

Asian-African Legal Consultative Organization



**Verbatim Record
of Discussions**

Fifty-First Annual Session

18 – 22 June 2012
Abuja, Federal Republic of Nigeria

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

Asian-African Legal Consultative Organization



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PREFACE

AALCO is one of the very few regional intergovernmental Organizations that unites countries from Asian and African continents on matters of international legal issues of common concern. It serves its Member States as an advisory body on matters with an international legal dimension. The consultative nature of the Organization beholds transparency within the AALCO and also ensures that the voice of Asia and Africa is heard in various international fora. Its close working relationship with various other international organizations is the evidentiary fact of AALCO's contribution towards progressive development and codification of international law. The current work programme of AALCO incorporates important legal issues and closely tracks the items on the agendas of the International Law Commission and the Sixth Committee of the UN General Assembly.

The Fifty-First Annual Session of AALCO was successfully held in Abuja, Federal Republic of Nigeria from 18 to 22 June 2012. I take this opportunity to thank all the Member States of AALCO for reappointing me at this meeting as the Secretary-General of this esteemed Organization for a second and final term of four years. The Session witnessed participation from twenty-six Member States, representatives from two Regional Arbitration Centres of AALCO, Observers from two Non-Member States and representatives from three Intergovernmental/ Specialized Agencies/ Subsidiary Organs/ Inter-Regional Organizations, totalling approximately 150 participants.

The Fifty-First Annual Session focused on deliberations on both Organizational and Substantive matters like: (i) 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; (ii) Extraterritorial Application of National legislation: Sanctions Imposed against Third Parties, (iii) International Criminal Court: Recent Developments; and (iv) Environment and Sustainable Development.

A major highlight of the Fifty-First Annual Session was the convening of the three half-day Special Meetings on previously mandated topics of: (i) "Selected Items on the Agenda of the International Law Commission", (ii) "Responses to Piracy: International Legal Challenges", and (iii) "International Terrorism".

This comprehensive Verbatim Record as mandated according to the Statutory Rules of AALCO, presents to the Member States the discussions and deliberations on all the above stated items, as well as on the Organizational matters, in detail. On the concluding day of the Session, the Member States adopted the Summary Report, Resolutions on Organizational and Substantive Matters, including Resolutions on the three half-day Special Meetings along with the Message of Thanks on behalf of all the Member States to H. E. Mr. Goodluck Jonathan, the Honourable President of the Federal Republic of Nigeria.

This Verbatim Record of the Fifty-First Annual Session contains mainly the text of statements of the Inaugural Session, three Meetings of Delegations of Member States; and five General Meetings; three half-day special meetings; the Summary Report of the Fifty-First Annual Session; the Resolutions on both Organizational and Substantive matters adopted at the Session; and the list of participants who attended the Session.

I wish to thank the Ministries of Justice, and Foreign Affairs of the Federal Republic of Nigeria for convening the Annual Session of the Organization, for their cooperation and administrative arrangements, which were very helpful in conducting the proceedings of the Session successfully. I would also like to express my heartfelt appreciation and thanks to my friends and colleagues Dr. Xu Jie, Dr. Hassan Soleimani, and Dr. Yasukata Fukahori, the Deputy Secretaries-General, for their support in making the Session a success.

I also wish to express my deep appreciation to Mrs. Anuradha Bakshi, Principal Legal Officer; Ms. Shannu Narayan, Mr. S. Pandiaraj and Mr. Parthan Vishvanathan, Legal Officers along with the other Staff of the Secretariat for their immense efforts exerted to help me in accomplishing my mandate. Their professionalism and sense of responsibility contributed a lot towards making the Session a success.

7 January 2013

Prof. Dr. Rahmat Mohamad
Secretary-General

I. AGENDA OF THE SESSION

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I. Organizational Matters

1. Consideration and Adoption of the Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Re-appointment of the Secretary-General
5. Report of the Secretary-General on the Work of AALCO
6. Proposed Budget for the Year 2013
7. Report on the Work of the AALCO's Regional Arbitration Centres
8. Report of the Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters
9. Report of the Chairman on the Second Meeting of AALCO-EPG
10. Report on the AALCO's Centre for Research and Training (CRT)
11. Venue of the Fifty-Second Session

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

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

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

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

VI. Three Half-Day Special Meetings

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

VII. Any Other Matter

II. BUREAU OF THE SESSION

II. BUREAU OF THE SESSION

PRESIDENT

**H. E. Mr. Mohammed Bello Adoke,
SAN,**
Attorney-General and the Minister of
Justice,
Federal Republic of Nigeria

VICE-PRESIDENT

H. E. Mr. U Thiha Han,
Director,
International Law and Treaties Department
Ministry of Foreign Affairs,
Union of Myanmar,

SECRETARY-GENERAL

H. E. Prof. Dr. Rahmat Mohamad

DEPUTY SECRETARIES-GENERAL

H. E. Dr. Xu Jie

H. E. Dr. Hassan Soleimani

H. E. Dr. Yasukata Fukahori

HEAD OF THE HOST NATIONAL COMMITTEE

H. E. Mrs. Ifeyinwa Rita Njokanma,
Director,
International Law Department,
Federal Ministry of Justice,
Nigeria

III. VERBATIM RECORD OF THE INAUGURAL SESSION

III. VERBATIM RECORD OF THE INAUGURAL SESSION OF THE FIFTY-FIRST ANNUAL SESSION HELD ON MONDAY, 18 JUNE 2012 AT 10.00 AM AT SHERATON ABUJA HOTEL, ABUJA

Master of Ceremony Mr. Pius The, Esq, Special Assistant to the Honourable Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria: The inaugural session began with the National Anthem of Nigeria followed by a cultural show. On behalf of the Attorney-General of the Federal Republic of Nigeria Mr. Mohammed Bello Adoke and the incoming President of the Fifty-First Annual Session of the Asian-African Legal Consultative Organization (AALCO), it is my duty to welcome all the delegations from Member States of AALCO to Abuja. Thank you for your patience. I would like to invite the attention of the invitees who are not Members of AALCO, that the Organization was established in 1956 by seven founding Member States as a result of the historic Bandung Conference. It has come a long way from 7 Member States to 47 Member States, which shows the increasing interest of the global community to address issues of legal concern.

Abuja is one of the youngest cities of the Federal Republic of Nigeria established in 1977. Nigeria since becoming a member of AALCO in 1970, had hosted two Annual Sessions of AALCO in the year 1972 and 2002 respectively. We are proud of this city and for giving us an opportunity to host this Annual Session. In order to begin this opening ceremony, I now invite H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO to deliver his welcome remarks.

(i) Welcome Address by H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of Asian-African Legal Consultative Organization

“Eku abo” - Welcome to the Federal Republic of Nigeria.

Your Excellency, Mr. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria,

Your Excellency, Mr. Rauff Hakeem, Minister of Justice of the Democratic Socialist Republic of Sri Lanka and President of the Fiftieth Annual Session of AALCO,

Your Excellency, Mrs. Winfrida Beatrice Korosso, Director of Public Prosecution, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO,

Hon’ble Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen,

On behalf of the Asian-African Legal Consultative Organization and my own behalf, I respectfully and warmly welcome Your Excellency Mr. Mohammed Bello Adoke, and this distinguished gathering to the Fifty-First Annual Session of AALCO.

Your Excellency, the AALCO, since its inception in the year 1956, has a unique tradition of holding its Annual Session at the invitation of its Member States on a rotational basis in the countries of Asia and Africa alternatively. Last year our Fiftieth Annual Session was held at Colombo, Democratic Socialist Republic of Sri Lanka, and this year we have come to this historic city Abuja, the Capital of the Federal Republic of Nigeria which is the land of hospitality, cultural diversity and scenic beauty.

Nigeria, which is a Country of enormous cultural diversity, has indeed many feathers in its hat. Perhaps the most important of them all is the ***Abuja National Carnival***, which can certainly be called the “Mother of All Carnivals” in Nigeria, as it integrates peoples of diverse culture and traditions for the betterment of the nation and for the promotion of harmony and peaceful co-existence in the lives of a people as diverse as Nigeria. To all of us, this Carnival symbolizes the idea that culture could be used as a tool for national integration.

I would like to express on behalf of the Organization and its Member States our profound gratitude to Your Excellency, to the Government and People of Nigeria for inviting AALCO to hold its Fifty-First Annual Session. Personally, I am beholden to your esteemed Government for responding to my request for holding the Fifty-First Annual Session of AALCO with utmost speed and efficiency within a short span of time.

Your Excellency, this is the third time AALCO has the honour to hold its annual session in Nigeria. The earlier occasions were when Nigeria, after joining AALCO in 1970, immediately hosted the AALCO's *Thirteenth* annual session in 1972 at Lagos. That was a period when more and more African States realized political independence and joined the Asian- African Legal Consultative Organisation. It is indeed my pleasure here to recall the extraordinary role that Taslim Olawale Elias, a distinguished jurist of Nigeria has played towards the cause of the Third World. Mr. T. O. Elias, who was not only a Judge of the Supreme Court of Nigeria, but also was the President of the International Court of Justice from 1981-1985, had played a stellar role in highlighting Africa's contributions to the international legal discourse. Furthermore, his legal theories regarding the ways in which its rules could be reformulated to benefit the newly independent states had influenced many contemporary international lawyers in Africa and elsewhere.

The relationship between Nigeria and the AALCO was further strengthened by the decision of the Government of Nigeria to host the AALCO's Regional Centre for Arbitration and the signing of the Headquarters Agreement facilitating such establishment in 1999. The other occasion was the holding of AALCO's *Forty-First* Annual Session in 2002 at Abuja. We are confident, with Your Excellency setting the tone for our deliberations, that the Abuja Session is going to be a historic success.

Your Excellency, Nigeria, which sees itself as one of Africa's leading voices, also is a prominent member of the international community. In these twin roles, it has played a very active role in global governance in different international organizations and bodies such as the Commonwealth, the Non-Aligned Movement, the G-77, Organization of Petroleum Exporting Countries (OPEC), etc. At the global level Nigeria has chaired the

Non-Aligned Movement, the G-77 and importantly the UN special committee on peacekeeping operations. And in terms of the maintenance of global peace and Security, hundreds of thousands of Nigerian soldiers, policemen and civilians have taken part in peacekeeping operations, truce supervisions, monitoring and observer missions in diverse regions from Africa to Asia and the Middle East. As regards the maintenance of regional peace, even a cursory look at the various engagements made by Nigeria towards an African agenda in areas such as peace keeping missions, decolonization of the continent as well as other bilateral and multilateral aid she rendered in the continent, would clearly show Nigeria's deep and positive involvement in African Affairs.

Needless to say that the invitation extended by your esteemed Government to host the Fifty-First Annual Session of AALCO testifies to the commitment of Nigeria towards promoting a world order that is based on adherence to the rule of law in international relations. It also conveys the continued commitment and support of your Country to the activities of AALCO and a keen interest in promoting the co-operation among Asian-African states in general and among African States in particular. It is our firm hope that Nigeria, with the largest African population of well over 130 million and with rich natural and human resources, will forever remain relevant and influential in Africa and World Affairs.

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

Your Excellency, over the course of the coming four days, our Annual Session would be deliberating upon several important international legal issues that are of critical concern to the Asian-African States. After the Inaugural Session gets over, the Heads of Delegations of the participating delegations, would be making their 'General Statements' through which they would be sharing their experiences and perspectives on a number of contemporary areas of international legal matters that are of vital concern to the Asian-African States. Thereafter, we would have Three Half-Day Special Meetings devoted to exploring in detail three important issues of the contemporary era; Firstly, the Special Meeting on "*Selected Items on the Agenda of the International Law Commission*". This meeting would be addressing three of the most important items found on the agenda of the ILC, namely 'Protection of Persons in the Event of Disasters', 'Expulsion of Aliens' and the 'Immunity of Foreign Officials from Foreign Criminal Jurisdictions'. The second Special Meeting would be on "*Law of the Sea: Responses to Piracy: International Legal Challenge*". This Meeting would deliberate a number of issues as regards the crime of

piracy, its legal regime and the gaps in it, and the feasibility of regional response to it. The third will focus on the problem of “*International Terrorism*” that affects almost all the Countries of the world and which depends on the denial of the humanity of its victims.

The Annual Session is also expected to address the following topics that are on the work programme of AALCO: 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; Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties; International Terrorism; International Criminal Court; and Environment and Sustainable Development. Apart from these issues, the Heads of Delegations would also be reviewing the Organizational matters, including the financial situation of AALCO and the re-appointment of the Secretary-General of AALCO.

I request the Delegates to avail this unique opportunity and reflect the concern of their Governments/Countries regarding these topics and to share their experiences with and among AALCO Member States as it is in my view one of the fundamental aims of our annual meeting. Together with the National Organizing Committee of the Host Government, the AALCO Secretariat has done its utmost to make all the necessary arrangements for the success of our Fifty- First Annual Session. Pardon us, if there is any shortcoming in the arrangements of this session from our part.

Excellency, before I close, may I once again thank you and your government for your kind invitation and the customary warmth of African hospitality that we have enjoyed ever since we arrived here. I thank you.

Master of Ceremony: Thank you very much H. E. Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO for your remarks. May I now invite H. E. Mr. Rauff Hakeem, Minister of Justice, Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of AALCO for delivering his statement.

(ii) Statement of H. E. Mr. Rauff Hakeem, the President of the Fiftieth Annual Session of the Asian-African Legal Consultative Organization

“Ayubowan, Vannakkam, and Assalamualaikum”

His Excellency Mr. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria;

Her Excellency, Mrs. Winfrida Beatrice Korosso, Director of Public Prosecution, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO,

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

Honourable Ministers, Heads of Delegations, Distinguished Delegates and Observers, and Ladies and Gentlemen;

At the outset, may I take this opportunity on behalf of my delegation, to thank the Government and People of the Federal Republic of Nigeria for the warm hospitality extended to us since our arrival and for the excellent arrangements and facilities made available to us.

Kindly allow me also to express my deep appreciation to the Secretary-General of AALCO and the AALCO Secretariat for the preparations and arrangements made for this Session. I express my sincere gratitude to all the Member States of AALCO, the Secretary-General and the Secretariat for the support and cooperation extended to me during my tenure as the President of the Fiftieth Annual Session.

I also extend my gratitude towards Honourable Ministers, Heads of Delegations, Distinguished Delegates and Observers, and the Panelists for Half-Day Special Meeting who have come all the way to Abuja to participate and make this important event a success.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; during this session, we would be deliberating upon certain important agenda items like Palestinian issue, unilateral sanctions imposed against third parties through extraterritorial application of national legislations, International Criminal Court (ICC) and environment and sustainable development.

It gives me immense pleasure to inform that pursuant to the mandate given at the Fiftieth Annual Session to deliberate upon the matters relating to the International Law Commission (ILC), an inter-sessional meeting of legal experts to discuss matters relating to the ILC was convened at AALCO Headquarters in April this year. In order to reformulate a concrete perspective on important agenda items of the ILC, these topics would be further deliberated upon during this Session as well. In conjunction with the Fifty-First Annual Session, we have three Half-Day Special Meetings on contemporary global challenges like international terrorism, piracy at Sea, protection of persons in the event of disasters and immunity of State Officials from Foreign Criminal Jurisdiction.

I would like to recall what H. E. Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka who was the Chief Guest of the Inaugural Session of the Fiftieth Annual Session held last year, observed at the General Debate of the Sixty-Sixth Session of the UN General Assembly; the core concern for developing countries would be challenges that they face from terrorism, dumping of commercial and industrial goods manufactured in developed countries that imperils the economies of many Asian and African countries, disproportionate pollution of the environment by industrialized countries and so on.

Simultaneously G 20 Leaders are meeting in Mexico and the Rio Summit is also taking place in Brazil, where world leaders are meeting to resolve current contentious issues

pertaining to the world economy, with the resurrection of the Eurozone crisis and going beyond Durban deadlock.

The forthcoming five-day deliberations that would take place here in Abuja, would, I believe, certainly help our Member States in consolidating their positions at the international level, which would reflect the aspirations of the Asian-African countries and their people in the progressive development and codification of international law.

Recalling the spirit of Bandung and marching towards the trajectory of social progress and economic development, as developing countries from Asia and Africa, I urge AALCO Member States to be unified in terms of extending solidarity and cordially cooperating towards resolving the current global challenges.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; I feel immensely privileged in informing the Distinguished dignitaries at this inaugural session, that in my capacity as President of AALCO, I have witnessed that AALCO's flag has been kept flying high among the international legal community. The role and participation of AALCO in various international meetings and International Organizations marks the determination to consistently support and promote the viewpoints and concerns of its Member States in addressing international legal matters.

It has been a precedent that while holding the Presidency, the current President would visit the AALCO Headquarters in New Delhi. Following which I had the opportunity to visit the AALCO Headquarters on 24 January 2012. In the meeting with Secretary-General and the Deputy Secretaries-General of AALCO, various important issues pertaining to AALCO Secretariat and its day-to-day functioning were discussed. I also had the opportunity to interact with the Secretariat Staff and address the Resumed 314th Meeting of the Liaison Officers.

I thank AALCO for the opportunity provided to Sri Lanka to host the milestone Fiftieth Annual Session of the Organization in Colombo in June 2011. I had also highlighted the role and contribution of AALCO in the international legal arena with reference to the law of the sea, concept of archipelagic states, Bangkok Principles on the status and treatment of refugees, law related to trafficking of women and children etc., which were groundbreaking.

I also had the opportunity to deliver a lecture to a select group of diplomats, legal scholars and academicians at the Indian Council of World Affairs (ICWA), New Delhi on the topic "Responsibility to Protect: Asian-African Perspectives". This topic is very contemporary which requires clear perspectives of the Asian and African countries.

In that regard, I mentioned during the lecture that as many of the Asian and African States have seen a colonial past, where anti-interventionist ideologies were still more common and more powerful than R2P advocates care to admit. Powerful States believe in sovereignty as a principle that does not have to be earned but exists as an arena in which to carry on envious political struggles. Stability and good politics are best made from

within, seldom delivered by outsiders. Some other States are also skeptical of an intervention's ability to act without significant negative consequences, fearing that the shadow of international action may often be longer and darker than its good intentions and original protection operations. Therefore, those arguing for a responsibility to prevent protect and repair must prove the case that external intervention has a creative role in State-formation.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; as most of you are well aware there has been a tremendous increase in the activities of the Organization despite its financial difficulties. The training programmes and workshops have been beneficial for the diplomats from the Member States. The topics that were discussed during the training programmes would assist Member States in keeping themselves abreast of all the developments happening at the international level. The WTO training programme that was recently convened is one such example wherein the theme was on "Trade and Development" issues. The lectures delivered during the training programme were very informative to understand the nuances of the issues and decipher the concerns of developing countries at various trade negotiations.

I take this opportunity to inform that the AALCO-Eminent Persons Group which was constituted at the Fiftieth Annual Session had convened the 2nd Meeting at the AALCO Headquarters under the chairmanship of Dr. A. Rohan Perera, former Member of the ILC from Sri Lanka. Organizational and substantial matters were discussed by the EPG.

Excellencies, Distinguished Delegates, Ladies and Gentlemen; as mentioned earlier, activities of AALCO do not reflect in any way the financial shortcomings of the Organization. As the President of the Organization, I urge Member States of AALCO who are in arrears to take a firm decision to place AALCO on a sound financial footing. This could happen only by fulfilling their financial obligation towards the Organization and nurture the Organization as our own institution that has in the past and has the potential of being the voice of Asia and Africa in future. I appreciate the Secretary-General and the Staff for their continued efforts in serving the Organization with utmost sincerity.

At this juncture, I would like to extend my Government's support to the Secretary-General for his reappointment for one further term.

To conclude, I would like to, once again, thank all the distinguished delegates and observers, who are here to participate in this Session and wish you fruitful deliberations.

Thank you.

Master of Ceremony: I thank H. E. Mr. Rauff Hakeem, President of the Fiftieth Annual Session of AALCO for his statement. May now invite Honourable Attorney General of the Federation and Minister of Justice Mr. Mohammed Bello Adoke, SAN, CFR, for delivering his welcome remarks at this inaugural session.

(iii) Statement of Mr. Mohammed Bello Adoke, SAN, CFR, Honourable Attorney General of the Federation and Minister of Justice

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

Your Excellency, Mr. Rauff Hakeem, Minister of Justice of the Democratic Socialist Republic of Sri Lanka and President of the Fiftieth Annual Session of AALCO,

Your Excellency, Mrs. Winfrida Beatrice Korosso, Director of Public Prosecution, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO,

Your Excellency, Senator Bala Abdul Khader Mohamad, Minister for the Federal Capital Territory,

Hon'ble Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen,

I am delighted to welcome you to the Fifty-First Annual Session of the Asian-African Legal Consultative Organization (AALCO) being held in the capital city of Abuja. The Government and People of Nigeria are particularly grateful to AALCO and its Secretariat for this unique opportunity to host the Fifty-First Annual Session. It is our expectation that the Session will consolidate on the gains made by the Organization over the years.

May I also express our profound gratitude to the various delegations and participants for honouring us with the esteemed presence at this Session. Your presence at this Session is a clear demonstration of your commitment to the ideals of AALCO and commitment to ensure that the objectives for which the Organization was set up are attained. It is in this connection that I wish to reiterate Nigeria's resolve to effectively harness the resource base of this Organization for socio-political and economic development, as well as, strengthening of the bonds of friendship between our people on both continents.

Your Excellencies, Distinguished Delegates, Ladies and Gentlemen, the Fifty-First Annual Session of AALCO, promises to be stimulating and productive in the light of the topical, regional and international issues slated for discussion for the next few days. I note with particular interest, the topics relating to Terrorism, Piracy and the Rome Statute of the International Criminal Court (ICC) which will benefit from your informed consideration and analysis.

As you are well aware, Nigeria has recently been grappling with the challenges occasioned by piracy in the Gulf of Guinea and terrorism in the northern parts of the country. We therefore, hope to benefit from the incisive analysis of the problems that AALCO can engender and experiences of other jurisdictions in our quest to effectively combat these international crimes in our jurisdiction.

The focus on the work of the International Criminal Court and the International Law Commission will also benefit Member-States of AALCO and indeed the entire global community. A large number of the State Parties to the Rome Statute of the International Criminal Court (ICC) are from African and Asian Continents. The African Continent alone has 33 State Parties, yet the relationship between the ICC and the African Union has been less than satisfactory. There is the need for the ICC to engage Africa constructively in the global effort to end impunity.

Similarly the work of the International Law Commission (ILC) should mirror the interest of the developing world. As a member of the International Law Commission (ILC), I am pleased to note that selected items on the Agenda of the ILC will be discussed at this Session, thus giving the distinguished delegates the unique opportunity of contributing to the work of the ILC and the progressive development and codification of international law. It is my firm belief that the preliminary consideration of ILC matters at this forum will provide a platform for forging the necessary consensus between our two continents before deliberation on the larger global stage, thus helping to achieve one of the core objectives of AALCO.

Your Excellencies, Distinguished Delegates, Ladies and Gentlemen, I wish to observe that in the ever increasingly competitive and complementary world of today, organisations such as AALCO offer a useful platform for developing close and enduring partnerships among nations for sustainable development and global stability. We must therefore continue to render support to one another and take advantage of our unique skills and competencies to enhance the well being of our people.

To end this address, I wish to place on record the immense support and encouragement which my Ministry has received from the Federal Government of Nigeria, under the leadership of His Excellency, President Goodluck Ebele Jonathan, and GCFR towards the hosting of this Session. I should equally also express my gratitude to the AALCO Secretariat and the Local Organising Committee who have worked tirelessly in organising what promises to be a very successful meeting.

I wish you a memorable and enjoyable stay in Nigeria and invite you to take advantage of your visit to reach out and build lasting bonds of friendship among yourselves and with Nigerians. It is now my honour and pleasure to formally inaugurate the Fifty-First Annual Session of AALCO and wish you all fruitful deliberations. I thank you very much.

Master of Ceremony: I thank Honourable Attorney General of the Federation and Minister of Justice Mr. Mohammed Bello Adoke, SAN, CFR for his remarks. I now invite Mr. Nixon Ndege Ntimbwa, Principal State Attorney representing Her Excellency Mrs. Winfrida Beatrice Korosso, Director of Public Prosecution, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO for proposing a vote of thanks.

(iv) Vote of Thanks by Mr. Nixon Ndege Ntimbwa, Principal State Attorney representing Her Excellency Mrs. Winfrida Beatrice Korosso, Director of Public Prosecution, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO

His Excellency Mr. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria;

H. E. Mr. Rauff Hakeem, Minister of Justice, Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of the Asian-African Legal Consultative Organisation;

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

Honourable Ministers, Attorney-Generals, Heads of Delegations, Distinguished Delegates and Observers:

In my capacity as the President of the Forty-Ninth Annual Session of AALCO, it gives me immense pleasure to propose a vote of thanks at this inaugural session. The Annual Session of AALCO is a unique platform where one witnesses the essence of mutual cooperation and support extended among Member States of the Asian and African countries. The Organization's role in bringing together nations from the two prominent continents, in order to address international legal matters which have serious implications in international relations is commendable.

On behalf of the Member States of AALCO, allow me to express my sincere gratitude to the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO. I would like to extend our whole-hearted support and cooperation to the current President His Excellency Mr. Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria who is also a Member of the ILC for inaugurating and the Organizing Committee for all their efforts in conducting the Fifty-First Annual Session of AALCO. At this instance, I thank my predecessor Honourable Celina Ompeshi Kombani, who had discharged her responsibilities as President of the Forty-Ninth Annual Session of AALCO till I assumed charge as Minister of Constitutional and Legal Affairs of the United Republic of Tanzania.

I would like to thank Honourable Mr. Rauff Hakeem, Minister of Justice of Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of AALCO for successfully guiding the activities and works of AALCO during his term in the last one year. I congratulate him for ably conducting and presiding over the meeting of AALCO Legal Advisors which was held on the sidelines of the Sixth Committee of the Sixty-sixth session of the United Nations General Assembly in New York at the end of the year 2011. I appreciate the keen interest he had taken by involving deeply in the activities, be it Organizational and Substantial matters of AALCO. Under his Presidency, AALCO strived to achieve greater heights in the international legal fraternity.

The significant role that our Secretary-General, His Excellency Professor Dr. Rahmat Mohamad has played during his first term is remarkable especially to work towards revitalizing the Organization. We trust that under your stewardship this institution will attain many more glories. The Secretary-General and his Secretariat officials and staff should be commended for their untiring efforts in discharging their duties and carrying out the objectives of AALCO. I urge Member States of AALCO to take necessary action to protect and promote AALCO by ensuring AALCO is financially sound for an effective functioning of the Secretariat and in conducting its activities as well.

As the President of the Forty-Ninth Annual Session of AALCO, I wish to take this opportunity to register on behalf of the Government of Tanzania and its people, our gratitude to this Organization for having given us an opportunity to hold this position in the year 2010.

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

Thank you.

Master of Ceremony: Thank you very much for the vote of thanks. Upon request from delegation of Kingdom of Saudi Arabia, I would like to make the announcement of demise of Prince Nayef bin Abdel Aziz al-Saud, Crown Prince of Kingdom of Saudi Arabia. I request all the delegates present at this inaugural session to pay condolence to the departed soul by observing 1 minute silent prayer. May his soul rest in peace.

Master of Ceremony: Thereafter, all the Heads of Delegations are requested to assemble outside this hall for a group photograph. The session would resume after a short tea break, and in the meanwhile other members of the delegations are requested to assemble in this hall for forthcoming deliberations. Thank you very much.

IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS

**IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS OF
AALCO MEMBER STATES HELD ON MONDAY,
18 JUNE 2012 AT 12.20 PM**

His Excellency Mr. Rauff Hakeem, Minister of Justice, Democratic Socialist Republic of Sri Lanka and President of the Fiftieth Annual Session of AALCO in the Chair.

President: Thank you very much. Let me call the First Meeting of Delegations of AALCO Member States to order. The first item on the agenda of the Fifty-First Session is the adoption of the “**Provisional Agenda and the Tentative Schedule of Meetings and Events**”. As there are no comments we adopt the Agenda and the Schedule of Meetings as proposed by the Secretary-General, for the Fifty-First Annual Session.

The second item on the agenda relates to the “**Admission of Observers**”. We have among us Observers from Morocco and the Russian Federation. From the International Organizations we have the International Committee of the Red Cross (ICRC), United Nations Office on Drugs and Crime (UNODC), and International Tribunal for the Law of the Sea (ITLOS). It should be noted that Observers would be present at the plenary meetings only and they would not be participating in any meetings concerning the Heads of Delegations. As there are no comments, I consider the participation of Observers is approved by this meeting.

President: Now we move on to the next agenda item “**Election of the President and Vice-President of the Fifty-First Annual Session**”. Any proposals from the floor? People’s Republic of China.

The Leader of Delegation of the People’s Republic of China: Thank you Mr. President. It is my honour and privilege to propose **Mr. Mohammed Bello Adoke, SAN, Attorney-General and the Minister of Justice of the Federal Republic of Nigeria** to be the President of the Fifty-First Annual Session of AALCO. Mr. Mohammed Bello Adoke has a distinguished career. He has received his education from the prestigious universities throughout the world. He has acted as an arbitrator, severally, in England and Nigeria and is presently a party appointed Arbitrator by the Federal Republic of Nigeria in the Investment Dispute before the International Centre for Settlement of Investment Disputes, Washington D.C. between “Shell Ultra Deep Limited and the federal Government of Nigeria. He is also the Government appointed Arbitrator on other on-going important Arbitrations. He is also the Member of the International Bar Association and an honorary fellow of the Institute of Business Executives of Nigeria and Institute of Industrialist and Corporate Administrators. Mr. Adoke, S.A.N. has also held other high posts in the Nigerian Bar Association. He was appointed the Honourable Attorney-General of the federation and Minister of Justice by President Goodluck Ebele, GCFR on 6th April 2010, and by virtue of his position was until the 29th of May 2011, the Chairman of the Nigerian Delegation to the Follow Up Committee for the implementation of the Greentree Agreement between Nigeria and Cameroon on the Bakassi Peninsula. Mr. Mohammed Bello Adoke, SAN was recently elected into the International Law

Commission (ILC), a 34 Member body of the United Nations responsible for the progressive development of international law. In view of his vast knowledge and experience in various areas the People's Republic of China considers it most appropriate to propose Mr. Adoke for the post of the President of the Fifty-First Annual Session.

President: Thank you. Anyone seconding the nomination by the People's Republic of China.

The **Leader of Delegation of Ghana:** I second the nomination of my good friend Honourable Mr. Mohammed Bello Adoke in view of his vast experience, to this high office of AALCO, as the President of the Fifty-First Annual Session. I second the motion.

President: Thank you very much. Now we move on to nominating the Vice-President. Yes the Delegation of the United Republic of Tanzania.

The **Leader of Delegation of the United Republic of Tanzania:** I would like to propose the name of **Mr. U Thiha Han**, Director, Ministry of Foreign Affairs of the Union of Myanmar, International Law and Treaties Department to be the Vice-President of the Fifty-First Annual Session of AALCO being held at Abuja, Federal Republic of Nigeria.

The **Leader of Delegation of Japan:** Thank you Mr. President, I second the proposal made by the distinguished delegate of Tanzania to appoint Mr. Thiha Han Director in the Ministry of Foreign Affairs of the Union of Myanmar, International Law and Treaties Department, to the post of Vice-President of the Fifty-First Annual Session.

The **Leader of Delegation of the Republic of Indonesia** also seconded the nomination of the Vice-President.

President: Thank you very much. I declare Mr. Mohamed Bello Adoke as President of the Fifty-First Annual Session of AALCO being held in Abuja. Similarly, the representative from the Union of Myanmar, Mr. U Thiha Han as Vice-President of the Fifty-First Annual Session.

President: Ladies and gentlemen may I have your indulgence for me to introduce the next agenda item "**Reappointment of the Secretary-General**". Paragraph 20 (1) of the AALCO's Statutory Rules, states *inter alia* that "The Organization shall appoint a legal expert or a person who has adequate legal expertise and administrative experience, who is a national of a Participating State, to be the Secretary-General, for a term of four years. The person so appointed shall be eligible for reappointment for only one further term of four years".

It may be recalled that a letter of support was sent by the Attorney-General of Malaysia to all his counter parts seeking support and endorsement for re-appointment of Prof. Dr. Rahmat Mohamad, as Secretary-General of AALCO.

A letter to such an effect was also sent by Prof. Dr. Rahmat Mohamad to all the Member States on 2 May 2012. Till date the Secretariat has received positive response from the following Member States namely; Syrian Arab Republic; Singapore; State of Qatar; United Republic of Tanzania; Union of Myanmar; Japan; Republic of Mauritius; Sultanate of Oman; and Republic of South Africa.

I am sure that other Member States would like to extend their support on this issue. May I now open the floor for discussions?

The Leader of Delegation of Malaysia: His Excellency the Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen. During the 50th Annual Session of AALCO in Sri Lanka, Malaysia announced its intention of seeking H.E. Professor Dr. Rahmat Mohamad's reappointment as the Secretary-General of AALCO for a further 4-year term (2012 - 2016). I am pleased to announce that Professor Dr. Rahmat Mohamad's re-appointment has the full support of the Government of Malaysia. A mandate pertaining to this re-appointment has been obtained as early as 30 March 2012 by virtue of a Malaysian Cabinet decision. This mandate clearly shows the support and confidence that the Government of Malaysia has in Professor. Dr. Rahmat Mohamad to continue his duties and responsibilities as the Secretary-General for a second term.

During the 48th Annual Session of AALCO held in Putrajaya, Malaysia in 2009, the "Putrajaya Declaration on Revitalizing and Strengthening AALCO" was adopted whereby the Member States of AALCO reaffirmed their faith in the Organization and recognized its vital contribution in the progressive development and codification of international law. Significantly, the Declaration symbolizes the mandate that AALCO has given Professor Dr. Rahmat to not only revitalize and strengthen AALCO, but to also transform the Organization.

It is undeniable that for the past four years, Professor Dr. Rahmat Mohamad has successfully served the given mandate by leading and transforming AALCO to meet the challenges of the new century. He has enlarged the scope of activities to ensure AALCO's relevance within both the Asian and African communities, while balancing the regional peculiarities of the 47 Member States of AALCO.

Under his helm, he has undertaken various initiatives to revitalize and strengthen AALCO, including the creation of the AALCO Eminent Persons Group (EPG), the initiation of the AALCO Lecture Series and the adoption of various measures to improve the financial situation of AALCO. Through his efforts in fostering ties with the United Nations, International Court of Justice and the International Law Commission, among others, and through the collaboration with international organisations such as the International Committee of the Red Cross, AALCO's standing and presence in the international community has been enhanced. This is an attestation of Professor Dr. Rahmat Mohamad's efforts and success in fulfilling his mandate by the AALCO Member States.

Therefore, to allow for the continuation of the remarkable work he has done for AALCO and its progress, Malaysia wishes to seek the support and endorsement of Your

Excellencies' Governments for the reappointment of Professor Dr. Rahmat Mohamad, as provided under Article 3 of the AALCO Statute.

I am confident that Professor Dr. Rahmat Mohamad is in the best position to continue the fulfillment of the mandate of the Secretary-General. His task is to now move into the second phase of revitalizing and transforming AALCO. Therefore, Malaysia urges Professor Dr. Rahmat Mohamad to ensure AALCO remains as one of the most important legal regional intergovernmental Organization, and not a political one.

Your Excellencies, with all due respect, it remains for me to express my appreciation in advance for Your Excellencies' consideration and support in this matter. Thank you.

The Leader of Delegation of the Islamic Republic of Iran: I would like to take this opportunity to thank Prof. Dr. Rahmat Mohamad, the distinguished Secretary-General of AALCO for four years spent in this office. During his first term the Organization has been very active and the initiatives taken by him were very fruitful. We sincerely hope that he will be able to serve the Organization as Secretary-General for the second term. We wish him all the best for his efforts. Thank you.

The Leader of Delegation of the People's Republic of China: Mr. President we fully support Prof. Dr. Rahmat Mohamad for his reappointment for a second term as Secretary-General of AALCO. During the reception yesterday Prof. Dr. Rahmat Mohamad gave a very good speech where he told us his plans for his second term. We are confident that if he is reappointed AALCO will benefit a lot and we fully support his reappointment. Thank You.

The Leader of Delegation of India: We also join the previous speakers in giving support to Prof. Dr. Rahmat Mohamad on his reappointment as Secretary-General of AALCO for one further term. Being the host country of this Organization we take pride to see Dr. Rahmat Mohamad on his reappointment as Secretary-General of the Organization. India is particularly very much sure of the Organization's vital contribution to the progressive contribution to International law. We hope that with his wisdom and expertise the Organization will cross its problems, be they financial or resource management issues successfully. We are confident of that. Thank You.

The Leader of Delegation of Ghana: We join other Member States in supporting the reappointment of the Secretary-General. The CV of the Secretary-General speaks for itself, especially in the area of publications last year. I feel that the incumbent is very apt for the position of Secretary-General. His publication on Asian-African Perspectives on International Law in the Post Westphalian Era is a watershed for recent global issues. Therefore, we fully support Prof. Rahmat Mohamad's reappointment.

The Leader of Delegation of the Republic of Indonesia: On behalf of the Government of Indonesia we would like to thank Prof. Dr. Rahmat Mohamad for his efforts in strengthening AALCO during his first term, in this regard my delegation would also like to support his reappointment for a second term. We very much appreciate him for his hard work and dedication in strengthening AALCO, we hope that during his second term

he will focus his attention on the substantive matters and undertake more activities and proposals in the area of international law. Thank you.

The **Leader of Delegation of the State of Kuwait** in view of the good work done by Prof. Dr. Rahmat Mohamad also supported the re-appointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for a second term¹.

The **Leader of Delegation of the State of Palestine** also supported the reappointment of prof. Dr. Rahmat Mohamad as Secretary-General of AALCO².

The **Leader of Delegation of Kenya:** Mr. President, Kenya would like to support the re-appointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for a further period of four years. Kenya recognizes Prof. Rahmat's tireless efforts in steering the work of this Organization in a very able and efficient manner. Not only has he steered the work of the Secretariat he has also ensured that the interests of the two regions were well articulated at the United Nations general Assembly, the International Law Commission and even the World Trade Organization. He has done this with limited human and financial resources so we commend him for his good work and fully support his re-appointment. I thank you.

The **Leader of Delegation of the Federal Republic of Nigeria:** In view of the sterling qualities of Prof. Dr. Rahmat Mohamad, Nigeria endorses his re-appointment. Thank you.

The **Leader of Delegation of the Kingdom of Saudi Arabia:** The Kingdom of Saudi Arabia also endorses the reappointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for one further term of four years³.

The **Leader of Delegation of the Republic of Yemen** also supported the re-appointment of Prof. Rahmat Mohamad.⁴

The **Leader of Delegation of the Kingdom of Thailand:** The delegation of Thailand also supports the re-appointment of Prof. Dr. Rahmat Mohamad as Secretary-General of the AALCO.

President: As stated in my earlier statement and supported by several others from the floor I recommend to the meeting the endorsement of the decision of re-appointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for one further term of four years from 2012-2016 and wish him all the best in his assignment.

President: May I now call upon the President elect of the Fifty-First Annual Session Honourable Mr. Mohammed Bello Adoke, SAN to assume the Chair.

¹ This statement was delivered in Arabic. Unofficial translation from interpreter's version.

