could be to identify a company to furnish the whole building of the Residence and the Secretariat could pay for it in five or six installments. In pursuance to that, he informed that a tender was invited to furnish the whole Residence and one company had agreed and this could be finalized soon. He further stated that it was estimated that the maintenance cost for the whole building (civil and electrical works) would amount to approximately USD 100,000 (Rs. 40 lakhs), which was almost half of the budget of AALCO. The offer was however rejected. Further, there was a need to recruit more administrative and support staff for the function of the Secretariat. All these expenditures were far beyond the scope of the Organization's current budget which was stagnant for the last 15 years.

The Secretary-General noted that keeping in view the heavy burden on the Organization and taking into consideration the financial situation, the Secretariat had requested support from its Member States in the form of revision of scale of assessment, clearing of arrears and through voluntary contributions. In this regard, he thanked the People's Republic of China for providing the AALCO Secretariat with eight desktop computers, three Laptops, two cameras and a special Wall Carpet. He also informed that the Delegation of State of Kuwait had finalized the gift to the Secretariat.

- 3.9 ***Report on AALCO's Centre for Research and Training:*** Dr. Xu Jie, Deputy Secretary-General of AALCO while introducing the item stated that in pursuance of the resolution RES/46/ORG 4 adopted at the Forty-Sixth Session held in Cape Town in 2007 recalled

that the Centre for Research and Training (CRT), was functioning in the Secretariat of AALCO since November 2001. A publication titled *'Fifty Years of AALCO: Commemorative Essays in International Law'* was released during the Forty-Sixth (Cape Town) Session in 2007. Apart from these studies, a special study, namely: *'Definition of Aggression: An Analysis'*, could be published in future. The DSG said that in accordance with the assigned mandate, the website of the AALCO had been significantly modified, upgraded and updated in order to make it more user-friendly, interactive and informative. As part of its revitalization process, a new domain name of [www.aalco.int](http://www.aalco.int) had been assigned to the AALCO's website recently. In this context, he requested all the Member States to provide information and other relevant materials, including the name and address of the focal point with e-mail and URL of the Ministry concerned and Officials in charge of AALCO, in their respective governments as well in New Delhi.

In pursuance of the key objectives of the CRT to impart training to the officials from the Member States, he said that the CRT could plan to organize training programmes and seminars in cooperation with other international organizations. Towards achieving this objective, he said that the Secretariat had prepared a draft proposal of the training programme and elaborated it in the Secretariat document. While the infrastructure, in terms of Seminar and Conference rooms with modern facilities and equipments were provided by the Government of India in the new Headquarters Building, the operational cost of the CRT was still dependent on the regular budget of the AALCO. The DSG noted that keeping in view that the Secretariat had shifted to its new Headquarters Building, the Member States were requested to fund adequately the 'CRT Fund' in order to facilitate its future activities effectively. He also welcomed the Member States to provide the Secretariat with necessary directions and recommendations and could also suggest topics of common interest and concern for conducting in-depth research studies.

#### 4. First and Second General Meetings

- 4.1 Delegations from the following Member States made statements during the First and Second General Meeting: **Pakistan, Malaysia, Sultanate of Oman, the Republic of Kenya, Sri Lanka, the State of Kuwait, the United Arab Emirates, the People's Republic of China, Ghana, Japan, Nepal, Uganda, Thailand, the Republic of Indonesia, the Islamic Republic of Iran, Arab Republic of Egypt, Republic of Korea, Democratic People's Republic of Korea, Myanmar, Republic of South Africa, Nigeria, Brunei Darussalam, the Republic of Yemen and India.** Observer delegate **League of Arab States** also made a general statement.
- 4.2 All the States congratulated the President H.E. Mr. Narinder Singh and the Vice-President Mr. Wanjuki Muchemi of the Forty-Seventh Annual Session of AALCO on their election. The delegates congratulated Prof. Dr. Rahmat Mohamad, Professor of Law and Deputy Vice-Chancellor on his election as the Secretary-General of AALCO. They endorsed their full support for the new Secretary-General. The delegates also appreciated the efforts and dedication of the outgoing Secretary-General Amb. Dr. Wafik Z. Kamil in taking AALCO to greater heights.
- 4.3 The Member States congratulated the Organization on shifting to the new Headquarters Building. They said that this would begin a new era in the effective functioning of the Secretariat. They appreciated the efforts of the Secretary-General and the Secretariat for the well organized preparations for the Session. Many delegates commended the effort of AALCO in galvanizing Asian-African cooperation in the field of international law.



- 4.4 Several delegates stated their positions on the AALCO's agenda and the contributions of their respective countries. They also suggested the ways and means to improve the work and effectiveness of AALCO.
- 4.5 One delegation reiterated that in order to assist AALCO, which is an essential legal institution, to the path of development, their Government has gifted to the new office Building some office equipments. The delegate suggested that AALCO should continue its efforts in developing international legal expertise for Member States and promoting education and research dissemination of international law in Asia and Africa.
- 4.6 Some suggestions to resolve AALCO's financial problems were made by one delegation. These were: the streamlining and reform of the organization is urgently needed like cutting unnecessary expenditures; making the period of the annual session shorter; and introducing an external auditing system for sound financial management. However, they reiterated that it did not mean that the AALCO should reduce the scope of its activities, but instead direct the Secretariat to take a realistic approach to find out some effective measures for a long-desired solution.
- 4.7 On the agenda items, one delegation mentioned that the substantive items found on the agenda of AALCO were of immense significance to all the Member States of AALCO and that the deliberations of those matters during the Sessions were certainly a catalyst for the progressive development and codification of international law. Another Delegation shared the view that the work of AALCO should be reviewed. The agenda of AALCO must be flexible and should not only be driven by standing agenda items but regional and global topical issues. The delegation suggested that some agenda items must give way to other topical issues within the appropriate period. One delegate suggested that an agenda item should be considered thoroughly for only three years and new issues in international law could be taken up for the benefit of the Member States.
- 4.8 Another delegation urged the Member States to form an international legal framework that cares for the compensation for the infringement of interests of developing countries arising in the areas of the Law of the Sea and the Environment and Sustainable Development. Another delegation proposed that the permanent natural resources must be preserved in order to protect the environment. In this regard, AALCO may cater the means and methods to conduct research in protecting technical and scientific resources.
- 4.9 One delegation expressed his deep concern for the Palestinian people, while condemning the Israeli practices against the Palestinians, requested that the Member States for AALCO should make cooperative efforts at different levels in order to support them.
- 4.10 Another delegation urged the Secretary-General to organize an expert meeting in cooperation with WIPO, to facilitate the exchange of views by Member States on the issues of international protection of expressions of folklore including the Draft Agreement for the Protection of Expressions of Folklore prepared by the International Bureau of WIPO. The delegation strongly supported a joint AALCO-WIPO seminar on folklore matters to consolidate the position of Asian-African countries on the substantive aspects of the future international instrument for the protection of folklore.
- 4.11 One delegation stated that the right of his country to peaceful uses of nuclear technology was a clear example of the realization of "the right to development", "permanent sovereign right over natural resources" and "right to self-determination". Such rights were among the fundamental rights of nations and their breach entails

international responsibility for those who have violated them vis-à-vis the nation whose rights have been violated and also towards the international community as a whole.