² This statement was delivered in Arabic. Unofficial translation from interpreter's version.

³ This statement was delivered in Arabic. Unofficial translation from interpreter's version

⁴ This statement was delivered in Arabic. Unofficial translation from interpreter's version

Mr. Mohammed Bello Adoke, SAN, CFR, President of the Fifty-First Annual Session in the Chair.

President: Excellencies, Distinguished Ladies and Gentlemen, let me start by expressing my profound gratitude to all the delegations for the honour done to me and my country by electing me as the President of the Fifty-First Annual Session to steer the work of this reputable Organization for the next one year. My delegation wishes to congratulate the President of the Fiftieth Annual Session, the Minister of Justice of the Democratic Socialist Republic of Sri Lanka, H.E. Mr Rauff Hakeem for the very successful completion of his tenure and for the exemplary leadership and commitment which he brought to bear on the work of the Organization. We join other delegations in wishing him God's grace and blessings in his future endeavours.

Distinguished Delegates, as I assume the mantle of leadership of this Organization, this afternoon, I wish to assure you that I will work conscientiously with the Secretariat to consolidate and improve on the gains recorded during your tenure. We hope to continue to rely on your counsel and immense wealth of experience in the management of the affairs of this great Organization.

I similarly solicit the support and cooperation of all Member States and delegates to ensure a hitch free session. It is in this regard that I call our distinguished delegates to focus on the Agenda items which have been carefully selected in the light of their relevance to contemporary global affairs, international peace and security. As a member of the International Law Commission (ILC) I will strive, during my tenure, to enhance the collaborative effort of AALCO with the ILC so as to ensure mutually beneficial outcomes for our Member States.

My delegation notes with immense satisfaction, the excellent work of the AALCO Secretariat under the dynamic leadership of the Secretary-General, Prof. Dr. Rahmat Mohamad and wishes to use this opportunity to commend him and reiterate our appreciation to him for his commitment and dedicated service to the Organization. His re-appointment is not only well deserved, given his wealth of experience and the competence he has exhibited since his first appointment, but it would equally ensure continuity in the implementation of the current programmes of the Organization.

Your Excellencies, distinguished delegates, Ladies and Gentlemen, given the characteristic spirit and candor and objectivity that pervades the deliberations of AALCO, I am optimistic that the Fifty-First Session will achieve its objectives and lay the foundation for greater cooperation and partnership among our Member States in the years to come. I therefore look forward to a robust and healthy exchange of views and to conclusions and outcomes which will be practical, relevant and beneficial to all delegations and participants. Once more, I thank you for this honour and wish you fruitful deliberations. I thank you for your kind attention.

The Meeting was thereafter adjourned.

V. VERBATIM RECORD OF THE FIRST GENERAL MEETING

**V. VERBATIM RECORD OF THE FIRST GENERAL MEETING
HELD ON MONDAY, 18 JUNE 2012 AT 12.55 PM**

His Excellency Mr. Mohammed Bello Adoke, SAN, President of the Fifty-First Annual Session of AALCO in the Chair.

President: I call the First General Meeting to order and it is my pleasure to invite the Honourable Attorney-General of Malaysia who has kindly requested to speak first during the session. Honourable Tan Sri Abdul Gani Patail, Attorney-General of Malaysia.

GENERAL STATEMENTS

The Leader of Delegation of Malaysia: His Excellency Mr President, the Secretary-General, Excellencies, Distinguished Delegates, ladies and gentlemen;

On behalf of my delegation, I thank His Excellency the President of this 51st Session of AALCO, the Secretary General of AALCO, the Host Country, Nigeria and the AALCO Secretariat for all the arrangements made for this AALCO session. My delegation will take part in the deliberations of the topics placed on the Agenda during the next few days of the Meeting. At this point in time, allow me to share with you Malaysia's initial reactions to some of the topics we considered important.

Mr. President and distinguished delegates; Your Excellencies, one of the important topics placed on AALCO Annual Session agenda since 1988 is on the issue of Palestine.¹ We have been discussing on this topic every year for the past 24 years. We need to ask ourselves honestly what had been the tangible outcome of the discussion. Had our views been conveyed to the relevant parties? Had our proposals, if any, been taken up by the concerned parties? If not, isn't it about time we ask ourselves why and what should we do?

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

If we want to retain this topic in the Agenda of our Annual Session, I suggest we should stop our rhetoric and come out with concrete plans. The fundamental rights of the Palestinian people to self-determination and a sovereign State as provided in Article 1 of the Montevideo Convention² has remained unrealized for more than four decades despite Palestine's efforts to be recognised as a sovereign Palestinian State. Numerous General Assembly Resolutions and Security Council Resolutions had been adopted on the establishment of an independent State of Palestine and for the right of the Palestinian people to self-determination. Amongst them are the Security Council Resolution 1397 (2002) which affirmed a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders. The General Assembly Resolution 54/152 (1999) reaffirmed the right of the Palestinian people to self-determination, including the option of a State. Most recently, on 3 April 2012 the Office of the Prosecutor of the ICC had decided not to commence investigation on Palestine's application on the basis that it is in no position to decide whether Palestine is a State. The ICC Prosecutor was of the opinion that this question should be decided by the United Nations or the Assembly of States Parties.

However, the question of the statehood of Palestine had been discussed by the Committee on the Admission of New Members under the United Nations Security Council. And the Committee decided that it was unable to come to an agreement as there were contradicting views regarding whether Palestine have an effective government in control over the claimed territory and also its capacity to enter into relations with other States, including the issue of recognition by other States.

The question is how could AALCO contribute to the legal discussion on this important topic? Malaysia calls for AALCO to re-look at the deliberations by Member States on this topic. AALCO should look at the legal issues pertaining to the elements of determination of a State under the Montevideo Convention and the question as to who, or which body, has the ultimate determination to decide whether Palestine is a State. The AALCO Secretariat should be given a mandate to conduct a thorough legal research into this subject and prepare it for the deliberations by AALCO Member States. AALCO Member States should take the AALCO legal view for discussions at the UN General Assembly or such other bodies.

Mr. President and distinguished delegates, the on-going United Nations Conference on Sustainable Development or Rio+20 in Rio de Janeiro continues to emphasise the importance of a green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development. It is envisaged that the Conference will result in the finalisation of the outcome document "The Future We Want".

Malaysia observed that certain commitments in the outcome document relate to international obligations governed by various international legal regimes. In this respect, the commitment to establish a more effective waste management and lifecycle regime,

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

the issues may arise when the disposal of the chemical or electronic wastes involves trans-boundary movements of such substances which are governed under the export control regime.

In relation to the commitments on global marine environment, global program of action for the protection of the marine environment from land-based activities etc., Malaysia is of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).

Mr. President and distinguished delegates, with regard to the topic on “*Law of the Sea – Responses to Piracy: International Legal Challenges*”, Malaysia’s commitment to its role in support of, *inter alia*, numerous Security Council resolutions³ may be aptly demonstrated through both its operational contributions in the Gulf of Aden, and the current prosecution in Malaysia of the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman in Malaysia.

Member States would recall that at the 50th Annual Session, Malaysia had urged the AALCO to come forward to provide the necessary technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Thus, Malaysia appreciates the willingness of the AALCO to play an integral role to develop a model legislation that could be used by its Member States. In that regard, Malaysia hopes that the model legislation on piracy and other maritime security offences to be prepared by the AALCO could be completed and circulated for the consideration of all Member States in advance prior to the next Annual Session.

Considering the growing importance of this corpus of law, Malaysia welcomes the convening of the half-day Special Meeting on “piracy” under the agenda item the Law of the Sea at this Annual Session. The incidents of piracy, especially in the Gulf of Aden and Indian Ocean have greatly affected the safety and security of navigation as well as the international shipping community as a whole.

Mr. President and distinguished delegates, Malaysia notes that the topic “International Terrorism” has been identified as one of the topics to be deliberated at the Special Meeting of this annual session. Malaysia has made great strides in countering terrorism through very stringent domestic laws and cooperation with other States. Malaysia wishes to highlight the repeal of its Internal Security Act 1960 (‘ISA’), a preventive law which previously was the main legislation used in detaining suspected terrorists. Such move was to ensure that, among others, in combating the scourge of terrorism, the rule of law and fundamental freedoms are upheld.

Acknowledging the grave risks to internal security and public order presented by threat of terrorism, sabotage and espionage still persist, to replace the ISA, the Security Offence (Special Measures) Act 2012 was drafted. The process under the Act provides the balance between the responsibility of the State to ensure peace and security with the rights of the

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

accused person to fair trial and due process of law. Careful consideration based on international norms and standard in relation to the period of detention and the total autonomy of the executive to allow detention without trial has been addressed in the Bill.

Therefore, currently the detention under the Act only relates to investigation. Malaysia also wishes to highlight that the period of 30 days detention for purposes of investigation is subject to a sunset clause, where this provision will be revisited every 5 years. A Special Review Committee, chaired by the former Chief Justice and with members including the Attorney General, the Inspector General of Police, Chairman of the Malaysian Human Rights Commission, had also been established for purposes of reviewing the implementation of the law every six month. Again, Malaysia wishes to reiterate that the new law only allows detention for purposes of investigation and not detention without trial.

In fighting terrorism, it is imperative that States engage in international cooperation. Within the Southeast Asian region, Malaysia finds that the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries ('ASEAN MLAT'), as highly valuable in efforts against transnational crimes, including terrorism. Malaysia reiterates its view that an intra-regional Asian-African legal instrument on the same matter would be beneficial as among others, such instrument facilitates the implementation of a harmonised mutual assistance in criminal matters regime among AALCO Member States with both common law and civil law systems. Recalling the decision of the Forty-Ninth AALCO Annual Session vide Resolution AALCO/RES/49/S8, Malaysia looks forward to the constitution of an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States in near future. For purposes of the study, on its part, Malaysia is prepared to share its knowledge and experience on the negotiation and conclusion of an AALCO MLAT. Thank you.

President: I thank the leader of delegation of Malaysia. May I now call upon Japan to make their statement.

The Leader of Delegation of Japan: Thank you Mr. President. H.E. Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice of the Federal Republic of Nigeria,

Hon. Rauff Hakeem, Minister of Justice of the Democratic Socialist Republic of Sri Lanka and President of the 50th Annual Session of AALCO,

Hon. Mathias Meinrad Chikawe (MP), Minister of Justice and Constitutional Affairs of United Republic of Tanzania and President of the 49th Session of AALCO,

H.E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO,

Honorable Ministers and Attorney Generals,

Distinguished Delegates,

Ladies and Gentlemen,

It is indeed my great pleasure and privilege to make general statement again before the honourable ministers and distinguished colleagues of AALCO Member States who are gathered here for this AALCO Annual Session. I would like to express our great appreciation to the Government of the Federal Republic of Nigeria for hosting this Annual Session, and extend my sincere congratulation to H.E. Mohammed Bello Adoke, Attorney General and Minister of Justice of the Federal Republic of Nigeria, for his election as President of the 51st Annual Session. I would also like to congratulate Mr. U Thiha Han for their election as Vice-President of this Annual Session. Our gratitude also goes to Prof. Dr. Rahmat Mohamad, AALCO Secretary-General, Deputy-Secretary Generals and all the staff for all of their hard work in preparing for this Annual Session.

Mr. President, in my view, this Annual Session of AALCO holds a special significance for a number of reasons.

First, this Annual Session is the first Annual Session after the AALCO marked the 50th Annual Session of AALCO meeting which was held very successfully in Sri Lanka, making a new start now for the future as an important regional legal consultative organisation among the Member States of the Asian and African regions.

Secondly, this Annual Session is held in the Federal Republic of Nigeria, most populous great nation rich in many resources in Africa, following the established tradition of AALCO to alternate the venue of annual meeting between our two regions.

Africa is today one of the two most rapidly developing dynamic growth center regions of the world. By hosting this Annual Session, the Government of the Federal Republic of Nigeria has eloquently shown its support for the promotion of the rule of law in the international community, and dialogue among States in the two regions on various issues of international law.

Thirdly, the AALCO is to undergo an important year in its history for further activities under the able leadership of Prof Dr. Rahmat Mohammad who will start a second term as the Secretary General of AALCO when he is duly reappointed during this Session.

During his first term in office, Prof. Dr. Rahmat Mohammad as Secretary-General showed strong leadership towards revitalization of AALCO and has made some significant achievements: strengthening the financial basis by revising the scale of contributions of Member States; contribution towards adoption of the “Putrajaya Declaration” at the Forty-eighth Annual Session; collection of arrears; streamlining expenditure and at the same time implementing various seminars and workshops in partnership with Member States and with other international organisations; establishment of the Eminent Persons Group, etc., just to name a few areas. Big challenges remain, but I am optimistic that they should be overcome under his leadership, and I look to continuing working relationship with him and his staff during his second term.

Fourthly, this Annual Session is held at a juncture of great importance in terms of development of international law.

Just to mention a few points relating to the agenda items to be discussed during this Annual Session, this year marks the thirtieth (30th) Anniversary of the opening for

signature of the 1982 UN Convention on the Law of the Sea (UNCLOS). The 22nd Meeting of the State Parties to the UNCLOS celebrated the anniversary this month in New York. The topic of the law of the sea has all along been one of the most traditional agenda items of importance for discussion in AALCO, and the contribution of AALCO to the development and codification of the law of the sea has been widely known. Today, UNCLOS has a total of 162 parties and we can fairly say that it has attained the status as “the constitution for the oceans”, serving as the core and basis of international legal principles of the sea. It is quite timely that one of the three Half-day Special Sessions is devoted to the topic of the law of the sea and piracy issues, and I look forward to fruitful discussions on the topic of piracy which remains a real threat to the safe navigation of ships and poses a grave concern for the international community.

Environment and Sustainable Development is another topic on the agenda for this Annual Session which is deemed quite timely as the United Nations Conference on Sustainable Development, Rio+20, is currently being held in Rio de Janeiro. The United Nations Conference on Environment and Development held in 1992 laid a foundation for the development of contemporary international environment law. 20 years have passed since then, and the world has changed quite significantly. Rio+20 will be an important occasion to deliberate on how we want our world to be in the future. I look forward to fruitful exchange of views and discussions on this agenda item during this Annual Meeting.

Mr. President, when I addressed last year’s Annual Session in Sri Lanka, it was just after Japan experienced the devastating Great East Japan Earthquake and tsunami which claimed the lives of more than 15,000 people. More than one year has passed, and the infrastructure and economy of the disaster affected regions are steadily recovering. The production levels in the mining and manufacturing sector have now recovered to the levels prior to the disaster. So much of such reconstruction has only been made possible, thanks to the warm assistance extended to us from more than 160 countries and regions and over 40 international organisations, and I wish to take this opportunity to renew, on behalf of the People and the Government of Japan, our sincere appreciation to all the people concerned for their kind support. The Great East Japan Earthquake was a truly tragic experience but at the same time it gave us an opportunity to reconfirm the bond of friendship-kizuna- and close ties we have with the international community. For this, the Government of Japan has renewed its determination to promote international cooperation.

The fight against nuclear accident is continuing and the Japanese Government is making every effort to ensure that the rebirth of Fukushima is definitely achieved. At the same time, the Government of Japan will contribute to strengthening nuclear safety worldwide by sharing with the international community the lessons learned from the accident. In this regard, the Government of Japan will hold the Fukushima Ministerial Conference on Nuclear Safety, in co-sponsorship with the IAEA, from 15 to 17 December 2012.

After the last Annual Session in Sri Lanka, elections were held at the UN for the members of two institutions relating to the development of international law, namely the International Court of Justice (ICJ) and the International Law Commission (ILC). For Japan, at the elections held in the General Assembly and the Security Council, on 10 November 2011, for judges of the ICJ, Judge Hisashi Owada, former President of the Court who addressed the AALCO Annual Session last year, was re-elected. A week later,

on 17 November, at an election of membership of the ILC held at the General Assembly, Professor Shinya Murase, who also participated in the Annual Session last year, was re-elected for the second term. We are most appreciative of the kind support by AALCO Member States.

Japan places great importance to establishing and promoting the rule of law in the international community, and in this regard Japan values very highly the work of the ICJ, the ILC and the International Tribunal for the Law of the Sea (ITLOS). Japan is pleased to see Japanese International lawyers making direct contribution to the work of these highly acclaimed institutions and thereby serving to further promote the rule of law and peaceful settlement of disputes in the international community.

Speaking of the ICJ and the peaceful settlement of disputes, there is a growth in number of cases brought before the Court that involve Asian and African States. Japan is now no exception and we have a case in the docket of the Court, brought by Australia.

Mr. President, on the work of the International Law Commission (ILC), we discussed the United Nations Convention on Jurisdictional Immunities of States and their Property during last year's Annual Session, upon Japan's proposal. There were a number of positive responses from the members. I will discuss the matter in more detail in the session on the work of the ILC.

Mr. President, as I mentioned earlier, Asia and Africa are the two growth centers of the world and therefore peace and stability in the two regions is crucial for prosperity of the world. Promotion of rule of law in Asia and Africa is of grave significance in that regard, and there are great roles for AALCO to play in facilitating dialogue and exchange of views on various issues of international law. Putting AALCO on a sound financial basis and thereby further re-vitalizing the Organisation is not just of benefit to us but it is our responsibility to the world as a whole. As I understand, the budget for the year 2013 has been approved without much controversy by the Liaison Officers and I expect that it will be adopted smoothly during the course of this Annual Meeting. However, financial challenges remain and in the event of recurrence of the difficulties, it could undermine the role that AALCO can play if we do not take the matter seriously and duly address the problems. Therefore, I would like to reiterate that it is critical that every member state fulfils its financial obligations, and that we, AALCO Member States as a whole, should keep the matter in mind seriously and in particular the importance of full commitment and implementation by all Member States regarding their financial obligations.

Mr. President, before I conclude, I would like to bring to your attention the fact that next year is a TICAD (Tokyo International Conference on African Development) year: an important year for cooperation between African states and Japan. TICAD V will be held from 1st to 3rd June, 2013 in Yokohama. Since the last meeting, TICAD IV held also in Yokohama in 2008, Japan has been faithfully implementing its commitments detailed in the Yokohama Action Plan, amid its efforts in recovering from the Great East Japan Earthquake. In TICAD V, Japan hopes to address new challenges facing Africa, building on the past 20 years of the TICAD process. Some of the major themes will include "Boosting Economic Growth" in Africa, addressing various development challenges, and

strengthening of Africa's own resilience and human security. Japan looks forward to welcoming the heads of states of Africa in June next year for TICAD V.

I wish to conclude my remarks, thanking once again the Government of the Federal Republic of Nigeria for hosting and the AALCO Secretariat for preparing this Annual Session. I very much look forward to engaging in active exchange of views with the distinguished delegates, both in and out of this conference room. Thank you.

President: Thank you very much. I now call upon Kuwait to make their statement.

The Leader of the Delegation of the State of Kuwait: His Excellency the President, Attorney General and Minister of Justice, Republic of Nigeria Professor Mohammed Bello Adoke,

His Excellency Secretary General Professor Ramat Mohammad,

Excellencies, Heads and Members of Delegates,

Peace, Mercy and Blessings of Allah.

At very beginning, I express to the delegation of the Kingdom of Saudi Arabia our sincere condolences on the demise of His Highness the Crown Prince of the Kingdom Prince Nayef bin Abdul Aziz praying to the Almighty God bestow His forgiveness and wide mercy on him.

I am pleased at the outset to convey to all you respected the sincere greetings and appreciation of the His Highness the Emir, Government and People of State of Kuwait and their best wishes for success, and this meeting achieves the desired results, which would support the position of Member States in the International community, especially for the mentioned topics on agenda of your esteemed meeting.

I am also pleased to convey to His Excellency the Attorney General and Minister of Justice of the friendly Republic of Nigeria Mr. Mohammed Bello Adoke sincere congratulations for presiding the 51st session of your esteemed organization wishing him the success in managing its sessions to the fullest.

I remember in this regard to commend the efforts of His Excellency Professor Rahmat Mohammad, Secretary General of the organization for the great role he played in order to establish rules and principles of the organization as well strengthen its pillars and to achieve its goals for further progress of people of your esteemed organization, this is which comes only through his active replies to the governments of Member States of organization in issues and matters that are of interest to the International Community. In this context, the delegation of my country congratulates the re-nomination of Professor Rahmat Mohammad for the post of Secretary General of Organization for the second term in recognition of his significant efforts to ensure the success of your esteemed organization's works.

Ladies and gentlemen, there is no doubt that the agenda of this session is full from many factual and legal topics, and that is call of practical necessity, to address them by studying which represent the impact on our countries. Depending on the pioneering role which your esteemed organization played on all levels internationally, regionally and nationally, it is worth to discuss the matters which make participation in the works of International Law Commission more effective and positive.

His Excellency the President, His Excellency Secretary General, Excellencies members of the participating delegations, the delegation of the State of Kuwait affirms that the International Community is closely following the activities of the current session of the organization but awaits the outcome and the results of this session that because of its topics on the agenda of this session are very important intersect in many of them with the world is witnessing in general and Middle East in particular the changes and developments, perhaps most important of it is so-called Arab Spring, which saw some of its events in violation of rules of international humanitarian law, human rights and fundamental freedom.

In this context, the State of Kuwait is fully confident of achieving the just demands of the people to self-determination and the availability of free options before it, and enhancing the livelihood and peace. These are things represent in its objective, basic pillars support the human structure and pillars of civilized human civilization which is call of all religion and divine law.

In this regard, I emphasize that we can't overlook what the occupying Israeli authorities are doing in violations contrary to all international conventions and acts and international norms related to the human rights and rights of occupied people to self-determination, from which the operations of annexation and judaization of Palestinian land and building settlements on it, and work to remove and displace its people and continuation of blockade on Gaza and attempt to hamper the request for the declaration of independent sovereign State of Palestine. That is what led to add Palestinian Issue on agenda of organization since 27th session held in Singapore 1988, till to our current session.

The completion of the Statute of the International Criminal Court after the definition of aggression crime at the end of the activities of Kampala Review Conference 2010, invites us to put this International Court before its responsibilities and urge it on standardization of conviction and arrest.

On this occasion I am pleased to congratulate Mrs. Fatou Bensouda on assuming post of the Prosecutor of the International Criminal Court to succeed Mr. Luis Moreno Ocampo and we hope that this International Court will see changes in its policies and achieve with that the complete international justice, far from mixing the law with international political balance. What encourages us in this hope is that Mrs. Fatou Bensouda is from one of the country of African Continent which has long many of its people suffered from countless violation of rules of International Humanitarian law.

On the other hand, the agenda of current session is full of topics and the item on human trafficking and smuggling of migrants. The State of Kuwait is drafting through its specialized institutions integrated bill in this regard to ensure optimal application of

protocol to prevent, suppress and punish human trafficking annex to the agreement of United Nations to combat organized crime.

I would also like to acknowledge the generosity of our agenda about other items, on top of these are: international terrorism, piracy, protection of environment and sustainable development and rights of women and children which are also very important.

Finally, I deeply thank and appreciate to all of you respected and I sincerely hope that our esteemed organization achieves its high and optimal goals expected from it.

I thank for kind attention, I hope Almighty God to help us and you in discussing this valuable topics and items, wishing to all of you respected the permanent success and the success of our esteemed organization, and Almighty God blesses to our people with security, well-being and stability.

President: Thank you very much. May I not call upon the delegate from the Republic of Korea.

The Leader of the Delegation from the Republic of Korea: Mr. President, on behalf of my delegation, I would like to congratulate you on your assumption of the Presidency of this Session. I wish to extend my full support to you and the other members of the Bureau. I have every confidence that this 51st Session in Abuja will prove to be a resounding success, not only in exchanging views on key issues in contemporary international law, but also in nurturing partnerships between Asia and Africa.

Mr. Secretary-General, Dr. Rahmat Mohamad, I would like to thank you for your contributions to AALCO and extend my sincere congratulations for your re-appointment as the Secretary-General. I also would like to express my appreciations to the Secretariat of AALCO for their hard works in making this Session a memorable and successful one.

Mr. President, distinguished delegates, we now have various important agendas before us covering a wide range of highly relevant and cutting-edge international legal issues, which include, among others, the International Criminal Court, Environment and Sustainable Development, Responses to Piracy and International Terrorism.

Taking this opportunity, I would like to draw your attention to the following three agendas which will be discussed during this Session: Firstly, "Environment and Sustainable Development, Secondly, "the International Criminal Court," and lastly, "Responses to Piracy: International Legal Challenges"

In the area of environment and sustainable development, there have been significant progresses at the 17th Conference of Parties to the UN Framework Convention on Climate Change and the 7th Meeting of Parties to the Kyoto Protocol, held in Durban, South Africa last year. In a few days, there will be another milestone in this field, the Rio+20, one main theme of which is "a Green Economy" in the context of sustainable development and poverty alleviation.

The Government of the Republic of Korea, in this regard, undertakes a variety of activities designed to achieve both economic growth and environmental sustainability.

With strong support from the international community, the Korean government successfully launched the Global Green Growth Institute (GGGI) in June 2010 in Seoul. The GGGI is dedicated to support developing countries to shift their economies from the traditional manufacturing sectors towards the more environment-friendly "low-carbon, Green Growth" paradigms.

In October this year, during the 18th Pre-COP Ministerial Meeting on Climate Change in Seoul, the GGGI is to be launched as an international organization, thanks to the cooperation and contributions of like-minded States including many AALCO Member States. At this time, please allow me to express my sincere appreciations to Cambodia, Ethiopia, Indonesia, Japan, Mongolia, the Philippines, Thailand, and the United Arab Emirates for their participations and I hope that other AALCO Member States will also participate in the GGGI in the near future.

Mr. President, distinguished delegates, I now would like to touch upon the issue of the "International Criminal Court (ICC)", in which I was personally involved during the sessions of the Preparatory Commission. The ICC is the first permanent international criminal court established to punish individuals who have committed the most heinous crimes against humanity. Celebrating 10th anniversary of the creation of the Court this year, we just witnessed its first verdict regarding the case of Lubanga in DR Congo in March this year.

Since the establishment of the ICC, the Republic of Korea has fulfilled its obligations as a State Party with sincerity and particular attention. The Government of the Republic of Korea has contributed to the effective functioning of the ICC by providing voluntary contributions and also by proactive leadership of H.E. Judge Sang-Hyun Song as the President of the Court. The Republic of Korea will continue to make every effort to support the Court in order to eradicate the culture of impunity by bringing about international criminal justice.

Mr. President, distinguished delegates, among issues for focused consideration, I wish to emphasize the importance of "Responses to Piracy: International Legal Challenges"

The piracy has been an enemy of humanity, not just because it puts lives of innocent people at risk, but also because it undermines invaluable trust in the rule of law in international community. The Government of the Republic of Korea takes the piracy very seriously. As a result of rescue operation of Korean sailors held captive by Somali pirates last year, the Korean navy captured 5 pirates alive, and prosecuted them in domestic criminal court. Some of them were sentenced to more than 10-year imprisonment and one was to life in prison.

However, criminal justice at the international level cannot be brought about by a single State's effort. Close cooperation in the national and international criminal justice system are vital for the effective repression of piracy. For these reasons I hope this issue will remain high on the agenda of the AALCO.

Mr. President, Distinguished delegates, before concluding, I would like to emphasize the overriding significance of the AALCO for the strengthening of the Asian-African partnerships as well as for concerted actions towards the rule of law.

On this positive note, allow me to wish all of us every success in this Session, and convey once again my deep gratitude to the Secretary-General and his staffs for organizing this Annual Session in Abuja.

I thank you for your kind attention.

President: Thank you very much. I would now like to call upon People's Republic of China to make their statement.

The Leader of the Delegation of the People's Republic of China: Mr. President, distinguished delegates, first of all, on behalf of the Chinese delegation, I would like to congratulate Your Excellency on your election as President of the 51st Annual Session of the Asian-African Legal Consultative Organization (AALCO). I believe that, under your wisdom and experienced leadership, this session will get a great success as expected. My delegation will, with a responsible & cooperative attitude, take an active part in the discussions in this Annual Session. I also wish to take this opportunity to extend our congratulations to Dr. Rahmat Mohamad on his re-appointment as Secretary-General and our appreciation to him and secretariat colleagues for their outstanding work during the past year. Moreover, I also would like to express our thanks to our host Nigerian Government and working staff for their considerate arrangements for this annual session.

Mr. President, currently, the international system is undergoing complex and profound changes, and the international law system is facing significant adjustments. The role of International law is getting increasingly important in addressing global issues like security, reform of the financial system, international trade, environmental protection and climate change, which are bringing both opportunities and challenges to the development of international law. Most Asian and African countries are developing countries and share common interests and concerns in promoting social and economic development and coping with global challenges. Through this important platform of the AALCO, Asian and African countries can carry out cooperation and exchange, and build consensus in the field of international law. This will be helpful for the development of international law to better reflect the interests and positions of the developing countries, and it will have a positive impact on the efforts of the international community to build a new political and economic order that is fair and equitable. China is ready to work with other Asian and African countries under the principle of equality, cooperation, mutual benefit and win-win to seize the opportunities and meet the challenges so as to achieve our enduring development and common prosperity.

Mr. President, I would like to briefly make remarks on some issues which will be discussed during this session.

Regarding "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties", China reiterates its consistent position against abusing domestic legislation to impose sanctions on other countries. China holds the opinion that all

countries shall resolve disputes and differences properly on the basis of respecting state sovereignty and other fundamental principles of international law, and work together to maintain the international peace and build a harmonious world of lasting peace and common prosperity.

Regarding "International Criminal Court", my delegation supports to establish an independent, impartial, effective and universally recognized international criminal court to effectively punish the most serious international crimes. We call upon the court to get rid of prejudice and political distraction, to win the trust of the state parties from developing countries to the Rome Statute.

Regarding "Environment and Sustainable Development", China holds that all parties should stick to the principle of common but differentiated responsibility, and conduct consultations on establishing a just and reasonable international cooperative mechanism in dealing with climate change.

Regarding "Working Report of International Law Commission", the Chinese side calls on the Commission to fully consider all states' concerns and research on the drafts on "expulsion of aliens" and "the protection of persons in the event of disasters" and improve them constantly.

Regarding "Law of the Sea—Response to Piracy: International Legal Challenges", the Chinese side hopes countries concerned to enhance judicial cooperation and assistance and bring the pirates to justice. We also call on developed countries to strengthen the assistance to developing countries in their capacity building so that to improve the capacity of these coastal countries to combat the Somali Piracy.

Regarding "international terrorism", the Chinese side opposes persistently and combats firmly international terrorism, and supports the UN's working on a Comprehensive Convention on International Terrorism.

Mr. President, the Chinese government always attaches great importance to the work of the AALCO, and highly appreciates the achievements made since its establishment. China will continue to support and take an active part in the work of the AALCO. Recently, Dr. Rahmat appointed Mr. Feng Qinghu from China as the Vice Secretary General of AALCO to replace Dr. Xu Jie. We appreciate Dr. Xu for his efforts and contributions to AALCO in the past 6 years. We also hope that his successor Mr. Feng could get the same invaluable support from all Member States.

With regard to the future development of the AALCO, I wish to make the following points:

Firstly, we hope that the AALCO will continue to follow closely major international issues and events and provide in-depth analyses of the international law issues involved, encourage Member States to exchange views and reach consensus, and work to influence the development of relevant International Law.

Secondly, we hope that the AALCO will continue to strengthen its cooperation with important international legal bodies such as the UN International Law Commission, and

actively reflect the views on issues, of which AALCO Member States concern the most and have the widest consensus, in order to increase the influence of the AALCO to international legislation.

Thirdly, we hope that the AALCO will strengthen its connection with the academia, and continue to hold seminars and training programs for its Member States so as to develop itself into a cradle of talents on international law for Asian and African countries.

Finally, I wish this Annual Session a great success!

Thank you, Mr. President.

President: Thank you. May I now call upon Saudi Arabia to please come to the podium.

The Leader of the Delegation of Kingdom of Saudi Arabia⁴: At the outset I thank AALCO for supporting its Member States to adopt instruments in the field of international treaties, international conventions leading to united understanding of many issues of international law. The Kingdom of Saudi Arabia reiterates its stand that deportation of Palestinians clearly violates various international legal instruments, particularly the UN Charter, the fourth Geneva Convention and others.

As regards combating terrorism, we would like to state that terrorism in all its forms and manifestations in the field of international law is practiced in different parts of the world. We should continue to combat terrorism and terrorists have no religion. Our Islamic values as mentioned in Koran clearly state that whatever religion we follow, it requires us to combat terrorism relentlessly. For combating terrorism we have created an international Centre for Combating Terrorism under the banner of the United Nations. As part of the counter terrorism activities we have been extending financial support of 10 million US Dollars.

In the end, we extend our thanks and appreciation to the Organization for its blessed efforts.

President: Thank you. May I now call upon Thailand to make a statement.

The Leader of the Delegation of Thailand: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is with great pleasure that my delegation participates in this Fifty-first Annual Session of the Asian-African Legal Consultative Organization. On behalf of the Thai delegation, I would like to take this opportunity to congratulate the Hon. Mr. Mohammed Bello Adoke on his election as President of the 51st session of AALCO. Our sincere congratulations also go to the Vice-President who will assist you in steering this session towards a successful conclusion. Additionally, my delegation wishes to thank the Government of Nigeria for the warm hospitality and excellent preparation of this Meeting in collaboration with AALCO. I also would like to express my delegation's appreciation to the AALCO Secretary-General and his staff for their dedication and good work in compiling documents on a variety of information to be discussed at this meeting.

⁴ Statement delivered in Arabic. Unofficial translation from interpreter's version.

Mr. President, Thailand has attached great importance to the work of AALCO and has valued its efforts in developing mutual legal policies and positions of Asian-African States ever since our membership of the Organization in 1961. AALCO work has progressively and significantly strengthened our cooperation in the field of international law.

For our part, Thailand has been actively contributing to the issues of contemporary concerns under this forum in order to promote closer co-operation for the development of international law. These issues of interests include those concerning law of the sea, piracy, environmental and sustainable developments as well as selected items relating to the work of the International Law Commission (the ILC).

On issues relating to law of the sea and piracy, Thailand has now been a proud party to the 1982 UN Convention on the Law of the Sea since 14th June 2011. Throughout the years, even before 2011, Thailand had made substantial contributions to the causes of developing States in the law of the Sea matters, including the assumption of the Chairmanship of the Group of G77 of the Whole of the 9th Session of the Preparation Commission for the International Seabed Authority and the International Tribunal on the Law of the Sea. As for piracy, Thailand has joined the naval patrol in the Gulf of Aden and the Western Indian Ocean with a view to lend support to the eradication of the global problem of piracy. We have also actively participated in many regional and international fora on maritime security, namely ASEAN Maritime Forum (AMF), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), International Maritime Organization (IMO) and the Contact Group on Piracy off the Coast of Somalia (CGPCS)

On environmental and sustainable developments, Thailand has also been committed to addressing climate change seriously through a variety of innovative measures including building low-carbon and resilient societies and lowering greenhouse gas emission through innovative energy conservation. In order to achieve these commitments, our work was built on the foundation of the Philosophy of Sufficient Economy introduced by His Majesty the King Bhumibol Adulyadej of Thailand. Such enlightened Philosophy, introduced in the aftermath of the 1997 Asian Financial Crisis, encompasses 3 inter-related principles of Moderation, Reasonableness, and Self-Immunity. Additionally, we stand firm in our support for a functioning multilateral rule-based climate regime that respects the principles of equity, common but differentiated responsibilities, respective capabilities and historical responsibilities.

On the invaluable work of the International Law Commission (the ILC), Thailand has always closely followed their developments. The topics of particular interest this year include expulsion of aliens, protection of persons in the event of disasters and immunity of state officials from foreign criminal jurisdiction. Thailand aims to approach any issues to be discussed with sensitivity and regards to the complexity of the arguments involved. The balance between international relations and the principle of justice and fairness, principles of human rights as well as state sovereignty shall together form a basis to our positions.

Mr. President, my delegation wishes to take this opportunity to reaffirm that the Royal Thai Government stands ready to support and collaborate with all AALCO Member States to achieve the common objectives and aspiration of AALCO.

Thank you very much for your kind attention.

President: Thank you. May I now call upon the delegate from the Democratic People's Republic of Korea to deliver their statement.

The Leader of the Delegation of Democratic People's Republic of Korea: Your Excellency, Mr. Mohammed Bello Adoke, President of the 51st Annual Session of AALCO, Your Excellency, Prof. Dr Rahmat Mohamad, the Secretary-General of AALCO, Distinguished Delegates, First of all, on behalf of the delegation of the DPRK, I would like to congratulate Your Excellency Mr. Mohammed Bello Adoke on your election as the President of the 51st Annual Session of AALCO.

I would like also to express my deep gratitude to the Local Organising Committee of Federal Republic of Nigeria and the AALCO Secretariat for making every possible effort to make this session a success. I hope this session will achieve a great success under the able chairmanship of President Bello Adoke.

The Asian-African Legal Consultative Organization, as one and the only regional intergovernmental organization in the field of the international law, has expanded its membership to 47 and made a remarkable contribution to the codification and the progressive development of the international law. It has played a positive role in strengthening exchange and cooperation between Member States and in helping Member States understand and coordinate their stands on important legal issues including regional issues of common concern. Particularly, in today's complicated international situations, the Organization has fulfilled its mission successfully by representing and defending the stands and interests of its Member States in main international bodies like UN while increasing Afro-Asian influence on the discussion of international legal issues by establishing close cooperative relationship with relevant international organizations. These are all noticeable successes the AALCO has made in recent years.

Mr. President, I would like to take this opportunity to state the principled stands of the DPRK Government on some issues which were brought up by this session as agendas.

Firstly, Member States including the DPRK have been hindered unfairly in all areas of the national development such as politics, the economy, culture due to the unilateral sanctions and blockade imposed by the United States which are products of high-handedness and arbitrariness.

The United States in pursuit of its political objectives is making interventions in internal affairs of the other sovereign states and is forcing its own values on the other independent states by pursuing double standards in interpretation and application of international law in an undisguised manner. These acts of high-handedness and arbitrariness impede not only the socio-economic development of target states but also the establishment of fair international order.

The government of DPRK strongly opposes and rejects the act of imposing unfair sanctions and blockade on the third state by certain states including the US by invoking its domestic law and the act of forcing political and economic pressure on many Afro-Asian countries including the DPRK by abusing international law as a gross violation of the general principles of international law which stipulate respect for sovereignty of states, non-interference in internal affairs of the other, equality and reciprocity and the right to free development of the state

Secondly, deportation of Palestinians and other Israeli inhumane practices among them massive immigration and settlements of Jews in Occupied Palestinian Territories are grave violations of international law particularly the fourth Geneva Convention of 1949 relative to the protection of civilians in time of war. In particular, the blockade of Gaza Strip by Israel which has been in place for the last 5 years gave rise to grave humanitarian catastrophe in this region.

The international community has adopted a number of resolutions and statements relative to Palestinian issue by which they strongly censured the acts of violation by Israel of international law particularly international human rights law and the IHL including the Fourth Geneva Convention of 1949 and urged Israel to immediately implement its obligations under international law. But Israel pays no heed to these strong demands and protests of the international community and continues violating international law flagrantly.

The DPRK government reiterates its principled stand that it is only way to address the Middle East issue that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.