- 4.12 One delegation was of the view that the International Criminal Court should be committed to the Statute and not political considerations. Another delegation also implored AALCO and its membership to support Uganda's bid to host the ICC Review Conference slated for 2010. Another delegation suggested holding inter-sessional activities on topical issues such as the definition of the Crime of Aggression and the role of the UN Security Council ahead of the 2010 Review Conference of the Assembly of States Parties to the Rome Statute of the ICC.
- 4.13 Another delegation while appreciating the work of AALCO on the issue of Establishing Cooperation against Trafficking in Women and Children observed that, the studies that had been conducted by the Secretariat on this issue very pertinently identified the causes, the consequences and the interface between trafficking and international migration and other related problems in proper light. He added that his own country was looking forward to learn from the initiatives of other Member States of AALCO based on the work of the Secretariat.
- 4.14 One of the delegations while explaining the importance of Asian African solidarity in the present era stated that, the traditional Asian African legal camaraderie was very much prevalent in the context of the negotiations that had taken place in the UNCITRAL Working Group, to develop a new Convention on the Carriage of Goods by Sea, of which he was also a part. He further added that when the developed Countries wanted to have stringent liability for shippers as opposed to carriers that were successfully watered down to a considerable extent by the Asian African solidarity.
- 4.15 Another delegation, while commenting on the issue of terrorism opined that, the evil of terrorism needed to be eradicated in all its manifestations and that it required among other things, cooperation on the part of the international community in general and Asian African States in particular and the urgent need to ratify the relevant legal instruments on the issue of terrorism.
- 4.16 One delegation said that the Forty-Seventh Session of AALCO took place at a time of the world economic depression of food and inadequate energy supplies. Agriculture is key issue in addressing the challenge of food shortage and escalating food prices. In this global food and energy crisis the delegation of the Republic of South Africa suggested for finding a way of dealing with the issue of tariff removal, which acts as a barrier for trade in agriculture and a major factor for the collapse of the Doha (WTO) rounds. Another delegate expressed its wish that AALCO may particularly study the following broad areas on both policy and technical levels and formulate model instruments, among others, the legal and institutional reforms that may be instituted following some members accession to International Organizations such as WTO and regional trade bodies to achieve managed liberalization; legal and administrative reforms necessary for the realization of best practices in investment promotion and facilitation; a legal framework that promotes liberalization while guaranteeing transfer of technology and sustainability and allowable protection of domestic industries; the practical role of government in investment promotion and retention beyond fiscal or financial incentives; and an appropriate legal framework for checking the adverse effects of trade liberalization, particularly dumping and stifling of domestic industry.
- 4.17 A Delegation mentioned that the substantive items found on the agenda of AALCO were of immense significance to all the Member States of AALCO and that the

deliberations of those matters during the Sessions were certainly a catalyst for the progressive development and codification of international law.

- 4.18 While ascertaining the achievements of AALCO over the years, an Observer Delegate stated that the Organization had been able to pool the intellectual resources of both the Asian and African Continents quite successfully, that it had a critical influence on the development of the law of the sea, international human rights law and international trade law.

### **The Third General Meeting**

#### **5. Agenda Item II: International Law Commission**

- 5.1 **Amb. S. R Tabatabaei Shafiei, Deputy Secretary-General (DSG) of AALCO** introduced the item. The DSG briefly presented the report on the work of the Commission at its Fifty-Ninth Session and the first half of the Sixtieth Session. He expressed AALCO's congratulations to the International Law Commission on its Sixtieth Anniversary. He requested that delegates to submit specific comments and observations on the agenda items to facilitate the work of the Commission.
- 5.2 **Dr. Rohan Perara, Representative of the International Law Commission (ILC)** made a statement on behalf of the International Law Commission. In his statement Dr. Perara focused on the current agenda of the Commission, outlining developments covering the Forty-Ninth Session and the first segment of the Sixtieth Session of the Commission.
- 5.3 Other ILC Members present during the Meeting was: Amb. Madam Xue Hanqin from the People's Republic of China, Prof. Maurice Kamto from the Republic of Camaroon and Mr. Narinder Singh from India who was also the President of the Forty-Seventh Session of AALCO.
- 5.4 The delegations from **the People's Republic of China, the Islamic Republic of Iran, Japan, the Republic of Indonesia, Malaysia, and India** made statements on the work of the Commission. The Delegates focussed their interventions on the current work programme of the ILC and highlighted the views and positions of their respective countries on each topic under the consideration: Shared Natural Resources; Responsibility of International Organizations; Reservation to Treaties; Effects of Armed Conflicts on Treaties; The Obligation to Extradite or Prosecute (*aut dedere aut judicare*); Expulsion of Aliens; Protection of Persons in the Event of Disasters" and Immunity of State Officials from Foreign Criminal Jurisdiction. It was suggested that it was important that AALCO Member countries agreed on principles on the discussed topics to consolidate the position of AALCO's common concern. One Member felt that AALCO Members could unite their common position on the issues and could make recommendations and forward its legal position on the issues to the ILC.

The Delegates identified AALCO as a very important forum for exchange of views on the ILC's work among the African and Asian countries. The Delegates appreciated the efforts made by AALCO in disseminating and promoting international law and reiterated their support for a close cooperation between AALCO and ILC. Some felt that there was a need to further enhance the cooperation to much higher level. One Delegate, however, emphasized that it was important for the AALCO to make a timely input of their views regarding the work of the ILC. Another delegate suggested that AALCO could organize workshops on topics currently under the agenda of ILC or future topics which could be in the agenda of that ILC. In that connection it was noted by one of the delegation that AALCO could play a more active role in searching for

new emerging issues. Inputs provided by AALCO would be valuable to the ILC in identifying particular issues outside the main topics already considered by the ILC.

## **6 Agenda Item II: The Law of the Sea**

- 6.1 **Dr. Xu Jie, DSG of AALCO** introducing the Secretariat Report said that it provided an overview of the important developments that had taken place in the institutions established by the United Nations Convention on the Law of the Sea (UNCLOS), since the Forty-Sixth Annual Session of AALCO. It reported on the Nineteenth and Twentieth Sessions of the Commission on the Limits of Continental Shelf (CLCS), Seventeenth and Special Meeting of the States Parties to the UNCLOS, thirteenth session of the International Seabed Authority, and dispute settlement by the ITLOS, since the Forty-Sixth Session of AALCO. In addition, it reported on the Eighth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea and consideration of the law of the sea issues by the Sixty-second Session of the United Nations General Assembly.
- 6.2 The Deputy Secretary-General informed the meeting about the recent election of Mr. Zhiguo Gao of the People's Republic of China, Mr. P. C. Rao of India and Mr. Joseph Akl of Lebanon as Judges of the International Tribunal for the Law of the Sea (ITLOS), the election of Mr. Nii Allotey Odunton of Ghana, as Secretary-General of the International Seabed Authority and congratulated them on behalf of AALCO on their election to that august office.
- 6.3 Dr. Xu highlighted that the Secretariat had identified following three issues for focused deliberations: *first*, question of equitable geographical distribution of seats in the CLCS and the ITLOS; *second*, relevant legal regime for "marine genetic resources" in areas beyond national jurisdiction; and *third*, Right of transit passage through Strait used for international navigation. He requested the Member States amongst other things to reflect their opinion on these points.
- 6.4 **Judge P. C. Rao, Observer from the International Tribunal for the Law of the Sea** made a statement about the activities undertaken in ITLOS. He stated that ITLOS was a Court in whose composition the principle of equitable geographic distribution was given due recognition. A majority of the Tribunal's judges came from the developing countries. He observed that it was well known that the Tribunal's judgments had been accepted and implemented by the Parties without any reservations. This showed the total commitment of the Tribunal to impartial administration of justice within the framework of the Convention. It was widely noted that the Tribunal's Judgments and Orders provided practical solutions to the underlying concerns in cases brought before the Tribunal. The provisional measures prescribed by it often helped the Parties in resolving the main differences between them. However, he noted that ever since its inception in 1996, the Tribunal had dealt with only 15 cases and had not been put to full use. He drew attention to competence of the State Parties to make declarations under Article 297 of the UNCLOS and hoped that the Asian-African States would chose Tribunal as their preferred means, or one of the means, for the settlement of disputes and they would approach the Tribunal for resolving their disputes. He mentioned that the Tribunal had in 2007, established a Chamber for Maritime Delimitation Disputes. He also drew attention towards "A Guide to Proceedings before the Tribunal" issued by the Tribunal's Registry which contained practical information explaining the manner in which cases were instituted and conducted before the Tribunal.

6.5 Delegates of the **Islamic Republic of Iran, India, Japan, Malaysia, Republic of Indonesia, Mauritius, Republic of Korea, People's Republic of China, and Kenya** made statements. The delegations generally reflected upon the three issues identified by the Secretariat. In particular, they welcomed the joint Asian-African proposal pertaining to equitable geographical distribution of seats in the CLCS and ITLOS. Attention was drawn towards the consideration of this proposal during the recently held Eighteenth Meeting of States Parties to the UNCLOS whereby an additional seat for the African and Asian Groups in the CLCS and ITLOS was to be allocated on a rotational basis. This was considered to be a legitimate and reasonable proposal. Since the issue was to be discussed further next year, it was hoped that concerns of Asian-African countries would be seriously considered and consensus would emerge. A delegation (Republic of Indonesia) drew attention towards the implication of UNCLOS to the application of other international law, particularly, international air law. In this context, it proposed that AALCO could include in its agenda the topic of the implication of UNCLOS to the application of the Chicago Convention, its Annexes and international air law instruments, particularly the amendment of Article 2 of the Chicago Convention. It suggested that the AALCO could hold an event to deliberate that topic. Furthermore, the AALCO could communicate its view on this topic to the International Civil Aviation Organization (ICAO) and to the international bodies concerned for their considerations.

## 7. **Special Day Meeting “Contemporary Issues in International Humanitarian Law” Inaugural Session**

7.1 The One Day Special Meeting on “Contemporary Issues in International Humanitarian Law” was held on 2<sup>nd</sup> July 2008. **Mr. Narinder Singh, President of the Forty-Seventh Session of AALCO** stated that AALCO and ICRC had worked in close cooperation and held many seminars and meetings with the aim of disseminating important issues in international humanitarian law. He then invited Amb. Dr. Wafik Zaher Kamil, Secretary-General for delivering his introductory remarks.

7.2 **Amb. Dr. Wafik Zaher Kamil, Secretary-General of AALCO** in his introductory remarks recalled the close cooperation that existed between the two organizations for the last ten years. He stated that the topics of the special meeting were of topical significance, as it touched upon some challenges currently faced by the international community. Cluster Munitions, the Ottawa Anti-Personnel Landmine Ban Convention, CCW as well as Private Military and Security Companies. He highlighted that these topics were comparatively new developments in international humanitarian law and required the attention of the international community, in progressively dealing towards the codification.

In this context he highlighted the important role of the ICRC in the context of promoting and disseminating International Humanitarian Law and this could be realized from the very fact that the Four Geneva Conventions of 1949 envisaged a role for it in their provisions. He hoped that the presentations made by the experts, as well as the experiences shared by the Member States at the meeting would enrich the deliberations.

7.3 **Mr. Vincent Nicod, Head of the Regional Delegation, ICRC**, New Delhi, recounted the numerous challenges and issues that had recently surfaced, such as natural disasters entailed by the phenomena of global warming, the expansion of pandemics, the uncontrolled migration and sometimes trafficking of human beings, provoked by poverty, reasons that had resulted in numerous armed conflicts, often causing untold

suffering to civilian population. He enumerated the important diverse roles that ICRC had played in such situations. The international community, various Organizations and other actors had always been receptive and accepted the role of the ICRC, precisely because it aimed at helping innocent victims, regardless of who they were. He further stated that acting as a neutral intermediary to initiate dialogue on mutual humanitarian concerns between the relevant parties was essential to the protection of victims of conflicts, especially when weapons replaced all means of communication. It was in this context that the AALCO and ICRC had signed a MOU in 2002, which highlights the cooperation between the two Organizations and provides that matters of mutual interest would include updating information on development and regulations relating to humanitarian law, and conducting seminars and workshops on contemporary issues of IHL.

He noted that some countries in Asian and African Continents had experienced or were experiencing armed conflicts, as a result of which populations suffered all kinds of miseries inflicted by violence. In such situations Governments played a crucial role in minimizing the suffering, and the legal advisers had an important role of advising their governments on the rules of IHL and in adopting appropriate legislation to enable the application of the rules of IHL in practice.

He mentioned that international humanitarian law is dynamic and over 10 new IHL instruments had been developed in the past 15 years. Mr. Vincent noted that barely four weeks ago, in Dublin, the text of a new treaty prohibiting cluster munitions had been adopted.