Lastly, the consistent position of the government of the DPRK that opposes the terrorism of all forms and any support to it remains unchanged. We cannot but pay attention to acts of military intervention committed against the sovereign states under the pretext of combating terrorism. Politically motivated military invasions and mass-killings of civilians in Iraq, Afghanistan and Pakistan committed by the US are the examples of state terrorism and extension of high-handedness and domination which causes the vicious circle of terrorism.

Therefore, the draft Comprehensive Convention on International Terrorism under deliberation in the UN should clearly stipulate the obligations of the states to establish the international relationship based on the sovereign equality, justice and fairness, to respect each other's ideology, system, culture and custom and to promote international cooperation to achieve common development and prosperity as well as the issue of eliminating terrorism by state army.

In the future, too, the government of the DPRK will continue to fulfill its responsibility and obligation to root out all forms of terrorism and build a new, peaceful and prosperous world. Regarding the issues above, we will state our stands in detail at the time of separate discussions during the session.

Mr. President. President Kim Il Sung and General Kim Jong Il, the great leaders of the Korean People have handed down to us, new generation, the Socialist society where people owns everything and everything serves for the interests of people, as precious legacy.

In DPRK, the man-centered Juche Idea has been thoroughly introduced in all fields of social life and the state gives a top priority to realizing the demands and interests of the working masses in its activities, thus the human dignity and rights are guaranteed at the highest level.

The cause of building thriving Socialist nation and the cause of national reunification in my country will be ultimately accomplished under the independent Songun politics carried on by the respected leader Comrade Kim Jong Un who is succeeding to the cause of President Kim Il Sung and General Kim Jong Il.

In future, we will make strenuous efforts to ensure that the recognized principles of international law are strictly observed and to establish the equal and fair international order. We will actively participate in the work of AALCO for the progressive development of the international law and continue promoting the cooperative relations with Member States for the common interests.

Last but not the least, we hope that the 51st annual session of AALCO convened in beautiful city of Abuja will achieve a great success.

Thank you for your attention.

President: Thank you. May I now call upon the Islamic Republic of Iran to make their statement.

The Leader of the Delegation of the Islamic Republic of Iran: Mr. President, at the outset, allow me to join the previous speakers and congratulate you and Vice-President on your elections. I am sure that under your leadership, we would have fruitful discussions in our annual session. My delegation also appreciates the valuable efforts of Mr. Hon. Rauff Hakeem, the President of the Fiftieth Annual Session of AALCO. I would like also to express my delegation's sincere appreciation to the Secretary General of the AALCO, Dr. Rahmat Mohammad, as well as Secretariat for preparing the documents including the report on the work of AALCO during the last year.

Mr. President, for the last couple of decades, developing countries, and the Asian-African States, have played a pivotal role in contributing to create equal and fair framework for the codification and development of international law. Indeed it would go a long way in building a just and equitable international political, legal and economic order. AALCO could continue to carry out cooperation and exchange of views on many critical issues of international law of common concern.

Mr. President, the right to development is the most basic reality and requirement of society in our time, and one of the fundamental human rights as it has been confirmed in United Nations General Assembly's Declaration on Right to Development. The spirit of the 1955 Bandung Conference required the developing nations to join hands and exert

their energy to contribute in finding solutions to the current world challenges. My delegation has the honor to announce that the 16th. Summit of the Movement of Non-Aligned States will be convened on August, 30-31, 2012 in Tehran.

Mr. President, the Asian-African Consultative Organization in view of my delegation should be a milestone toward cooperation and consultation among Member States in different areas of international law of contemporary challenges in particular international terrorism, maritime piracy, cybercrime, international criminal law and the topics under discussion in the International Law Commission. My delegation firmly believes that the security of the cyberspace is one of the issues of most concern in our Global Village. My delegation would like to draw your attention that the Twelfth United Nations Congress on Criminal Prevention and Criminal Justice convened in Salvador, Brazil on 12-19, April 2010 observed that the development of information and communications technologies and the increasing use of the Internet create new opportunities for offenders and facilitate the growth of crime. The challenges faced by States, in particular developing countries for combating cybercrime emphasize the need to reinforce technical assistance and capacity-building activities in the prevention, prosecution and punishment of the use of information technologies for criminal and terroristic purposes. Thus the interest to intensify international cooperation as well as regional coordination for facilitating the prevention of cybercrime is more real. The General Assembly resolution 65/230 recommends that the United Nations Office on Drugs and Crime provide, in cooperation with Member States, and relevant international organizations, assistance to improve national legislation and build the capacity of national authorities, in order to deal with cybercrime in all its forms, and to enhance the security of computer networks, and to conduct the study of the problem of cybercrime as well as the response to it. We believe that AALCO could also contribute to this effort.

Mr. President, my delegation would like to emphasize the matters related to the international terrorism and in this respect to state that the International Conference on Global Fight against Terrorism was held on June 25-26, 2011 in Tehran. During this conference, the participants reiterated their unequivocal condemnation of all acts of terrorism in all its forms and manifestations, including state terrorism and economic terrorism. It was underlined that state terrorism has posed, for long, a real threat to the peace and stability of many nations across the globe through unlawful use or threat of force, aggression and occupation.

Mr. President, on implementation of any "Revitalization Plan" in AALCO, my delegation believes that the financial matters of the Organization are among the key factors. We need a "financial policy" that ensures the "financial discipline" in the Organization plus "sustained financial resources". My delegation would like to suggest that during annual session, an open-ended working group to be established in which all aspects of the proposals and initiatives related to revitalization of the Organization to be examined and to report the session for consideration and possible decision.

Finally I would express the deep gratitude of my delegation to the Government and the people of Nigeria for hosting this session and for their hospitalities.

Thank you Mr. President.

President: Thank you. May I now call upon Indonesia to deliver their statement.

The Leader of the Delegation of the Republic of Indonesia: Mr. President; Distinguished delegates,

I would like to convey my sincere appreciation to the Federal Republic of Nigeria for its warm welcome and generous hospitality in arranging the 51th Annual Meeting of AALCO here in Abuja. I would also like to congratulate Prof. Dr. Mohammad Rachmat for the re-election for the second term as the Secretary General of the AALCO. We do believe that under his leadership, AALCO will produce significant and productive contribution of the development of international law in line with the interest of the members of AALCO.

In this opportunity, I would like to congratulate His Excellency H. E. Mohammed Bello Adoke, for having been elected as the President of the 51st Annual Session of AALCO. I have every confidence that under your chairmanship, along with the joint efforts of the delegations of Member States, this Session will be a success and enhance AALCO's role as a valuable forum for legal consultation. Please accept the cooperation of the Indonesian Delegation in promoting a productive discussion.

Mr. President, distinguished delegates, it is indeed a privilege for me to attend the 51st annual meeting of the Asian-African Legal Consultative Organization today. Since its inception as the Asian-African Legal Consultative Committee (AALCC) in 1956 as an important part of the outcome of the Asian-African Bandung Conference 1955.

The Organization has made an important contribution to the development of international law. As we may recall, its early valuable contribution was in particular in the work on the Law of the Sea. It was an effective forum where Member States engaged in consultations, exchanges of views and fostering coordinated efforts. The work of the AALCC on the Law of the Sea issues in subsequent meetings helped Member States to formulate their respective positions on different issues on the Law of the Sea being considered in the Conference on the Law of the Sea. Then finally in Kingston Bay Jamaica in 1982, we succeed to sign the United Nations Convention on the Law of the Sea, and this year we commemorate the 30th year Anniversary of the adoption of UNCLOS.

In short, this Organization who just celebrated the Golden Jubilee last year at AALCO Annual Meeting in Colombo, has succeeded in establishing itself as a prominent organization representing the developing countries from Asia and Africa, serving as an advisory body to its Member States in the field of international law and as a forum for cooperation on legal matters among its Member States.

Mr. President, distinguished delegates, allow me to inform that the Indonesian Government will hold the *Third Session of Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions/Folklore* (LMCM-GRTKTCE/F III) on 27-29 June 2012 in Bali, Indonesia. The Meeting will begin with Preparatory Meeting LMCM 3: *International Symposium in Ensuring Protection for GRTKTCE/F through the Creation of Database*.

Indonesia not only has played an active role and been recognized by the international world in its efforts to establish the international legally binding instruments or in a multilateral context, but in the bilateral level, Indonesia has also worked on the protection of GRTKF. Indonesian Government, represented by the Ministry of Foreign Affairs, will continue to prioritize the efforts to create international legally binding instruments in order to provide protection for GRTKF.

The Second Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) which was held in Bali last year, has reached an agreement or a common position which was manifested in the *Bali Recommendation*.

In an effort to encourage the negotiation on establishing a legally binding international instruments in terms of GRTKF protection, the agreement, which is named the Bali Recommendation to Advance the Work of WIPO to Establish an International Legal Instrument (or instruments) on the Effective Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (Folklore) (GRTKF), has been presented at the 19th Inter-Governmental Committee IGC-WIPO meeting in Geneva, 18-22 July 2011.

This agreement represents a distinguished achievement and is expected to make an important contribution to the member countries of WIPO. This is important considering that the discussion on the Genetic Resources (GR) in IGC Forum has not experienced any progress over the period of 5 years. The distinguished achievement here was the making of Legal Text draft of Genetic Resources (GR), which previously was still in the stage of Objectives and Principles. This process received high appreciation from the attending countries due to being a breakthrough in efforts to encourage negotiations in IGC.

Mr. President, distinguished delegates, the Government of the Republic of Indonesia is seeking election for membership of the UN Commissions and International Trade Law (UNCITRAL) for the period of 2013-2019, at elections to be held during the 67th Session of the United Nations General Assembly in New York, November 2012.

Over the years, as an active member (1978-1983) and active observer (1983-now) of UNCITRAL, Indonesia remains strongly committed to the development of international trade law, particularly through its active deliberations and best efforts in the UNCITRAL Sessions of Commission and Working Groups.

Within our domestic territory, Indonesia, has been consolidating and further harmonizing national laws and legislation on international trade law by adopting UNCITRAL Conventions, model laws, legal guides, legislative guides, rules, and practice notes, among others, the *UN Convention on Contracts for the International Sale of Goods*, *UN Convention on Independent Guarantees and Stand-by Letter of Credits*, *UNCITRAL Model Law on International Credit Transfers*, and *UNCITRAL Arbitration Rules*. This harmonization aims to not only upholding the supremacy of international trade law in Indonesia, but also to give utmost protection for foreign traders and investors in Indonesia based on a mutually beneficial manner.

At the regional level, Indonesia is strongly committed to collaborate with UNCITRAL Regional Centre for Asia and the Pacific, in promoting legal certainty in international trade law, particularly in the Asia Pacific region, including to facilitate technical assistances through the holding of seminars, workshops, and other meetings.

As incoming Chair of APEC in 2013, Indonesia supports the promotion and harmonization of international trade law as a key component to boost the development of Asia Pacific's economy, including the South East Asian's, and committed vigorously in coordinating economic cooperation in the Asia Pacific region and the world. Hence, Indonesia seeks to achieve a leading role in Asia Pacific, including within the framework of APEC, on the harmonization of international private law in the region.

At the international level, Indonesia has always acted and engaged constructively as a bridge-builder and problem-solver in the deliberations of international law issues, including in addressing matters on the international trade law, which is taking place in the Sixth (Legal) Committee Meetings. In addition, as a Member State of International Institute for the Unification of Private Law (UNIDROIT) since 2009, Indonesia is of the view that pertaining issues related to international private law issues have to be addressed in a multilateral approach.

The Government of Indonesia believes that Indonesia's membership of the UNCITRAL for the period of 2013-2019 would contribute substantially to maintain the focus of UNCITRAL on addressing international trade law as enshrined in its founding resolution, and to ensure that the works of UNCITRAL in the future will be beneficial to all countries, particularly in forging global responses and solutions for global challenges in the area of international trade law.

In this regard, the Government of Indonesia would highly appreciate the support of your Government for Indonesia's candidacy for a membership of the UNCITRAL at the election to be held during the 67th Session of the General Assembly in 2012.

Mr. President, distinguished delegates, Indonesia would like to comment on most of the deliberated items that concern us, namely "Deportation of Palestinians and Other Israeli Practices among them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949", "The International Criminal Court: recent Developments", and "Environment and Sustainable Development".

Mr. President, distinguished delegates, please allow us also.

First will be on agenda item of 'Selected Items on the Agenda of the International Law Commission'. We agree that inputs provided by the Member States of AALCO would be of significance to the ILC. In this regard, Indonesia would like to share its positions on the topic of Immunity of State Officials from Foreign Criminal Jurisdiction, Expulsion of Aliens, Protection of Persons in the Event of Disasters.

Second will be on the agenda item of "Law of the Sea: Responses to Piracy". As an archipelagic state, we would like to emphasize our position on the maritime security, maritime piracy and our common efforts to counter maritime piracy.

And on the Third agenda item of “International Terrorism”, Indonesia would like to share our strong commitments to prevent and eradicate terrorism.

Mr. President, distinguished delegates, finally, Indonesia, as a founding member of AALCO, has always been an active and strong supporter of cooperation between Asia and Africa in order to establish that our two great continents grow more dynamic, robust and prosperous. Once again, I wish to reiterate the Indonesian Government’s strong support for AALCO and its contribution to world legal affairs.

I thank you.

President: Thank you very much. May I now call upon Kenya to make their statement.

The Leader of Delegation of Kenya: H.E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria,

Distinguished Delegates and all the dignitaries on the dias;

Allow me first of all on behalf of the Republic of Kenya, on my own behalf and that of my delegation to express my pleasure on this auspicious occasion of the Fifty-First Session of the Asian-African Legal Consultative Organization (AALCO), here in this beautiful city of Abuja, Nigeria.

I would like to congratulate H.E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria on your election as President of the 51st Session of AALCO. On behalf of my delegation, we express our confidence in you and wish you every success in your tenure.

I also wish to take this opportunity to thank the AALCO Secretariat and in particular H.E. Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO, for his tireless efforts in steering the work of this Organization in a very able and efficient manner. Not only has he ably steered the work of the Secretariat, but he has also ensured that the interests of the two regions were well articulated at various forums such as the United Nations General Assembly, the International Law Commission and even in the World Trade Organization. This has been done with limited human and financial resources and so we commend the entire Secretariat for work well done to enhance the activities of the Organization and to implement its work programme.

As you are aware, the Asian-African Legal Consultative Organization was established in 1956 at a time of political awakening for Asians and Africans in their respective countries. AALCO has ensured through its annual sessions, the continued shared experiences and goals of the two largest continents which together represent about two thirds of the world’s population. Since joining the organization in 1970, Kenya continues to actively participate at meetings of the Organization and as you may recall, Kenya hosted the 28th Session in February 1989 and the 44th session in 2005 respectively in Nairobi.

One of the main objectives of AALCO which is dear to our hearts is its role in serving as an advisory body to its Member States in the field of international law. This, together

with its close relationship with the International Law Commission, the UN General Assembly and other International Organizations, indicates the importance of having these annual sessions which allow for a regular forum to formulate the positions we hold on the various legal issues.

Ladies and Gentlemen, my delegation would like to thank the Permanent Observers of AALCO at the United Nations Headquarters in New York and in Vienna respectively and commend them for their work. Kenya welcomes the possibility of establishing a Permanent Observer Mission of AALCO at the United Nations Offices in Nairobi. The Government of Kenya remains ready and willing to facilitate the discussions on this issue with both AALCO and the United Nations at the earliest opportunity.

Distinguished Delegates, my delegation is looking forward to discussions during the Half-Day Special Meeting on the contemporary topic of the Law of the Sea, with emphasis on the International Legal Challenges in response to Piracy. The issue of piracy and armed robbery against ships at sea off the coast of Somalia remains a grave concern to Kenya. These activities have greatly affected trade and commerce in the entire East African region. Acts of piracy have continued to adversely affect fishing, tourism and shipping industry in East Africa. This has significantly contributed to the increase of cost of goods and services in the region. Indeed, Kenya's revenues from fishing have fallen drastically owing to the insecurity in the waters at her Exclusive Economic Zone on account of the fact that few commercial fishing vessels are willing to take up licenses and engage in commercial fishing around the affected area.

Kenya welcomes the efforts made by the international community to combat piracy, which efforts have had some deterrent effect on piracy and armed robbery in our region. We look forward to discussions on this topic with anticipation that solutions may be crafted for the international legal challenges to addressing piracy.

Ladies and Gentlemen, Terrorism has been acknowledged by the global community as a threat to international peace and security. To address the unique challenge that the threat of terrorism poses, there is urgent need for increased international co-operation to tackle the same. We recognize the important role that AALCO plays in seeking a common legal position to address the threat of terrorism. This forum is both important and useful and complements the global efforts to conclude legal instruments on terrorism. Kenya has been a victim of terrorist actions which have adversely affected her citizens but that notwithstanding, Kenya remains firm in her commitment to the global efforts in the suppression of terrorism.

Distinguished Delegates, one of the outstanding issues on which Kenya would like to give an update is that on establishing the Nairobi Regional Centre for Arbitration. Last year we reported that due to the Constitution of Kenya which was promulgated in 2010, the focus of Government was directed towards its implementation. We are now however on course and on 29th February 2012, the Hon. Attorney-General appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Regional Arbitration Centre. This Arbitration centre now has a constitutional basis for its establishment since the new Constitution has given prominence to the role of alternative dispute resolution in the judicial process and this therefore means that both the

Government and private sector are agreed on the urgent need to establish the Regional Arbitration Centre. Even though we are running behind schedule, the Government of Kenya wishes to reassure AALCO Member States that we are still on course in realising our undertaking to establish the Nairobi Regional Centre for Arbitration.

Distinguished Delegates, once again, let me thank the Government of the Federal Republic of Nigeria and the Secretariat for having organized this meeting in Abuja and to commend each one of the Officials for working tirelessly to ensure the success of this meeting. May you all travel safely to your respective countries at the end of this Meeting and it is my prayer that we shall meet again next year during the Fifty-Second Session of AALCO.

This Conference will undoubtedly provide all of us with the unique opportunity to analyze the impact of various issues in the legal arena both regionally and internationally that hopefully will culminate in conclusions and recommendations giving rise to strong comprehensive legal standpoints. I wish you all fruitful deliberations. Thank you.

President: Thank you very much. May I now call upon Yemen to make their statement.

The Leader of the Delegation of Republic of Yemen: At the outset, I thank and greet Prof. Dr. Rahmat Mohamad, Secretary General of the Organization, Mr. Mohammed Bello Adoke, the Attorney General and Minister of Justice of Federal Republic of Nigeria, and President of 51st Session of Organization and Excellencies all. I also thank the Host Government of Nigeria for all the helps and hospitality extended to all of us here.

As we all know Yemen has witnessed in 2011 and 2012 a number of things such as public revolution, armed confrontations, international intervention, international solution and others. Specially, the Gulf initiative and mechanism of transition process implementation, resolution of Security Council No. 2014 can be mentioned here.

Yemen is undergoing a transition period. The First phase of 3 months started from December to February and that is the formation of rescue government and the election of provisional President. The Second phase which lasted for two years included the tasks for two years: holding conference of national dialogue to reach a new social contract; restructuring of the security services and armed forces; take steps at the level of transitional justice and national reconciliation efforts and executing constitutional and electoral reform.

Hence, the Tasks of Ministry of Legal Affairs focuses on the formation of legislation of transition phase, especially:

- 1- Law of transitional justice and national reforms and related laws like law for the establishment of the National Independent Human Rights Commission, law of institutional reform and etc.
- 2- Formation of legislative foundations for the National Dialogue Conference, System of preparatory committee for dialogue, and procedures for holding a conference of national dialogue and framework for dialogue.

- 3- Formation or contribution in forming the primary concepts of new constitution.
- 4- Formation of new election law to end the transitional period and elect the Parliament and Head of State according to the new constitution.

However, this does not mean in any way lack of attention to the serious problems that threaten the national and global peace both like terrorism and sea piracy, and what related to legislation task, but this task will be the top priority of the legislative plan for next year and Yemen is fulfilling these tasks and confronts the terrorism and sea piracy, and is worthy of supporting legal consultative organization and international community.

Confirmation with the proposals of Malaysian delegation especially what is related to Palestinian issue, piracy and terrorism and I add to that the following:

An important topic for many its members including Yemen, that is fight against corruption and Yemen proposes the need to restore the fight against corruption that to be a permanent item in its agenda.

- We propose that this session to take serious steps to urge the Member States to recognize the Palestinian State and Jerusalem as its capital
- Provide support to Yemen and Somalia to combat sea piracy and terrorism
- Urge the Member States of AALCO to join Rome Statute on the International Criminal Court and during limited period of time not exceeding two years

On the issue of International Criminal Court, I would like to recall that, Yemen has participated in the preparation of Rome Statute and signed the agreement and agreed to join in 2003.

According to constitutional proceedings the international treaties do not become binding until ratified by the legislative council. The government submitted agreement to the parliament for ratification and approval on the ratification in 2007. However, the ruling party led by seventh President made a retreat from ratification because of invalidity of voting process and it was supposed to re-vote, but this has not yet been.

The Ministry of Legal Affairs will try to request from the government to the parliament to put the agreement for voting anew and complete the ratification procedures on behalf of ministry, along with the discussion of minister's council for agreement related to forced hiding and approval of that and summing to the legislative council for ratification. This is important to Yemen in order not to be repeated the violation of human rights such as crimes against humanity and war crimes.

In the past, the international community did not take adequate measures to encourage Yemen for joining the Rome Statute by support or pressure. It is advisable that today Legal Consultative Organization provides necessary incentives to the Yemeni government and the other authorities through support for the procedure of ratification be done as quickly early as possible.

On the issue of Deportation of Palestinians and Israeli Practices, I would like to mention that, for more than 65 years the Palestinians, original population of Palestine are waiting for an international solution for their sufferings, raise against their occupation and the restoration of their rights guaranteed under International Law of Human Rights and International Humanitarian Law. Tens of years and resolutions of international legitimacy are waiting the application and on top the resolution of International Security Council: 242, 338, 425, 1397, 1515, 185. In addition to the decision of the International Court of Justice on the illegality of the construction of the separating wall

This statement comes in the light of Palestinians surrender from the Palestinian land for peace and the establishment of a Palestinian State on part of the land of Palestine and the boundaries of occupied land in 1967 that are the boundaries where Palestinians are facing injustice. Here, we ask the Organization for hard work to restore the Palestinians rights and make them to return their home, demolition of separating wall and establishment of Palestinian state and Jerusalem as its capital.

Perhaps the most dangerous thing that Israel is doing to international peace and security is the continuation of the establishment of its settlements. It will be a cause of religious and national fanaticism in the region and provides justification for establishment of terrorist organizations and creates climate for the efforts to establish religious states in the region and makes impossible the chance of peace. I thank you.

President: Thank you very much. The Secretary-General would now like to make an announcement.

Secretary-General: Tonight there is an invitation for the welcoming dinner by the host government within this banquet hall at 7:30, so all of you are invited. Thank you.

President: Distinguished Delegates, we will resume here tomorrow at 9 o'clock. Thank you.

The Meeting was thereafter adjourned.

VI. VERBATIM RECORD OF THE SECOND GENERAL MEETING

**VI. VERBATIM RECORD OF THE SECOND GENERAL MEETING
HELD ON TUESDAY, 19 JUNE 2012 AT 10.00 AM**

His Excellency Mr. Mohammed Bello Adoke, SAN, President of the Fifty-First Annual Session of AALCO in the Chair.

President: I hereby call this meeting to order. Thank you very much. Before we go into the business of the day, I have two announcements to make.

The first one is to inform the plenary that we shall not constitute the drafting committee this year due to shortage of Secretariat Staff. So whoever has a paper to present or any amendments to the Resolutions, please hand it over early to the Secretariat for purposes of carrying forward the changes.

I also want to inform you that all the Resolutions pertaining to the organizational and substantive matters are annexed to the respective Secretariat's reports. If any of our Delegates have any changes, please make them and hand them over to the Secretariat. It will be reflected when the Resolutions are circulated on Friday for adoption. Thank you very much.

We will go on to the business of the day now and the continuation of the General Statements. May I call upon the Distinguished Delegate from Sri Lanka to make their opening statement.

The Leader of the Delegation of the Democratic Socialist Republic of Sri Lanka: At the outset, On behalf of the delegation of Sri Lanka, I wish to express our appreciation for the work undertaken by AALCO and its contribution towards International Law. I would also wish to express my gratitude and appreciation to the Secretary General of the AALCO and the AALCO secretariat for their excellent coordination and organization made for the session. I also take this opportunity to express my deep appreciation of the support extended by the Secretary General and AALCO secretariat to me during my tenure as the President of the Fiftieth Annual Session of the AALCO. Let me also thank the Honourable Ministers, Heads of Delegates and Observers, for their presence in this meeting in the historical city of Abuja at the Fifty First Annual Session. Your presence here today representing Asian African nations testifies the commitment and common interest of Asian African countries towards progressive and harmonious development.

As you all know, AALCO as an organization carries tremendous potential to make a difference in the Asian-African region. Therefore Sri Lanka is of the view that it is the responsibility of all stakeholders to raise the profile of the organization in the world stage. There are still many countries in our region that are yet to join AALCO. In this respect during my tenure as the President of the AALCO, invitations were extended to Republic of Vietnam and the Kyrgyz Republic to obtain membership of AALCO.

The Annual Sessions serve as a useful forum for representatives of the Member States to come together and debate on the important legal issues faced by the individual countries and the region as whole. The outcome of these sessions are very important and therefore

on behalf of Sri Lanka, I propose to include current topics which are of importance to the Asia-Africa region to be selected for discussion and included in the Agenda of the Annual Sessions.

An extremely important issue in the current context is the spread of global terrorism. Sri Lanka's experience related to eradicating terrorism was a long and hard one. During the Fiftieth Annual Session held in my country last year, our President His Excellency Mahinda Rajapakse stressed on the need and importance of continued vigilance at the international level and stated that the ability to resort to both domestic law and international law as a source of protection, are vitally important. Considering the paramount importance of this issue in a global context and especially in an Asian-African context, Sri Lanka urges all Member States would exert all efforts to take necessary action against terrorism including addressing issues of terrorist financing.

The relationship between AALCO and International Law Commission (ILC) is also one of crucial importance considering the pivotal role played by the ILC in the world stage. There is need for greater collaboration between AALCO Member States and this cannot be done without the participation of all members of AALCO. There are three central issues currently faced by the ILC which include: Immunity of High State Officials from Foreign Criminal jurisdiction, Expulsion of Aliens and Protection of persons in disaster situations.

Ladies and gentlemen, the first issue of Immunity of High State Officials from Foreign Criminal jurisdiction is a difficult and challenging one indeed, involving political sensitivities. Nevertheless it is a topic of contemporary relevance. Given the complexities involved, there is a clear need to agree on matters of principle. In relation to the topic of expulsion of aliens, Sri Lanka is of the view that the Right of Expulsion falls within the sovereign domain of the States and therefore must be essentially governed by domestic laws. However it is also Sri Lanka's position that International law should also be considered in this matter. On the third issue, it is absolutely essential that persons be protected in the event of disasters. However, it is also important to comply with the overarching principles of respect for territorial sovereignty and non interference in the internal affairs of the affected State. Sri Lanka places the above three issues to be of central importance and urges AALCO as an organization to do the same.

The submission of claims to the CLCS is a matter of vital importance to all the State parties in accordance with the Law of the Sea Convention. Sri Lanka made its submission in May 2009 and it is scheduled to be taken up only in the year 2025. In this connection the Law of the Sea State parties have agreed to have 23 weeks of sittings of the Commission. It is imperative that the sittings of the Commission must be accelerated to dispose all pending submissions expeditiously even if it requires the Commission to sit throughout the year since vital economic interests are at stake.

This year marks the 30th anniversary of the adoption of the Convention on the Law of the Sea. Sri Lanka had the privilege of chairing the UNCLOS. AALCO also played a decisive role in the development of the Law of the Sea and the emergence of new concepts such as EEZ. We would therefore propose a convening of a special meeting to

mark this event to recognize the contribution of AALCO as well as to focus on new areas of importance to Member States.

One of the important issues of concern deliberated at the Fiftieth Annual Session which is also of high political relevance is the issue of law of the Sea and piracy. The recent upsurge in piracy attacks has drawn renewed attention of the international community towards combating maritime piracy to ensure security of nations. Sri Lanka considers sea piracy as a serious security problem which must be addressed and dealt with forcefully. Escalation of sea piracy attacks in the waters off Somalia, the Horn of Africa and in Asia has emerged as a major maritime security problem for international commercial activities and navigation. The United Nations Convention on the Law of the Sea (UNCLOS) was ratified by Sri Lanka in 1994. Sri Lanka enacted the Piracy Act No. 09 of 2001 which encompasses legal measures to be adopted in relation to incidents of piracy and criminalizes maritime piracy as a cognizable and non-bailable offence. Sri Lanka is also a party to the Regional Cooperative Agreement against Piracy and Armed Robbery in Asia (ReCAPP) which is an important inter-governmental agreement to counter maritime piracy in the region. It obliges Member States to increase international cooperation and sharing of information in the efforts of prevention of piracy attacks. Sri Lanka believes that the organized criminal nature of this issue demands a coordinated response from Member States. We urge Member States of the AALCO to form similar inter-governmental cooperative mechanisms to strengthen anti-piracy efforts. Sri Lanka calls on the Member States to take adequate national measures to combat piracy and to enact stringent national legislation to make maritime piracy a serious criminal offence.

During the fifty-one years of its existence, AALCO has supplemented the work of the United Nations in the progressive development and codification of international law. We have undertaken various international legal matters of common concern to two continents and have strengthened the unity and cooperation among Member States on matters of national importance. Sri Lanka takes this opportunity to commend AALCO and express our continued support and commitment to the Organization. Thank you.

President: Thank you. May I now call upon the Distinguished Delegate from Tanzania to make their opening statement.

The Leader of the Delegation of the United Republic of Tanzania: Your Excellency, H.E Mohammed Bello Adoke, Attorney General and Minister of Justice, Federal Republic of Nigeria President of the 51st Annual Session, Your Excellency, Prof. Dr, Rahmat Mohamad, Secretary General of AALCO, Excellencies Ambassadors and High Commissioners accredited to the Federal Republic of Nigeria, Distinguished delegates, Dear Colleagues, Ladies and Gentlemen,

Mr. Chairman, let me on behalf of my delegation join other previous speakers in congratulating you and the People of the Federal Republic of Nigeria for hosting the 51st Session of AALCO. It is indeed a privilege and honour for me to address the fifty first session. I would like to avail myself of this opportunity to extend my congratulations and good wishes on your election as AALCO's President in the presence of distinguished and eminent personalities representing Asian, African States and various international institutions and organizations. We are confident that under your leadership, the current

session will uphold and preserve the traditions and fulfill the functions and the mandate of AALCO.

May I also take this opportunity to express our heartfelt appreciation and profound gratitude to you Mr. President and Prof. Dr. Rahmat Mohamed and Secretariat for the warm welcome extended to our delegation since our arrival here in Abuja. You have made us feel at home.

I wish to salute the presence of so many eminent personalities which indicates the significance of this Organization in the world today. Let me also assure you, Mr. Chairman of my delegation's full support as you spearhead the work of our Organization for the coming year. I trust it will be a challenging experience but together we can overcome the immense challenges that lie ahead of us.

Mr. Chairman, you will certainly agree that we live in the difficult times the world has ever experienced. From man-made humanitarian crises, environmental, social and political crises to natural disasters, with their attendant negative effects. Unfortunately, all these impinge on the relevance of international law for which the work of our Organization was founded. Our maturity in defining the right direction when addressing such challenges is crucial. Our sense of responsibility and resilience as we strive together is critical and despite the agenda being ambitious, focusing on recent global issues will be necessary.

Mr. Chairman, as we mark the 30st anniversary of the UNCLOS this year, it is important to take stock of the achievements as well as to reflect on the challenges in the implementation of the Convention.

Whereas the Convention has generated positive impact in maintaining international peace and security through sustained use of ocean resources, navigation and protection of marine environment, it remains a matter of concern that the lack of mechanisms to fully implement the Convention has exposed the inability of the international community to govern the sea effectively. Hence, our session this time cannot ignore the piracy situation around the world and Africa generally with special attention to the East Africa region.

Indeed, speaking for Tanzania, it is a matter of fact that piracy off the Coast of Somalia and along the India Ocean continues to threaten regional trade, tourism and security beyond unimaginable proportions. Although we have put in place both preventive, deterrent and corrective measures, the same remain palliative and not a panacea. We therefore appeal to the international community to explore other means of enforcing prosecutions of pirates by exercising jurisdiction within the purview of article 105 of the UNCLOS. We must summon the spirit of revisiting the Convention so as to make it better serve the mankind.

Mr. Chairman, let me at this juncture share with this noble assembly some of internal measures that my Government has taken in addressing piracy:

First, we amended our penal legislation so as to allow prosecution of suspected pirates being apprehended at the high seas by foreign vessels. Subsequently, we undertook to negotiate bilateral pirates transfer agreements with a number of countries with the

capacity to pursue pirates at the high seas. To this end, we have signed a Memorandum of Understanding with the United Kingdom which allows transfer of suspected pirates from U.K. Navy forces to Tanzania for prosecution and incarceration. We are also about to sign a similar agreement with the European Union. Again, we have an MOU with Mozambique and South Africa for joint operations against pirates.

Secondly, we have developed a National Action Plan for countering piracy which elaborates in detail the short and long term strategies against piracy. However, the bottom line remains the lack of capacity both technical and material in implementing such strategies. Therefore we will continue to count on the support and assistance of the international community so as to sustain these efforts.

Thirdly, we are a party to the Djibouti Code of Conduct and continue to implement the same with our regional partners. This legal framework, despite being non-binding, has proven to be useful in the fight against piracy as members continue to exchange best practices and relevant marine surveillance.

Mr. Chairman, tackling terrorism remains one of the very important components of our efforts at both national and international level. We must build on the already strong law enforcement networks that have been built to fight terrorism and trace the funds that finance terrorism. We must also be prepared to be innovative and allow regional jurisdiction to seize proceeds of crime. More importantly, we must now resolve to conclude the prolonged discussion of a *Comprehensive Counterterrorism Convention*.

Mr. Chairman, with regard to the work of the International Criminal Court (ICC), Tanzania remains a staunch member of Rome Statute and recognises the significant role that the Court plays in fostering international peace and security as well as the dispensation of international justice. However, we are also mindful of the recent developments such as the sentiments of *double standards* which have brought the prominence of the Court to test. We would strongly appeal that efforts should be taken to rectify the status of this important Court.

Mr. Chairman, please bear with us if we have digressed, but if that is so, we have done this with the understanding that the discussions on various matters will be very involving and informative.

We conclude by wishing you all the best and success during the period of your term in office and at the end of the session let us recognize and celebrate all the positive achievements.

I thank you Mr. Chairman,

President: May I now call upon the head of delegation of India to make their statement.

The Leader of Delegation of India: I would like to congratulate you on your election as President. I am sure that with your wisdom, experience and expertise, you will see to it that the deliberations would reach a successful conclusion. I also wish to thank the government of the Federal Republic of Nigeria for hosting this Fifty-First Annual Session of AALCO in this beautiful city Abuja. I thank them for their warm hospitality which we

received since our arrival. I am pleased to note that the organizers of this meeting have ensured in our programmes that we have opportunity to visit some of the wonderful sites of this beautiful city.

Mr. President, I would like to state that India being one of the seven founding members of the AALCO continue to attach high importance to the Organization and its works and we are proud to host it since it was established. One of the major objectives of AALCO which is related to the cause is its role in serving as an advisory body to its Member States in the field of international law. Also, AALCO's relationship with International Law Commission (ILC), UN General Assembly and other International Organizations upholds the importance of having these annual sessions, which offers a forum to discuss, formulate and deliberate upon the positions we hold in various international legal issues. We thank the Secretariat for their tireless work they have done on various topics under discussion.

Mr. President, we have at this session three important items in the agenda as you have rightly mentioned in the inaugural session of this annual session. These are the issue that the international community is currently grappling with. I wish to engage in discussion of those topics as and when it is taken.

On the issue of "maritime security and piracy" Mr. President, the increasing acts of piracy, armed robbery against ships represents serious threat to the life of sea farers, safety of navigation, the marine environment and security of coastal states and impact negatively on the entire maritime industry thereby leading to higher costs and suspension of shipping services in this areas. Mr. President, we welcome in that regard, Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships adopted by the 22nd Assembly of IMO and we also support the efforts of the IMO at promoting regional cooperation to address the problem wherein India had actively participated in many seminars organized by the IMO to enhance the implementation of its guidelines preventing certain acts. India has been seriously affected by the problem of maritime piracy. Piracy off the coast of Somalia has become an urgent security matter attracting the attention of the international community in the Gulf of Aden which separates Somalia and Yemen, it connects the Arabian Sea to Red Sea, the Suez Canal in Mediterranean Sea, which has been increasingly targeted by pirates. In view of the increasing incidents of piracy in India's Exclusive Economic Zone (EEZ) and the increasing numbers of piracy problems piling up that Indian forces has to deal with, the Government of India is considering to tackle the problem of piracy through a comprehensive domestic legislation should be in place. The enactment of such a comprehensive legislation would provide certainty and clarity in the law as well as the sound legal basis for prosecuting and punishing the pirates, it will also promote safety and security of India's maritime trade including safety of our vessels and crew members.

Mr. President, India has been fully involved in the deliberations in the UN on the issue of international legal mechanism dealing with pirates and we have also been working closely with other countries within the contact group on Piracy off the coast of Somalia as well as in all other multilateral groups deliberating on all aspects of piracy emanating from Somalia. India has been raising its voice against piracy in regional and international forums keeping in demand that acts of piracy and armed robbery against ships affect the

entire maritime transport industry leading to higher costs. This is important as Indian Navy had joined other Navies in escorting maritime transport vessels in the Gulf of Aden.

Mr. President, on the issue of international terrorism, let me join the previous speakers in expressing our concern on the ongoing challenge that international community is facing at the moment. India continues to believe that terrorism in all its forms and manifestation, irrespective of its motivations is criminal and indiscriminable act and cannot be condoned and accepted as legitimate in any situation. Justification on diplomatic, religious, political, philosophical or any other grounds remain untenable. The 1994 Declaration is most historical in this respect and provides that no considerations of political, philosophical, ideological, racial, ethnic, religious or any other nature could justify criminal acts intended or calculated to provoke a state of terror in the general public. This has been specifically repeated in several conventions on terrorism. The reiteration that terrorism in all its forms and manifestations should be condemned in all the UN General Assembly resolutions which seeks that the international community would no longer tolerate the actors of sponserors of terrorism or of those who fails to prevent those to utilize their territories for the such acts. The UNGA had established a legal framework for countering terrorism comprising of 13 multilateral legal instruments remain fundamental tools to fight terrorism. India is a party to all these instruments.

Mr. President, on the issue of “environment and sustainable development’ I am glad that the Secretariat has chosen a very important topic on the agenda for its discussions.

Mr. President, I would like to highlight that due to India’s insistence, the issue of equity was brought back to the centre stage of the climate debate at Durban. Accordingly, it has been agreed to hold a workshop on the issue of equitable access to sustainable development, which would advance the understanding and relevance of the approach in evolving the climate change regime.

Mr. President, regarding India’s continuous efforts to address the environmental concern, let me put it precisely that, India, as a developing country, has huge developmental challenges. Around fifty-five percent of India’s population still has no access to commercial energy. Despite these developmental challenges, India has declared its commitment to keep its per capita emissions lower than the average per capita emissions of many advanced countries. We have adopted a National Action Plan on Climate Change along with National Missions. These Missions would go beyond mitigation and adaptation and are anchored to the overall national prospective of sustainable development.