- 7.4 **Mr. Christopher Harland, Regional Legal Adviser for South Asia, ICRC** provided a brief historical introduction to weapons regulation and a framework for the development of the limits placed by international treaties and custom on the methods and means of warfare. Mr. Harland briefly overviewed the traditional warfare and limitations. He traced such limitations that could be found in various cultures over the centuries, for example, in the Six Secret Teachings of Jiang Ziya, in ancient China in 11<sup>th</sup> century B.C., Common Customs of Warfare, Ancient Greece, 6<sup>th</sup> century B.C., Code of Manu, Chapter VII, verse 90 (around 2000 years ago, Indian culture), Khalif Abu Bakr Al-Siddiq, the first caliph after the Prophet Muhammed, 6-7<sup>th</sup> century, Malik ibn Anas ibn Malik ibn Amr al-Asbahim, distinguished scholar of Islamic Law, 8<sup>th</sup> century, Maori Warrior Cojde, New Zealand, 1864, and some oral provisions in Senegal. Thereafter he enumerated the “Modern” restrictions on weapons. Some of these codes had official sanction and others carried moral or cultural authority. As the notion of nation states developed, so too did rule codification, but each country had its own rules. He traced the history of development of various weapons agreements beginning from Saint Petersburg Declaration of December, 1868, the Geneva Conventions of 1949, their Additional Protocol of 1977, the 1980 CCW, Chemical Weapons Convention, the 1997 Ottawa AP Landmines Convention and the most recent 2008 Convention on Cluster Munitions that maybe adopted in December 2008.

#### **Session-I: Cluster Munitions**

- 7.5 The Session was chaired by **Mr. Christopher Harland, Regional Legal Adviser for South Asia, ICRC, New Delhi**, who gave a brief introduction about the topic on hand and introduced the Panelists of the Session. A short documentary on cluster munitions was screened for the delegates.

- 7.6 **Mr. Lee Moroney, Norwegian People Aid**, gave a presentation on *Cluster Munitions, a View from the Field*. The presentation highlighted four main areas, including what are cluster munitions, their use in the 21<sup>st</sup> century warfare, humanitarian problems, and challenges in their clearance. The main focus of his presentation was on South East Asia. The panelist gave a detailed presentation on what constitutes cluster munitions. The final text of the Convention on Cluster Munitions, discussed in Dublin in April 2008, defined cluster munitions as a conventional munition that was designed to disperse or release explosive submunitions each weighing less than 20 Kilograms, and includes those explosive submunitions.

The first use of cluster bomb was during World War II when the Germans used the butterfly bomb against North East England. Since World War II cluster munitions have been used in 24 countries. A large number of unexploded cluster bombs still contaminate the land where they were used. The panelist explained the reasons why cluster munitions failed on a number of occasions. He narrated the horrific experiences of the indiscriminate use of cluster munitions in Vietnam. The Panelist also shared his experience in dealing with the problem of cluster munitions, since he was in Kosovo during the conflict in 1999. He emphasized that the Oslo Process was a major step forward in banning not only the use and stockpiling of cluster bombs but also in supporting the clearance efforts on the ground. The Panelists also underlined the challenges faced especially on the ground. The ratio of teams globally compared to the level of contamination and the use of the contaminated land by the civilian population was tremendously unbalanced. Cluster munitions are area weapons and unlike minefields it was difficult to assess the exact areas of impact.

- 7.7 **Mr. Louis Maresca, Legal Adviser, Weapons Unit, ICRC, Geneva**, in his presentation on *New Rules to end the Civilian Suffering caused by Cluster Munitions* made an overview of the Convention on Cluster Munitions (CCM) and the Convention on Certain Conventional Weapons (CCW). Convention on Cluster Munitions prohibited under any circumstances using cluster munitions and developing, production acquiring, stockpiling, retaining or transfer of cluster munitions and also prohibited assisting, encouraging or inducing any one to engage in such acts. There were several commitments under the Convention, such as destruction of stockpiles within 8 years, clearance of unexploded cluster munitions within 10 years. The Convention would be open for signature on 3<sup>rd</sup> December 2008 in Oslo. Implementation would be through submission of annual reports by the State Parties, domestic legislation, clearance and destruction of cluster munitions, victim assistance and regular meetings of State Parties. He mentioned that the Cluster Munitions had been on the agenda of Convention on Certain Conventional Weapons (CCW) since 2001.
- 7.8 The Delegates from **India, Japan, Islamic Republic of Iran, Sultanate of Oman, Republic of Kenya, Republic of Indonesia, Libya, Ghana, Arab Republic of Egypt**, and the Observer delegation of **Russian Federation** participated in the discussions that followed. The delegations highlighted the problems caused by the Cluster Munitions and the need to check the improper use or to eliminate it. One delegation stated that the Convention struck an adequate balance between humanitarian considerations and security aspect, stipulating on the one hand comprehensive provisions for assistance to victims, clearance of unexploded cluster munitions, international cooperation, destruction of stockpiled cluster munitions but also provisions enabling military cooperation with States not party to the Convention. Another delegation informed that representatives of African Governments recently came up with an African Common Position on Cluster Munitions. This Common Position was to support a total ban on

use, production, stockpiling and transfer of cluster munitions. Some delegations were critical about the Convention on Cluster Munitions. One delegation pointed out that the Convention lacked civil and criminal remedy and hence the implementation was doubtful. Another delegation expressed concern regarding the financial implications involved in clearing the cluster munitions. One delegation pointed out that while people were suffering due to landmines and cluster munitions, international community was not active in forcing States to remove it. The international community was overlooking this fact. The delegation stated that the reason for failure of international humanitarian law was that powerful countries who could use these munitions never became party to the treaties and agreements. Two delegations shared their experiences as victims of land mines.

## **Session II: Ottawa AP Landmine Ban Convention and 1980 CCW Convention**

7.9 The second substantive session of the Special Day Meeting was chaired by **Major General Dipankar Banerjee (Retd), Director, Institute of Peace and Conflict Studies**. He invited **Mr. Len Blazeby, Legal Advisor, Advisory Services, ICRC, Geneva** to make a presentation on the “Implementation of the Landmine Ban Convention and the CCW Convention”. Mr. Blazeby said that the 1997 Ottawa Treaty provided for a complete ban on anti-personnel mines. This ban covered the acquisition, development, production, use, stockpiling, retention and transfer of such mines and required their destruction. The definition of “anti-personnel mine” contained in the Convention was based upon the effect such mines caused in terms of incapacitating, injuring or killing one or more persons. Individual criminal responsibility formed one of the key pillars of the Convention, which was similar to that in several human rights and international humanitarian law instruments. This was reflective of shift in the focus from state responsibility to individual criminal responsibility in international law. State Parties to the Convention had the responsibility to destroy all stockpiled mines within 4 years and all emplaced mines within 10 years. They were also required to mark, monitor and protect against mined areas. The State Parties were also required to allow for visit by fact-finding missions. They were required to give privileges and immunities, search capability, transport accommodation, security to such missions, as well as permission to bring their own equipments. Mr. Blazeby also explained about the Reporting requirements under the Convention and stated that initial report was to be submitted to the Secretary-General of the United Nations within 6 months and an annual report by 30<sup>th</sup> April containing details about national implementing measures; total mines stockpiled in ground, number of mines retained, status destruction programmes, measures to warn and protect civilians was required to be submitted by.