On the issue of sustainable development, Mr. President, in India’s view, sustainable development has much larger requirements than merely addressing environmental issues. The challenges facing sustainable development must be addressed in a balanced manner. Global development path should recognize the fact that human beings are at the centre of sustainable development.

Mr. President, the theme of Green Economy has attracted wide attention. Green Economics should be seen as one of the means to achieve the fundamental and overriding priorities. India’s position on Green Economy is essentially one which invariably relates

to the overriding priorities of poverty eradication, food security, universal access to modern energy services, and employment generation. India believes that Green Economy is a dynamic concept intended to induce every activity towards poverty eradication with sustainability, thereby greening the economy towards developing economically, socially and environmentally. India strongly believes in balancing the three pillars of sustainable development, namely economic development, social development and environmental protection to achieve the path of a Green Economy.

On the issue of extraterritoriality, Mr. President, we reiterate our position that any unilateral measure involving the enforcement of a national law brings into sharp focus the issue concerning the extraterritorial effects of such acts. The basic principle of international law is that all national legislations are territorial in nature and there is a unanimous rejection of the extraterritorial application of national legislation for the purpose of aid or obligations by third states. Unilateral or Extraterritorial application of national laws violates the sovereign equality, and the principle of mutual respect, sovereignty and non-intervention into the affairs of other states.

I wish to join other speakers to highlight the relevance of the important issue of “immunity of state officials from foreign criminal jurisdiction”. It is our general view that the report on the immunity of state officials should consider only foreign criminal jurisdiction. Questions relating to immunity with respect to international criminal tribunals and domestic courts should be set aside. The source of immunity is international law and not international comity and the focus should be on immunity under national law. Immunity of officials in relation to diplomacy should be amicably codified.

Let me now take this opportunity in congratulating the 30th anniversary of the Law of the Sea Convention and also join with the previous speakers in congratulating the tremendous work done by the AALCO Secretariat. The AALCO Annual Sessions were very active on this issue and the Secretariat of the organization brought all the members to the table to discuss and formulate their position. So, at the outset, we welcome the interest shown by the states in becoming party to the UN Convention on Law of the Sea. The Convention is a document with universal application. Furthermore, the Convention is a document with universal acceptance. We are of the opinion that a crucial element of sustainable development and uses of the oceans and seas remains the implementation of the Convention. We sincerely believe that sincere efforts are required to enable all states to enter into the Convention and to benefit from sustainable development of the oceans and seas as well as participate fully in global and regional forums and processes dealing with the oceans and law of the sea issues to encourage capacity building. Mr. President, India, as a country with a vast coastline has a traditional and abiding interest in maritime issues and as such has become a party to the Convention.

Thank you very much Mr. President and I look forward to the detailed discussions.

President: May I now call upon the head of delegation of Nepal for making their statement.

The Leader of the Delegation of Nepal: Mr. President, Your Excellencies, Ministers and Ambassadors, Mr. Secretary-General, Distinguished Delegates, Participants and Observers, Ladies and Gentlemen!

At the outset, on behalf of myself and on behalf of the Nepalese Delegation, I would like to extend my sincere thanks and gratitude to the President for giving me this opportunity to make brief statement before this august gathering of highly distinguished delegates.

Mr. President, let me congratulate H. E Mohammed Bello Adoke, Attorney General and Minister of Justice of the Federal Republic of Nigeria on your unanimous election to the high office of President of the fifty-first Session of the Asian African Legal Consultative Organization (AALCO). I am confident that your immense knowledge and wisdom, and quality inherent in you will definitely help to further strengthen and revitalize the Organization.

I would also like to congratulate Mr. U Thiha Han of Myanmar on his unanimous election as the Vice-President of this Session.

Mr. President, on behalf of the Nepalese delegation, I would like to offer special thanks to the Government of Federal Republic of Nigeria for organizing this Session in the beautiful city of Abuja as well as for extending warm and cordial hospitality to us since our arrival here. I deeply appreciate the excellent job performed by the Secretary General and other AALCO staff in organizing the Session.

I appreciate the inspiring inaugural address by His Excellency Mohammed Bello Adoke, Attorney General and Minister of Justice of the Federal Republic of Nigeria. His inspiring words symbolize the importance attached by the Government of Nigeria to this Organization and provide invaluable guidance for future direction of the Organization.

Mr President, AALCO is the only legal mechanism that consists of Member States from both Asian and African continents. It had played a pivotal role in setting norms and standards in various fields of international law. It is to note that in order to ensure that its members have proper laws and regulations in newly emerging areas, it has developed and disseminated model laws and agreements. Nepal has always attached great importance to the works of AALCO.

Mr. President, Nepal appreciates the agenda selected for this Session which are most important and very timely, especially those dealing with environment and sustainable development; extraterritorial application of national law and sanction against third parties and recent development with regard to the ICC. Similarly, international legal challenges responding to piracy and combating international terrorism are the agenda of utmost importance for us.

Mr. President, being a developing country, striking a balance between increasing development activities and protection of environment is a challenge for us as well. Nepal is a party to a number of multilateral environmental agreements, and we have adopted several policies dealing with sustainable use of natural resources and equitable sharing of benefits arising out of their use. In this connection, I feel proud of sharing with this august gathering that the Community Forestry Program - in which users' communities

themselves, and not the government, are involved in conservation efforts and sustainable use of forest resources in their respective forest areas – has become a symbol of tremendous success and a model conservation program all over the world.

Despite these efforts, worsening environmental conditions, especially climate change, have become a threat not only for our rich bio-diversity, but also for the very survival of our people. We have been experiencing unusual flash floods in rivers originating in the Himalayan region causing heavy loss of life and property. The rapidly melting snow in the mountains, the barren lands in the hills and the rapidly depleting water table in the plain land symbolize the seriousness of this problem in Nepal. We think the situation is not much different in other Member States sharing similar ecology. Therefore, I would like to emphasize that something concrete needs to be done immediately to save life and livelihood of peoples of Asian and African continents.

Mr. President, international terrorism is a common concern for all of us. Combating international terrorism requires resolute responses from all Member States in a coordinated manner as efforts of a single country are not enough. As concrete measures to demonstrate our commitment against terrorism, Nepal has ratified the International Convention for the Suppression of the Financing of Terrorism and the United Nations Convention against Transnational Organized Crimes and other instruments. It is high-time for us to devise an international cooperation mechanism, especially among AALCO members, to combat terrorism.

Mr. President, piracy is inimical to free and smooth flow of goods all over the world thereby adversely affecting international trade. Uncontrolled piracy and resulting proceeds of crime may assist terrorist activities. We feel that maritime security measures must go hand in hand with measures to address the underlying root causes of this global problem.

Mr. President, being a source country of migrant workers, Nepal has legitimate concerns in protecting and promoting rights and interests of our workers abroad. Our experiences show that migrant workers, especially the irregular ones, have been subjected to multiple victimization and exploitation everywhere-be it in the home country, transit countries or countries of destination. Since most of the destination countries of our migrant workers are the AALCO Member States, it is our firm conviction that the AALCO would come up with some special arrangement on this issue. The Draft Regional Model Cooperation Agreement between States of Origin and States of Destination/employment within AALCO Member States would be instrumental in this regard.

Finally, I once again thank you for giving me the floor.

Thank you.

President: Thank you. May I now call upon the Distinguished Delegate from Myanmar to make their statement.

The Leader of Delegation of Myanmar: Mr. President, Distinguished Guests, Observers, Ladies and Gentlemen

I would like to begin by expressing our sincere appreciation to the Government of the Federal Republic of Nigeria for hosting this session and for extending a warm welcome and hospitality to the delegation.

I also thank His Excellency Prof. Rahmat Mohamad, the Secretary General of AALCO, and the Secretariat for their hard work and commitment towards the work of AALCO. Myanmar has noted with approval the work of the Secretary General's leadership, with his energetic activity towards extending the activities of our organization. For this reason Myanmar has voted to extend his term of office for an additional term, and we have the fullest confidence that he will continue to expand and enhance the role and activities of our prestigious organization.

I also would like to take this opportunity to congratulate His Excellency Mohammed Bello Adoke on his election as President and also congratulate U Thiha Han on his election as Vice President. Thank you U Thiha Han for acting on behalf of me.

We would like to give our sympathy and deepest condolence to the Government and the people of Saudi Arabia for the late Crown Prince.

Mr. President, the Myanmar Government has long been committed to AALCO, which has been playing an important role not only in providing international legal assistance to its Member States but also promoting Asian-African cooperation and facilitating exchanges of views among Member States on issues of common concerns. Asian – African solidarity is very important for us.

The respect for law and the promotion of the rule of law is at the core of Myanmar's foreign policy. I believe that all the delegates in this room are aware that there is at present a lot of political developments and political reform under the leadership of the President and our two Hluttaws (that is Parliaments). During the visit of the Pyithu Hluttaw Delegation led by the Pyithu Hluttaw Speaker to the European Union Parliament and Parliaments of EU member countries, we explained, and expressed our views on the changes and reforms, which were faster than they had expected. In response to their questions, the Pyithu Hluttaw Speaker replied that Myanmar will not renege on its commitment to the changes and reforms which were necessary for the interests of the nation and the People. We are determined to do whatever it takes for the future prosperity of the country.

Mr. President, the Myanmar people believe democracy is the only path towards national prosperity. Political reform, without the economic reform, alone cannot make the political system a success. Legal reform too must be compatible with the new democracy system and economic reform, and these developments are at the center of the mandate of Myanmar Government. During the First Session of the Pyidaungsu Hluttaw, 14 Laws have been promulgated, 10 laws have been amended and 2 laws were repealed.

We are aware of the fact that much remains to be done here. Our Democracy is only a year old, and we have a tremendous backlog of obsolete laws to review and also an

enormous amount of new legislation to draft and legislate. Our legislators themselves have openly admitted that they lack the necessary experience to draft and legislate these necessary laws quickly and comprehensively. Myanmar, therefore, is open to constructive advice from all genuine well-wishers on the necessary legal framework to construct a solid foundation for our new-born Democracy.

Mr. President, Myanmar strongly believes that it is important to strengthen peaceful settlement of disputes among states. With this concept, both Myanmar and Bangladesh have consented to institute proceedings under Part XV of the UNCLOS, before the Tribunal for the Law of the Sea. The Tribunal has delivered its judgment on 14th March 2012, within a short period of 28 months. The judgment was spread over 151 pages and 506 paragraphs. The Tribunal had to address a number of issues raised by the Parties. The Tribunal *inter alia* decided that it has jurisdiction in respect of the delimitation of the Continental Shelf beyond 200 M.

Myanmar is of the view that the Tribunal provided a balanced and fair judgment to settle a long standing dispute between the two good and friendly neighbours. It enables Myanmar to benefit fully from its rights over the Continental Shelf as well as its superjacent waters.

Myanmar also would like to express its hope that the example provided by herself, and Bangladesh, in submitting their dispute to ITLOS instead of choosing the path of hostility and confrontation, will inspire other countries which also have maritime disputes to do the same.

As this meeting is well aware, there is another challenge on the high seas facing all the maritime countries of the world – the challenge of piracy. Myanmar has cooperated with her ASEAN partners in the common endeavor to fight this ancient scourge of the seas which has re-emerged today in a new incarnation, and Myanmar will deepen and strengthen that cooperation until this challenge has been overcome.

Mr. President, this meeting will address the challenge of terrorism and human trafficking in its later sessions, and Myanmar applauds the AALCO for its determination to face these two challenges which have been dominating the national security agendas of States for the past two decades or more. Terrorism is not an unfamiliar problem for Myanmar: she has had to face the threat of terrorism for much of her existence as an independent country. Myanmar has always been consistent and resolute in her struggle against terrorism, and she wishes to reassure this meeting that she will not only fulfill her international obligations to combat this menace, but will also cooperate with others to find ways and means, including if necessary new legislation, to continue doing so.

In common with many other developing nations, Myanmar is a labour exporting country, and therefore she inevitably suffers from the problem of human trafficking, in particular to her neighbouring countries. Myanmar is actively cooperating with them to stop this trafficking, and to assist in the return of the trafficked persons to their homelands. Here, too, Myanmar would like to announce that she will cooperate with the efforts of the AALCO to find ways through which human trafficking may be more effectively combated.

Mr. President, as we have mentioned before, the Myanmar Government fully supports the reappointment of the current Secretary General Excellency Prof. Dr. Ramat Moharmad for his efficient and effective leadership to the organization.

Myanmar always supports all the endeavours of AALCO so as to promote Asian-African solidarity, cooperation towards progressive development and codification of International Law.

Therefore in conclusion, we would like to express our wishes for the success of this meeting in all its endeavours, and our hopes that today we will lay a foundation for the unity of our AALCO members in their determination to overcome our various challenges and reach out for progress.

President: Thank you very much. May I now call upon South Africa to make their statement.

The Leader of Delegation of South Africa: President of the Asian-African Legal Consultative Organization's 51st Annual Session H.E. Mohammed Bello Adoke Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria,

Distinguished Delegates,

and all protocol observed,

On behalf of the Government of the Republic of South Africa, I have the honour to thank the Government of the Federal Republic of Nigeria for hosting this 51st Annual Session of the Asian-African Legal Consultative Organization, AALCO. We congratulate the incoming President and Vice President of this 51st Annual Session and express our confidence that under their leadership, the proceedings of this 51st Annual Session will yield positive results.

In addition, we would also like to thank the Secretary General of the AALCO, H.E. Professor Dr. Rahmat Mohamad for leading the Organization into a position of influence and a relevant body in matters of international law. His continued dedication has elevated the AALCO to the Organization we see today and in this regard I wish to convey congratulations from the Government of the Republic of South Africa towards the extension of the term of the Secretary General for another four years, from 2012-2016. We would also like to convey our deepest gratitude to the AALCO Secretariat and all those who were involved in the preparations for this 51st Annual Session.

We were last on the African soil during the AALCO's 49th Annual Session in the United Republic of Tanzania. Since then, we have also had the historic 50th Annual Session of the AALCO in the Socialist Democratic Republic of Sri Lanka. South Africa is indeed a proud member of this half a century old Organization, since joining in 2004, and as such, proud to participate in this 51st Annual Session.

Mr. President, allow me to extend on behalf of the Government and the People of the Republic of South Africa condolences to the Kingdom of Saudi Arabia on the passing of the Crown Prince. May his soul rest in peace.

Mr. President, at this stage, allow me to impart the remarks of the South African Government on issues to be discussed in the Agenda of this 51st Annual Session.

On the topic of Environment and Sustainable Development, South Africa, as you all know, successfully hosted the 17th Session of the Conference of Parties to the United Nations Framework Convention on Climate Change and the 7th Session of the Conference of Parties, herein referred to as COP17/CMP7. COP17/CMP7 was scheduled for 28 November-9 December 2011 in Durban, but negotiations only ended on 11 December 2011. It is my pleasure to report to the AALCO Member States Mr. President that the negotiations culminated to a breakthrough for the future of the international community's response to climate change whilst realizing the urgent need to raise the collective will to reduce greenhouse gas emission to keep the average global temperature rise below 2° Celsius. South Africa is also working together with other parties in order to ensure a continuity going forth towards the COP18/CMP8 to be hosted by the State of Qatar from 26 November to 7 December 2012, working in close cooperation with the Democratic Republic of Korea.

Mr President, South Africa takes note of and welcomes the admission of Palestine as a member state of the United Nations as of November, 23, 2011 but we regret that no convincing progress has been made in the Arab-Israeli peace process since it was revived on the 2nd of September 2010. We wish to take this opportunity, once more, to urge all parties, including the Israeli Government, to negotiate with the leaders chosen by the Palestinian people. We believe the leadership on both sides should seize the opportunity, in an effort to establish a free and independent State of Palestine, which will live side-by-side in peace with the State of Israel.

Mr. President, South Africa has noted with deep concern the increasing number in women and child trafficking. South Africa's response to dealing with human trafficking has been illustrated by it signing and ratifying the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Furthermore Mr. President, we also take note of the deteriorating conditions of migrant workers and protection of children. Certainly, we all agree that the United Nations and other international bodies need to do more to uproot this criminality from our society; both in the form of women and child trafficking, migrant workers and protection of children.

Mr. President, at the time that negotiations for the Rome Statute of the International Criminal Court were taking place in 1998, the Republic of South Africa was only four years old after its democratic transition in 1994. Millions of South Africans suffered for generations the humiliation and human rights abuses associated with apartheid, and it is thus gratifying that the crime of apartheid was criminalized in Article 7(2)(h) of the Rome Statute as a crime against humanity.

South Africa is proud to have been part of the African Group, the biggest block at the Rome negotiations, which vigorously supported the adoption of the Rome Statute. The creation of the world's first permanent international criminal tribunal to combat impunity for the most serious crimes of concern to the international community; namely: genocide,

crimes against humanity, war crimes, and hopefully from 2017 the crime of aggression; and I think we all agree that this would not have happened without Africa's support.

We firmly believe that the scourge of impunity must also be addressed by keeping in place an effective system of individual criminal liability for international crimes, thereby giving full effect to the prohibition of aggressive war in the Charter of the United Nations.

In this regard, it is to be remembered that complementarity forms the cornerstone of the Rome Statute, and that the International Criminal Court will only intervene once it is clear that the national criminal jurisdiction will not proceed. In order to fight impunity where it begins, it is the challenge of all the AALCO Member States to assist each other to strengthen national jurisdictions to effectively investigate and prosecute these crimes. Then justice will not only be done but be seen to be done. Voluntary activities to assist each other to strengthen national jurisdictions, what we refer to as "positive complementarity", will surely signal to victims our commitment to truly fight impunity.

South Africa therefore reiterates its call for all the AALCO Member States to ratify the Rome Statute as the battle against impunity will only be won once universal ratification of the Rome Statute has taken place. We call on all the AALCO Member States to support the election of African and Asian candidates for senior positions in the International Criminal Court as well as to continue to engage with the International Criminal Court. In this regard, we welcome the appointment of Ms Fatou Bensouda of The Gambia who became not only the first African but also the first woman to head the team of prosecutors at the tribunal as Chief Prosecutor of the International Criminal Court as of 15 June 2012. We congratulate her on her position and wish her a successful tenure.

Mr. President, it is my pleasure to acknowledge the efforts made by the AALCO Secretary General to work in close collaboration with the African Union and we encourage the AALCO to formalize these efforts. South Africa has always been of the view that the decisions of the African Union should be taken into account in the AALCO.

In conclusion Mr. President, I would like to express the Government of the Republic of South Africa's on-going commitment and support to this very important Organization.

Thank you.

President: Thank you. I believe that with this, the Member States have all made their opening statement. May I now call on the Distinguished Delegate from the ICRC to make an opening statement.

The Observer Delegation of the International Committee of the Red Cross (ICRC): Thank you very much, Mr President. Excellencies, distinguished delegates, ladies and gentlemen,

At the outset, I would like to take this opportunity to thank the Asian-African Legal Consultative Organization (AALCO) and the Government of the Federal Republic of

Nigeria for giving the International Committee of the Red Cross (ICRC) the opportunity to take part in AALCO's 51st Annual Session.

As you all know, the ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence, and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement of the Red Cross and Red Crescent in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. The ICRC's association with AALCO provides a welcomed opportunity to join efforts in the promotion of international humanitarian law.

Thirty-five years ago, the international community adopted Protocols I and II, and six years ago, Protocol III additional to the 1949 Geneva Conventions. While the Geneva Conventions have been universally ratified, there are 172 States party to Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, 166 to Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts. 60 States have also become parties to the Additional Protocol III relating to the Adoption of an Additional Distinctive Emblem. The ICRC welcomes this sustained progress in the participation of States in the Additional Protocols, which form part of the foundation of international humanitarian law. It encourages States which have not yet done so to accede to the Protocols as soon as possible in order to enhance the protection of victims of armed conflicts. The ICRC also salutes the increasing participation of States in other relevant IHL instruments, in particular conventions prohibiting or restricting the employment of certain weapons.

At the time of the 50th Annual Session, the ICRC informed AALCO Member States of the 31st International Conference of the Red Cross and Red Crescent held in November-December 2011 in Geneva. This event provided a non-political forum for dialogue on humanitarian matters bringing together States and the components of the International Red Cross and Red Crescent Movement. Today, the ICRC is pleased to inform you of the outcomes of this important conference.

From an ICRC perspective, the 31st International Conference was a success. The level of engagement in the different debates and the support received from States and National Societies of the Red Cross and the Red Crescent (National Societies) were unparalleled.

Eight Resolutions were adopted by consensus, three of which touched on IHL issues, notably Resolution 1 on "Strengthening Legal Protection for Victims of Armed Conflicts", Resolution 2 and its annex entitled "4-Year Action Plan for the Implementation of International Humanitarian Law" and Resolution 5 on "Health Care in Danger."

As regards Resolution I on Strengthening Legal Protection for Victims of Armed Conflicts, prior to the 31st International Conference, the ICRC conducted an internal study to determine whether, and to what extent, IHL as it exists today continues to provide an appropriate response to the humanitarian problems arising in armed conflicts.

Resolution I provides a basis for strengthening international humanitarian law in two areas where gaps have been identified: the protection of people deprived of their freedom, and mechanisms to ensure compliance with IHL.

The Resolution reiterates that international humanitarian law remains as relevant today as ever before in international and non-international armed conflicts and continues to provide protection for all victims of armed conflict. However, it recognizes the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with international humanitarian law, with a view to strengthening legal protection for all victims of armed conflict.

Therefore, Resolution I invites the ICRC to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, to identify and propose a range of options and its recommendations to enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law. The ICRC will also provide information at regular intervals to all members of the International Conference and will submit a report on this work to the 32nd International Conference in 2015.

Resolution II includes a "4-Year Action Plan for the Implementation of IHL" adopted by the International Conference.

The Action Plan urges States and components of the Red Cross and Red Crescent Movement to take specific action to enhance implementation of IHL in five areas: access by civilian populations to humanitarian assistance in armed conflicts; protection of children, women and persons with disabilities; protection of journalists; incorporation and repression of serious IHL violations in the domestic legal order; and arms transfers.

States and National Societies have adopted almost seventy different pledges related to the five areas contained in the Action Plan. We seize this opportunity to strongly encourage AALCO Member States to implement the Plan of Action and their respective pledges. Regular interaction between the ICRC, States and National Societies is planned on global, regional and bilateral levels with a view to ensuring appropriate follow-up of these pledges before the 32nd International Conference in 2015.

The 3rd Resolution to be highlighted is on Health Care in Danger. The ICRC launched the project Health Care in Danger in 2011 based on the observation from its operational experience that violence against the wounded and sick and medical personnel, facilities and transports is one of the most crucial yet overlooked humanitarian issues of today. In response, the ICRC declared its intention to mobilize support from governments, members of armed forces and groups, National Societies, and the health-care community like professional medical associations and NGOs specialised in this issue for safeguarding the delivery of effective and impartial health care in armed conflicts and other emergencies. The Resolution on Health Care in Danger calls upon the ICRC to initiate expert consultations with a view to formulating practical recommendations for making the delivery of health care safer in armed conflicts and other emergencies, and to report to the next International Conference in 2015 on the progress made.

Mr. President, in addition to its protection and assistance activities for victims of armed conflicts and other situations of violence, ICRC's preventive action in the field of weapons is also of utmost importance. The ICRC considers the upcoming negotiations of an Arms Trade Treaty in July this year as extremely important. Studies from the field have shown that the unregulated arms transfer and availability has a serious negative impact on respect for IHL and the delivery of humanitarian assistance in conflict zones. The ICRC urges that AALCO Member States actively participate in the negotiations to achieve a strong treaty. The ICRC is of the view that the ATT should firstly contain strict transfer criteria based on IHL, i.e. require that States a) assess the likelihood that serious violations of IHL will be committed with the weapons being transferred, and b) do not authorize transfers when there is a clear risk that these arms may be expected to be used to commit serious violations of IHL. Secondly, ICRC also believes that the ATT should contain a comprehensive scope of weapons and transactions to which these criteria will apply. Short of these conditions, the ATT's humanitarian goal would be seriously weakened.

Before concluding, it is worth recalling that States have the obligation under various treaties to harmonize their domestic legal framework and practice with humanitarian law. They can do so by adopting a wide range of national implementation measures, including legislation and administrative measures, drawing up military manuals and proper training within the armed and security forces. National IHL Committees or similar bodies can play a valuable role in helping concerned authorities to develop such measures. Currently, 103 States, including several AALCO Member States, have National IHL Committees. As always, through the Advisory Service on IHL, the ICRC continues to stand ready to assist States in their efforts to promote and implement international humanitarian law. Thank you Mr. President.

President: Thank you very much. May I now call upon the Distinguished Delegate from Russia to make a statement.

The Observer Delegation of the Russian Federation: Thank you very much, Mr President. Excellencies, distinguished delegates, ladies and gentlemen,

It is my great honour and a pleasure to attend this session.

May I take this opportunity to express my profound gratitude to the people and government of Nigeria for their warm hospitality extended to me since my arrival. My sincere thanks also go to the Secretary-General of AALCO for all his efforts in organizing this meeting.

The issues in the agenda for the Annual Session are of crucial importance for international relations, and I am looking forward for the consideration of these challenges and issues by AALCO Member States who have a direct effect on the progressive development of international law.

So, let me wish you a very successful Annual Session and fruitful deliberations and I thank you all.

President: Thank you very much.

The meeting was thereafter adjourned.

**VERBATIM RECORD OF THE SECOND GENERAL MEETING (Contd.)
HELD ON TUESDAY, 19 JUNE 2012 AT 11.55 AM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

Vice-President: May I now call upon the Leader of the delegation of Iraq for his statement.

The Leader of Delegation of Republic of Iraq¹: President of the Fifty-First session, Prof. Dr. Rahmat Mohamad, the Secretary-General of the Organization, Heads of Delegations and Respected Delegates and Ladies and Gentlemen, Peace, mercy and blessing of Allah.

We convey the greeting of the Government and people of the Republic of Iraq through you to the Republic and people of Nigeria for hosting this Session in a great manner and we wish them progress and prosperity and presents our congratulation for the renewal of the presidency and other positions in the Organization and hope more efforts and tender, with our thanks for their continued efforts in the service of the Organization and its members and serve humanity.

We would like to share with our brothers in Palestine their concerns and problems and we hope that those problems are going to be resolved within the international courses and International law which preserve the dignity of Palestinian people and stop the violation and that will be one factor of achieving international peace and security.

Either with regard to terrorism, the Republic of Iraq has placed treatment within the constitutional and legal framework and initiated to combat that on local level the necessary laws. And the international cooperation in fighting against terrorism will contribute to the achievement and promotion of International peace and security, and stopping the expansion of terrorism and its grave. We wish everyone success and we reiterate our thanks to the efforts of taking care of this meeting. I thank you.

Vice-President: Thank you. May I now call upon the Secretary-General for giving his brief remarks on the “Release of AALCO Publications”.

Secretary-General: Thank you Mr. Vice-President. Excellencies, Distinguished delegates, Ladies and Gentlemen, the first publication is the Yearbook of the AALCO, which was previously known as the ‘**Report and Selected Documents**’², has been

¹ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

² The other two Publications that were released were the “Newsletter” and “Report of the Meeting of Legal Experts on the Rome Statute of the International Criminal Court: Issues and Challenges, held in Putrajaya, Malaysia, July 2011”.

published since **2003**. The Ninth Volume (2011) of the Yearbook has been prepared by the AALCO Secretariat and is being released at the Fifty-First Annual Session of AALCO. A copy of AALCO Yearbook 2011 would be sent to all the Member States of AALCO through their Diplomatic Missions located in New Delhi in the coming month.

The Yearbook remains the most comprehensive and authoritative reference work of the Organization in a particular year. More specifically, the Yearbook provides comprehensive information about AALCO, its activities, the studies prepared by the Secretariat on the agenda items during the year, summary of deliberations and the resolutions adopted at the Annual Session. In addition, it contains statements delivered by the Secretary-General and the Deputy Secretaries-General at various forums and countries. In the last nine years, the Yearbook has established its place firmly among the publications as an important reference material not only for the Member States of AALCO, but also for other international organizations, international lawyers and academics who work in the field of international law.

The Second publication to be released is the AALCO Journal of International Law, vol.1, Issue 1, 2012.

With a view to contribute towards a better knowledge and understanding of international law, which in turn can influence the discourse of the global policy debates, AALCO has been publishing “Quarterly Bulletin” since 1976. In the year 1997 its name and periodicity were changed to “AALCO Bulletin” brought out bi-annually, till the year 2001. The Secretariat felt the need to re-structure the format and mode of this publication and after careful discussions and study, a totally overhauled publication in the new title, i.e; ‘AALCO Quarterly Bulletin’ was launched by beginning once again with Volume 1, Issue No. 1 dated January-March, 2005 and was published until 2011.

Beginning from this year, the name of the Bulletin has been changed to ***AALCO Journal of International Law***, and in an effort to improve further the quality of it so that it does contribute to the Third World legal discourse in an effective manner an “International Advisory Board” has been constituted. The primary role of this body, which would consist of a group of well-renowned legal scholars, practitioners and jurists drawn from the Asian and African Continents, would be to exercise oversight and provide guidance as to the many possible ways through which the quality of the Journal could be enhanced.

The newly launched AALCO Journal of International Law (Vol. 1, Issue 1, (2012) features topical and well-researched articles written by renowned legal experts and write-ups on selected current developments. The publication provides appropriate information to scholars and academics who are keen to obtain insights to the Organizations’ work in promoting research in international law matters.

May I now present all these publications to the Vice-President of AALCO.

Vice-President: I congratulate the Secretariat for bringing out these publications and I hope they will be useful for the Member States. I also release at this meeting the

“Newsletter” and “Report of the Meeting of Legal Experts on the Rome Statute of the International Criminal Court: Issues and Challenges, held in Putrajaya, Malaysia, July 2011”. Now, we move on to the next agenda for today.

The Meeting was thereafter adjourned.

VII. VERBATIM RECORD OF THE SECOND MEETING OF DELEGATIONS

**VII. VERBATIM RECORD OF THE SECOND MEETING OF DELEGATIONS
OF AALCO MEMBER STATES HELD ON TUESDAY,
19 JUNE 2012 AT 12.05 PM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

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

Vice-President: After release of the AALCO publications, now we move on to our business of taking up the “Report of the Secretary-General on the Work of the Asian-African Legal Consultative Organization”. As the President has informed us before when it comes to purely the Organizational Matters, only the delegates will attend the meeting, therefore, may I respectfully request the Observers to please leave the room for this particular meeting, while we will now listen to the Secretary-General. I would like to invite Dr. Rohan Perera to join us on the dais.

Secretary-General: Honourable Mr. Vice-President, Honourable Ministers, Excellencies, Ladies and Gentlemen, at the outset I would like to join the Leaders of delegations of Member States of AALCO in congratulating the President and the Vice-President of the Fifty-First Annual Session and look forward to working with you and stand to be guided by your wisdom.

Before I deliver my statement, I take this opportunity to profoundly thank all the Member States, for reposing trust and confidence in my ability to lead the Asian-African Legal Consultative Organization and for re-appointing me as the Secretary-General for a second and final term of four years. I assure you that I would continue with my efforts in promoting the noble aims and ambitions of the Member States, which they want to accomplish through this Organization.

I once again thank the Member States of AALCO for their constant support and cooperation extended to me in discharging my duties. Special thanks is due to His Excellency Mr. Rauff Hakeem, Minister of Justice of Democratic Socialist Republic of Sri Lanka; and President of the Fiftieth Annual Session of AALCO for his guidance in steering the work of the Organization. I would like to express my gratitude to Mr. Rauff Hakeem, for his efforts in requesting his counterparts in the governments within the region for becoming members of AALCO. I also would like to thank the International organizations and other academic institutions which collaborated with AALCO in organizing several inter-sessional events. My special appreciation is due to the Deputy Secretaries-General and the Legal and Administrative Staff for their relentless and sincere efforts in assisting me to accomplish the mandate entrusted by the Member States.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, this statement is divided into five parts namely: (i) Steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization; (ii) activities undertaken since the Fiftieth Annual Session;

(iii) financial matters of AALCO (iv) The AALCO Secretariat and Welfare measures for the Secretariat staff and (v) concluding observations.

(i) Steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization

Pursuant to the adoption of the Putrajaya Declaration of 2009, various activities have been initiated on a regular basis, to make AALCO the primary centre for harmonizing the actions of Asian-African States in international legal affairs. These include – a) Capacity Building Programmes, b) initiation of AALCO Lecture Series, c) AALCO Eminent Persons Group. Apart from these long-term initiatives, I seek to place for the kind consideration of Member States a few new proposals:

Strengthening the Human Resources in the AALCO Secretariat

- The Secretariat plays a crucial role in strengthening the work of the Organization. Presently, the Secretariat functions under severe constraints of human and financial resources. Yet the final products bear no witness to these handicaps and measure up to the quality and quantity of any important international conference and their outputs held anywhere in the world. In view of the decrease in the strength of legal staff and the increasing activities being undertaken by the Organization, it is proposed to recruit at least two new legal officers in the Secretariat in 2012-2013. Hence, AALCO needs to further strengthen the infrastructure and other facilities offered to the Secretariat Staff.

Request for Deputy Secretaries-General from Africa and Middle East

- Presently all the three Deputy Secretaries-General in AALCO are from the Asian Region, in order to ensure African and Arabic representation in AALCO, I request the African States to second at least one senior official to the Secretariat as Deputy/Assistant Secretary General and also the Arab Member States to depute one senior official to the Secretariat.

Request Member States to depute Legal and Professional staff to AALCO

- In order to attract the best talent from the two regions for the Professional Category of Secretariat Staff, I propose offering remuneration and other terms and conditions of services at par with other Inter-governmental Organizations. In furtherance of this proposal, I request Member States to nominate legal officers from their legal ministry to assist in the legal research, where the remuneration for these officials will be borne by the sponsoring States. Finally, I propose a Visiting Fellowship programme for senior academic and research assistant for post-graduate students from AALCO Member States.

2. Activities undertaken since the Fiftieth Annual Session of AALCO

Excellencies, Distinguished Delegates, Ladies and Gentlemen, next, I would like to briefly deal with the activities undertaken since the Fiftieth Annual Session of AALCO.

The ***Asia Pacific Regional Arbitration Group (APRAG) Conference*** took place in Kuala Lumpur from 9 to 10 July 2011 on the theme “International Arbitration in a Challenging Region. Seven Sessions were held on different important topics and I chaired a Session on the topic ‘*Arbitrating Islamic Banking and Finance Disputes*’ on 10 July 2011.

On behalf of the Organization I addressed the ***Sixty-Third Session of the International Law Commission*** in Geneva on 26 July 2011. The Verbatim record of the agenda item and the deliberations on ‘Report on Matters Relating to the Work of ILC at its Sixty-Second Session’ at the Fiftieth Annual Session of AALCO held in Colombo, Sri Lanka from 27 June to 1 July 2011, were circulated for discussion. One of the significant achievements of the Session was the constitution of an Eminent Persons Group (EPG) with the aim to serve as an “Advisory Body” for me to steer the work of the Organization.

I am pleased to inform this gathering that I held a ***meeting with the officials of the WIPO and UNCTAD***, during my visit to Geneva on 27 July 2011. There were discussions about future cooperation and close working relationship with the two organizations and suggestions to conduct joint seminars/workshops/inter-sessional meetings.

The ***Annual AALCO Meeting convened on the sidelines of the annual session of the United Nations General Assembly*** took place at the UN Headquarters in New York on 31 October 2011. The opening remarks were made by H.E. Mr. Rauff Hakeem, Minister of Justice of Sri Lanka and the President of the Fiftieth Annual Session of AALCO. The AALCO-ILC Meeting was chaired by Mr. Maurice Kamto, Chairman of the ILC. Following topics, namely; Expulsion of Aliens, Responsibility of International Organizations, and Protection of Persons in the Event of Disasters were presented by the respective Special Rapporteurs and Members of the ILC.

Two ***Luncheon meetings in New York were held on 28 October 2011 and 1 November 2011 as a new feature to the 2011 AALCO-ILC Meeting***. On 28 October 2011, presentations were made by H.E. Mr. Hernan Salinas Burgos, Chairperson of the Sixth Committee of the UNGA on the topic “*Protecting Democracy in the Americas*” and by Prof. David Caron, President of the American Society of International Law on the topic “*Judicial Independence and Impartiality in International Law*”. At the 1 November 2011 Luncheon Meeting, presentations were made on the topic of “Investment Law and Intellectual Property” by experts invited by Dr. Roy S. Lee, Permanent Observer of AALCO to the United Nations, New York.

The ***Fifty-Fifth Constitution day celebrations of AALCO*** were convened by me at Taj Palace Hotel in New Delhi on 11 November 2011. The Ambassadors/High Commissioners and Liaison Officers from 25 Member States of AALCO and 2 Non-Member States participated in the meeting. I made a presentation highlighting the outcome of the Fiftieth Annual Session and the Plan of Action for the year 2011-

2012. The Honourable High Commissioner of Sri Lanka to India released an AALCO publication titled **“Report of the Meeting of Legal Experts on the Rome Statute of the International Criminal Court Issues and Challenges”** which was held in Putrajaya, Malaysia in July 2011.

In pursuance of the invitation received from the Institute for Ethics, Governance and Law (IEGL), Australia, I presented a paper on **“International Criminal Court in the Development of International Rule of Law: A Reflection of Asian-African views”** on 21 November 2011. Further, at the invitation of The Human Rights and Governance Colloquium, Queensland University of Technology, Brisbane, Australia, I delivered a keynote address on the topic **“The Role of the International Criminal Court and Rome Statute in International Criminal Justice Standard Setting: Some Reflections”** at the international conference on “Shifting Global Powers: Challenges and Opportunities for International Law” on 25 November 2011.

Dr. Xu Jie, the Deputy-Secretary General of AALCO was invited to be the Distinguished Guest at the Inaugural Session of the **19th South Asia Teaching Session (SATS) on International Humanitarian Law (IHL)** jointly organized by the International Committee of the Red Cross (ICRC) and the National Law School of India University, Bengaluru from 27 November to 5 December 2011.

The AALCO Secretariat along with UNCITRAL supported the **International Seminar on Institutional Arbitration and Online Dispute Resolution techniques** organized by Construction Industry Arbitration Council (CIAC), New Delhi.

On 24 January 2012, **Hon’ble Mr. Rauff Hakeem, the Minister of Justice of the Democratic Socialist Republic of Sri Lanka and the current President of AALCO visited the AALCO Headquarters.** The President of the AALCO had a meeting with the Deputy Secretaries General and me and also addressed the resumed 314th Meeting of the Liaison Officers of AALCO Member States.

On 24 January 2012, in the evening, the **Hon’ble Rauff Hakeem, the Minister of Justice of the Democratic Socialist Republic of Sri Lanka and President of AALCO delivered a lecture at the Indian Council of World Affairs (ICWA), New Delhi.** I gave a brief introduction about AALCO at the occasion.

A Joint Seminar on “Competition Law in Emerging Economies: Trends and Developments in India” was organized at AALCO Headquarters with O. P. Jindal Global University on 28 and 29 January 2012.