The next part of his presentation dealt with Certain Conventional Weapons Convention. An important obligation for the State Parties laid down under the CCW Convention was the obligation to disseminate Convention and the Protocols widely, especially to military. The Amended Protocol II required the State Parties to take all legislative and other measures to prevent and suppress violations of Protocol, by persons or territory under control. Mr. Blazeby explained about AP Mines; Anti-vehicle mines; Booby traps; Undetectable fragments; Incendiary weapons; Binding laser weapons and Explosive Remnants of War. The presentation was followed by a film on Explosive Remnants of War.

7.10 The **Delegate of the Hashemite Kingdom of Jordan** delivered remarks about the Eighth Meeting of the States Parties to the Anti Personnel Mine Ban Convention that took place in the Dead Sea, Jordan from 8<sup>th</sup> to 22<sup>nd</sup> November 2007. The delegate



informed that the 8<sup>th</sup> Meeting of Parties coincided with the 10<sup>th</sup> anniversary of the adoption of Convention, and it was the first time a meeting of the State Parties was held in the Middle East which provided the opportunity to pursue three main objectives: first, to reinvigorate global interest in the landmine problem; second to increase interest in the Convention in the Middle East; third, to highlight the reality of the challenges faced in implementation and creating cost-effective and efficient ways to overcome these challenges highlighted in the meeting. All these objectives were successfully attained during the course of the meeting.

- 7.11 The **Delegate of Japan** said that his country had been implementing its obligations under the Convention. It had already completed the destruction of one million stockpiled anti-personnel landmines pursuant to Article 4, which stipulated the destruction of stockpiled landmines within 4 years. In accordance with Article 7 (Transparency measures) Japan had annually been reporting on the total number of anti-personnel landmines retained by its Self-Defense Forces for training purposes under the Convention. Japan considered following two questions that were discussed at the 8<sup>th</sup> Meeting of States Parties as particularly important. One concerned the implementation of Article 4, which stipulated the destruction of stockpiled landmines within 4 years. The other was with regard to Article 5, which provided for the destruction of landmines in mined areas under its jurisdiction or control. As certain States could not fulfill their obligations as stipulated in those articles of the Convention their delegation believed that those cases required most careful treatment as they concern and could affect adversely, the very confidence in the effective implementation of the Convention.

### **Session III: Private Military and Security Companies (PMCs and PSCs)**

- 7.12 **Mr. Len Blazeby, Legal Advisor, Advisory Service, ICRC, Geneva** chaired the session. The main panelist was **Ms. Cordula Droege, Legal Adviser, ICRC, Geneva**. The Panelist briefed about the “Legal Status of PMCs/PSCs and the ICRC Guidelines”. The presentation highlighted the legal status and obligations of such companies. A company as a legal personality did not have any rights and obligations under international law. According to ICRC, in situations of armed conflicts, there were only two categories of persons: either combatants or civilians. In this regard, they were either part of the regular armed forces of a government or member of organized armed group. In the initial case, the State would become liable for any acts conducted by their armed force. In the second instance, question of accountability would remain vacuum. PMCs though in theory could be termed as armed force, since they have an organized structure, hierarchy with disciplinary means, however, they do not necessarily depart the military functions and often their activities include being security guards to diplomats, night guards, etc. Hence, their status according to ICRC was that of civilians who took up arms during hostilities. However, in such case they could be accorded protection against attack.

In the instance when they were directly involved in participation in hostilities, they might also be taken up as prisoners but would not be considered as Prisoners of War and would be given the protection under the Fourth Geneva Convention. The next issue related to mercenaries, wherein there existed only narrow definition. Republic of South Africa was one of the countries that had recently promulgated a national legislation on Prohibition of Mercenary Activity in their country. Though considered as post-conflict situations, many a time armed conflicts continue and in such situations, one has to abide by the principles of International Humanitarian Law (IHL).

In terms of obligation of States, PMCs/PSCs could be attributable to four countries, namely, host state (State which hires), home state (State where a PMC is registered), territorial state (State where PMC operates) and nationality state (State to which they belong). Under common Article 3 (1) of the Geneva Conventions, all of them should not only not violate but rather respect the principles of IHL, prosecute and punish serious violations. Therefore, it is the obligation of the State to prosecute their nationals who are involved in such serious violations and this could be done only if there is primarily domestic legislation regulating such acts. Therefore, the nationality State is accountable in terms of prosecution and home State is responsible for close monitoring the activities of such companies, since they give the license for them to perform such governmental function.

- 7.13 The **Delegate of the Republic of South Africa** pointed out that South Africa is a country with high level of non-statutory private military and security companies. Post Apartheid South Africa advanced ethos of a caring society, peaceful coexistence and international solidarity. In terms of adhering to the international treaties dealing with IHL, South Africa passed two domestic legislations namely; The Regulation of Military Assistance Act of 1997 and the Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an Area of Armed Conflict, 2006. The major objective of such legislations was to ensure that private persons or entities that render services in conflict zones must be regulated and thus held accountable for their actions.
- 7.14 Interventions were made by the Delegate of **Japan, the People's Republic of China, the Islamic Republic of Iran, Arab Republic of Egypt and Libyan Arab Jamahiriya**. The delegates strongly supported that there must be clear distinction as to civilians and combatants. The delegates observed that during post-conflict situations it is necessary to observe the rules and principles of international law and the activities should be observed in accordance with human rights and international humanitarian law. Answering to the queries raised by certain delegates, Ms. Cordula Droege, said that States could regulate through having an effective domestic legislation and also that companies could be made accountable by States through regulating and monitoring them by having an effective tort laws.
8. ***Agenda Item III: Deportation of Palestinians and Other Israeli Practices Among Them The Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly The Fourth Geneva Convention of 1949***
- 8.1 **Amb. Dr. Wafik Zaher Kamil, Secretary-General of AALCO** in his introductory remarks recalled that AALCO in its Annual Sessions had always condemned the inhumane and illegal acts by the Occupying Power, Israel and continued to reiterate its support to the Palestinian nation, free of all occupation and its right to become a sovereign independent State. 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 is continuing with the construction of the separation wall, which is totally illegal and contrary to international law. Secretary-General stated that the recent decision of the Government of Israel for construction of Israeli settlements in East Jerusalem violated international law and its commitments under the Road Map and the Annapolis process. Human rights violations emanating from Israeli military attacks and incursions in the Occupied

Palestinian Territory (OPT); and blockades and sanctions, particularly in the Gaza Strip were highly condemnable. Secretary-General highlighted, the plight of Palestinian refugees resulting from the illegal occupation by the Israel. Secretary-General also emphasised on the Annapolis Conference on Palestine; International Donor's Conference for the Palestine State; United Nations International Meeting on the Question of Palestine and the Palestine Investment Conference.