A Workshop on “Trade Law as a Means to Promote Economic Growth” was organized in New York by Office of the Permanent Observer of the AALCO, New York on 7 February 2012. Ms. Patricia O’Brien, UN Under-Secretary-General for Legal Affairs and United Nations Counsel introduced the subject matter identifying some of the challenges and possibilities. Mr. Salim Moollan, Chair of the UNCITRAL Working Group on Arbitration and Conciliation and a practicing

Barrister in London deal with other issues. Mr. Renaud Sorieul, Secretary of UNCITRAL presented the current status of trade law instruments

At the *Eighth International Conference organized by the India Society of International Law on the topic “Emerging Concerns in Public International Law”* in New Delhi on 23-25 February 2012, I delivered the keynote address for the Session that focused on International Criminal Court and the Crime of Aggression.

A two-day *Training Programme for the Diplomats and Officials from Kingdom of Saudi Arabia on the “Working of AALCO”* was convened at the AALCO Headquarters in New Delhi from 12-13 March 2012. In the two days of the Training Programme, Officials of the Ministry of Foreign Affairs and Interior from the Kingdom of Saudi Arabia were given a detailed overview on the working of AALCO both in its Organizational and Substantive spheres. The training programme was attended by more than 20 Diplomats and Officials.

An *Informative Discussion on the topic “State to State, Investor to State and Commercial Arbitration: Procedures and Implications”* was organized by the Office of the Permanent Observer of the Asian-African Legal Consultative Organization, New York on 26 March 2012 in New York.

The *2nd Meeting of the AALCO-EPG* was held at AALCO Secretariat, New Delhi on 9 April 2012. Dr. A Rohan Perera, Chairman of the Eminent Persons Group (EPG) chaired the meeting. The meeting focused on two major themes: Session I was on Organizational Matters such as– i) Financial Issues related to AALCO, ii) AALCO Profile and Image, and iii) Enlarging the Membership of the Organization. Session II was on Substantive Matters such as – (i) ILC Matters, (ii) AALCO Agenda Items, and (iii) Restructuring of Methodology of Annual Sessions.

In pursuance of the mandate given to AALCO by its Member States at the Fiftieth Annual Session, the AALCO Secretariat convened an *Inter-Sessional Meeting of Legal Experts to discuss Matters relating to the ILC at the AALCO Secretariat, New Delhi* on 10 April 2012. 17 Member States and the legal staff members of the AALCO Secretariat attended this meeting.

I am pleased to inform this gathering that I *visited the Federal Republic of Nigeria on 27 April 2012 and had a meeting with H. E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice of Federal Republic of Nigeria* and other high-ranking officials in the Ministry of Justice, Federal Republic of Nigeria. The meeting discussed the logistics, administrative, and security arrangements done by Federal Republic of Nigeria ahead of the Fifty-First Annual Session of AALCO.

For the third consecutive year now, a *five-day training programme on “Trade and Development Issues”* was organized by AALCO in cooperation with the WTO Headquarters at the AALCO Secretariat from 21-25 May 2012. I am pleased to

inform you that it was very successful and found to be immensely informative by the participants.

On 30 May 2012, Dr. Roy S. Lee, Permanent Observer of the AALCO to the UN Headquarters, New York had *convened a workshop in New York jointly with the Legal Office of the United Nations to celebrate the 30th anniversary of the United Nations Convention on the Law of the Sea (UNCLOS)*. The theme of the workshop was “*Maritime Baselines*.”

The *AALCO, since its inception, has regularly been bringing out publications*. The serials brought out by the Secretariat since its Fiftieth Annual Session are: Yearbook of the Asian-African Legal Consultative Organization, AALCO Journal of International Law, Newsletter: Asian-African Legal Consultative Organization which reflects on the current activities of the Organization, and Special Studies published by the Centre for Research and Training in pursuance of its mandate to conduct an in-depth research on topics of international law.

I would like to make a special mention regarding the upgrading of the AALCO website www.aalco.int which is now at par with other international organizations. It follows the latest trends in web styling and information sharing. For this project we have received immense technical and financial support from the Kuala Lumpur Regional Centre for Arbitration, and I wish to thank them for this endeavour.

The Government of Malaysia, the International Criminal Court, ICC Secretariat and the AALCO Secretariat jointly organized a *Meeting of Legal Experts on the Rome Statute of the International Criminal Court: Issues and Challenges* on 19th and 20th July 2011 in Putrajaya, Malaysia. The meeting aimed at providing the Legal Experts from the Member States of AALCO, a forum to explicitly discuss the issues and challenges relating to the Rome Statute, as well as ponder over reasons as to why some States, particularly from the Asian region, were hesitant to ratify the Rome Statute. I am grateful to the Government of Malaysia for its constant support and encouragement, President of the ICC for agreeing to co-host this event as well as the other participants and organizers of the event.

3. Financial Matters of AALCO

Excellencies, Ladies and gentlemen, now I will proceed to discuss the financial matters of AALCO.

You would recall that in order to improve the financial situation of AALCO, a comprehensive approach was adopted at the Putrajaya Session held in Malaysia in 2009, with respect to the adoption of the ‘Revised Scale of Assessed Contribution’ of Member States. I am pleased to inform you that the financial situation of AALCO presently is better than what it was in the past. However, in order to meet its commitments and to sustain financial stability more cooperation is sought from Member States, besides their annual contributions, I fervently request Member States,

who can, to make voluntary contributions to AALCO. Moreover, some innovative measures will have to be adopted in the long run.

For the year 2011 annual contributions from 34 Member States have been received; however, the same has not been received from 13 remaining Member States. I urge the Member States that have not paid their contributions to please do so at the earliest.

In light of the 'Action Plan' approved at the Extraordinary Session at the Headquarters in 2008, 9 of the Member States have either partly cleared or are in the process of clearing their arrears, whereas efforts are being continued for 4 of the Member States (which have been in arrears for more than 10 years) through their Diplomatic Missions in New Delhi to conclude MoUs.

In addition, I am grateful to the Member States which have made voluntary contributions and would like to propose that any such voluntary contributions should not be added to the regular budget of the organization and therefore would be utilized for Special Projects for which the Member States have made such voluntary contributions.

With respect to the replenishment of the Reserve Fund under Rule 27 (3) of the Statutory Rules of the Organization, I suggest that the amount kept be sufficient to meet the expenses of the organization for at least a period of six months. Due to the current financial difficulties, it is rather difficult to reserve some amount from the contributions received from Member States.

Pertinent in this regard is to mention that AALCO since its inception in 1956 has functioned only on the basis of financial contribution made by the Member States, and is often constrained in its functioning because of limited budget and non-payment of annual contribution by several Member States. The Secretariat has limitation in pursuing the States in arrears beyond a point, as the relatively technical nature of AALCO's work does not attract enough attention within the political decision making process in the Member States.

4. The AALCO Secretariat and Welfare measures for the Secretariat staff

Three Senior Officials from AALCO Member States, namely, People's Republic of China, Islamic Republic of Iran and Japan have been deputed to the Secretariat on secondment.

The number of the locally recruited staff (permanent category) in the Secretariat is 13 as of 15 May 2012. Mr. Mohommad Hussain K. S., Senior Legal Officer and Mr. Senthil Kumar, Legal Officer after working in AALCO for seven and six years respectively resigned to join as Legal Officers in the Legal and Treaties division, Ministry of External Affairs, Government of India.

The AALCO Secretariat in terms of payments of salary and retiral benefits to its employees closely follows the scheme followed by the Government of India. As we do not have pension and other benefits for our staff, the only substantial amount at the time of retirement is in the form of Gratuity. The Government of India in 2006 raised the ceiling limit for gratuity payable to its employees on cessation of employment to a sum of Rs. 10, 00,000/- (Ten lakhs). In view of this, the ceiling of the gratuity amount payable to employees on the cessation of their employment in AALCO was enhanced and the ceiling limit was brought at par with the Government of India.

In this regard it is pertinent to mention that Chapter X of the Administrative, Financial and Staff Regulations, adopted by AALCO in 1990 under Article 10.3 (iii) deals with Retiral benefits defining the formula for computation of Gratuity Award. At the Forty-Third Session in 2004, vide Resolution RES/43/ORG 10 dated 25 June 2004, formula for computing the Gratuity award was revised. Subsequently, at the Forty-Ninth Annual Session of AALCO, held in Dar es Salaam, 2010, the above mentioned resolution was recalled and it also requested the Secretary-General to follow the legal provisions of the Host Government, i.e., the Government of India, for payment of gratuity to the locally recruited staff of the Organization.

On the basis of the 2010 session, the Secretary-General has implemented the ceiling limit of the 6th Pay Commission of Government of India up to Rs.10, 00,000/- (Ten lakhs). Building upon the above mentioned resolutions and keeping in mind the welfare of the locally recruited staff, it has been decided to follow a revised formula for computation of the terminal gratuity award upto a ceiling limit of Rs. 10,00,000/-¹. This formula shall be retrospectively applied and implemented in AALCO from the year 2006². The draft resolution on this issue has been annexed to my report contained in document (AALCO/51/ABUJA/2012/ORG 1) and I request the Member States to approve it.

Plan of Action for the coming year 2012-2013

Mr. Vice-President, Excellencies, Ladies and Gentlemen, on completion of my first term and beginning of the second and final term, I once again seek this opportunity to reiterate my gratitude to the Member States for the kind support and confidence they have reposed in me. In order to meet the growing expectations of the Member States and reorient AALCO's activities in such a way so that it could provide more beneficial and useful services, some of the steps I propose to be undertaken in the coming year include: (i) Establishing Collaboration with Educational Institutions and Universities, (ii) Expanding Internship Projects in AALCO, (iii) Preparation of the Studies on the item on the agenda of AALCO, (iv) Preparation of studies on selected items on the agenda of the Sixty Seventh Session of United Nations General Assembly, (v) Participation in International conferences, (vi) Capacity Building Programmes, (vii) Strengthening the Library, and (vii) bringing out more special studies and briefing papers on various specialized topics of international law.

¹ The ceiling limit of the terminal gratuity award would be in consonance with the then prevailing ceiling limit as adopted by the Government of India.

² The 6th Pay Commission was implemented by the Government of India on 1-1-2006.

Concluding Remarks

Excellencies, I would like to recall the promise that I made to Member States when I was elected Secretary-General in 2008 in New Delhi. Firstly, as AALCO is an inter-governmental Organization of 47 States, it is not about me but the interests and needs of the Organization. Secondly, AALCO must remain independent and neutral as a legal entity with the objective to promote the progressive development of international law and to convey the views of the Asian-African states to the other international fora and thirdly, AALCO must remain relevant to the Member States i.e. the stakeholders. Towards this end, I earnestly hope that the Member States would extend their wholehearted support to all the activities that would be undertaken in the coming year.

Vice-President: Thank you very much Mr. Secretary-General for the very concise and if I may say a very passionate statement on the work of AALCO, I see why the Member States have chosen you for the second term and I do hope that you are able to demonstrate the same enthusiasm that you were able to demonstrate when you were elected as the Secretary-General of this Organization. Before, we move on to the next item, I would like to ask the Member States if they have any comments on the Report of the Secretary-General. Now, we move on to the next item on the topic of “Draft Budget for the Year 2013.

Report on the Proposed Budget for the Year 2013

Secretary-General: Mr. Vice-President, Excellencies, Heads of Delegations, Distinguished Delegates;

May I now invite your attention to the Secretariat Report or Budget Document on the “Proposed Budget for the Year 2013” contained in document AALCO/51/ABUJA/2012/ORG.2. The budgetary papers were adopted at the 315th Meeting of the Liaison Officers of AALCO Member States in accordance with Statutory Rules 24 (2) and are placed for final approval before this Annual Session as per Rule 24 (4) of the Statutory Rules of AALCO.

Excellencies; the total amount of the proposed budget for the year 2013 is USD 570,268 (US Dollars Five Hundred and Seventy Thousand, Two Hundred and Sixty Eight) which is calculated as per expected assessed contribution of Member States which was revised and adopted during the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia in the Year 2009 vide resolution AALCO/RES/48/ORG.2.

During the Forty-Ninth Annual Session of AALCO held in United Republic of Tanzania in 2010, some Member States had urged the Secretary-General to prepare a realistic budget on the basis of actual contributions received. Therefore, the budgeted expenditure for the year 2013 has been divided into two parts, (i) the realistic budget of USD 501,621 on the basis of expected contributions from regularly paying Member States; and (ii) the remaining amount of USD 68,647 would fall under the heading ‘other projected

expenditures', which would be incurred depending upon contributions received from Member States in arrears.

The Proposed Budget could be divided into two main heads namely: (i) Expenses incurred in relation to maintenance of the Headquarters, Pay and Allowances to Secretary-General and Locally recruited Staffs, emoluments to Deputy Secretaries-General, expenses in relation to Annual Session and inter-sessional meetings printing, publication and so on amounting to USD 499,621 and (ii) Expenses under Centre for Research and Training (CRT) which is USD 2,000.

It may be recalled that to replenish Reserve Fund, during the Forty-Eighth Annual Session, the resolution adopted urged the Member States to ensure that it always has a six-month operational fund. As of May 2012, the total amount of the Reserve Fund is only for an operational period of five months.

Excellencies; certain measures were proposed to collect arrears from Member States who are in large amount of arrears. In this regard, I would like to inform the Member States and thank the Government of Iraq for having paid their first, second and third installment of arrears of contribution in compliance with the Memorandum of Understanding (MoU) signed with AALCO. The Government of Sudan also has paid their first installment of arrears of contribution based on the calculations under the draft MoU. I hope other Member States who are in large amount of arrears would also follow suit. Few other Member States have also started paying arrears of contribution, which is very encouraging for the Organization. I would like to thank the Deputy Secretary-General from Japan for his efforts towards collection of arrears.

The AALCO has received annual contribution from 32 Member States for the year 2011 until May 2012. Arrears of contribution have been received from 10 Member States in the year 2011. On these lines, I would like to urge Member States which have not paid their annual contribution and arrears to fulfill their financial obligations. I wish to emphasize that voluntary contributions from Member States is most welcome.

Excellencies, it is essential to assess an organization through its ongoing activities undertaken, which has repeatedly been the concern of AALCO Member States. In this regard, activities conducted and organized by AALCO in the Year 2011 and till this month of 2012 is a manifest evidence of the promotion of research and training. I would like to emphasize that there have been effective streamlining of the expenses, and the Secretariat staff needs to be appreciated in extending their full cooperation in reducing the expenses.

In the light of these facts, I would like to place before this august body the Proposed Budget for the Year 2013 for final approval.

Thank you.

Vice-President: Having heard Secretary-General's statement on Proposed Budget, I invite observations from Member States. As the maxim goes that silence is consent, I take that the 2013 Budget is adopted. Thank you.

Vice-President: Next on the agenda is the “**Report of the Chairman of the AALCO-EPG on the 2nd Meeting held on 9 April 2012, AALCO Headquarters, New Delhi**”, for this I now invite Dr. Rohan Perera, the Chairman of the AALCO-EPG.

Report of the Chairman of the AALCO-EPG

Dr. Rohan Perera, Chairman of the EPG: Mr. Vice-President, Excellencies, Ladies and Gentlemen, it is an honour and privilege to place before this august gathering the report on the 2nd Meeting of the AALCO-EPG.

The Second Meeting of the AALCO-Eminent Persons Group (EPG) was convened on Monday 9th April 2012, at the Headquarters of AALCO in New Delhi. At the commencement, it was recalled that the rationale for constituting the EPG, was the realization that after over 50 years of establishment of AALCO, the time had come to take stock of its past and present work, and to give direction for the Organization's future work.

With a view to facilitating a structured discussion, the Agenda for the Meeting divided the Sessions into (i) Organizational Matters and (ii) Substantive Matters. The cluster of issues discussed under Organizational Matters was (a) Financial Issues related to AALCO: (b) Enlarging the Membership of the Organization: and (c) AALCO Profile and Image.

Under Substantive Matters, the issues discussed were prioritization and rationalization of AALCO Agenda Items, and restructuring of the methodology of the Annual Session. There were unavoidable areas of overlap, given the cross-cutting nature of some of these issues. Certain related issues also engaged the attention of the EPG.

I-ORGANIZATIONAL MATTERS:-

A-FINANCIAL ISSUES

In his briefing of the EPG on financial issues related to the Organization, the SG drew attention to the fact that primary attention was being given to measures to improve and normalize the financial situation of AALCO. It was stated in this regard that the Organization's financial target was based on annual contributions from Member States, and that most Member States pay their annual contributions to AALCO regularly. Collection of arrears still remains a challenge; nevertheless defaulting Member States were beginning to respond and to negotiate.

The SG also emphasised the fact that voluntary contributions by Member States need to be intensified in order to alleviate the financial situation of the Organization. Among other measures brought to the attention of the EPG was, the possibility of Member States hosting Meetings on specific topics, as Malaysia had done, in successfully

hosting Meetings and Workshops on Trafficking in Human Beings, especially Women and Children and on the International Criminal Court. SG also referred to a Proposal of forming an AALCO Foundation, to explore ways and means of generating income for the Organization. A proposal had also been put forward by a Private Company in India that they would assist in maintaining the AALCO Secretariat, by absorbing some Contract Staff and in return they would utilize some space in the Secretariat. He stated that the Host Government, the Government of India would be consulted before proceeding with such proposal.

The EPG, after discussion of these issues raised by the SG, expressed satisfaction on the improved financial situation of the Organization. And there was general endorsement of the efforts of SG towards stabilizing the financial situation. It was emphasized that the Secretariat should continue with its efforts in collecting arrears of contribution, keeping in view the fact that annual contributions by Member States was the primary source of funding for AALCO.

The EPG was also of the view that Member States should be encouraged to sponsor Meetings and Workshops on specific topics of particular interest to the Asian-African region, and that this would help to ease the financial burden of the Organization. On the question of private sector participation in the maintenance of the Secretariat, the EPG was of the view that this proposal required careful study and encouraged the SG to closely consult the Host Government, before proceeding to finalize such proposal.

During the discussions within the EPG, it was thought appropriate to draw the attention of Member States to the "Putrajaya Declaration on Revitalizing and Strengthening the Asian African Legal Consultative Organization" adopted at the 48th Annual Session of the Organization, and in particular to Operative Paragraph 8 thereof which stated, "We recognize that it is the responsibility of all Member States of AALCO to work together to alleviate the financial hardship of the Organization." it was also recalled that Operative Paragraph 9 stipulates that, "We emphasize the importance of fulfilling the Statutory and financial obligations by all Member States of AALCO and urge those Member States in arrears, to expeditiously clear their arrears." The EPG is of the view that all Member States, guided by these provisions should, in a spirit of solidarity and co-operation, take all necessary measures to ensure the financial viability of the organization.

In discussing financial issues relating to the Organization, the EPG also recalled a proposal made some years ago, whereby non-paying Member States could not participate actively in the activities of AALCO. This proposal need to be studied very carefully, also taking into account the practice of other International Organizations. It was recognized that there was an urgent need to evolve a formula of how and what measures could be taken against non-paying Member States and placed before Member States for their consideration. Otherwise, the question of arrears would continue to jeopardize the financial viability of the Organization.

B-STAFFING OF THE SECRETARIAT.

Mr. Vice-President, Excellencies, Ladies and Gentlemen: On the issue of the staffing of the Secretariat, the SG briefed the EPG that presently, the professional category was understaffed. There were only three professional legal officers, at present, as recently some officers had left the Organization in pursuit of better options. It was mentioned that salaries and other perks given to AALCO professional staff, were not attractive enough to encourage young local talent. The pertinent question was how to attract the best brains to work at AALCO. Recruiting of new officials had to be done immediately, in order to fulfill the mandate given to the Organization by Member States. In this context, it was recalled that a proposal had been made to invite Member States to depute officials/experts to AALCO, who would remain on the pay-roll of Member States. SG expressed the view that such an arrangement would be very helpful to AALCO. The EPG is of the view that this proposal is worthy of renewed consideration by Member States, in the context of the financial constraints currently faced by the Organization.

EPG is also of the view that the AALCO Secretariat could play a more pro-active role, particularly with regard to the work of the ILC, which is a key item on the AALCO Agenda. AALCO could sponsor one of its Legal Officers to attend the Annual ILC Sessions. The advantage of such an arrangement is that the Officer could assist a Special Rapporteur of the ILC, and in his Report, he could brief the Member States. This would also further strengthen the AALCO-ILC relationship.

The SG also brought to the attention of the EPG the substantive targets that needed to be achieved by the Secretariat. The real outcome of AALCO which constituted the bulk of the Secretariat's work were Reports, Model Laws and Guidelines. The issue was to make an assessment as to how much these documentation had been of benefit to Member States. The feedback in this regard had not been forthcoming. The EPG is of the view that, as the Organization sought to take more pro-active measures, in particular with regard to ILC matters, it was imperative that Member States responded to the Secretariat, as to how much importance they attached to the substantive work prepared by AALCO.

On the question of making communications between the Secretariat and Member States more effective, the EPG is of the view that communication could be done through email so that the material could reach the Member States fast and at no extra cost to the Secretariat. The Secretariat could begin by identifying the Focal Points in each country, whether it was the Ministries of Foreign Affairs, Justice or the Attorney General's Chambers, and create a database of email addresses, to facilitate speedy and effective communication with Member States.

C-ENHANCING THE PROFILE AND IMAGE OF THE ORGANIZATION.

Excellencies: A range of views emerged within the EPG on the question of enhancing the profile and image of the Organization. It was noted in this context that AALCO's profile was very high during the 1970s and 1980s, and in comparison, it had seen a decline during the 1990s and since 2000. The reason for this lay in the fact that the then on-going negotiations on the Law of the Sea had involved issues that were common to almost all

Member States and were a bonding and binding factor. However, currently, there were no International Law issues under discussion that were challenging and were common to all Member States. It was also noted in this regard, that the situation in the Sixth (Legal) Committee of the UN was no different and the Committee was not active as it used to be. The reason for the decline was also manifest in the work undertaken by the ILC on the Fragmentation of International Law, wherein it was pointed out that the manner and method of rule-making had undergone radical change. It was further noted that in the 1970s and 1980s the Ministries of Foreign Affairs were in charge of AALCO affairs, but when the role of the Foreign Ministries got diluted, with the changes in the manner and method of law-making, this in turn affected the work and representation in AALCO.

Therefore, the need of the hour was to look beyond the topics taken up by the Sixth Committee of the UN and take up issues that were of common and immediate concern to Member States of AALCO. For instance issues that had arisen in the WTO and Environment negotiations, were basically legal issues that had been handled at the political level and the lack of legal input was showing up in these negotiations. These were the areas of contemporary relevance that needed to be taken up by AALCO, which in turn would have a positive impact on its role, and profile. There was accordingly a clear need to re-brand the Organization and to identify contemporary issues that could attract the attention of all Member States.

D-ENLARGING MEMBERSHIP.

The EPG also considered the question of the possible enlargement of the Membership of the Organization, which could have a positive impact both on the financial stability of the Organization, as well on the profile and image of the Organization. After considering various options in this regard, including several written suggestions made by the Permanent Observer of AALCO to the United Nations, (Para 8) the EPG took the view that as a starting point, the SG, along with the current Chair of AALCO or a Representative, could visit Diplomatic Missions in New Delhi. Apart from the cost-effective nature of such an exercise, New Delhi was a very important city where States from both regions were well represented, and communication could be easily established with many Regional Groups.

While a formal request could be made to the Regional Organizations and Bodies through a letter and communicated via the relevant Diplomatic Mission in New Delhi, the EPG is also of the view that a concrete recommendation in the form of a Resolution adopted during the current Abuja Session of AALCO, could strengthen the initiative towards enlargement of Membership.

II-SUBSTANTIVE MATTERS.

The EPG discussed a range of issues of a substantive nature which included the rationalizing and prioritizing AALCO Agenda items, as well as re-structuring the methodology of the Annual Sessions. In order to keep pace with current developments in International Law, emphasis was placed on the need to focus on areas of practical relevance to Member States,

(A) PRIORITIZATION OF AGENDA ITEMS.

The EPG is of the view that Investment Law was becoming important to Member States and AALCO could undertake project based research on this topic. As many Member States had entered into a large number of Agreements for the Promotion and Protection of Investment, the need of the hour was to move beyond Treaties and to address the real issues that had arisen with regard to their implementation, including disputes arising therefrom and other related issues.

Recent problems that had arisen in Arbitral Jurisprudence in relation to over- expansive interpretation of the scope of application of the Most-Favoured-Nation (MFN) Clause, by different Arbitral Tribunals, particularly with regard to its application to Dispute Settlement Provisions of an Investment Agreement, were of particular concern to developing host countries. The work of the Study Group of the ILC on the MFN Clause, which seeks to address these issues, inter-alia by providing Model Clauses and Guidelines, should be closely followed in AALCO.

Another topic of current concern is the discretionary powers of the ICC Special Prosecutor, which was the subject of much debate. It was recalled in this context that in 1990, the UN had drafted Guidelines on the Role of Prosecutors. AALCO could take upon itself the task of updating these Guidelines, in the context of current developments, which in turn could be used by Member States. EPG also recognized the need for training of Judges and Prosecutors from Member States of AALCO in the light of the need to domesticate the provisions of the Rome Statute, by the State Parties.

Another area of current concern was the issue of Piracy. AALCO could undertake a comprehensive study of the topic, ideally through a Working Group which should be required to give its outcome in a time-bound framework of about 2 years. It was also felt that as a general rule, a time limit should be set out for completion of work on a particular topic. This could be a progressive step towards rationalizing the Agenda of AALCO.

It was also felt that besides the normal work, AALCO could consider drafting model laws or agreements on specific subjects which could be useful to Member States. For instance, it could embark upon drafting a Mutual Legal Assistance Treaty- What was clearly needed was to produce implementable documents by following a more pragmatic approach.

The EPG also discussed the need to commemorate in a suitable way, the 30th Anniversary of the Law of the Sea Convention, given the special contribution made by the Organization to the development of novel Concepts such as the EEZ, at UNCLOS III .A number of proposals made by the Permanent Observer of AALCO in this regard is set out in Paragraph 34 of the Report. This includes the organizing of a Seminar by the Office of the Permanent Observer to the UN, on the importance of Baselines in the context of climate change and sea-level rise.

Among the other proposals considered by EPG and commended for the consideration of Member States, is the organizing of a Special Lecture on "The contribution of AALCO to the development of the Law of the Sea at UNCLOS III".A study could also be undertaken

on Sea- bed resources and what the future holds. Another current issue that could be addressed by AALCO in this regard would be 'Biological Resources of the Oceans.'

(B) RATIONALIZING THE AALCO AGENDA.

Mr. Vice-President, Excellencies, Ladies and Gentlemen: The EPG held an in-depth discussion on the need to rationalize the AALCO Agenda. The list of Agenda Items of the Organization had continued to grow over the past few years and as the time allocated at an Annual Session was limited, it was not possible to discuss all the Agenda Items at such Session. It was noted in this regard that categorizing the topics into 'deliberated' and 'non -deliberated' items was a practical devise by which some topics could lie dormant on the Agenda. The next step would be to secure an endorsement from Member States, as to the desirability of certain 'non-deliberated' topics continuing on the Agenda. Clearly, there was a need to evolve a methodology, through which the Organization could suggest ways on how to delete a topic from the Agenda of AALCO. This would pave the way for new topics of contemporary relevance to be included on the AALCO Agenda. It would be useful for this purpose, to study the methods and procedures adopted by other Organizations.

After a preliminary discussion on a list of Agenda Items that was circulated, the EPG decided to forward the list for the consideration of Member States, and to obtain the benefit of their reactions.

(C) RE-STRUCTURING THE METHODOLOGY OF THE ANNUAL SESSIONS.

While discussing the methodology of AALCO Annual Sessions, it was recalled that in the past certain workman- like procedures had been adopted, with several Working Groups meeting in tandem with the Plenary, on specific subjects during the Annual Session, and reporting back to the Plenary, of the outcome of their deliberations. This was the procedure adopted during the LOS Negotiations. This provided an informal atmosphere for an in-depth discussion of issues. However it was noted that this pattern had changed in recent times, and current Annual Sessions replicates the methods adopted at the UN General Assembly, including adoption of Resolutions. Consequently, there is less interactive discussion among Member States and more reading out of prepared country positions. The EPG is of the view that there should be more emphasis on workman-like procedures, having regard to the primary objectives and functions of a Legal Consultative Organization. It is noted that considerable time is spent at Annual Sessions in drafting Resolutions.

It was also pointed out in this regard that the Statute and Statutory Rules of AALCO provided, inter alia that decisions on matters of a substantive character, shall be adopted in the Plenary, in the form of Recommendations to be incorporated in a Report, rather than Resolutions. (See further, Paragraphs 27, 29, 30 and 31)

The EPG recommends that this matter receive the careful consideration of Member States at the Abuja Session.

Finally, Mr. Vice-President, Excellencies, Ladies and Gentlemen, the EPG also considered the question of timing of the Annual Sessions, with a view to maximizing the

participation of Member States as well as Resource Persons. It was noted that in the past few years, the Annual Sessions had been convened in the month of June, This was found to be not suitable to many Member States, because other Meetings on the UN Calender coincided at this time. In the past, the Annual Sessions had been convened in January or February and this was found to be convenient, as it did not clash with other Meetings. Another advantage of having the Annual Sessions in the early part of the Year was that the views of Member States on ILC Items could be conveyed to the Commission well in time. The EPG therefore recommends that in convening the Annual Session, the SG bears in mind the international calender of Meetings and the advantage of convening the meeting in the early part of the year. It was also recognized however, the convenience of the Host State was also a factor that needed to be taken cognizance of.

Vice-President: Thank you Dr. Perera that was indeed a very comprehensive report.

The Delegate of the Kingdom of Saudi Arabia: noted with concern that one of the reasons for the financial problems of AALCO pertained to the long pending arrears from some Member States. In this respect he inquired from the Secretariat why private funding could not be explored as an additional option. He was also of the opinion that an early solution to the financial difficulties faced by the Organization should be found.

In response the **Secretary-General** stated that this proposal was placed for the consideration of Member States during the 50th Annual Session held in Sri Lanka in 2011. However, many Member States cautioned about receiving private funding as this could in some way alter the basic role of the Organization. Therefore, a detailed scheme for receiving private funding would be drawn out by the Secretariat and possibly be placed for consideration of Member States at the next Annual Session. He also said that other international organizations like the United Nations were receiving funding from some private companies.

Vice-President: The report of the Second Meeting of the EPG presented by Dr. Rohan Perera, the Chairman of the EPG, is adopted. The next item on the agenda is the “**Report of the Chairman of the Sub-Committee on AALCO’s Human Resources and Financial Matters**”.

Report of the Chairman of the Sub-Committee on AALCO’s Human Resources and Financial Matters

Dr. Yashukata Fukahori, Deputy Secretary-General: **Mr. Vice-President, Excellencies, Ladies and Gentlemen,** this report was initially supposed to be presented by Mr. PG. Indera Jaya Shamsu, the Liaison Officer of Brunei Darussalam and the Chairman of the Sub-Committee, but unfortunately as he could not make it to Abuja, I will be presenting this report on his behalf.

It may be recalled that pursuant to the 49th Annual Session of AALCO, Dar Es Salaam, United Republic of Tanzania (2010), upon a recommendation of the Secretary-General, a **Sub-Committee on the AALCO Secretariat’s Human Resources and Financial Matters** (herein after Sub-Committee) was established at the Resumed 308th Meeting of

Liaison Officers of AALCO Member States which was convened at the Headquarters of AALCO, on Wednesday, 1st December 2010. The sub-committee was entrusted with three main tasks, namely:

- i) Salary structure of the Staff;
- ii) Right size of the AALCO Secretariat and
- iii) Ways and means to generate income for AALCO other than the contributions received from its Member States.

The Reports of the First and Second meetings of the Sub-Committee are annexed to the document AALCO's Draft Budget for the year 2013 (AALCO/ABUJA/2012/ORG 2)

The first meeting of the Sub-Committee was convened on 7th March 2012, at that meeting the Chairman proposed that to begin with, "the right size of the Secretariat" could be taken up as the first point of discussion. He asked the Secretariat to provide a list of the AALCO Staff. He was informed that currently there were **13** staff members in the Permanent category: 3 Legal Staff; 5 Administrative staff; and 5 subordinate staff. Besides this there were **9** contractual employees: 1 Librarian/translator; 1 watch and ward; 1 messenger; 1 chauffer; 2 electricians; 2 cleaners and 1 gardener.

In response to this information, the **Liaison Officer of India** said that before arriving at any conclusion on whether the Secretariat was under or over staffed, it was essential to have a look at the Sanctioned Staff for the Secretariat. He referred to the Secretariat document AALCO/50/COLOMBO/2011/SD/ORG 2 "Proposed Budget for the year 2012", and pointed out that on page 15 of that document, the Sanctioned Staff for the Secretariat was 34, and presently there were only 13 Permanent staff members in the Secretariat. Therefore, in his view there was no need to discuss this issue for the time being.

The **Liaison Officer of Sri Lanka** opined that the Sub-Committee was given a very onerous task, which would require detailed study and assessment of requirements, objectives and the tasks to be undertaken by the Secretariat over the next five years. In view of the fact that the activities were growing it would need a practical assessment. The right way to go about carrying out this task would be that the Chairman should circulate a detailed paper on all the above mentioned points, which could be studied by the Liaison Officers and their capitals, as well as discussed in the Sub-Committee. The **Liaison Officer of Bangladesh** endorsed the views of the Liaison Officer of Sri Lanka. Thereafter, it was decided that before the next meeting of the Sub-Committee a Basic Fact Sheet of the required information would be provided to all the Member States.

Mr. President, Excellencies, Ladies and Gentlemen, the second meeting of the Sub-Committee was convened on 29 May 2012. The Secretariat official first drew attention of the participants to "the Comparison between the Government of India Pay Scale and Benefits accorded to the Permanent Employees of the AALCO Secretariat" which appeared in the Basic Fact Sheet. He stated that it was aptly clear from the list that AALCO local staff employees were in a much inferior state as far as the allowances and

benefits when compared to Indian Government employees, he further stated that for this reason during the past few years in general and last year in particular a few precious legal officers chose to leave the Organization as a result of such “less attractive package” at AALCO.

Having said that, he drew attention of the participants to the “Trend and Comparison of Salary Increase Rate between Indian Government and AALCO” which appeared in the “Numerical Analysis of AALCO Budget,” and explained that AALCO had faithfully tried its best to comply with the mandate received from the Member States, i.e. to provide equivalent salary increase to locally recruited staff in consonance with the Indian Government. He pointed out that the inflation rate in India had been very high in recent years and this was the main cause of the salary increase, which suppressed the activity budget of AALCO. He then stated that in a simple mathematical prediction, that if the salary component in the AALCO Budget continued to rise, AALCO was likely to face bankruptcy again in a few years if the current inflation continues and no new measures were taken by the Member States.

It was also explained that other international organizations in India also faced the same problem; however, they overcame it with the increase of contribution from member countries or headquarters, or partially by the support from the host government.

After hearing the explanation provided by the Secretariat official, that Chairman summarized the Report of the Secretariat that the increase of contribution from Member States was a logical conclusion to address AALCO’s budget problem in view of the fact that inflation was expected to continue to rise in India and there was an urgent need to employ a few legal officers in AALCO. He stated that discussions could revolve around the following points: (i) how to reduce the expenditure; (ii) possibility of increasing contributions from Member States; (iii) could AALCO seek financial support from the private sector and (iv) request the host government to explore the possibility of making some additional contributions to AALCO.

The Chairman requested that a comparison should be clearly made between the current amount of contributions received and the increased amount of contributions expected from Member States, so that the effect and degree of the increase should be clearly understood by Member States. The Secretariat stated that such a comparison table would be presented if and when the increase of contributions would become necessary.

The Secretariat further commented that an overall review of salary structure of the AALCO Secretariat employees including allowances and benefits would have to be considered under this Sub-Committee, however, the immediate priority was to form a solid financial basis which would, once in place, enable the comprehensive reforms within the Secretariat.

Thereafter, the Liaison Officers from Sri Lanka, Japan, India, and Ghana suggested that the first and foremost priority of the Secretariat should be to collect the outstanding arrears of contributions from the Member States in arrears, to cut down further on the Secretariat

expenses, send all the documents via email in order to reduce the postage expenses and try and seek voluntary contributions from Member States. The Secretariat was also cautioned on exploring means to raise funds from the private sector.

The Liaison Officer of India while taking note of the financial problems of AALCO, said Indian Government was still concerned about the inadequate disbursement of gratuity to retired officials and requested that the Secretariat pay the remaining amount soon to those entitled. In addition she requested the Secretariat to prepare a detailed transparent paper outlining the current financial status, present and sanctioned staff strength of the Organization as well as enlist the problems of the employees.

In view of the foregoing discussions, and the mammoth task before the Sub-Committee, the Secretariat would like to seek a mandate from the Member States, to further extend the tenure of the Sub-Committee. The text of the draft resolution on this topic is annexed to the document containing the Draft Budget for the year 2013 (Doc. No AALCO/51/ABUJA/2012/ORG 2). I thank you all for a patient hearing.

The Delegate of Malaysia: Thank you. We wish to seek clarification from the Deputy Secretary-General on this report which has been very well prepared along with detailed annexes etc to it, on the subject of trend of salaries for the locally recruited staff, whether there has also been a comparison made in respect of the system of other international organizations for example the UN locally recruited staff in New York, Geneva and Vienna or even ASEAN Jakarta, just to see so that we can also appraise this situation whether this is unique in India or is there a similar trend elsewhere, this would be a good basis for the Member States to see this comparison. Thank you.

Deputy Secretary-General: Part of the research done by the Secretariat is to see what other Organizations are doing in New Delhi is already included in the report. However, we will continue working on this issue and then make a comprehensive report, which will then be placed before the Liaison Officers in December in the process of framing the next Budget for 2014 and based on this research we would like to seek the decision of the Member States on how to frame the Budget of 2014, but as I said part of this research has already been made.

The Meeting was thereafter adjourned for lunch.

VIII. VERBATIM RECORD OF THE THIRD GENERAL MEETING

**VIII. VERBATIM RECORD OF THE THIRD GENERAL MEETING HELD ON
TUESDAY, 19 JUNE 2012 AT 3.00 PM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

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

Vice-President: I will now request Dr. Hassan Soleimani, Deputy Secretary-General to introduce this agenda item.

Dr. Hassan Soleimani, Deputy Secretary-General: Mr. Vice-President, Hon'ble Ministers, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

I have the honour to introduce the topic, "Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949". The AALCO Secretariat has been deliberating on this topic since 1988, ever since it was initiated by the Government of the Islamic Republic of Iran. Following the mandate in the resolution adopted at the Fiftieth Session, AALCO/RES/50/S 4, the Secretariat has prepared Document AALCO/51/ABUJA/2012/S 4 related to this topic.

For well over four decades, Israel has administered a military occupation of the West Bank, the Gaza strip and East Jerusalem in consistent and unrelenting defiance of the will of the international community.¹ The international consensus has been expressed through widely supported resolutions adopted by the UN Security Council (UNSC) and UN General Assembly (UNGA). However, Israel the occupying power continues to defy the will of the international community, and the horrific atrocities perpetrated on the civilian population in the Occupied Palestinian Territories (OPT).