- 8.2 The Delegates of **Islamic Republic of Iran, State of Qatar, Republic of Indonesia, Malaysia, Japan, Democratic People's Republic of Korea, Arab Republic of Egypt, State of Kuwait, Ghana, and Syrian Arab Republic** presented their views on the topic. The delegations condemned the continued violation of international law, particularly international humanitarian law and human rights law, by the Government of Israel. The delegations also highlighted illegal actions by Israel, including forceful deportation of Palestinians, illegal settlements in the OPT, and military excesses against the Palestinian people. Several delegations urged that international community must seek and take necessary measures pressurising Israel to respect relevant international laws and to comply with its obligations towards international community. The delegations emphasised on the right to self determination of the Palestinian people for establishing an independent sovereign State of Palestine. Some delegations condemned the Israeli disregard towards the Advisory Opinion of the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. One delegation was of the view that the Quartet Road Map for peace could bring to an end and also ensure peace in the Middle East. The Delegation of Indonesia informed that the Government of Indonesia, co-jointly with South Africa would host a ministerial level conference from 14 to 15 July 2008 for Asian and African countries to discuss technical assistance for Palestine and to plan for its future independence.

#### **Fourth General Meeting**

##### **9. Agenda Item III: International Terrorism**

- 9.1 **Dr. Xu Jie, the DSG of AALCO** in his introductory remarks stated that international terrorism had become a worldwide threat to the life and security of humankind. As a common enemy, terrorism is an assault on the maintenance of international peace and security, law and order, human rights and the peaceful settlement of disputes. Therefore, the United Nations, various other International Organizations and States should not spare any effort, to prevent and combat this crime. He informed that the item "International Terrorism" was placed on the AALCO's agenda upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of ongoing negotiations in the Ad Hoc Committee of the United Nations on Elaboration of the Comprehensive Convention on International Terrorism. He informed that, based upon the discussions at the Ad hoc Committee as well as the Sixth Committee of the United Nations General Assembly, the Secretariat had identified *inter alia* some of the issues for focused deliberations, namely, Draft Comprehensive Convention on International Terrorism: the legal definition of terrorism distinguishing it from the self-determination; and the Question of Convening a High-Level Conference under the auspices of the United Nations.
- 9.2 The President introduced the panellist, **Counselor Dr. Iskander Ghattas, Global Consultant, UNODC, Vienna**. In his special address Dr. Iskander Ghattas expressed his heartfelt congratulations to Prof. Dr. Rahmat Mohamad on his becoming the new Secretary-General of AALCO. He also appreciated the outgoing Secretary-General

Amb. Wafik Z. Kamil for exerting great efforts during his tenure in pursuance of realizing the objectives of AALCO. He started his presentation by informing that his comments would predominantly focus on the international cooperation in combating terrorism in general, with special emphasis on the Plan of Action on Global Counter-Terrorism Strategy adopted by the United Nations General Assembly in September 2006. While outlining the salient features of this strategy included a wide array of practical steps ranging from strengthening State capacity to counter-terrorism threats to better coordinating United Nations system's counter-terrorism activities; measures to address the conditions conducive to the spread of terrorism; measures to prevent and combat terrorism; measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

- 9.3 The following delegates presented their comments and observations: the **Sultanate of Oman, the Republic of Kenya, the State of Kuwait, Malaysia, India, Myanmar, Thailand, People's Republic of China, Japan, Republic of Korea, Democratic People's Republic of Korea, the Islamic Republic of Iran, the State of Qatar, Pakistan, the Republic of Indonesia, Ghana, the Republic of South Africa, Republic of Yemen, Nigeria and Libya**. Delegates were of the general view that international peace and security was threatened by terrorism, they unanimously condemned terrorism in all its forms and manifestations. They were of the view that terrorist activities by any individual, groups, or non-state entities have to be checked by all possible means. It is a global threat, and that wherever it took place, it posed a threat to the international community as a whole. The delegates were of the view that the discussion on the Comprehensive Convention on International Terrorism is a positive step that was being discussed by Member States of the United Nations which may reflect the views of the whole international community. However, the delegates stressed that counter-terrorism initiatives should not be used as a pretext for interfering in the domestic affairs of other countries. They emphasized that each country's sovereignty and territorial integrity should be respected and not to be violated under any circumstances.
- 9.4 The delegates generally recognized the suppression of terrorist financing as one of the key factors in fighting against terrorism. To this end, the delegates were of the view that devastating terrorist attacks could be accomplished at relatively low cost, measures to cut-off money flows to individual terrorists and terrorist organizations thus become crucial in the global effort against terrorism.
- 9.5 The delegates generally were of the opinion that for enhancing international cooperation at the level of concluding international instruments and also at the level of establishing bilateral and regional coordination particularly in the fields of investigation, extradition and prosecution. There was a general consensus for the adoption of a Comprehensive Convention on International Terrorism. Delegations expressed their wish that consensus would emerge among the international community to conclude the comprehensive convention.

#### **10. *Agenda Item IV: An Effective International Legal Instrument against Corruption***

- 10.1 **Dr. Xu Jie, the DSG of AALCO** introduced the item. After briefly explaining the way the topic had been dealt with by AALCO and giving an overview of the salient features of the UN Convention Against Corruption (UNCAC) he stated that the most serious shortcoming of the UNCAC was its failure to provide for an adequate implementation mechanism. In so far as the developing countries are concerned, the issues of asset

- recovery and technical assistance were of immense importance, he added. He welcomed the recommendation of some of the Member States that a Group of Legal Experts from among the Member States be established to prepare a Model Law in line with the UNCAC. This he felt, would go a long way in assisting the Member States in implementing the UNCAC. Finally, he requested the Member States to present their views and comments precisely and lucidly.
- 10.2 The delegations from **Myanmar, the Republic of Indonesia, the Republic of South Africa, Japan, the Republic of Korea, Kenya, Ghana, the State of Kuwait, People's Republic of China, Cameroon, the Islamic Republic of Iran, the State of Qatar, Malaysia, Thailand, India, the Arab Republic of Egypt and Singapore** presented their views on the topic.
- 10.3 The delegations generally condemned the phenomenon of corruption as a crime and insisted on eradicating the evil in all its manifestations. Almost all of the delegates agreed that corruption was no longer a purely domestic issue and that it had cross-border and international implications. Hence, they reiterated the indispensable need to cooperate with each other in various forms and ways in order to make a significant dent on the evil of corruption.
- 10.4 The delegates were of the firm view that corruption threatened not only the social, economic and political development of States but it had serious implications for the national security of them as well. They were of the unanimous view that the UN Convention Against Corruption 2003 was pivotal to the fight against corruption since it was the most important and comprehensive legal instrument ever adopted on the universal level outlining in detail, various obligations to be performed and the mechanisms to foster cooperation among the State Parties.
- 10.5 The delegates generally explained their domestic legal regimes and other administrative arrangements that they had established on corruption and other related issues such as money laundering and asset recovery. They felt that their legislations were in conformity with the UN Convention Against Corruption and that they had established various institutional mechanisms to confront corruption. One delegate opined that AALCO could contribute a lot with its expertise with regard to how to approach the issue of anti-corruption transitional justice. One delegate proposed that an Expert Meeting of AALCO Member States be convened to explore the various issues not adequately addressed by the UNCAC.