Despite the countless provisions in the Fourth Geneva Convention of 1949 which call for the Occupying power to respect the rights of the civilian population, it is noted with great regret that the Israeli activities in the OPT that violated the Fourth Geneva Convention and other relevant provisions of international law, including: (1). Annexation and Illegal Expropriation of Palestinian Land; (2). Creation of Jewish Colonial Settlements; (3). Deportation of Palestinians; and (4). Construction of the Wall in the OPT, still continued.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, atrocities carried out by Israel on the civilian population have been given in the **Report of the Special Committee (the Committee) to Investigate Israeli Practices Affecting the Human Rights of the**

¹. Beyond Oslo: The new uprising International law and the al-Aqsa Intifada – Middle East Report 219, Winter 2002

Palestinian People and Other Arab Territories. The salient features of this report have been covered in the AALCO document referred to above. The UNGA by its resolution 2443 in 1968 established the Committee, which was requested to continue investigating the Israeli policies and practices in the OPT, especially the violations of the Fourth Geneva Convention. The Special Committee report details out the activities of the Committee, and notes the non- cooperation of the Government of Israel, including lack of response from the Permanent Representative of Israel to the United Nations as well as human rights authorities in Israel with respect to initiatives by the Committee to establish dialogue and hold discussions.

The Committee report mentions a visit to the OPT and meetings at Gaza and Jordan, and also reports on:

1. The Situation in Gaza;
2. The Situation in East Bank, including East Jerusalem and
3. The Situation in occupied Syrian Golan.

This report then lists all the conclusions and recommendations of the Committee as mentioned in its report including a call for the cooperation of the Government of Israel, according to its obligations under the UNGA resolutions; a request to the UNSC and UNGA to adopt measures to address Israel's non- cooperation; directions to Israel to take immediate measures to improve the health conditions of the children, including the facilitation of travel outside Gaza for medical treatment; Israel was called on to stop from practices resulting in the denial of the children's right to education; Israeli activities in OPT were found to be in violation of International Humanitarian Law and Human Rights obligations.

The Committee repeated the call for Israel to lift its illegal siege of Gaza, in line with Security Council Resolution 1860 (2009); Israel was called on to desist from any further taking away of lands or demolition of homes in the occupied areas and ensure the return of the confiscated lands to its rightful owners and effective steps to end violence against Palestinians by Israeli settlers were called for, among other conclusions.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, the **question of Statehood of Palestine was discussed in the UN General Assembly in September 2011**. On 23 September 2011, H.E. Mr. Mahmoud Abbas, the President of the State of Palestine delivered to the UN Secretary General the official application for recognition of a Palestinian State by the UN and a membership in the same organization. The President noted the aspiration and desire of the State of Palestine for a more effective role for the United Nations to work to achieve a just and comprehensive peace in the region and to ensure the protection of the legitimate national rights of the people of Palestine. The President emphasized on the right of the people of Palestine to self- determination and confirmed the readiness of the Palestinian people and their institutions for Independence. Some Member States of AALCO also responded to the President's statement and there was a consensus with respect to support for Palestine's application for Statehood and its international recognition.

Subsequently, on 28 September 2011, the Security Council had before it Palestine's application for admission to the membership to the UN and the President of the Council referred the application to the Committee on the Admission of New Members for examination and its report. This report goes on to discuss the **Report of the Committee (Committee) on the Admission of New Members** concerning the application of Palestine for admission to membership in the United Nations. The Committee report notes that the Committee should be mindful of the broader political context, whatever is its outcome.

Positive **developments were noted at the 36th General Conference of UNESCO**, where 107 Member States voted in favour of Palestine's membership, resulting in Palestine becoming the 195th member of UNESCO. On 31 October 2011, the General Council of UNESCO voted in favour of admitting Palestine as a member state. This membership became effective on November 23, 2011. The membership of Palestine into UNESCO may open the doors to other United Nations specialized agencies that have individualized process of admission.

It is further repeated that Israel is obliged to respect and be bound by the relevant principles of international law contained in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August, 1949.

Finally, Mr. Vice-President, the resolutions adopted at the successive Annual Sessions of AALCO, have demanded that the Occupying Power "Israel", should fully comply with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention in order to protect the rights of Palestinians.

I thank you for a patient hearing.

Vice-President: I thank the Deputy Secretary-General for his statement and now I recognize the delegate of the State of Palestine.

The Delegate of the State of Palestine: In The Name of God The Most Compassionate The Most Merciful

Prof. Rahmat Mohammad, Secretary-General, Excellencies, Ministers and Heads of Delegations,

Ladies and Gentlemen, to begin with I may be excused for the Palestinian Minister of Justice, Dr. Ali Mohanna not being able to participate in the current session of AALCO. Also I would like to thank the Nigerian Government for hosting this conference and for their warm reception and hospitality. I highly value the great efforts made by the Nigerian Ministry of Justice for making this conference a success in full cooperation with the Organizing Committee of AALCO Secretariat.

Mr. Vice-President, security, peace, stability, justice, growth, development and prosperity are the important things which are demanded by the peoples of the region as they badly need them from their respective Governments and States. In order to fulfill their demand it is necessary to respect the rules of international law and not to allow any state to ignore the International law and the International Human Rights Law and to follow another law called as the law of forest. Combating injustice and securing justice for the peoples is an inevitable goal.

The Middle East region is suffering from high tension since many years. This tension will not end unless an end is put to the Arab-Israel conflict on the basis of all resolutions of the UN. In this regard, the Palestinian leadership under President Mahmud Abbas has demonstrated maximum flexibility for achieving justice and comprehensive peace in the region through full coordination with the Arab brothers, the League of Arab States, organization of Islamic Cooperation, Non-aligned countries, Asian states, Russian Federation, African Union and the two Americas as well as with all people who love freedom, independence, peace and justice.

However, all these efforts have been met with the absolute Israeli refusal to apply the UN resolutions. Israel has been behaving as a country which is above the law with no respect or commitment for the rules of law and the International Human Rights Law. It commits violation of human rights every day. While briefing this conference, the Palestinian leadership demands that it should take up a special role for putting an end to injustice faced by the Palestinian people and to secure justice for them through ensuring their right to self determination and establishment of the Palestinian state with Jerusalem as its capital within the borders of 4th June 1967 on the basis of the relevant UN resolutions.

The Palestinian leadership would like to emphasize the following points:

1. Reiterating the need of commitment to the principles agreed upon to achieve the just peace, especially Security Council's Resolutions 242, 338 and 1515; that the resumption of negotiations requires that Israel should accept the principle of returning to the borders of 1967 and stop all activities of building settlements in the occupied Palestinian territories including East Jerusalem.
2. Supporting the plan of Palestinian move which President Mahmud Abbas offered to the Ministerial Committee for Arab Peace Initiative on 02.12.2011 and reiterated in the last meeting of the Committee at Doha, Qatar on 02.06.2012; to follow up the efforts being made for the membership of Palestine in the United nations through Security Council, General Assembly and other international institutions and organizations; to work on the resumption of the conference of the states which are party to the fourth Geneva Convention of 1949 concerning protection of civilians during the time of war.
3. To reiterate that the settlement in all forms constitutes violation of the International law and the fourth Geneva Convention; to ask the international community and UN to intervene immediately for pressurizing Israel to stop construction of settlements, especially in Jerusalem which is faced with the attempts of effacing its historical features.

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

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

6. Reiterating the Resolution of Arab league 7502 dated 06.05.2012, especially Paragraph 7 which calls for convening an extra-ordinary session of the General Assembly to discuss the issue of the Palestinian and Arab prisoners languishing in the prisons of Israeli occupation with its all dimensions.

7. Demanding immediate stop of all forms of the oppressive and illegal Israeli siege of Gaza Strip, considering it a flagrant violation of International law and International Human law, urging the International Criminal Court to chase some Israeli leaders who committed heinous crimes in Gaze Strip when they assassinated 1500 Palestinians including children, women and old persons in addition to inflict injuries on 5000 people as the Israeli war planes used internationally banned and prohibited uranium as well as attacking the UN offices where the unarmed Palestinians had taken refuge. It is not logical and just to have two standards when it comes to the Israeli crimes and to keep silent on the issue of its criminal leaders who are roaming across the world with all immunity.

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

9. Renewing our total commitment to the Arab peace initiative at the Beirut Summit of 2000 thanks to the effort of the Saudi monarch, His Majesty King Abdullah bin Abdul Aziz. The initiative urges Israel to completely withdraw from all Palestinian and Arab lands which it had occupied in 1967 including the Syrian Golan Heights and farms of

Shaba in Lebanon, to restore the right of Palestinian refugees to return to their lands as per Resolution 194 from which they were evicted in 1948 and to establish an independent Palestinian state within the borders of June 1967 with Jerusalem as its capital against comprehensive and just peace which may put an end to the Arab Israeli conflict. But Israel has been completely defying and ignoring this initiative till this moment. Thank you Mr. Vice-President.

Vice-President: I thank the Ambassador of the State of Palestine for his statement and now request the delegate of the Islamic Republic of Iran to make his presentation.

The Delegate of the Islamic Republic of Iran: In the name of God, the Compassionate, the Merciful.

Mr. Vice-President, at the outset, my delegation likes to thank the AALCO' Secretariat for preparing the update report on "Deportation of Palestinian and others Israeli practices among them, the massive immigration and settlement of the Jews in all occupied territories in violation of international law, particularly the Fourth Geneva Convention of 1949", as contained in document AALCO/51/ ABUJA/2012/SD/S 4.

Mr. Vice-President, the Islamic Republic of Iran continues to attach high importance to the present item which addresses one of the most crucial matters of our era and time. This item which was introduced into the agenda of our Organization in 1988, is still relevant. And that's a sad irony and an unfortunate fact which the international community faces. Mr. Vice-President, the situation in the occupied Palestinian Territory in recent years, resulted from the abhorrent carnage and the crimes perpetrated by the Israeli regime, is a clear magnification of a cold-blooded massacre of innocent civilians, most of them women and children.

The most heinous crimes committed by the Israeli soldiers during their 22 days of aggression against Gaza Strip are in the knowledge of everyone. Certainly, such military behaviors in no way could be justified under international humanitarian law and there is a reasonable ground, to prove this argument. I should refer you to the report of the United Nations Fact Finding Mission on the Gaza Conflict presented to the Human Rights Council on 29 September 2009, urging the Council and the international community as a whole to put an end to impunity for violations of international humanitarian law in Israel and the Occupied Palestinian Territory.

The blockade of the Gaza Strip, the worlds largest open –air Gulag, enters its sixth year. For over five years in Gaza, more than 1.6 million people have been under blockade in violation of international law. More than half of these people are children. More than 80 per cent of families in Gaza are dependent on humanitarian aid. In addition, while some steps have been taken to ease the blockade's impact, Gaza remains subject to severe restrictions on imports, exports and the movement of people, by land, air and sea – which amounts to a "collective punishment" of all those living in Gaza and is a denial of basic human rights in contravention of international law.

Mr. Vice-President, we all aware that the proposal to grant Palestine full membership in the United Nations which was looking for ways to strengthen the efforts to materialize the Palestinian right to have an independent state that is the member of the United Nations, unfortunately has vetoed by United States in Security Council among 46 others resolutions which has been already presented against Israel.

Mr. Vice-President, my Government from the beginning of this conflict has announced that the Israeli criminals shall be brought into justice for their actions. In this respect, the Fifth International Conference on Palestine was held in Tehran on October 1-2, 2011, in which delegates from more than 70 countries attended the Conference. In the final Declaration of Conference, the state terrorism targeted by Israel against Palestinian personalities and civilians, specifically children, women and the elderly, were condemned as “evident instances of war crimes”.

Finally, the Declaration undermines the Israeli's weapons of mass destruction arsenal, specially its military capabilities and urging the international community to take proper measures on the eradication of such arms, which are threats to regional peace and security.

My delegation believes that the time has come for international community to put an end to impunity and bring all persons without any distinction who have committed international crimes into justice. In this regard, we regret the recent decision taken by ex-general prosecutor of the ICC to refuse to recognize the possibility for the state of Palestine to bring the complaint for the crimes committed by Israeli forces in Occupied Territories. Thank you Mr. Vice-President.

Vice-President: Thank you. Now I give the floor to the delegate of Indonesia.

The Delegate of the Republic of Indonesia: Mr. Vice-President, Distinguished delegates,

Allow us to re-emphasize Indonesia's three pragmatic steps to be offered in line with our common efforts to achieve a just, lasting and comprehensive solution to the Question of Palestine, as have been stated by Indonesian Foreign Minister at the Non-Alignment Movement Ministerial Committee on Palestinian, in Egypt, on May this year.

First, we must continue to pave the way for the eventual membership of Palestine in the UN.

Indonesia would like to underline that it is important for us to support Palestine in attaining international recognition as a sovereign Palestinian State. Palestinian independence is no longer a choice, but a certainty. Indonesia believes that the time of peace and settlement for Palestine will eventually come upon real actions performed by the international community, particularly to assure Palestinian independence according to the borderline set in 1967 that dictates East Jerusalem as the capital of Palestine.

Regarding this issue, Indonesia would like to call all the like minded-countries to draw more recognitions for Palestine as a sovereign state, from the neighboring countries in their regions.

Second, continued Israeli illegal actions, including the building of settlements on Palestinian land, must stop.

In this regard, we must create a situation conducive to resume the talks between Israel and Palestine and other Arab nations in good faith. We must support the current talks between the Palestinian factions toward reconciliation and unity government. We must also speak as one in demanding an end to all illegal Israeli practices, including the central issue of settlement activities.

We, AALCO Members, need to reaffirm our unity, to assure and to draw the attention of the international community, on the obligation of the Israeli to be bound by the principles of international law contained in Fourth Geneva Convention of 1949, and on the fact that the Palestinians are suffering rampant injustice, through our efforts in UN forum, social media and engagement in civil society.

Third, we must sustain our efforts to help Palestine build its capacity for effective governance.

Indonesia would like to encourage AALCO Members as part of the international community to sustain these efforts. A state building, development and strengthening of Palestinian national institutions become crucial, as Palestine prepares itself for statehood. We must gain international support for Palestine's capacity building. In doing our part, Indonesia has an ongoing capacity building program to train 1000 Palestinians in various fields. We are also open to collaborating to support capacity building programs for the Palestinians.

Mr. Vice-President, Distinguished delegates, Regarding to the funding issue in UNESCO following the membership of Palestine in UNESCO, Indonesia has once again shown its commitment to support Palestine by giving additional fund of 10 million USD to UNESCO. Indonesia believes that through our concrete and meaningful contributions, we can help alleviate the plight of the Palestinian people. I thank you.

Vice-President: Thank you. I now give the floor to the delegate of the Democratic People's Republic of Korea.

The Delegate of the Democratic People's Republic of Korea: Democratic People's Republic of Korea. Mr. Vice-President, past 60 years of Israeli occupation of Arab territories is the history of systematic violation of international law by Israel.

In particular, violations of international law committed by Israel in recent years, cause grave concern to the international community.

First of all, blockade of Gaza Strip which had been enforced for past five years, is typical example of collective punishment and state terrorism strictly forbidden by international law particularly the IHL and international human rights law. Especially Israel refuses to observe its obligations under the Fourth Geneva Convention of 1949 relative to the protection of civilians in time of war, and this has jeopardized the lives and safety of more than 1.5 million Palestinians confined in this region. Evidencing this is the report of the special committee to investigate Israeli practices affecting human rights of the Palestinian People and other Arabs of the occupied territories submitted on 22 September, last year.

Next, acts of violation of international law by Israel are being committed against non-belligerent countries in areas beyond occupied Arab territories. As we all know, in May 2010, Israeli forces, infringing upon the sovereignty of Turkey, the flag state, have attacked the Humanitarian Aid Flotilla heading to the Gaza Strip in the Mediterranean high-seas thus causing the loss of lives of some humanitarian activists. By this, Israel has breached its commitments not only to the IHL and international law of war, but also international law of sea which provides for freedom and safety of navigation by vessels in the high seas.

The international community has censured in strong terms the recent violations of international law particularly the IHL by Israel in recent years and urged Israel to respect and observe international law. The fact that the UN General Assembly had adopted 18 resolutions during its 66th session, all of which condemn the Israeli practices and support the just cause of Palestinian people, clearly shows this.

The DPRK delegation appreciates that AALCO, considering the Palestinian issue as an important regional issue having serious political and legal implications, included this item in the agenda and has been making contribution with constructive opinions in deliberations to this date. We also appreciate that AALCO has been representing the positions of its Member States in international arena like the UN on this issue.

Mr. Vice-President, it is a consistent position of the DPRK government stated to the world that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.

The international community should pay due attention to the behavior of the US which connives at, encourages and shelters the Israel's acts of violation of international law and take a legally binding concrete steps to ensure the implementation of relevant UN General Assembly resolutions and Advisory Opinion of the International Court of Justice on Gaza Strip without delay.

The DPRK delegation reaffirms the consistent support and solidarity to the struggle of the Palestinian people for the restoration of their legitimate rights particularly, the right of self-determination, right to return to the State and right to establish an independent state, and the struggle of Arab people to achieve lasting peace in the Middle East. In future, we

will strengthen our solidarity with other countries in the struggle to end the military occupation by foreign forces which is an obstacle for world peace and security.

The DPRK delegation joins other delegations to propose this item to be included as an agenda item for the 52nd annual session of the Organization. Thank you.

Vice-President: Thank you. May I now call upon the delegate of Japan to make his presentation?

The Delegate of Japan: Mr. Vice President, Japan has held a deep interest and concerns on the Palestinian question. It has been Japan's basic position that on the basis of UN Security Council resolutions 242 and 338 (1) Israel should withdraw from all the area which it has occupied since 1967, (2) Palestinian people's rights for self-determination including establishment of an independent state should be recognized, (3) Israel's right for existence should be recognized and that peace should be realized, paying due consideration to legitimate security interests of the countries of the region. Thus, Japan has been supporting the efforts to seek the realization of lasting peace in the Middle East based on the two-state solution in which Israel and a future independent Palestinian State coexist in peace and safety and considers that for that end the serious direct negotiations between the two parties are essential and the earliest resumption of such task is most desirable.

On the question of activities for settlement, Japan considers that they are illegal as stated in the UN Security Council resolution 465 which said that the policy and practices of settling parts of its population and new immigrants in the territories occupied since 1967 constitute "a flagrant violation of the Fourth Geneva Convention", and has all along taken the position that activities for settlement in the west bank including East Jerusalem should be stopped.

With a view to alleviating the sufferings of the Palestinians people and to serving to increase their well being, since 1993, Japan has provided to Palestinians assistance and aid, in such areas as humanitarian assistance, assistance for reforms, confidence building and assistance for a self-sustainable Palestinian economy, totaling 1.2 US dollars which is the largest only after the US and the EU.

Japan considers that assistance to Palestinian people placed in difficult conditions in the West Bank C area, East Jerusalem and Gaza Strip is very much needed and thus contributed 25.8 million US dollars to the UNICEF and UNRWA for their projects and activities in those areas.

Japan has also been carrying out a middle and long term project named Jericho Agro Industrial Park (JAIP) which aims at promoting economic and social development in Jericho and the Jordan Valley area with regional cooperation among the Palestinians, Israelis, Jordanians and Japanese under the "Corridor for Peace and Prosperity" initiative.

Japan is also cooperating within other AALCO countries such as Malaysia and Indonesia

for human resources development programs for Palestinians. Thank you.

Vice-President: I thank the delegate of Japan and now give the floor to the delegate of the Republic of Iraq.

The Delegate of the Republic of Iraq² said that the situation in Palestine was in conflict with the lofty goals of AALCO which included securing peace and justice for the people of the two regions. The Iraqi delegation joined the other speakers in condemning the suffering of the Palestinian people due to the atrocities committed by Israel, including terrorist attacks on its religious places. They also joined the United Nations General Assembly in condemning Israel for its actions which were aimed at changing the demography and geography of the Occupied Palestinian Territories.

Vice-President: I thank the delegate of Iraq and now invite the delegate of Saudi Arabia for his views.

The Delegate of the Kingdom of Saudi Arabia³ stated that AALCO was a legal Organization and not a political one, for this reason the students were taught about legal affairs. In this regard he said that it was essential to take advantage of the experience and expertise of this organization and stand up for the just cause of the suffering people of Palestine. The double standards adopted by some countries on the Palestinian issue should be condemned, and AALCO should have its own legal position on this issue which could also be useful for the next generation. He said that even after 6 decades the Palestinian issue remained unresolved. He said that efforts exerted by Saudi Arabia had resulted in UNESCO granting statehood to Palestine. Therefore, as a legal organization it was important to implement the resolutions adopted at the subsequent Annual Sessions of AALCO. He fully supported the stance taken by the Ambassador of Palestine, taken in his statement on this topic in the 51st Annual Session. Furthermore, he urged AALCO to examine the stance taken by the ex-Prosecutor of the ICC in rejecting Palestine's application for probe into the Israeli atrocities, on the ground that the question of statehood of Palestine remained unresolved. He added that the conflict between Israel and Palestine could end by following the initiative of Peace proposed by King Abdulla, according to which Israel should withdraw from all occupied Palestinian Territories. He also urged all Member States of AALCO to support the rights of the Palestinian people and encourage it to become a member of all the International Organizations.

Vice-President: Thank you. I now give the floor to the delegate of Kuwait.

The Delegate of the State of Kuwait⁴ reiterated the stance taken by his country in their general statement that demanded justice for the Palestinian people and strengthening ways and means to enforce human rights and humanitarian law.

Vice-President: Thank you. I recognize the delegate of Yemen.

² The statement was made in Arabic. Unofficial translation from interpreter's version.

³ The statement was made in Arabic. Unofficial translation from interpreter's version

⁴ The statement was made in Arabic. Unofficial translation from interpreter's version

The Delegate of the Republic of Yemen⁵ hoped that AALCO would continue its efforts until Palestinians got independence and freedom. He appreciated the stance taken by the Organization to support the cause of Palestinians and called on Member States to work to achieve justice for the Palestinian people. He supported all the demands of the Palestinian people as enumerated in the statement made by the Ambassador of Palestine. He hoped that those demands could be reflected in the resolution adopted by the Organization on that issue. Until the Palestinians got their legitimate rights, it would remain as a blot on the human conscience. He added that the first step towards Palestinians getting their own independent State was to put an immediate end to the settlement activity being carried out by Israel on the Palestinian land. It was also necessary that all the Palestinian Arab prisoners were released and the Israeli criminals be prosecuted by the ICC. All these efforts taken together would help in the establishment of an independent Palestinian State with Jerusalem as its capital.

Vice-President: I now call upon the delegate of Malaysia for his statement.

The Delegate of Malaysia: Mr. Vice-President, Malaysia would like to thank the AALCO Secretariat for a very well written paper of the topic. Malaysia would also like to reiterate its position that it will continue to fully support the establishment of the State of Palestine. This position has been made clear at the international fora, particularly at the previous sessions of AALCO and United Nations General Assembly. The position is well-reflected in Annexures I, II and III of the Secretariat Paper AALCO/51/ABUJA/2012/SD/S4.

Malaysia's statement will focus on the International Criminal Court's Office of the Prosecutor ('OTP') decision regarding Palestine's declaration under Article 12(3) of the Rome Statute of the ICC. Malaysia applauds Palestine's effort to bring Israel to justice for its "acts committed on the territory of Palestine since 1 July 2002" by lodging a declaration to the International Criminal Court under Article 12(3) of the Rome Statute of the ICC in order to trigger the jurisdiction of the Court as a non State Party to the Statute. However, Malaysia finds that it is unfortunate that the OTP had decided on 3 April 2012 to not commence investigation on Palestine's application on the basis that it is in no position to decide on whether Palestine is a State to be able to accept its jurisdiction.

In this relation, Malaysia wishes to refer to paragraph 5 of the decision of the OTP which states, among others, the following:

'In instances where it is controversial or unclear whether an applicant constitutes a "State", it is the practice of the Secretary-General to follow or seek General Assembly's directives on this matter. This is reflected in General Assembly resolutions which provide indications of whether an applicant is a "State". Thus the competence for determining the term "State" within the meaning of article 12 rests, in the first instance, with the United Nations Secretary General who, in case of doubt, will defer to the guidance of General Assembly. The Assembly of State

⁵ The statement was made in Arabic. Unofficial translation from interpreter's version

Parties of the Rome Statute could also in due course decide to address the matter in accordance with article 11(2)(g) of the Statute.’

Malaysia notes that the question of the statehood of Palestine had been discussed by the United Nations Security Council and the United Nations General Assembly. Recently, the Committee on the Admission of New Members at its 109th and 110th meetings held on 30 September 2011 and 3 November 2011 respectively, considered the application by the State of Palestine for admission to the membership of the United Nations. Different views were expressed during the debate with regard to the Palestinian statehood. However, at the end of the debate, the Chair of the Committee concluded that it was unable to make a unanimous recommendation to the United Nations Security Council.

On the other hand, the 36th General Conference of the United Nations Education, Scientific and Cultural Organization (“UNESCO”) has shed some light of hope for Palestine to have its statehood recognized when it was admitted as the 195th member of UNESCO on 31 October 2011 with 107 Member States voting in its favour⁶.

Mr. Vice President, Malaysia further refers to paragraph 8 of the OTP decision which stated that ‘the OTP could in the future consider allegations of crimes committed in Palestine, should a competent organs of the UN or eventually the Assembly of States Parties resolve the legal issue relevant to an assessment of article 12 or should the Security Council, in accordance with article 13(b), make a referral providing jurisdiction’. In line with Malaysia’s Head of Delegation’s General Statement made yesterday, it is a pertinent question on how could AALCO contributes in this regard. Malaysia thus calls upon the Secretary-General and the Secretariat to conduct a thorough legal analysis on the question of statehood of Palestine and to be deliberated by AALCO Member States at the next annual session. AALCO Member States should further take this AALCO legal view for discussions at the UN General Assembly or such other bodies. Thank you.

Vice-President: I thank the delegate of Malaysia and now give the floor to the delegate of China.

The Delegate of the People’s Republic of China: Thank you Mr. Vice-President. My delegation fully supports the views that have been expressed by the previous speakers. China believes that the legal rights of the Palestinian people must be protected and achieved. International law particularly the Fourth Geneva Convention of 1949 should be observed in the occupied territory. China continues to support the Palestinian legitimate cause as well as the Middle East Peace Process. Thank you.

Vice-President: I thank the delegate of China for the very concise statement and now invite the delegate of Sri Lanka.

⁶ Malaysia is among the AALCO Member States that had voted in favour of Palestine becoming a Member of UNESCO.

The Delegate of the Democratic Socialist Republic of Sri Lanka: Mr. Vice-President, Israeli occupation of the occupied Palestinian Territories had continued for the past 45 years, since it began in 1967. As has been the stance in AALCO resolutions it has demanded Israel to withdraw from the occupied territories in compliance with the relevant provisions of the UN Charter, Universal Declaration of Human Rights, and Regulations annexed to The Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention of 1949. On the rejection of Application by the Palestinian authority to the ICC, in order to protect the rights of the Palestinians, it is pertinent to note that general rules of statehood indicated in the Montevideo convention, however in the case of Palestine that convention needs to be re-examined in light of the 1988 Declaration of Palestine, which is not in relation to a new state rather it exerted its stance on being a state which could fulfill all the requirements of a state including entering into relations and agreements with other states and international organizations, as provided in the Oslo accords.

Furthermore, a final set of arguments are based on the situation before 1948, during the Ottoman era and the later League of Nations Mandate Period, which sought to determine whether the Palestine claim to sovereignty is a continuation of a pre-existing State. A number of submissions argued that the 1988 declaration of independence was in relation to an extant statehood and not by an entity that purported to be a new state. The declaration referred to the Covenant of the League, thus indicating a pre-existing claim. It was suggested that after the demise of the Ottoman Empire, Palestine had become an independent State, when the British administered it under the League of Nations mandate System, where it was assigned a class A mandate - in the category belonging to independent States. It was also pointed out that even during the mandate era, Treaties were concluded by the administering power to which Palestine was registered a party under the League of Nations Treaty Series. Palestinians had also lost the Ottoman citizenship and gained a new Palestinian nationality and passports. The pre-existing title to sovereignty was also pointed out to be reflected in the 1947 General Assembly resolution on the partition plan envisaging two provisional states. Therefore, it is our opinion Palestine statehood should be expedited, and we also condemn the office of the Prosecutor of the ICC for denying its competence under Article 12(3) of the Rome Statute of the ICC.

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

Vice-President: Now we move on to the next agenda item “Extraterritorial Application of National Legislations: Sanctions Imposed against Third Parties”. I invite the Dr. Hassan Soleimani, Deputy Secretary-General of AALCO for the introductory remarks.

Dr. Hassan Soleimani, Deputy Secretary-General of AALCO: Thank you Mr. Vice-President.

H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO;

Excellencies, Distinguished Delegates, Ladies and Gentlemen;

Allow me to introduce the agenda item “Extraterritorial Application of National Legislations: Sanctions imposed against Third Parties” as discussed in the Secretariat Report AALCO/51/ ABUJA/2012/SD/S 6. This topic was introduced at the Thirty-Sixth Annual Session of AALCO held in Tehran in 1997, upon a proposal made by the Government of Islamic Republic of Iran.

Extraterritorial Measures or the application of the domestic laws having extraterritorial effects with the imposition of unilateral sanctions violates the sovereign interests of a State. Imposition of unilateral sanctions is impermissible under international law as they violate the international rule of law, core principles of the Charter of the United Nations, and general principles of international law.

Mr. Vice-President, the concept of unilateral sanctions violates certain core principles of the Charter of the United Nations, namely; (i) principle of sovereign equality and territorial integrity, (ii) principle of non-intervention, and (iii) duty to cooperate. Principle of sovereign equality and territorial integrity of a State and principle of non-intervention in the internal affairs of the State are core principles, because through imposing unilateral sanctions, imposing countries are actually trying to influence the policy making by the governments of such countries. Such sanctions also are directed towards changing the political decision-making or general will of the peoples of the targeted countries to choose their own government. Hence, consensus by the international community stating that unilateral sanctions are violative of such principles and also the principle of duty to cooperate should be regarded as rule of law.

Mr. Vice-President, the concept of unilateral sanctions does not respect the principle of sovereign equality. Within the framework of international law, a State’s jurisdiction within its territory is absolute and exclusive. The principle of non-intervention is the mirror image of the sovereignty of States. Intervention and interference in both internal and external affairs of other States, in view of either transforming the economic or political policy of such countries have been clearly prohibited. Extraterritorial application of national legislation in the form of unilateral sanctions, which also in turn affect the bilateral relations with other States of the targeted State, is contrary to the principle of non-intervention. The principles of non-intervention clearly states that no State shall interfere in the internal or external affairs of a State which shall be a violation of sovereignty of the State. International economic cooperation is vital to the economic development of all countries of the world, and particularly of the developing countries. On those notes, cooperation in international trade and economic relations is also a very significant aspect of the duty to cooperate. When one speaks of cooperation in every area, scientific and technical sphere should also be regarded as vital.

Mr. Vice-President, the unilateral sanctions imposed against third parties by virtue of application of a State’s own national legislation extra-territorially also breach certain basic principles of international law. These include, (i) principle of self-determination, (ii) right to development of the citizens and individuals living in the targeted territory, and (iii) countermeasures and dispute settlement. The unilateral imposition of sanctions by States deprives the peoples of the target States with basic human rights and also their

right to development. Economic sanctions affect the overall development of the individuals and the economy as a whole therefore the burden of sanctions should not be put on the succeeding generations. These sanctions represent a form of collective punishment and do not comply with the ethical principle of individual responsibility, i.e. with the ability to attribute behaviour to an individual. Comprehensive economic sanctions heavily impact the life and health of the civilian population. International community recognizes that any dispute should be solved peacefully and bilaterally.

It is also important to note that unilateral imposition of sanctions reduces that existing actual and potential capacities of targeted countries in the very important areas of health and education, which are the basic elements in every social welfare programme. This in itself delays the development of their economic infrastructure and result in deprivation of overall development. Extraterritorial application of national legislation in the form of sanctions is harmful to the right of the targeted States to development and victimizes the most disadvantaged sections of the society in those States.

Mr. Vice-President, in view of these concerns, the Secretariat report has covered the issues dealing with Impermissibility of Unilateral Imposition of Sanctions, a brief overview of the sanctions imposed against AALCO Member States, Ministerial Declaration adopted by the Thirty-Fifth Annual Meeting of the Ministers of Foreign Affairs of Group of 77, Consideration of the Resolution on the “Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba”, at the Sixty-sixth Session of the United Nations General Assembly. The remedy could be sought in terms of encouraging direct dialogue between the parties to resolve their differences for the betterment of citizens of the targeted country. The Issues for Focused Deliberations at this meeting are: (i) *Unilateral Sanctions imposed against third parties violates principles enshrined in the Charter of the United Nations and other principles that are recognized through soft laws like the right to development and Friendly Relations Declaration, and (ii) Extraterritorial application of national legislation on third parties is per se illegal.*

On these notes, I request the distinguished delegates to present their views and look forward for an in-depth deliberation on this agenda item.

Thank you very much.

Vice-President: Thank you very much for that statement. Now, on our list of speakers the first delegation that has asked for floor is People’s Republic of China. I give the floor to the People’s Republic of China.

The Delegate of People’s Republic of China: Thank you.

Mr. Vice-President, Distinguished Delegates, first of all, on behalf of the Chinese delegation, I would like to extend our appreciation to the Secretariat for preparing such a comprehensive and professional report on “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties”. What I want to point out is, that one state imposes unilateral sanctions against another state based on its national legislation, which shows that the state prevail its national legislation over international

law, not only violates core principles of the UN Charter such as sovereign equality, non-intervention and duty to cooperate, and seriously undermines the authority of international law, but also infringes on the right to development of the sanctioned state, and is not in conformity with the attainment of the UN Millennium Development Goals.

I also want to emphasize that unilateral sanctions imposed against the third state, including its government, organization and citizens, further violates international law, infringes on the right of the third state and will aggravate the negative impact on international relations. Therefore, this kind of action has been, and will be surely opposed by the whole international community.

Mr. Vice-President, China holds the view that every country has the right to choose its own political and social system and development model, and any other country is not entitled to intervene. China always stands for resolving international conflicts peacefully through dialogue and cooperation, and opposes any form of hegemony, power politics and any move to impose sanctions against other countries by abusing domestic legislation.

Mr. Vice-President, the world we live in is far from peaceful. Mankind is facing more and more survival challenges. No country in the world can resolve all of those issues by itself. Countries need to follow the principle of peace, development and cooperation, conduct equal-footed and mutually beneficial interaction, seek common ground while shelving differences, properly resolve disputes and differences by peaceful means, uphold international fairness and justice and realize common development and progress. China is ready to work with other Asian and African countries for a harmonious world of lasting peace and common prosperity.

Thank you, Mr. Vice-President.

Vice-President: Thank you very much. I now give the floor to the distinguished delegate from Islamic Republic of Iran.

The Delegate of Islamic Republic of Iran: Thank you Mr. Vice-President.

Mr. Vice-President, my delegation would like to express its appreciation to the Secretariat of the AALCO for preparing the useful and informative report on “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties”, as contained in document AALCO/51/ ABUJA/2012/SD/S 6. The agenda item was placed, first on the provisional agenda of the Thirty-Sixth Session. Thereafter, the item had been considered at the successive sessions of the Organization.

Mr. Vice-President, my delegation would like to reiterate the critical importance of this agenda item as 'extraterritorial application of national legislation', especially those manifested by unilateral economic restrictions against some developing countries continues to unfold in various and new forms. This matter is the more important since an alarming trend seems to be emerging by certain powers to defy all international norms concerning the immunity of State and its properties in furtherance of their policy of pressurizing developing countries through economic embargoes. This trend is

consequential not only for the economic and overall human development of the countries but also disruptive of norms and principles of international law and international human rights law.

It goes without saying that extraterritorial imposition of national legislations on other States contravenes international law by violating the fundamental principles enshrined in the Charter of the United Nations, particularly the principle of sovereign equality of States and non-intervention in domestic affairs of other States. It also defies the recognized principle of State immunity, especially in cases where the functional agencies of a sovereign State, like Central Banks, are subjected to sanctions. The imposing States disregard the very basic notion of State sovereignty by forcing other States to abide by the restrictive measures against a third party. This is tantamount to the presumption of a super sovereign power which has supremacy over all other sovereign States. This cannot be acceptable to any State by any means, for sure.

Moreover, the very basic human rights are at stake; the ongoing unilateral economic sanctions are in fact developed only to bite the ordinary citizen by depriving them of their basic necessities. This is a shameful hypocrisy which aims to cover up the human costs of unilateral sanctions.

Furthermore, imposition of domestic laws and regulations on other States with the aim of pressurizing a third party prejudices the right to development.

Mr. Vice-President, we think that the position of international law is quite clear with regard to unilateral sanctions. I would like here to refer, for instance, to the Declaration on Principle of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which, among others, urges all states to respect the principle of sovereign equality and territorial integrity as well as non-intervention in domestic affairs of other States. This is the same Declaration that has severally been invoked by the International Court of Justice in its judgments, including in the Nicaragua Case in 1986. It is highlighted in the Declaration that: "All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding the differences of an economic, social, political or other nature", and that "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it subordination of the exercise of its sovereign rights and to secure from it advantage of any kind." This is in fact a confirmation of Article 2 paragraph 7 of the Charter of the UN that prohibits any form of intervention.

Mr. Vice-President, I would also like to underline the annual resolutions adopted for the past 20 years by the General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo against Cuba". The General Assembly has renewed, in its most recently adopted resolution on 25 October 2011, its call for an end to the economic, commercial and financial embargo imposed by the United States against Cuba and urged all States that applied extraterritorial measures to repeal them at the earliest; it has been stressed in this resolution, that extraterritorial application of such national laws

has affected the sovereignty of States as well as the freedom of trade and navigation and also violated the UN Charter provisions.

My delegation believes that the most unjustifiable and deplorable form of sanctions is the imposition of unilateral embargo and extraterritorial application of domestic laws by one State against others that affect not only the population under sanction but also the interests of the third parties.

Mr. Vice-President, the Islamic Republic of Iran has been under unjustified and unjustifiable economic restrictions for the past 3 decades following the popular Islamic Revolution in 1979. Very recently the Islamic Republic of Iran came under a most unprecedented economic coercive measure by the United States by blocking of the property of Central Bank of Iran and imposing other restriction on it. This unilateral act should be very alarming to all States, particularly for developing States in Asia and Africa, as it contravenes all norms and principles of international law concerning the immunity of State and its properties as manifested also in the 2004 UN Convention on Jurisdictional Immunities and their Property. It is underlined therein, under article.21 and the preamble of this Convention that the jurisdictional immunities of States and their properties including property of central bank or other monetary authority of the State are generally accepted as a principle of customary international law.

Mr. Vice-President, the Islamic Republic of Iran strongly rejects and remains opposed to the application of unilateral economic and trade measures by one State against another as well as to the extraterritorial application of national legislations on other sovereign States. We oppose and condemn these legislative measures and urge other States to do likewise by refraining from recognizing and implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on other countries, threatening their sovereignty and independence, and their freedom of trade and investment and prevent them from exercising their sovereign right , by their own free will.

Mr. Vice-President, the fact that the item “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” has been on the agenda of annual sessions of the Asian African Legal Consultative Organization from 1997 indicates the high importance the States members of this Organization attaches to the issue at hand. This issue deserves to be considered in a more serious manner since extraterritorial application of national legislations, continues to affect all countries as well as the international trade system, as certain powers persist in their unlawful unilateral imposition of restrictive measures against whoever dares to have economic relations with some developing countries. This politically narrow and ethically unfair and legally rejected approach defy all the norms and principles of international law and the Charter of the United Nations and signifies a very alarming domineering policy which certain powers insist to dictate to the whole international community.

We firmly believe that this item should remain in the agenda of the Organization and call on the Secretary-General to conduct a thorough study on the matter to discern different aspects of this unlawful action. Thank you, Mr. Vice-President.

Vice-President: Thank you very much. I now give the floor to the distinguished delegate from Democratic People's Republic of Korea.

The Delegate of Democratic People's Republic of Korea: Thank you Mr. Vice-President.

Mr. Vice-President, imposition of unilateral sanctions against third states by invoking domestic legislation of an individual state is a flagrant violation of the Charter of the United Nations and general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development. The international community including Asian and African countries is deeply concerned about this issue as it retards the socio-economic development of the target state and impedes the establishment of an equitable, multilateral, non-discriminatory trading regime.

Today this illegal and inhumane move for unilateral sanctions is being spearheaded by the USA. In today's increasingly independent world, the first target states of the US sanctions are anti-American independent countries.

My country together with Cuba, Iran, Syria and Myanmar has been subjected to the US sanctions for the longest period without stop. The United States has imposed sanctions against my country for many decades by applying tens of its domestic laws, including "Trading with the Enemy Act", "Export Administration Act", "Foreign Assistance Act", "Export and Import Bank Act", "Arms Export Control Act", "North Korea Nonproliferation Act", "North Korea Human Rights Act", "International Religious Freedom Act", "Trafficking Victims Protection Act" and many others, all of which are unilaterally fabricated in wanton violation of general principles of international law. The losses we have suffered during these years are beyond imagination.

If the arbitrary act of imposing unilateral sanctions against third states by individual states like the US by invoking its domestic laws goes unpunished, it is obvious that more and more countries, especially Asian and African countries are bound to fall victims of the unilateral sanctions.

Besides this, what cannot be overlooked is that individual states like the US are trying to check the exercise of sovereign rights of the other states by abusing the position and role of the international organizations including the UN. The US infringes upon the sovereign rights of other states and imposes its demands upon other countries by pursuing double standards in interpretation and application of international law in an undisguised manner.

Recently, the US has taken an issue with the satellite launch for peaceful purposes by my country, naming it "a long-range missile launch" by wire-pulling the UN Security Council. The US is also abusing UN Security Council and the International Atomic

Energy Agency to justify its moves to take an issue with the Iran's nuclear activities for peaceful purposes and to interfere in internal affairs of Syria.

Mr. Vice-President, Distinguished Delegates, it is an urgent task for the progressive peoples all over the world, desiring for independence and peace, to establish international legal regime to criminalize and punish the act of extraterritorially applying the domestic laws, particularly imposing unilateral sanctions against third states and the act of abusing international law.

We appreciate that AALCO, having paid due attention to this matter, included an issue in the agenda and hope that the AALCO will continue its study of legal implications of this issue. We also hope that Member States will closely cooperate and keep steps with each other to safeguard the sovereign rights and territorial integrity of Asian and African countries from the high-handed moves of the US.

Thank you.

Vice-President: Thank you. I now give the floor to the distinguished representative of Ghana.

The Delegate of Ghana: Thank you very much.

Mr. Vice-President, Ghana aligns herself with the position of the Group of 77^{*} and China and with the Non-Aligned Movement.^{*}

The Charter of the United Nations calls on all States to promote friendly relations and cooperation and to respect international law, the sovereign equality of States, the self-determination of peoples and the peaceful settlement of disputes. Adherence to these principles will contribute to the elimination of tension and confrontation between States.

Ghana has noted that under Article 41 of the United Nations Charter, economic sanctions have been one of the primary enforcement mechanisms of the United Nations collective security machinery.

Unfortunately, economic sanctions in national legislations have been applied much more often unilaterally as instruments of foreign policy by some states contrary to international law. The tentacles of such national legislation reach third parties who have economic relations with the target nations.

Ghana does not encourage extra territorial application of national legislations and its ramification on third parties.

^{*} The Thirty-fifth Annual Meeting of Ministers of Foreign Affairs of G 77 in 2011 rejected the imposition of laws and regulations with extra territorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries and called for an urgent need to eliminate them immediately.

^{*} Summits of the Non-Aligned Movement have always called upon its members to refrain from recognising, adopting or implementing extra-territorial or unilateral coercive measures or laws, including unilateral sanctions.

It is in this regard that Ghana voted in favour of the draft resolution on the Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States against Cuba (documents A/66/L.4) on 25 October 2011 at the Sixty-Sixth General Assembly Plenary.

By the text, the Assembly expressed concern at the continued application of the 1996 "Helm's -Burton Act" which extends the embargo's reach to countries trading with Cuba - and whose extra territorial effect impacted both state sovereignty and the legitimate interests of entities or persons under their jurisdiction. The next reiterated the call on states to refrain from applying such measures in line with their obligation under the United Nations Charter, urging those that had applied such laws to repeal and invalidate them.

The Government of Ghana is of the view that United States and Cuba are two countries whose destinies are linked by history and geography and it should follow that the embargo and coercive measures should be replaced by dialogue and cooperation.

The Government of Ghana strongly believes that unilateralism is not the way to solve international problems no matter how appealing it may appear.

Ghana strongly believes in a better international community where all nations, big or small will work together to respect international law and obligations in the conduct of international relations.

Finally, the Government of Ghana would like to remind members of AALCO of our collective determination captured in the preamble of the United Nations Charter to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

Vice-President: Thank you Ghana. I now give the floor to the distinguished delegate from Malaysia.

The Delegate of Malaysia: Thank you Mr. Vice-President.

Mr. Vice President,

1. Malaysia records its appreciation to the AALCO Secretariat for the preparation of the analysis of the relevant provisions under international law related to the impermissibility of unilateral sanctions.
2. Malaysia reiterates its view that the continued extraterritorial application of national legislation by certain countries as well as unilateral imposition of targeted sanctions against sovereign foreign nations and their citizens seriously undermines the primacy of the rule of law in the governance of inter-state relations. Such action blatantly disregards the Charter of the United Nations and international law and ignores the repeated condemnation of the UN General Assembly through its resolutions.
3. It further neglects the agreed dispute settlement mechanisms, be it for the maintenance of international peace and security as enshrined in Chapter VII of the

Charter of the UN, or for trade and economic purposes in the World Trade Organization ('WTO') Agreements. In this regard, the humanitarian hardships of innocent civilians caused by unilateral targeted sanctions, by executive orders or otherwise should also not be forgotten. Furthermore, such sanctions undermine States' and potentially the world's economic stability.

4. Despite the express objections of the vast majority of the global community, certain States continue to take advantage of its financial and economic strength to continue to invoke national laws to impose unilateral sanctions against other States or their nationals, particularly where the first-mentioned States have failed to convince the Security Council to invoke its powers under Articles 40 and 41 of the Charter of the United Nations. Malaysia notes with concern that the scope of these unilateral sanctions continues to expand. With reference to section 1245 of the United States National Defense Authorization Act for Fiscal Year 2012, the US authorizes the imposition of sanction against a foreign financial institution owned or controlled by the government of foreign States, including their central bank. Nevertheless, Malaysia notes that on June 11, 2012 the US had made a determination that the law will not apply to Malaysia's financial institutions for a renewable period of 180 days.

Mr. Vice President,

5. Malaysia is of the view that in relation to measures taken for purposes of coercing other sovereign States to comply with certain standard of behaviour for purposes of maintaining peace and security; this should only be limited to the provisions of Chapter VII of the United Nations Charter and the procedures therein. In this regard, Malaysia views the trend of certain regional organization to impose sanction against foreign nations and their citizens after failing to do so under the UN system to be quite alarming.

6. National laws or even regional laws that have extraterritorial application contrary to the norms of international law are a violation of international law. They contravene the principles of sovereignty, equality of states, non-intervention and non-interference in their internal affairs and freedom of trade and navigation. In addition they may carry serious implications for the well-being and socio-economic development of innocent peoples. With regard to the latest sanction against the petroleum industry of certain States, this would affect world's economic stability and causes hardship particularly towards developing economies.

Thank you.

Vice-President: Thank you Malaysia. I now give the floor to the distinguished delegate from Japan.

The Delegate of Japan: Thank you.

Mr. Vice-President, first of all, let me express my appreciation to the AALCO Secretariat for preparing a very detailed study on the topic of Extraterritorial Application of National Legislation and Sanctions Imposed against third parties, contained in AALCO/51/ABUJA/2012/S 6.

Japan shares the concern of the AALCO Member States that sometimes the unilateral sanctions imposed against third parties include extraterritorial application of domestic legislation that are not compatible with the established general rules of international law. Japan agrees that extraterritorial application of domestic legislation must be in conformity with the basic principles of international law such as respect for state sovereignty and non-intervention in the domestic affairs of another state.

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

Thank you.

Vice-President: Thank you very much. I now give the floor to the distinguished delegate from Democratic People's Republic of Korea.

The Delegate of Republic of Korea: Thank you Mr. President.

I would like to comment on the DPRK case briefly.

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

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

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

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

Thank you for your attention.

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

“ADDITIONAL STATEMENT OF THE DELEGATION OF THE DPR KOREA

(Submitted to the President of the 51st Annual Session of the AALCO, the Secretary-General of AALCO and the Secretariat of AALCO)

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

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

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

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

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

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

Vice-President: Thank you. I shall now invite the distinguished delegate from India.

The Delegate of India: Thank you. I would like to thank the Deputy Secretary-General for a very informative introduction to this topic. I wish to take this opportunity to commend the work of the AALCO Secretariat in choosing this topic as a deliberated agenda item. The Indian delegation wants to appreciate the Secretariat Report on the agenda item. It is indeed, well researched and helpful to Member States in providing valuable inputs on the topic. It has to be kept in mind and is a fact that many of the ALLCO Member States are facing the consequences of sanctions imposed on the basis of extraterritorial application of the national legislations and India wishes to state that there should a detailed study on the legal consequences of sanctions prepared by the AALCO Secretariat in the coming years.

Mr. Vice-President, in India's view any unilateral measure based on national law requires consideration on the issue of extraterritorial effects of such acts. The basic principle in international law is that all national legislations are *prima facie*, territorial in character. State practice and doctrinal evolution in international law reflects that there is unanimous rejection to extraterritorial application of national legislation for the purpose of creating obligations for third States. The unilateral and extraterritorial application of national legislation violates the legal equality of States, and principles of respect for and dignity of national sovereignty and non-intervention in the internal affairs of the State.

Mr. Vice-President, India has consistently opposed any unilateral measures by countries which impinge the sovereignty of other State by imposition of national legislation extraterritorially. India always associated with G-77 and NAM on issues urging the international community to adopt all necessary measures to protect sovereign rights of all countries. India also oppose unilateral measures that impinge the sovereign rights of other nations including of course to change the laws of another country. I thank you Mr. Vice-President.

Vice-President: Thank you the distinguished representative from India.

The Meeting was thereafter adjourned.

**IX. VERBATIM RECORD OF THE
SPECIAL HALF-DAY MEETING
ON
“SELECTED ITEMS ON THE
AGENDA OF THE
INTERNATIONAL LAW
COMMISSION”**

**IX. VERBATIM RECORD OF THE SPECIAL HALF-DAY MEETING ON
“SELECTED ITEMS ON THE AGENDA OF THE INTERNATIONAL LAW
COMMISSION” HELD ON WEDNESDAY, 20 JUNE 2012 AT 10.00 AM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session of AALCO in the Chair.

Vice-President: I now invite the Secretary-General to present his introductory remarks for this Special Half-day Meeting on report on Selected Items on the Agenda of the International Law Commission.

Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO: Dr. A. Rohan Perera, Former Member of ILC, Democratic Socialist Republic of Sri Lanka; Prof. Dr. Momtaz, Former Member of ILC from Islamic Republic of Iran;

Excellencies, Distinguished Delegates, Ladies and Gentlemen; May I invite you all to the Special Half-Day Meeting on the topic “Selected Items on the Agenda of the International Law Commission”. It may be recalled that the founders of the AALCO thought it is imperative for the Organization to have close cooperation with the ILC with a view to providing the work of the ILC inputs from the Asian-African States. With this objective in mind, Article 1 (d) of the Statutes of AALCO mandates AALCO to consider the matters relating to the work of the ILC at its annual sessions. It has now become customary that a Representative of ILC addresses the Annual Session of AALCO, on the progress of work in the ILC, while the Secretary-General of AALCO addresses the ILC Session reporting on the common minimum consensus that emerges from the deliberations on the ILC topics at an Annual Session. Henceforth, I had the opportunity to briefly summarize the deliberations that took place at Fiftieth Annual Session of AALCO, held in Colombo, Sri Lanka last year during the Sixty-third session of the Commission. The Secretariat had also prepared the verbatim record of the deliberations on the agenda items of ILC that took place during the Fiftieth Annual Session of AALCO and the same was circulated at the Sixty-third session of the Commission.

AALCO organizes the AALCO-ILC Joint Meetings along the sidelines of the Legal Adviser’s Meeting of AALCO Member States in New York in October/November. On 31 October 2011, AALCO-ILC Meeting was held. The Meeting was chaired by Mr. Maurice Kamto, the then Chairman of the ILC. The three topics that were deliberated during the meeting were: firstly, Expulsion of Aliens; secondly, Responsibility of International Organizations; and thirdly, Protection of Persons in the Event of Disasters. These topics were presented by the respective Special Rapporteurs and Member of the ILC – Mr. Maurice Kamto, Mr. Giorgio Gaja, and Mr. Eduardo Valencia-Ospina. The discussants for the meeting were Mr. Mahmoud D. Hmoud and Dr. A. Rohan Perera, Members of the ILC. I would like to acknowledge and extend my gratitude to Dr. Roy S. Lee, Permanent Observer of the AALCO in New York, for efficiently coordinating and convening the AALCO-ILC Joint Meeting and for his contribution towards substantial matters of the meeting. He is also a member of the AALCO-Eminent Persons Group (EPG) wherein he has made few very concrete suggestions to improvise the Organizational and Substantial matters of AALCO.

Mr. Vice-President, the Fiftieth Annual Session of AALCO mandated that the Annual Sessions of AALCO should devote more time for deliberating on the agenda item relating to the work of ILC. Accordingly, this Half-Day Special Meeting was scheduled during this Session for deliberation on certain pertinent agenda items of the Commission. As I had mentioned earlier, this Special Half-Day Meeting is tilted “Selected Items on the Agenda of the International Law Commission”. The distinguished panelist for this meeting is Dr. A. Rohan Perera, former Member of the International Law Commission from Sri Lanka. I thank him for taking time off his busy schedule for briefing us on the agenda items that we would be discussing in a short while. The topics for deliberation at this Half-Day Special Meeting are (i) “Protection of Persons in the Event of Disasters”, and (ii) “Immunity of State Officials from Foreign Criminal Jurisdiction”.

The report prepared by the AALCO Secretariat contained in AALCO/51/ABUJA/2012/SD/S 1, briefly discusses the matters relating the work of ILC at its Sixty-Third Session. The agenda items dealt during the Sixty-Third session of the ILC were: Reservations to treaties, Responsibility of International Organizations, Effects of armed conflicts on treaties, Immunity of State officials from foreign criminal jurisdiction, Expulsion of aliens, Protection of persons in the event of disasters, The obligation to extradite or prosecute (*aut dedere aut judicare*), Treaties over time, and Most-Favoured-Nation clause.

Mr. Vice-President, recently, the first part of the Sixty-Fourth session of the Commission was convened from 7 May to 1 June 2012 in UN European Headquarters in Geneva. The agenda item that was taken up during its first part was “Expulsion of Aliens” by the Special Rapporteur Mr. Maurice Kamto. The Sepcial Rapporteur presented the Eighth Report on the topic which included (i) comments by Member States, (ii) European Union, (iii) specific comments on draft articles, and (iv) specific comments on several methodological issues. The text of the draft articles from 1 to 32 were provisionally adopted at the first reading by the drafting committee at the Sixty-Fourth session.

At the Sixty-Third session of the ILC held in 2011 a brief summary of which has been reported by the Secretariat in its Report, the following progress was made.

On three important topics, namely, Reservations to Treaties, Responsibility of International Organizations, and Effects of Armed Conflict on Treaties, considerable work has been completed. On “*Reservation to Treaties*”, the Commission adopted the Guide to Practice on Reservations to Treaties which comprises an introduction, the text of the guidelines with commentaries thereto, as well as an annex on the reservations dialogue. On the topic “*Responsibility of International Organizations*”, the Commission adopted, on second reading, a set of 67 draft articles, together with Commentaries. With regard to the topic “*Effects of Armed Conflicts on Treaties*”, the Commission adopted, on second reading, a set of 18 draft articles and an annex (containing an indicative list of treaties the subject matter of which involves an implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries. On these three topics, the substantial progress made was appreciated. Further, in accordance with article 23 of the Statute of ILC, the adopted Draft Articles and Guidelines were recommended to the UN General Assembly to take note of the draft articles in a

resolution and to annex them to the resolution. Further to consider, at a later stage, the elaboration of a Convention on the basis of those draft articles.

Mr. Vice-President, on the topic “*Immunity of State Officials from Foreign Criminal Jurisdiction*”, the Commission considered the second and third reports of the Special Rapporteur. The second report reviewed and presented the substantive issues concerning and implicated by the scope of immunity of a State official from foreign criminal jurisdiction, while the third report addressed the procedural aspects, focusing, in particular on questions concerning the timing of consideration of immunity, its invocation and waiver. The debate revolved around, *inter alia*, issues relating to methodology, possible exceptions to immunity and questions of procedure.

The Commission deliberated upon the addendum 2 to the sixth report and the seventh report of the Special Rapporteur on the topic “*Expulsion of Aliens*”. Addendum 2 to the sixth report completed the consideration of the expulsion proceedings (including the implementation of the expulsion decision, appeals against the expulsion decision, the determination of the State of destination and the protection of human rights in the transit State) and also considered the legal consequences of expulsion (notably the protection of the property rights and similar interests of aliens subject to expulsion, the question of the existence of a right of return in the case of unlawful expulsion, and the responsibility of the expelling State as a result of an unlawful expulsion, including the question of diplomatic protection). Following a debate in plenary, the Commission referred seven draft articles on these issues to the Drafting Committee, as well as a draft article on “Expulsion in connection with extradition” as revised by the Special Rapporteur during the sixty-second session held in 2010. The seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles.

Mr. Vice-President, in relation to the topic “*Protection of Persons in the Event of Disasters*”, the Commission had before it the fourth report of the Special Rapporteur that dealt with the (i) responsibility of the affected State to seek assistance where its national response capacity is exceeded, (ii) duty of the affected State not to arbitrarily withhold its consent to external assistance, and (iii) right to offer assistance in the international community. Following a debate in plenary, the Commission decided to refer draft articles 10 to 12, as proposed by the Special Rapporteur, to the Drafting Committee.

Concerning the topic “*The Obligation to Extradite or Prosecute (aut dedere aut judicare)*”, the Commission considered the fourth report of the Special Rapporteur addressing the question of sources of the obligation to extradite or prosecute, focusing on treaties and custom, and concerning which three draft articles were proposed.

On the topic “*Treaties Over Time*”, the Commission reconstituted the Study Group on Treaties over time, which continued its work on the aspects of the topic relating to subsequent agreements and practice. The Study Group first completed its consideration of the introductory report by its Chairman on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction, by examining the section of the report which addressed the question of possible modifications of a treaty by subsequent agreements and practice as well as the relation of subsequent agreements and

practice to formal amendment procedures. The Study Group then began its consideration of the second report by its Chairman on the jurisprudence under special regimes relating to subsequent agreements and practice, by focusing on certain conclusions contained therein. In the light of the discussions, the Chairman of the Study Group reformulated the text of nine preliminary conclusions relating to a number of issues such as reliance by adjudicatory bodies on the general rule of treaty interpretation, different approaches to treaty interpretation, and various aspects concerning subsequent agreements and practice as a means of treaty interpretation.

Regarding the topic “*The Most-favoured-nation clause*”, the Commission reconstituted the Study Group on the Most-Favoured-Nation clause. The Study Group held a wide-ranging discussion, on the basis of the working paper on the Interpretation and Application of MFN Clauses in Investment Agreements and a framework of questions prepared to provide an overview of issues that may need to be considered in the context of the overall work of the Study Group, while also taking into account other developments, including recent arbitral decisions. The Study Group also set out a programme of work for the future.

Mr. Vice-President, pursuant to the mandate received by the Fiftieth Annual Session of AALCO held in Colombo, Sri Lanka, in 2011, an Inter-Sessional Meeting of Legal Experts to Discuss Matters relating to the ILC was held in April this year at AALCO Headquarters, New Delhi. The report of the Inter-Sessional Meeting is annexed to the Secretariat report on this agenda item from page no. 62 to 106. The Lead Discussants for the Inter-Sessional Meeting were Dr. A. Rohan Perera, who is with us today, and Prof. Shinya Murase, Member of the ILC from Japan. It was an honour for me to deliver welcome remarks on behalf of AALCO and to give a detailed presentation on “Appraisal of the Present and Future work of the ILC”.

Dr. A. Rohan Perera, was the Lead Discussant on two important Agenda Items of the ILC; (i) Protection of Persons in the Event of Disasters; and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction. The detailed presentation on these two Agenda Items of the ILC was followed by question and answer session and deliberations. Prof. Shinya Murase, Member of the ILC from Japan made presentations on Proposed New Topics of the ILC which were on (i) Protection of the Atmosphere, (ii) The Fair and Equitable Treatment Standard in International Investment Law; and (iii) Other New Topics on the Long-Term programme of work of the ILC. Exchange of views and observations of Member States followed after the presentation. Dr. Xu Jie, the Deputy Secretary-General of AALCO proposed a vote of thanks on behalf of the AALCO Secretariat for legal experts who attended the Inter-Sessional Meeting. 17 Member States of AALCO participated at the Meeting. I take this opportunity to thank Amb. Dr. Kriangsak Kittichaisaree, Member of ILC from Thailand, for his valuable comments on the topics discussed during the Inter-Sessional Meeting.

Mr. Vice-President, few major suggestions that evolved out of the Legal Experts Meeting with regard to the proposed new topics were to focus on whether there was a need for the Commission to work on those proposed topics. Also, if there were any topic which a Member State considers as contemporary and relevant, it should put forward during this

meeting and the Secretariat would forward such comments to the Commission at its second part of the Sixty-fourth session which will begin next month.

I look forward for a very comprehensive debates and suggestions on the topics for this meeting and on the proposed new topics. Thank you.

Vice-President: Thank you. Now I request Dr. Rohan Perera, Former Member of the ILC to present his views on the topics.

Dr. A. Rohan Perera, Former Member of the ILC from Sri Lanka: Thank you Mr. Vice-President. The two topics: (i) Protection of Persons in the Event of Disasters, and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction which have entered into such a decisive phase of consideration of these topics before the International Law Commission. They also figured prominently at the joint AALCO-ILC Meeting both in New York and in New Delhi as referred to by the Secretary-General. The responses from Member States of Asia and Africa to questions seeking comments from Member States which is referred to in the ILC Report would be of particular benefits because the State practice in respect of these two areas plays a critical role in future fashioning and formulation of draft articles.

So my first presentation is on the topic “Protection of Persons in the Event of Disasters”. From the time this topic was introduced, the Special Rapporteur, Mr. Eduardo Valencia-Ospina placed emphasis on certain tensions surrounding the core principles underlying the topic. I quote, “the tensions underlying the link between protection and the principle of respect for territorial sovereignty and the non-interference in the internal affairs of the affected State.” The question of protection of affected persons within the State, victims of natural disasters on the one hand and the fundamental principle of respect for sovereignty and territorial integrity of States which fall within both Customary International Law and Art.2 (7) of the UN Charter.

The “poles of tension” as referred to by the Special Rapporteur between sovereignty and the notion of protection, became manifest and sharply underlined the debate, on the cluster of three Draft Articles 10, 11 and 12, both within the deliberations of the Commission and in the Sixth Committee, during the annual consideration of the ILC Report at the United Nations General Assembly Session last year.

Draft Article 10 of Protection of Persons in the Event of Disasters, addresses the particular situation in which a disaster exceeds a State’s national response capacity. The Article stipulates that in such circumstances, the affected State has the duty to seek assistance, from among others, States, the United Nations, other competent inter-governmental organizations, and relevant non-governmental organizations. The Special Rapporteur explained that the Draft Article “affirms the central position of obligations owed by States towards persons within their borders”. If a State determines that the disaster situation exceeds the national capacity, they have a duty to seek that assistance, which is the pith and substance of Draft Article 10.

The Special Rapporteur pointed out that the duty expounded in Draft Article 10, is a specification of the content of Draft Article 5 and 9. It was also recalled that Draft Article 9 (1) stipulates that an affected State by virtue of its sovereignty has the duty to ensure the protection of persons and the provision of disaster relief and assistance on its territory. Draft Article 5 affirms that the duty to cooperate is incumbent upon not only potentially assisting States, but also the affected State, where such cooperation is appropriate.

Accordingly, the Special Rapporteur considered that such cooperation is both appropriate and required to the extent that an affected State's national capacity is exceeded. In these circumstances it was pointed out that seeking assistance is additionally an element of the fulfillment of an affected State's primary responsibility under International Human Rights Instruments and Customary International law.

The cluster of Articles 10-12, given the underlying tensions between the principles of State sovereignty and protection, was the subject of sharp divergence of views among the members of the Commission. Some members were opposed to the idea that affected States are under or should be placed under a legal duty to seek external assistance in cases of disasters. Draft Article 11 creates a "qualified consent regime" in respect of disaster relief operations. Paragraph 1 reflects the core principle that implementation of international relief assistance is contingent upon the consent of the affected State. Paragraph II however stipulates that consent to external assistance shall not be withheld arbitrarily and paragraph III places a duty on the affected State to make its decision regarding an offer of assistance known, wherever possible. The need to develop criteria to determine the arbitrariness or otherwise of a decision to refuse consent was also discussed and several principles were adduced, for reflection as guidelines in the Commentary. One, the Commission considers that withholding consent to external assistance is not arbitrary where a State is capable of providing, and willing to provide, an adequate and effective response to a disaster on the basis of its own resources. Two, withholding consent to assistance from one external source is not arbitrary if an affected State has accepted appropriate and sufficient assistance from elsewhere. Three, withholding of consent is not arbitrary if the relevant offer is not extended in accordance with the present draft articles. Humanitarian assistance must take place in accordance with principles of humanity, neutrality and impartiality, and on the basis of non-discrimination. Conversely, where an offer of assistance is made in accordance with the draft articles and no alternate sources of assistance are available; there would be a strong inference that a decision to withhold consent would be arbitrary.

Now, on the right to offer assistance on the part of other States of the international community was also the subject of sharp debate and the Special Rapporteur stated that it served to acknowledge the legitimate interest of the international community to protect persons in the event of a disaster. It was also recalled that the provision of assistance was subject to the consent of the affected State. Accordingly, the offer of assistance could not, in principle, be subject to the acceptance by the affected State of conditions that represented a limitation on its sovereignty. It was also stated that offers of assistance from the international community were typically extended as part of international cooperation as opposed to an assertion of rights. It was recalled that, in many cases, the

mere expression of solidarity was equally important as offers of assistance. It was suggested that the right of the international community to offer assistance could be combined with an encouragement by the Commission to actually make such offers of assistance on the basis of the principles of cooperation and international solidarity.

The Special Rapporteur explained that the Draft Article 12 sought to reflect the general proposition that offers of assistance should not be viewed as interference in the internal affairs of the affected State, subject to the condition that the assistance offered did not affect the sovereignty of the affected State as well as its primary role in the direction, control, coordination and supervision of such relief and assistance.

However, some members were strongly of the view that the provision avoids a reference to ‘legal rights’ since such offers of assistance from the international community were typically extended as part of international co-operation and solidarity as opposed to the assertion of ‘rights’. It was recalled in this context that in many instances, the mere expression of solidarity was equally important as offers of assistance. In this regard, reference was made to Article 2 (7) of the UN Charter, which in the view of these members limited the ability of the international community to offer assistance.

The middle ground which seemed to surface from these range of views was that the ‘right’ of an affected State to seek international assistance was complimented by the duty on third States and Organization to ‘consider’ such requests, and not necessarily a duty to accede to them. It was further emphasized that, the right to the international community to offer assistance could be combined with an encouragement to the international community to make such offers of assistance on the basis of the Principle of International Cooperation and Solidarity.

The Drafting Committee was unable to conclude consideration of Draft Article 12 due to lack of time. The discussion on these vital issues pertaining to the balancing of sovereignty and protection will therefore resume at the forthcoming session. It is important, therefore, that the Member States of Asia and Africa make their views known on them in a timely manner, in order to ensure an acceptable outcome.

The debate in the Sixth Committee on the cluster of Draft Articles 10-12, during the consideration of the ILC Report, reflected very much the range of diverse views, which characterized the discussion of these Articles in the Commission. It is also noteworthy, that on certain aspects there was a broad convergence of views across the geographical and political divide.

Thus, for instance, the United Kingdom, in expressing their position on the overall approach to the Draft Articles, emphasized;

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

A further dimension of the practical aspects of disaster relief assistance and the problems posed by what is referred to as “inappropriate assistance” was highlighted in the IFRC intervention during the Sixth Committee debate.

Vice-President: Thank you. Now, I suggest Dr. Rohan Perera to continue with the presentation on the next topic, which would be followed by comments by Prof. Momtaz.

Dr. A. Rohan Perera, Former Member of the ILC from Sri Lanka: Now we move on to the second topic the all important topic of Immunity of State Officials from Foreign Criminal Jurisdiction, a matter which has engaged the attention of international community in recent times. At the outset let me clarify that here we are speaking about immunity of state officials from foreign criminal jurisdiction and not international criminal jurisdiction. The question of Domestic Courts or National Courts asserting jurisdiction in respect of foreign Heads of States. And we are not talking about the jurisdiction of the international criminal court or international criminal jurisdiction. The debate of the International Law Commission on the topic of immunity of state officials from foreign criminal jurisdiction is centered around three principal issues. 1) The general orientation of the topic, 2) The scope of immunity and 3) the question whether or not there were exceptions to immunity with regard to grave crimes committed under international law. Let me say that the consideration of this topic on the part of ILC for the past few years has been of a preliminary nature and no draft articles have yet been drafted, given the fundamental issues that have been involved in terms of both the legal and political sensitivities that surround this topic. It was decided at the end of the last Session that the current Session when it reconvenes in July a Working Group would be constituted first to examine and decide on the general orientation of the topic before getting into draft articles. Secondly, the Special Rapporteur on this topic Mr. Roman A. Kolodkin is no longer a member of the International Law Commission. He has done valuable work by way of preparing Three Reports on this topic.

So first of all we come to the general orientation of the topic. In his introduction to the Second Report, the Special Rapporteur emphasized on the importance of looking at the actual state of affairs as the starting point for the Commission's work on the topic immunity of state officials and he explained that it was from the perspective of *Lex Lata* or the law as it exists presently that he had proceeded to prepare his Reports. From this perspective, the Special Rapporteur was of the view that immunity of state official from foreign criminal jurisdiction was the established norm and any exceptions to immunity would have to be proven or established. That is the starting premise of the Special Rapporteur. This position of the Special Rapporteur on the general orientation of the topic led to an intense discussion as to the perspective from which the Commission should approach the topic i.e., whether it formulates draft Articles from the *Lex Lata* perspective. It was pointed out that the Commission should proceed with caution in order to achieve an acceptable balance between the need to establish stability in international relations and the need to avoid impunity for grave crimes under international law. In this regard, it was pointed out that even if one chose to adopt the approach of the Special Rapporteur who had analyzed the issue from a strict *lex lata* perspective, the interpretation given to the relevant state practice and judicial decisions relating to this topic could plausibly lead one to different conclusions as to the existing law. It was also

felt that the end product of this exercise should have practical utility for the international community of States. The discussions on this topic led to the conclusion that the Commission should establish a Working Group to discuss this issue of orientation and then to proceed with this topic.

The Sixth Committee debates on this issue of general orientation of the topic several Delegates underlined the need to adopt a cautious approach and in this regard for instance I can quote the Representative of the United Kingdom who had stated that: “it is essential that the Commission keeps clearly in mind the distinction between its task of codifying the *lex lata* and making proposals for the progressive development of *lex ferenda*. Given the very practical importance of the Commission’s work on this topic we urge the Commission to ensure that this distinction is made clear throughout their work and that any proposals they make for the *lex ferenda* by way of draft articles for a future Convention are thought through with rigour and vigour that has informed the work to date”. Several other delegates also argued to take a cautious approach on this issue, particularly when you are getting into the progressive development given the sensitivities involved.

Thus the Sixth Committee debates reflects an approach which in principle endorses Special Rapporteur’s position of treating the *lex lata* perspective as a starting point. According to another view the assertion that immunity constituted the norm to which no exception existed was thus unsustainable. In this context it was pointed out that the question of how to situate the rule on immunity in the overall legal context was central to the debate. This argument has strongly emphasized the superior interest of the international community as a whole in relation to certain grave crimes under international law. Therefore, instead of addressing the issue, in terms of rules and exceptions with immunity being the rule, it seemed according to them more accurate to examine the issue from the perspective of responsibility of the states and its representatives in those situations that “shocked the conscience of mankind” and to consider whether any exceptions thereto in the form of immunity may exist. The Special Rapporteur therefore emphasised that to juxtapose immunity and combating impunity was incorrect. Combating impunity had wider context involving variety of interventions in international law including the establishment of international criminal jurisdiction by way of international courts and so on.

The Special Rapporteur emphasized that immunity from criminal jurisdiction and immunity from criminal responsibility were separate concepts by way of decisions of International Courts and so on. Immunity and foreign criminal jurisdiction was the issue to be tackled. The question of State Responsibility for wrongful conduct are provided with remedies in International Law by way of international tribunals, diplomatic procedures. Here we are dealing with the jurisdiction of Domestic courts. In response to the contention of the hierarchy of norms whereby *jus cogens* prevailed over immunities the Special Rapporteur contended that *jus cogens* rules which prohibit or criminalize certain acts are substantive in nature and cannot overturn the procedural rule such as one concerning immunity. The Special Rapporteur’s point that *jus cogens* rule belongs to the sphere of substantive rules and immunity the procedural rules. And therefore one can argue that they belong to two different characters, one substantive and the other

procedural. You cannot say that one prevails over the other and this has been recently upheld by the International Court of Justice in its case concerning Germany Vs Italy. The ICJ held that there cannot be a conflict between rules which are substantive in nature and rules on immunity which are procedural in nature. The Special Rapporteur was also at pains to point out that the question of International Criminal Jurisdiction was entirely one that was to be separated and needed to be distinguished from the concept of foreign criminal jurisdiction. In his view the Rome statute of the ICC was unlikely to be relevant in respect of foreign criminal jurisdiction. This is something very important. We all know that the Rome Statute expressly precludes immunity being invoked even in respect of Heads of States. So once states voluntarily accept that obligation, and waive immunity before an international court or tribunal it has no application where it concerns the jurisdiction of domestic courts over foreign Heads of States. The Special Rapporteur was at pains to point out that we are dealing with the question of state responsibility. State Responsibility for wrongful conduct has other remedies, the diplomatic procedures, the international procedures, the international tribunals. What is emphasized here is that one state is enjoying immunity from the jurisdiction of another state, the domestic court of other states. This was an issue pointed out by the Special Rapporteur. With this I come to the end of my presentation and I thank you Vice-President.

Vice-President: Thank you Dr. Rohan Perera. Now I invite Prof. Djamchid Momtaz, former member of the ILC from Islamic Republic of Iran to make his comments on those two topics.

Prof. Djamchid Momtaz, Former Member of the ILC from Islamic Republic of Iran: I want to thank the Secretary-General for asking me to participate in this Special Meeting at the last moment and that is the reason why I have no written prepared text before me and if you will allow me I will act as Discussant and I will react to the very important comments made by my good friend, Dr. Rohan Perera, former Member of the International Law Commission on some topics discussed in the ILC. As this year we do not have sitting ILC Member and we don't have the exact picture regarding the first part of the Sixty-fourth session of the ILC this year. I agree with my good friend Perera that the question of codification and progressive development of international law is very important subject for the Members of our Organization and I want to draw the particular attention of the distinguished delegates that in AALCO's Statutes there is a clear reference to the role of AALCO in codification and progressive development of international law and I think we have to do our best to respond to the queries of the ILC to answer to the questions raised by the Special Rapporteur of the Commission and then the Special Rapporteur would incorporate them in his works.

I want to give an example of participation of our Members in this process. One of the topic dealt by the International Law Commission is the topic "obligation to extradite or prosecute (*aut dedere aut judicare*)" and one very important question raised by the Special Rapporteur on this subject by Mr. Galicki was whether the practice of State regarding the question of obligation to extradite or prosecute is based on a treaty obligation or an obligation based on customary international law. It is a very important and difficult question. We cannot say without any doubt that in this case the State's have an obligation beyond the obligation based on treaty obligation. Mr. Galicki was working

on that and I am sure that the person who is in charge of this subject would have exactly the same question.

If you allow me Mr. Vice-President, I am going to have some comments on the two very important topics raised by my good friend, Dr. Perera. We start with the topic Protection of Persons in the Event of Disasters. Of course, the question regarding the real nature of sovereignty of States in the territory which has both rights and obligations and it is of no doubt that the States has obligation to seek assistance in case of natural disaster. But the question that I want to raise and has not been raised by Prof. Perera, it is not the question of right to offer assistance, but do the States have the duty to offer assistance. This question has not been considered by the Commission too especially the right of States to offer assistance. I would like to raise this question to Dr. Perera that the scope of the obligation on the State in whose territory the disaster has taken place. In that regard, the scope of obligation is restricted to the relation of the State's (where the disaster has occurred) to other States. Such an obligation was, however, limited only to the subjects of international law, excluding non-governmental organizations that are not subject of international law.

Regarding the second important topic on the agenda of the International Law Commission that is, "Immunity of State Officials from Foreign Criminal Jurisdiction", I think we have to make a very important distinction and avoid any confusion between this subject and subject of accountability of state officials. I want to stress that the question of accountability of state officials has been dealt with in some very important text and the most important one is the Statute of International Criminal Court and of course everybody knows that Article 27 of this Statute does not give immunity to any Head of State, Ministry of Foreign Affairs, and any other high-ranking officials of the State.

I agree with the question of distinction made between *lex lata* and *lex ferenda*. I remember that the former Special Rapporteur on this subject had expressed a note of caution that we have to focus on codifying the existing customary practice of States in international law as it exists and to invite the attention to the fact that practice of States on these matter. I want to raise a last question regarding the decision of the International Court of Justice (ICJ) on the dispute between Germany and Italy. Dr. Perera referred to this case and I have a question to him and I hope that he is in a position to answer that. I want to know if the ICJ, in insisting in this decision on immunity of States before national jurisdiction or tribunals referred only to the acts committed by armed forces of a state outside its territorial jurisdiction or the decision of the court of all the *Acta jure imperii* of States and does not make distinction between acts committed by the armed forces that is the better example I can say of *Acta jure imperii*. That decision of the ICJ insisted once more on the jurisdictional immunity of States before national tribunals. I think I will stop there and once more I want members of this august assembly to respond to the issues raised by the International Law Commission through the questionnaires of the Special Rapporteurs. Thank you very much Mr. Vice-President.

Vice-President: Thank you very much Prof. Momtaz. I think that these two subjects discussed that were certainly need extensive debate for the reasons that Dr. Rohan Perera has raised. I will now call upon People's Republic of China for their statement.