## **11. Agenda Item IV: Environment and Sustainable Development**

- 11.1 **Amb. S.R. Tabatabaei, the DSG of AALCO** introduced the agenda item "Environment and Sustainable Development". The DSG while introducing the item said that the work programme included the following developments in the three Rio Conventions, namely United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD) and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994 (UNCCD) and Follow-Up in Progress of the Implementation of the outcome of World Summit on Sustainable Development (WSSD). Emphasizing the role of climate change, he said that the focus of the Secretariat Report was on Climate Change regime. In addition, it reported on pertinent developments as regards Biodiversity and Desertification Conventions, and WSSD implementation agenda.

- 11.2 The DSG observed that the “Bali Road Map” adopted by the UN Climate Change Conference at Bali, Republic of Indonesia in December 2007, unfurled the process for the elaboration of the most complex international agreement that the history would have ever seen. He stated that there was an emerging consensus that adaptation, mitigation, technology and financing would form the building blocks of the post 2012 emission control regime. He identified the following issues for focused deliberations (i) on-going negotiations for an International Agreement on stronger international action on climate change for the period beyond 2012, as laid down in the Bali Action Plan; (ii) identification of areas that needs further clarification, i.e., to define, in a measurable, reportable and verifiable way and nationally appropriate, emission limitation commitments for developed countries and mitigation action for developing countries; (iii) emerging liability and redress legal regime for damage arising from the transboundary movement of living modified organisms; and (iv) raising awareness and commitment to the implementation of the United Nations Convention to Combat Desertification.
- 11.3 The following Delegations made statements: **Japan, Islamic Republic of Iran, State of Kuwait, Republic of Indonesia, Sultanate of Oman, Democratic People’s Republic of Korea, People’s Republic of China, India, Malaysia and Republic of Cameroon.** The Member States acknowledged that adoption of the Bali Roadmap was a major leap ahead in terms of framing a post-2012 commitment regime in accordance with principles of common but differentiated responsibilities. It was essential to negotiate them within the purview of the Convention and the Kyoto Protocol.
- 11.4 On the topic biodiversity, the delegates observed that the Convention on Biological Diversity had provided the Asian and African nations with strong support for protecting biodiversity. However, the rich biodiversity resources of developing countries were now under severe threats with economic development and population growth. To ensure a more effective role played by the Convention in the protection of global biodiversity, it was necessary to enhance dialogue and cooperation in that regard, offer more financial and technical assistance to developing countries and encourage wide participation of all sides.

### **Fifth General Meeting**

#### **12. *Agenda Item IV: The International Criminal Court: Recent Developments***

- 12.1 **Amb. S.R. Tabatabaei, DSG of AALCO** informed the Session that the Secretariat had been following the developments related to the International Criminal Court since its Thirty-Fifth Session, held in Manila (Philippines) in 1996. The DSG informed that as of 1<sup>st</sup> June 2008, 106 States Parties had ratified the Rome Statute. The Statute recognized that States had the primary responsibility for investigating and prosecuting international crimes, guaranteeing fair public trials consistent with internationally recognized human rights principles. He noted the importance of cooperation between the Court and the United Nations; States; International and Regional Organizations as essential to an effective and efficient functioning of the Court. In this regard he mentioned that a Memorandum of Understanding between the AALCO and ICC was signed on 5 February 2008. Thereafter, he briefly enumerated the discussion during the Sixth Session of the Assembly of States Parties on a non-paper by the Chairman of the Special Working Group on the Crime of Aggression, on defining the individual’s conduct in relation to the Crime of Aggression. The non-paper met with broad agreement among delegations. Strong support was expressed for using United Nations General Assembly resolution 3314, adopted at the 29<sup>th</sup> Session of the UNGA on 14

December 1974, as a basis in defining an act of aggression. As regards the conditions for the exercise of jurisdiction, consideration was given to two new elements concerning the crime of aggression, namely 1) the suggested role of the Pre-Trial Chamber and 2) the so-called 'green light' option with regard to the Security Council's role. Discussions in the resumed Sixth Session of ASP held from 2-6 June 2008 also made headway on a revised paper presented by the Chairman covering the definition of the crime of aggression and jurisdiction of the Court in respect of that crime. However, despite all these efforts the definition of the crime of aggression still remains elusive.

- 12.2 The delegations from the **Islamic Republic of Iran, Republic of Indonesia, Malaysia, China, Japan** and the Observer Delegation of **Greece** presented their views on the item. The delegation of the **Republic of South Africa** handed over their statement on the topic to the Secretariat for its records. Some delegations pointed out that the Court's activities should be conducted in strict compliance with the "principle of complementarity" set forth in the Statute. All the delegations made observations regarding the "Definition of the Crime of Aggression". Some noted that the ICC should have the widest possible reach in terms of providing for various acts defining the crime of aggression. They gave their views on the individual responsibility and command responsibility. One delegation noted that despite the efforts of the international community over the past sixty years it was regrettable that such a definition still remained elusive, and that the international community continued to struggle with a non-paper by the Chairman of the Working Group on the Crime of Aggression, instead of formulated articles that could be considered in the Review Conference scheduled to be held in Rome in 2010. He said that if this opportunity was not availed this matter would be further postponed by another 10 years. Many delegations wanted a clearly defined role for the Security Council in case of failure or declining to determine the acts of Aggression to the effect that independent judicial bodies such as ICC should not be impeded. One delegation noted from its experience that ratification to the Statute was an arduous process. He noted with satisfaction that 16 Member States of AALCO are parties to the Statute and encouraged others to do so. One delegate informed that his country had taken steps towards the ratification of the Statute, by promulgating normative and institutional infrastructure. The proposal of holding an "Inter-Sessional Meeting of Experts on International Criminal Law from the Asian-African Region" to formulate a definition of the Crime of Aggression by AALCO Member States, was put forward. In relation to the issue of prosecutorial discretion and victims rights highlighted by the Secretariat, one delegation noted that since this matter was not under discussion in the Special Working Group, clarification was required on what, if any, additional proposals AALCO or its Member States may have on this matter.
13. *Agenda Item III: Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties*

- 13.1 **Amb. S.R. Tabatabaei, DSG of AALCO** in his introductory remarks recalled that the topic was introduced at the Thirty-Sixth Session of AALCO (Tehran), upon a proposal made by the Government of Islamic Republic of Iran, in 1997. He stated that some of the important conclusions reached on the basis of the discussions at the successive annual Sessions of the AALCO were: first, extraterritorial measures or the promulgation of the domestic laws having extraterritorial effects with the imposition of unilateral attributions and objectives, namely, secondary boycotts are violation to the sovereign rights and economic interests of a State; second, they violate the core principles of territorial sovereignty, as well as political integrity of other States and principles of non-interference in internal affairs of other countries which has been

enshrined and shall be rejected in the Charter of the United Nations; and third, that they make a major constraint in the way of trade and economic cooperation between States. The DSG noted that the response submitted to the United Nations Secretary-General, by 86 UN Member States, out of which 23 were AALCO Member States, whether they have laws and measures having extraterritorial effect clearly demonstrated that there was a crystallization of State practice that considered extraterritorial application of national legislation as violation to the core principles of Charter of the United Nations. While all the States had the right to development, application of these measures were detrimental to that right of the targeted States and victimized the most disadvantaged sections of society in those States.

- 13.2 The DSG strongly condemned the recent additional and new sanctions imposed against the AALCO Member States, Myanmar, Islamic Republic of Iran, Syrian Arab Republic and the Republic of Sudan on baseless grounds by the United States of America. The DSG also stressed all the Member States not to recognize and reject the promulgation and application of unilateral extraterritorial coercive economic measures imposed by any State against any third parties.
- 13.3 The delegations from the **Islamic Republic of Iran, the Republic of Indonesia, Malaysia, the People's Republic of China, the Democratic People's Republic of Korea, Japan and Myanmar** presented their views on the topic and the **Republic of South Africa**, circulated their statement to be reflected in the Report of the Forty-Seventh Session. All the delegates highlighted the unilateral sanctions and extraterritorial measures against other countries were not admissible under international law. They also noted that it violated the basic principles of international law, inter alia, non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes, and was inconsistent with the various World Trade Organization Agreements. One delegation expressed that extraterritorial measures were used as a tool by the developed countries to put political or economic pressure against developing countries. Another delegation emphasized that humanitarian hardships of innocent civilians caused by unilateral targeted sanctions, by executive orders or otherwise should not be forgotten. One delegation stated that international conflicts could be resolved through dialogue and cooperation, and they opposed all forms of hegemony and power politics and any move of imposing sanctions against others by abusing domestic legislation. The delegation of the Democratic People's Republic of Korea was of the view that AALCO Member States should look at the nature and consequences of the issue in a more and deeper legal perspective and join efforts in finding out a way that could practically prevent those acts of extraterritorial application of national legislation by instituting a legal mechanism that question the accountability and cared for the compensation of affected parties and countries. The delegation of Myanmar proposed the Secretariat to continue the study, not only in the area of international law, but also with the constitutional approach for consideration of this topic at its Forty-Eighth Session.

### **The Third Meeting of the Delegations of AALCO Member States**

#### **14. Agenda Item I: Report on AALCO's Regional Centre for Arbitration**

- 14.1 **Dr. Xu Jie, DSG of AALCO** briefed the work and development of the AALCO's Regional Centres for Arbitration and invited the Representatives of the AALCO's Regional Arbitration Centres to present their reports.
- 14.2 The report of **Dr. Mohamed Abdel Raouf, Secretary-General, The Cairo Regional**



- Centre for International Commercial Arbitration**, highlighted the activities of the Centre since the last Session.
- 14.3 **Mrs. Eunice R. Oddiri, The Lagos Regional Centre for International Commercial Arbitration** presented her report on the activities of the Centre since the last Session.
- 14.4 **Dr. Moshkan Mashkour, Director, The Tehran Regional Arbitration Centre**, presented his report on the activities of the Centre since the last Session.
- 14.5 The **Executive Director of the Indian Council for Arbitration** also made a statement.
- 14.6 **Dr. M. Gandhi, Chairman of the Drafting Committee** presented his report.

## 15. Adoption of the Resolutions

- 15.1 The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 4 July 2008:

- RES/47/ORG 1 Report of the Secretary-General on Organizational, Administrative and Financial Matters
- RES/47/ORG 2 AALCO's Draft Budget for the year 2009
- RES/47/ORG 3 Report on AALCO Regional Centres for Arbitration
- RES/47/ORG 4 AALCO's Centre for Research and Training
- RES/47/ORG 5 Appointment of the Secretary-General
- RES/47/ORG 5A Expression of Gratitude to the Outgoing Secretary-General
- RES/47/ORG 6 Report on the AALCO's Permanent Headquarters Building
- RES/47/ORG 7 Venue of the Forty-eighth Session
- RES/47/S 1 Matters Relating to the Work of the International Law Commission at its Fifty-Ninth Session
- RES/47/S 2 The Law of the Sea
- RES/47/S 3 The Status and Treatment of Refugees
- RES/47/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/47/S 5 Legal Protection on Migrant Workers
- RES/47/S 6 Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties
- RES/47/S 7 International Terrorism
- RES/47/S 8 Establishing Cooperation Against Trafficking in Women and Children
- RES/47/S 9 The International Criminal Court: Recent Developments
- RES/47/S 10 Environment and Sustainable Development
- RES/47/S 11 An Effective International Legal Instrument against Corruption
- RES/47/S 12 Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
- RES/47/S 13 WTO as a Framework Agreement and Code of Conduct for World Trade
- RES/47/S 14 Expressions of Folklore and its International Protection
- RES/47/S 15 Human Rights in Islam
- RES/47/SP 1 "New Delhi Resolution on Aspects of International Humanitarian Law"

***Venue of the Forty-Eighth Session***

- 15.2 As soon as the Secretary-General receives a final invitation from any Member State for holding the Session, or any other substantive information, he would duly inform the same to the Member States.

***Adoption of Summary Report***

- 15.3 The Summary Report of the Forty-Seventh Session of the Asian-African Legal Consultative Organization was adopted.
- 15.4 The Provisional Summary Record of the First and Second Meeting of the Delegations of AALCO Member States and the First to Fourth General Meetings were distributed. Member States were requested to review the Provisional Summary Record and submit their views/suggestions to the Secretariat within the next two months after which the Summary Records would be finalized.

**16. The Sixth General Meeting**

- 16.1 During the Sixth General Meeting the President summarized the accomplishments of AALCO at its Forty-Seventh Session and thanked all those who made the Session a success.