The Delegate of People's Republic of China: Mr. Vice-President and Distinguished Delegates, the Chinese delegation would like to thank the AALCO for organizing this special meeting on selected items of the International Law Commission. We would also like to thank the Speakers for their extensive comments on the important topics on the agenda of the Commission.

Mr. Vice-President, the International Law Commission was set up to codify and gradually develop international law. The Chinese delegation believes that while pursuing academic quality to fulfill its aforementioned mandate, the Commission should also give due attention to whether its outcome is practical and what is the expectation of the international community. It is well recognized that codification and development of international law shall accord with the interest, of the international community, including Asian and African countries. At present, half of the members of the Commission are from Asian and African countries, and we believe that their participation will help reflect the views of Asian and African countries in the codification and development of international law.

Mr. Vice-President, with regard to the ongoing work of the Commission, the Chinese delegation would like to make two comments.

Firstly, on expulsion of aliens. China is of the view that expulsion of aliens, as a sovereign act of state, shall comply with the requirements of applicable treaties and domestic law. In this sense, it is desirable for the Commission to focus on codifying existing rules of international law, and in doing so, the Commission should give full consideration to the diverse domestic law and practice of various states, so as to leave ample room for country-specific policies and approaches.

Secondly, on protection of persons in the event of disasters. As Chinese representative commented during last 6th Committee Session of the UN General Assembly, the Chinese delegation made comments that some of the draft articles failed to strike a balance between the interests of the affected state and those of the international community. It is our view that in the relationship between the affected state and assisting states, we shall give more weight to international cooperation, than their respective rights and duties. To identify as a duty of the affected state to seek external assistance will bring in a lot of problems. To begin with, there is no such a duty or obligation under customary international law or international treaties. And even if such a duty existed, there is no clear picture of its content and consequence. We have noted that many other states have shared their concerns on this point. We hope that the Commission will address the concerns and deal with this issue properly.

Mr. Vice-President, China always supports close cooperation between the AALCO and the Commission. In our view, such cooperation will not only benefit the development of the two organizations, but also facilitate the communication between Member States of the AALCO and the Commission. We hope that the AALCO continues to provide us such opportunity in the future.

Mr. Vice-President, this year marks the beginning of a new five-year term of the Commission. The Chinese delegation would like to take this opportunity to wish the Commission greater success in its new term. Thank you, Mr. President.

Vice-President: Thank you very much. I will now call upon the delegate from Indonesia.

The **Delegate of Indonesia:** Mr. Vice-President and *Distinguished Delegates*, our delegation would like to thank the eminent speakers for their presentations. First, please allow me to take this opportunity to thank all the AALCO Members for the supports on the re-election of Mr. Nugroho Wisnumurti in November 2011, as the ILC Member for the term of 2012-2016. Indonesia would like to reiterate its commitment to cooperate with ILC and AALCO in our efforts to overcome various legal issues of common interests.

Mr. Vice-President, *Distinguished Delegates*, with respect to the substantive aspects including the issue relating to the scope of immunity *ratione personae* which was the subject of Immunity of State Officials from Foreign Criminal Jurisdiction debate in the 63rd Session of ILC, Indonesia delegation would like to reiterate the views that personal immunity should be limited to the ‘basic threesome’ or Head of State, Head of Government and Minister of Foreign Affairs. Our delegation disagrees to the extension of the “threesome” to include other senior officials.

Our delegation is also of the view that only State can legally invoke the immunity of its officials, whether it relates to the ‘basic threesome’ who has personal immunity (*ratione personae*) or other officials who have functional immunity (*ratione materie*). Thus, it is only when immunity being invoked or declared by the official’s State that invoking immunity, has legal consequences.

On the topic of Expulsion of Aliens, Our delegation is of the view that it is important to recognize the need to achieve a balance between the right of the State where an alien resides to expel the alien, and the human rights and dignity of the alien subjected to forceful implementation of an expulsion decision, including during his or her travel to the State of destination in accordance with the law and international law.

It is necessary to include consequential provisions regarding the protection of the human rights of the person subject to expulsion, as have been proposed by the Special Rapporteur in the 63rd Session of ILC. Such provisions provide that the rules that apply in the expelling State for protection of the human rights of aliens subject to expulsion, shall also apply *mutatis mutandis* in the transit State.

Come to the topic of the Protection of Persons in the Event of Disasters, regarding the issue of the responsibility of the affected State to seek assistance where its national response capacity is exceeded, our delegation is of the view that humanitarian assistance should be undertaken solely with the consent of the affected country, and with the outmost respect for the core principles such as sovereignty, territorial integrity, national unity and non-intervention in the domestic affairs of States. The need for the appropriate

balance between those principles and duty of protection were not accurately reflected in the draft articles of the topic.

Imposing such responsibility on the affected State, will undermine the principles of sovereignty, non-intervention and the requirement of consent of the affected State, and thus the requirement of balance between those core principles and the responsibility of the affected State to protect persons affected by the disaster is not met. It will also be inconsistent with the right of the affected State not to give consent to external assistance. We should not undermine the actual State Practice in dealing with major disasters in different parts of the world, where the States affected by disasters had always shown their promptness to team up with the international community.

Furthermore, imposing such obligation even at the stage where the disaster exceeds its national response capacities, will undermine its legitimate right to make its own judgment on whether or not it needs external assistance, and an obligation will also expose the affected State to possible external pressure that could be driven by motives unrelated to humanitarian consideration. Our delegation agrees that it is essential to include definite measures on to what extent that 'exceed its national response capacities' shall apply.

As on the 'right to offer assistance', our delegation is of the view that subject to sovereignty and the consent of the affected State, any non-affected State could provide assistance to that affected State at any time that it considers as appropriate. I thank you.

Vice-President: Thank you very much. May I now call upon delegate from Japan.

The **Delegate of Japan:** Mr. Vice-President, my delegation is grateful to a concise but comprehensive presentation of Dr. A. Rohan Perera and Prof. Djamchid Momtaz, former Members of the International Law Commission, on the two agenda items namely Protection of Persons in the Event of Disasters and Immunity of State Officials from Foreign Criminal Jurisdiction. I would like to make comments on the current and future work of the ILC and on the role of the AALCO vis-à-vis the ILC.

First of all, Japan would like to welcome new members of the ILC from the Asian and African regions who were elected in the elections last November. Two new members from Asia (from Thailand and the Republic of Korea) and four new members from Africa (from Algeria, Tanzania, Libya and South Africa) were elected to the ILC. Japan wishes that those new members will make valuable inputs into the work of the ILC and collaborate constructively with other members of the ILC from Asia and Africa and other regions. At the same time, it should be borne in mind that, once they are elected, all the members of the ILC are expected to attend the Commission throughout its session from April or May to June and from July to August every year and to contribute to the work of the Commission. This is essential for more various views, especially from the Asian and African regions, to be reflected in the draft articles, guidelines or studies of each topic before the ILC.

Codification of customary international law is an important function of the United Nations. It is often difficult to ascertain precisely what customary rules are and there also exist differences of interpretation of such rules among States. Furthermore there exist many lacunae in customary international law. In order to remove such ambiguity and to establish common understanding of customary international law, the UN has undertaken codification so far on many subjects on the basis of the works done by the UN International Law Commission. AALCO has made important contributions to the works by the ILC by providing valuable views of its Member States. The codification works by the ILC must be followed up by the UN General Assembly in order to give effect to the ILC's works. And for that, States must take initiative. In this context, there are two subjects which Japan plans to take up at the forthcoming session of the UN General Assembly. One is the Draft Articles on the Law of Transboundary Aquifers and another is the UN Convention on Jurisdictional Immunities of States and Their Property. First, I would like to refer to the Draft Articles on the Law of Transboundary Aquifers.

Fresh water is an indispensable life supporting resource for humankind and there is no alternative resource to replace it. 97% of readily accessible fresh water is located underground in aquifers. The groundwater is now the most extracted single raw material with the result of critical over-exploitation and pollution. In order to provide a legal framework for the proper management of groundwater resources, the ILC formulated a set of 19 draft articles on the Law of Transboundary Aquifers in 2008, which were based on the texts drafted by Ambassador Chusei Yamada, Special Rapporteur on this topic. Following the adoption of the draft articles by the ILC, the UN General Assembly received the draft articles favourably and took note of the draft articles in its Resolution 63/124, which was adopted by consensus. Last year, the UN General Assembly adopted Resolution 66/104, which encouraged the International Hydrological Programme of the UNESCO to offer further scientific and technical assistance to the States concerned. From 4 to 7 June, the International Hydrological Programme of the UNESCO held the 20th session of the IHP Intergovernmental Council in Paris and adopted a resolution which requested the UNESCO-IHP to support its Member States in promoting studies in regard to transboundary aquifers in the framework of the existing IHP's initiative and to continue studies on transboundary aquifers and assist interested Member States in their studies of transboundary aquifers resources management including by promoting capacity building and awareness raising activities on existing instruments and discussions. This resolution was supported by Pakistan, Malaysia, Kuwait, Sudan, Kenya as well as Japan.

On the other hand, Resolution 66/104 of the UN General Assembly further encouraged the State concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles and decided to examine the question of the form that might be given to them in its sixty-eighth session in 2013. One possible form which could be given to the draft articles is to adopt them as a universal treaty at a diplomatic conference. Another possible form is to adopt the draft articles as a declaration, like the UN General Assembly Resolution of 1962 (XVIII), which was titled "Declaration of Legal Principles Governing the activities of States in the Exploration and Use of Outer Space". Towards the session of the UN General Assembly next year, I would like to urge Member States of the

AALCO to consider this matter seriously. Japan wishes to consult with you as to how we can best proceed on this matter.

Mr. Vice-President, now I would like to turn to the UN Convention on Jurisdictional Immunities of States and Their Property. As the delegation of Japan mentioned in the Annual Meeting of the AALCO last year, this important convention is a product of combined efforts of the ILC's hard work and difficult negotiations at the UN General Assembly which took so many years to culminate into its final form with Japan and other AALCO Member States having made various contribution in that process. Japan believes that setting and clarifying the rules concerning jurisdictional immunities of states is an important factor in ensuring stable inter-state relations. At present, only thirteen States are parties to this convention, but those parties include some AALCO Member States, such as Iran, Saudi Arabia, Lebanon and Japan, as well as some other States, such as France, Spain, Sweden and Austria. In accordance with Article 30 of the Convention, this convention will enter into force only after the ratification by at least 30 States, and it might still take at least several more years before the 30th State ratifies this convention. Japan would like to expedite this ratification process as the coming into force of the convention would significantly contribute to securing justice and order as well as to settling disputes among States on the question of jurisdictional immunity. Japan would like to reiterate its sincere hope that Member States of the AALCO will consider early ratification of the convention. In this connection, Japan stands ready to render its assistance to, or exchange views with, other AALCO Member States which indicate their interests in or have been considering the ratification of this convention.

Mr. Vice-President, with regard to the current work of the ILC, the ILC finally adopted a set of draft guidelines on reservations to treaties in its 63rd session last year after the consideration of the topic for 18 years since 1994 and the General Assembly decided that the consideration of the draft guidelines shall be continued at its sixty-seventh session this year. Japan submitted its comments on the draft guidelines on reservations to treaties to the Secretariat of the ILC last year. Japan wishes that Member States of the AALCO study the draft guidelines carefully in light of their respective practice and express their positions in the debate on the topic in the Sixth Committee of the UN General Assembly this autumn.

Mr. Vice-President, I would like to turn now on to the proposal by Professor Shinya Murase, the Japanese member of the ILC, on "the protection of the atmosphere" as a possible future topic for the ILC. Last year, Resolution 66/98 of the UN General Assembly took note of the inclusion of all five new topics proposed by the ILC, including this topic, in the long-term programme of work of the ILC. The current session of the ILC has been considering whether or not it should proceed to work on this topic. Japan is convinced that this proposal would provide a good opportunity to ensure coherence among rules in this field, thus avoiding the fragmentation of international law. Japan wishes that the ILC decides to commence working on this topic in its current session.

Mr. Vice-President, with regard to the selection of new topics for the ILC, Japan would like to refer to the argument put forward by an academic that for a topic to be selected,

the following three criteria must be satisfied: the first is the *practical* consideration, i.e. whether there is any pressing need for the topic in the international community as a whole; the second is *technical* feasibility, i.e. whether the topic is “ripe” enough in light of relevant State practice and literature; and the third is *political* feasibility, i.e. whether dealing with the proposed topic is likely to receive broad support from States. In addition to “Protection of the Atmosphere”, four new topics have been proposed by members of the ILC, namely, “Formation and Evidence of Customary International Law” (proposed by Mr. Wood), “Provisional Application of Treaties” (proposed by Mr. Gaja), “Protection of the Environment in relation to Armed Conflicts” (proposed by Ms. Jacobsson) and “The Fair and Equitable Treatment Standard in International Investment Law” (proposed by Mr. Vasciannie). It may be advisable that when States consider whether a topic should be embarked on by the ILC, they should examine it in light of the three criteria just mentioned.

Mr. Vice-President, lastly I would like to reiterate, once again, the proposal for the future work of the AALCO in relation to the ILC which our delegation has made at the annual meetings of the AALCO in recent years. It is well known that the AALCO was established with the aim to have the views of Asian and African countries reflected in the work of the ILC, i.e. in the progressive development and codification of international law. It is therefore of critical importance to make substantive contributions from the Asian and African perspective to the work of the ILC. From this point of view, the delegation of Japan has proposed that the AALCO Secretariat should make questionnaires of concrete questions relevant to each topic of the ILC, for example, “immunity of State officials from foreign criminal jurisdiction” or “expulsion of aliens”, and request the Member States of the AALCO to provide their answers to the questionnaires to the Secretariat. The AALCO Secretariat will then compile those answers and submit them to the Secretariat of the ILC. For this project to succeed, Member States of the AALCO need to cooperate with the Secretariat of the AALCO by submitting relevant information on their state and regional practices. The information provided by the AALCO to the ILC will be duly considered by the members of the ILC, including Special Rapporteurs on specific topics, who will analyse the state and regional practices provided and reflect them when drafting and elaborating draft articles on each topic. This exercise will gradually but certainly affect the formation and substance of customary international law in the international community. Japan believes that the implementation of this proposal may reactivate the work of the AALCO vis-à-vis the ILC and will bring tremendous benefits for Asian and African States from a long-term perspective. Thank you very much.

Vice-President: Thank you. May I now call upon representative of Islamic Republic of Iran.

The Delegate of Islamic Republic of Iran: In the name of God, the Compassionate, the Merciful. At the beginning, I would like to express my sincere appreciations to the Secretariat of AALCO for preparing the informative report of the selective items on the agenda on International Law Commission. My delegation has found the report as a useful and informative document which touches upon such a matter of high significance. My

delegation would like to thank Dr. A Rohan Perera and Prof. Djamchid Momtaz for their presentation and views on few topics on the agenda of the Commission.

Mr. Vice-President, my delegation would like to make some comments on the Expulsion of Aliens, Protection of Persons in the event of Disasters and Immunity of States Officials from Foreign Criminal Jurisdiction.

Mr. Vice-President, my Delegation appreciates the efforts of Mr. Maurice Kamto, the Special Rapporteur, for the second addendum to his sixth report as well as his seventh report on the topic.

One can hardly contradict the State's right to expel aliens living on its territory if they pose a threat to its national security or public order. Every State has the right to determine, according to its national laws the components of these two concepts. It would, therefore, be pointless to try to enumerate the grounds that could be invoked by a State to justify the expulsion of aliens.

Once decided, expulsion shall be conducted in a manner that the fundamental human rights would be fully respected. The expulsion must be made with due respect for fundamental human rights of the deportees. They must be protected against any inhuman and degrading treatment. This applies even during the detention of aliens awaiting deportation. In all cases, the property rights of deportees should, as well, be respected and guaranteed by the authorities of the host State.

My delegation doubts the advisability of formulating any provision on appeals against an expulsion decision. We agree with the Special Rapporteur that there is no need for an additional draft article on this question since there is no clue as to the existence of sufficient State practice to that effect. Many national laws do not provide for such a possibility. There are serious doubts as to the existence of customary rules on the matter. It cannot be recognized in favor of the expulsion of an alien unlawfully in the territory a right to return to the territory of the expelling State since it would imply the recognition of an acquired right of residence, something which is totally unknown to the practice of States.

Regarding the final form of the draft articles, we take the liberty to express doubts about the possibility of elaborating a convention on the basis of the draft articles. It would be more appropriate and feasible to write the guidelines for States to guide State practice in this area.

I now turn to the item two, "Protection of Persons in the Event of Disasters".

Mr. Vice-President, my delegation expresses its appreciation to Mr. Eduardo Valencia-Ospina, the Special Rapporteur, for his fourth report on the topic.

Turning to the content of the proposed draft articles, I should start by a note of caution regarding the progressive development of a rule which does not enjoy sufficient State

practice. I should also underline the importance of taking into account by the Commission of the views and concerns expressed during the sessions of the Sixth Committee by the Member States.

Mr. Vice-President, we cannot question the dual nature of the sovereignty, which entails both rights and obligations. The State affected by a natural disaster certainly has the duty to take all measures at its disposal to provide assistance to its nationals and other persons living in its territory who have fallen victim to the disaster. However, this duty could not be disproportionately broadened as rising to a legal obligation to seek external assistance. Indeed, international law does not impose such obligation on the affected State. It would be far from any established or even from any relatively emerging practice, let alone any existing customary rule, to presume such an obligation. Therefore, the draft articles could not be worded in an imperative language. In other words, the affected State is entitled to seek external assistance should it be unable to provide necessary assistance to the victims.

Therefore, it would be more appropriate, in the light of the existing State practice, to indicate in draft article 10 that the States which is unable to assist the victims “should” seek assistance from other States and international organizations, instead of “an obligation” to ask for such assistance.

Certainly, there is little doubt as to the obligation of the State affected by natural disasters to cooperate with other States and international organizations, instead of an “obligation” to ask for such assistance.

The obligation to cooperate does not oblige the State affected by natural disaster to accept relief; the provision of humanitarian aid by other States and international organizations remains subject to the consent of the latter. Once granted, the affected States shall retain, in accordance with its domestic laws, the right to direct, control, supervise and coordinate the assistance provided in its territory. Moreover, the humanitarian assistance should be provided in accordance with the principles of humanity, neutrality and impartiality. All practices and principles identified by the Red Cross and Red Crescent Movement and which have in turn been referred to by the International Court of Justice, in the 1986 Nicaragua Case, and reaffirmed by the UN General Assembly resolutions 46/182 of 19 December 1991 and 45/100 of 14 December 1990, should be applied in good faith.

Immunity of State Officials from Foreign Criminal Jurisdiction: the subject of “Immunity of State Officials from Foreign Criminal Jurisdiction” is of critical importance in external relations of States. We share the note of caution expressed by the Special Rapporteur that the International Law Commission should focus on codifying the existing rules of international law in this area rather than engaging in an exercise for progressive development. The Commission is expected to take sovereignty and its ensuing components, principally immunity of State Officials, as its departure point and avoid confusing its subject with the subject of accountability of States officials.

The principle of immunity of the “troika” (Head of State, Head of Government and Minister of Foreign Affairs) which is well established and recognized beyond any doubt

in customary international law is the key guarantor of stability in international relations and the effective tool for the smooth exercise of prerogatives of the State.

The international law grants to the three categories of State officials absolute immunity *ratione personae*, from foreign criminal jurisdiction. It covers both acts performed in their official capacity and their private acts, during the period they hold office. This immunity shall cease to apply to their private acts as soon as they leave office. They shall continue to enjoy immunity for acts performed in their official capacity without time limit, as those acts are deemed to be acts of State. That is the approach taken by the Institute of International Law in its 2009 resolution on the Immunity from Jurisdiction of the State and of Persons who Act on behalf of the State in case of International Crimes. Thank you.

Vice-President: Thank you. May I now call upon Malaysia.

The **Delegate of Malaysia:** Thank you Mr. Vice President, His Excellency the Secretary-General, Distinguished Former Members of ILC, Ladies and Gentlemen, my delegation expresses our gratitude to Dr. Rohan and Dr. Momtaz for their elucidation and sharing their thoughts on the topics of Immunity of State Officials from Foreign Criminal Jurisdiction and Protection of Persons in the Event of Disasters.

Mr. Vice-President, regarding the topic of Immunity of State Officials from Foreign Criminal Jurisdiction, Malaysia noted the policy question posted by the ILC as summarized in paragraph 19 of the AALCO Secretariat Paper i.e. AALCO/51/ABUJA/2012/SD/S 1, should the ILC seek to set out existing rules of international law or should the ILC embark on an exercise of progressive development. Malaysia is of the view that the ILC ought to work at determining the existing basis of such immunity, scope and approach to immunity of State Officials. At the same time we are of the view that the ILC should determine the application of rules deriving from international law before embarking on progressive development of law.

In considering the application of immunity *ratione materiae*, Malaysia is of the view that *ultra vires* and illegal conduct should not be automatically considered as private acts of the state officials as such proposition could lead to States absolving from responsibility by claiming that the criminal acts were performed in the private capacity of their officials.

Malaysia is of the view that immunity *ratione personae* should not extend to acts which were performed by official in private capacity, prior to taking his office. Such acts will not impede him from carrying out his duties.

Malaysia is currently not in favour of extending the immunity to other categories other than the troika of Heads of State, Heads of Governments and Ministers of Foreign Affairs as it appears settled that immunity *ratione personae* is applicable only to these set of leaders. Strong legal basis must be shown to support the extension of this type of immunity to other than troika. Malaysia looks forward to further deliberation on this fundamental issue.

Malaysia supports the view of immunity of State officials from foreign criminal jurisdiction should, in principle be considered at early stage of the judicial proceedings, or earlier still, at the pre-trial stage to prevent a violation of the obligations arising from immunity by the State exercising.

Malaysia is of the view that invocation of immunity should be dealt with on a case-by-case basis and that States should not be restricted to choosing one method over the other nor should invocation be construed as admission of responsibility or states liability for any criminally unlawful acts.

Malaysia believes that the waiver of immunity should be express in nature and is determined by the States and not the official, but the official can/should notify at earliest stage to alert the state exercising jurisdiction. As for waiver of immunity for the troika, the power to waive such immunity should rest with the State.

Further, in determining the application of existing rules of international law, the ILC must address clearly the approach and outcome of its work vis-a-vis the international criminal tribunals particularly the International Criminal Court.

Mr. Vice-President, in the development of the draft articles on the Protection of Persons in the Event of Disasters, Malaysia strongly feels that full consideration is to be given to the principle of the sovereignty of States under international law, including the related concepts of consent of States and the rights of States to refuse external interference in its internal affairs and into its territory. A balance must be reached between respecting the sovereignty of the affected State and its sovereign rights to refuse external interference from foreign entities with the rights of its population to receive humanitarian assistance in the event of disasters. We remained engaged with the ILC and would update the ILC with our comments on this topic.

For disaster relief to be effective, the seeking of assistance in the event of disasters would need to be mutually supported by a corresponding responsibility to assist. Consideration must be given to a State's resources and capabilities as well as its domestic priorities and national interests.

Malaysia strongly feels that the imposition of a legal duty on States to render assistance when sought will be onerous one and could be deemed an unacceptable interference in a State's sovereign decision-making. States should be permitted to response to requests for assistance in all manners that it deems fit. All States, whether providing, seeking or accepting assistance should be allowed to freely interact and coordinate the need for, type and manner of assistance.

Malaysia proposes that the AALCO Secretariat initiate contact with ASEAN Secretariat on the mechanisms of disaster management and emergency response under the auspices of ASEAN Agreement on Disaster Management and Emergency Response (AADMER), the outcome of that contact should be disseminated to the AALCO Member States in order to provide a practical example of regional initiative in disaster management and

emergency response. Principle in the AADMER could provide guide in regional practice in dealing with disaster management.

Mr. Vice-President, in relation to the topic of Expulsion of Aliens, Malaysia takes note of the Special Rapporteur's responses to the issues raised by Malaysia in the 6th Committee of the 66th Session of the UN General Assembly. Malaysia endorses the Special Rapporteur's views that it is premature at this stage to decide on the final form of the work of the ILC on this topic particularly when there are many issues that need clarification and consideration.

Mr. Vice-President, Malaysia commends the selection of these three topics for deliberation, particularly as the ILC has expressed their interest to receive comments on specific issues on these topics. Malaysia agrees on the importance of providing input to the ILC. Malaysia notes that out of 34 ILC members, 17 of them are from Asia-African region. The question is how we make full use of this. It is unfortunate that although ILC is not sitting at the moment, but the existing ILC members were unable to attend this annual session. Malaysia is of the view that their guidance on the ongoing topics in the ILC is very pertinent. Accordingly, Malaysia proposes that AALCO Secretariat to arrange for an interaction session e.g., tele-conference between the ILC members and Member States. Thank you.

Mr. Vice-President: I thank the distinguished delegate of Malaysia. I give the floor to the distinguished representative of Republic of Korea.

The Delegate of Republic of Korea: Thank You for this Special Meeting on the issues of Protection of Persons in the Event of Disasters and Immunity of State Officials from Foreign Criminal Jurisdiction. Firstly, the protection of people or human beings in the event of natural disasters is closely related to human rights but at the same time it also relates to the principle of non-intervention in the domestic decision of other States. Generally, a country in which persons live or stay is responsible for giving protection of persons who are affected by natural disasters. However, if that country is unable or unwilling to help those people, other country's assistance of protection to those peoples who are affected or in need, in case the government of that country refuses to accept that assistance that country would be faced with a pressing situation where it must consider the human rights of the victims within the country or vice-versa.

In this regard, the Government of the Republic of Korea enacted last year a law on Emergency Services of all. This law states that in providing services in foreign countries, the Korean government should consider the request made by the affected foreign governments and closely cooperate in humanitarian reliefs in time of natural disasters in order to give protection of human beings to consider providing assistance including the well-being and protection of human beings. In our view, international organizations cannot just narrow the differences of decisions of the governments of that country concerned and the human rights of the persons concerned affected by the disasters.

With regard to the issue of “Immunity of State Officials from Foreign Criminal Jurisdiction”; I would like to mention at this early stage three points to be considered in codification of immunity of state officials from foreign criminal jurisdiction.

First, the codification on this matter should be based on *lex lata* rather than *lex ferenda* and in conformity with the prior case laws of International Court of Justice, which are, “the Arrest Warrant Case, DR Congo vs. Belgium, 2002)” and “the Certain Questions of Mutual Assistance, Djibouti vs. France, 2008)”.

Second, I'd like to point out that we have well-established state practices regarding Diplomatic Immunity and Privileges, and these should be respected.

Third, despite these, it is also desirable to consider the provision of the Rome Statute, Article 27, that official capacity as a government official shall in no case exempt the person from the criminal responsibility under the Rome Statute. Thank you.

Vice-President: I thank the distinguished delegate of Republic of Korea. I give the floor to the distinguished representative from Saudi Arabia.

The **Delegate of Kingdom of Saudi Arabia**¹: Thank your Mr. Vice-President. I thank and extend my appreciation to Dr. Perera on legal analysis regarding topic which he presented this morning. With regard to Protection of Persons in the Event of Natural Disasters, our country takes interest in draft articles for extending assistance in case of disaster. The Kingdom is a pioneer country in lending assistance to countries who face disasters. It has provided assistance to the affected States in case of floods, earthquakes and drought. In this regard, the basic problem is not in the nature of assistance, but in how to provide assistance during disaster.

Mr. Vice President, I have a question to Dr. Perera on this area about the important draft articles on the role of international organizations involved in providing assistance. I hope Dr. Perera would shed more light on that. Thank you Mr. Vice President.

Vice-President: I thank the distinguished delegate from Saudi Arabia. I now give the floor to the distinguished representative of Kuwait.

The **Delegate of State of Kuwait**²: Thank you Mr. Vice-President. I thank and appreciate Dr. Rohan Perera and Prof. Momtaz on providing their views on the important topics of ILC. I would give very short remarks regarding the topic expulsion of aliens. Kuwait has respect for workers human rights which should be taken into consideration. Kuwait takes interest and care in applying such standards. This issue is very substantive which Member States of AALCO should take into consideration if any State is applying these standards or not. With regard to ICC, perhaps the main reason for establishing that international organization with an international character is to act in accordance with justice and equality whereas the UNSC is not capable to do so. Unfortunately there has been lack in

¹ Statement delivered in Arabic. The Official translation from the translator's version.

² Statement delivered in Arabic. The Official translation from the translator's version.

promulgation of some rules. There are some shortcomings in implementation of treaties and agreements. No action has been taken against Israeli criminals whereas even when Sudan is not party to the ICC action has been taken against them. Therefore, action is not taken on equal basis and the issue of immunity needs more coordinated approach in ILC.

A question to Dr. Perera what are the reservations that come out of decision of ICC about the immunity of Heads of States. Of course we take that into consideration. Heads of States should be given immunity. What is the legal value to give immunity to Heads of States, what is the extend of credibility of ICC in condemning and chasing the Heads of States which have not ratified the ICC. What is the recommendary message we may give to countries which are putting obstacles before such organization.

Vice-President: I thank the distinguished speakers and delegates for insightful presentations and now I give the floor to Dr. Rohan Perera for responding to the questions posed by some of the delegates.

Dr. A. Rohan Perera: Firstly, the distinguished representative of Saudi Arabia raised the question of the role of domestic organizations in the context of providing relief and assistance to victims of disasters. The structure of the draft articles is that in terms of Article 9;

“The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.”

So, by virtue of its sovereign attributes, as far as domestic entities are concerned any assistance rendered by such entity would be within the sovereign jurisdiction of that State and indeed the draft article recognizes that the affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance. That is a matter within your sovereign territory.

The article that we were looking at was Article 10, which speaks of duty to seek assistance from external entities where the scale of the disaster exceeds the national capacity. This Article seeks to impose a duty to seek international assistance from among other States, United Nations, other competent intergovernmental organizations and relevant non-governmental organizations as appropriate. So with that structure, we are looking at Article 9 with regard to role of affected State and Article 10 where the national capacity has exceeded and the affected State is obliged to seek assistance. I hope that I have answered the question that was raised.

The distinguished representative of Kuwait raised the question of the absolute immunity enjoyed by the Head of State or government and raised a question of where a Head of State is not expected to commit an international crime. Here the rationale is that, as I mentioned, as far as the Rome Statute is concerned - Article 27 - clearly amounts to waiver of immunity in respect of such categories of persons. What the draft articles of the ILC is dealing with is the exercise of jurisdiction by domestic courts of foreign States. There the problem that arises is the conflict with the principle of sovereign equality. If a foreign Head of State while being in office is summoned before a foreign court of law

that will lead to a situation of international tension of disrupting stability of stable international relations and so on. So the rationale is that in such situations, there are other remedies that are available once that person has given up office. As far as the jurisdiction of International Criminal Court is concerned you cannot plead the fact that you are a serving Head of State. By virtue of being party to the Statute you have expressly waived the immunity. Different factors come into frame where national courts of foreign State begins to exercise jurisdiction over serving Heads of State and that would impact the stability of international relations. So that is the approach as far as the ILC Draft Articles are concerned.

Number of delegations referred to the work of “expulsion of aliens” which we did not discuss today due to lack of time. But as a matter of information I might just mention draft Article 27 which clearly is being presented as a matter of progressive development. The text of draft articles 1-32 were provisionally adopted last month in the first segment of the sixty-fourth session of the ILC and that is contained in the document A/CN.4/L.797. It is very important that these articles receive attention of Member States of AALCO. The first reading is complete. ILC has sought the views of the Member States particularly on the question of right of appeal. These articles proceed on the basis of persons in lawful presence and unlawful presence. It seeks to strike a balance between sovereignty and State’s right of expulsion and human rights obligations of the State. I might just mention to draft article 27 which clearly being presented as a matter of progressive development. “Suspensive effect of an appeal against an expulsion decision”: “An appeal lodged by an alien subject to expulsion who is lawfully present in the territory of the expelling State shall have a suspensive effect on the expulsion decision.” Now this was a matter of considerable comment both within the Commission and the Sixth Committee. The draft article says that an appeal can have suspensive effect on the expulsion decision. Now what effect does this have on the speedy disposal of expulsion procedures? What is the impact on the right of expulsion as a sovereign attribute? Is it supported by state practice, by case-laws etc., these are questions that ILC has raised and this is awaiting response from Member States. So draft articles 27 as approved by the Drafting Committee last month should receive your particular attention.

There is also draft article 29, “readmission to the expelling State”. It recognizes right of readmission where “if it is established by a competent authority that the expulsion was unlawful, except in cases which would constitute a threat to national security and public order. There are areas which reflect a movement towards progressive development and on which comments from Member States on State Practice would be most welcome. These are the areas where a movement towards progressive development and these are areas on which comments from Member States on state practice are most welcome. I can give a copy of this document to the Secretariat for perusal of AALCO Member States and both the Sixth Committee as well as communication with International Law Commission would be most timely. Thank you very much Mr. Vice-President.

Vice-President: Thank you very much Dr. Rohan Perera. I know that representative of India has asked for floor and before I do that I shall ask Prof. Djamchid Momtaz to reply to certain questions posed to him and after that the representative of India would make a statement.

Prof. Djamchid Momtaz: Thank you Mr. Vice-President for giving me the floor. Although there is no question from the floor that was directly addressed to me, I want to react to the comments made by the distinguished delegate from Kuwait regarding the position of the UN Security Council regarding fight against impunity. I want to remind that several times the Security Council insists to the fact that fight against impunity is a very important question. First of all in the resolution adopted by the Security Council in 1993 by which the Security Council created an Ad Hoc tribunal on Yugoslavia. In its Preambular paragraph the Security Council says it clearly that impunity is a threat to peace and international security. I want to add to that the reports prepared by the Security Council on the protection of civilian during armed conflict is that the Security Council is very aware that impunity without any doubt is a threat against peace and international security. If sometimes, the Security Council is not in a position to refer a case to the ICC, the principle obstructs, without doubt is a political one. Thank you very much.

Vice-President: Now I give the floor to distinguished delegate from India.

The Delegate of India: Thank you Mr. Vice-President. I thank Dr. Rohan Perera and Prof. Momtaz for an insightful presentation and a very comprehensive report on the very important topics of ILC. My delegation is particularly pleased to hear that the Commission reconstituted a Working Group on MFN clause. We feel that it is very pertinent to countries and the future topic would be “fair and Equal Treatment in the Investment Agreements. My delegation is of the view that these topics are very important in the ongoing investment particularly the recent arbitration decision and the evolving jurisprudence in this issue. India has signed more than eighty investment agreements and the issue of MFN and the topic of fair and equitable treatment in investment agreements is very important to us. Of late, States are experiencing that their regulatory space is limited by the application of the arbitration decisions and how to balance the protection extended to the investor on the one hand and the regulatory space that is to be maintained by the host State on the other hand is a very important issue and we appreciate the Commission for taking this topic.

On the topic “protection of persons in the event of disasters”, my delegation appreciates the report presented by Dr. Rohan Perera and we take note of the draft articles submitted by the Special Rapporteur. On the issue of ‘immunity of State Officials from Foreign Criminal Jurisdiction, we share the general view that the work on the immunity of State officials should consider only foreign criminal jurisdiction. Questions relating to immunity with respect to international criminal tribunal and domestic courts should be excluded. The source of immunity must not be international comity but international law. Therefore, we agree with the view that the proposal of the Special Rapporteur that the timings for raising immunity in criminal proceedings should be considered either at the initial stage or pre-trial stage of the proceedings. In this regard, it is appropriate that the Commission may study in-detail the implications of not considering of immunity at the early stage of criminal proceedings. On considering the immunity *ratione personae* beyond Troika, we are in favour of an independent, clear criterion in establishing such practice for which we need enhanced cooperation among States concerned in matters relating of immunity of State officials. With regard to immunity, we share the view that the right to waive immunity of officials vest in the State and not in the official list.

Delegate from Japan raised the concern regarding the UN Convention on Jurisdictional Immunities of States and Their Property. This is a Convention that concerns all of us very directly. So the Convention was drafted after long discussion, in-depth negotiations at the International Law Commission and at the Sixth Committee. I join Japanese delegation in urging all Member States of AALCO to ratify or accede to this Convention so that it enters into force without much delay. I would like to add that India has already signed the Convention and is in the process of enacting legislation and as soon as that process is over, we would be in a position to ratify that. I thank you very much.

Vice-President: Thank you. We now break up for lunch and we meet at 2'clock for the evening session on Law of the Sea.

The Meeting was thereafter adjourned.

**X. VERBATIM RECORD OF THE
HALF-DAY SPECIAL MEETING
ON “RESPONSES TO PIRACY:
INTERNATIONAL LEGAL
CHALLENGES”**

**X. VERBATIM RECORD OF THE HALF-DAY SPECIAL MEETING ON
“RESPONSES TO PIRACY: INTERNATIONAL LEGAL CHALLENGES”
HELD ON WEDNESDAY, 20 JUNE 2012 AT 2. 30 PM**

His Excellency U. Thiha Han, Vice-President of the Fifty-First Annual Session of AALCO in the Chair.

Vice-President: May I now invite the Deputy Secretary-General Dr. Xu Jie to introduce this agenda item.

Deputy Secretary-General: Mr. Vice President, H.E. Judge Albert J. Hoffmann, Vice-President of the International Tribunal for the Law of the Sea (ITLOS), Ms. Mariam Sissoko, Representative from UNODC; H. E. Ambassador Yasuji Ishigaki, from Japan; Commodore Austin Owkhor-Chuku, from Nigeria; Mr. Mathew Egbadon, from Nigeria; Excellencies, Distinguished Delegates and Ladies and Gentlemen,

It is my pleasure to welcome you all to this Half-Day Special Meeting on “Responses to Piracy: International Legal Challenges” organized by AALCO in collaboration with the Government of the Federal Republic of Nigeria and the Division of Oceans and Law of the Sea, UN Office of Legal Affairs, and in conjunction with the Fifty-First Annual Session of AALCO.

The Report of the Secretariat on the subject, which is contained in *AALCO /51/ABUJA /2012/SD/S 2*, highlights the growing challenge of piracy in the international waters and how despite the repeated efforts taken and measures implemented by the international community to curb it, piracy continues to be a major challenge in the present day scenario. Besides portraying the legal regime and its gaps, it also gives an overview of the responses of the international community towards this problem.

Excellencies, I would like to avail this opportunity to say a few things about the contribution of AALCO towards the creation of the international law of the sea which stands codified principally in the form of United Nations Convention on the Law of the Sea 1982. This I find necessary since we have just celebrated the 30th Anniversary of the UNCLOS 1982 recently. AALCO under the dynamic leadership of its Secretaries-General had played a critical part in this endeavor. This included ;

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

It is indeed a matter of pride for the peoples of the region that the concept of the Exclusive Economic Zone was born in the cradle of AALCO and finally found its rightful place in the UNCLOS 1982. It also needs to be underlined here that once the Fifty-First Annual Session adopts a Resolution commemorating the 30th Anniversary of the

UNCLOS, the same would officially be sent to the UN General Assembly which is planning to adopt a Resolution on the 30th Anniversary of UNCLOS. This Resolution, which would make an explicit reference to the contribution of AALCO to the UNCLOS in it, would provide an opportunity for the General Assembly to officially recognize AALCO's contributions to the creation of UNCLOS.

Excellencies,

In recent years, the problem of piracy has posed an increasing threat to the international community. Maritime piracy has re-emerged in recent years as a serious threat to both crews and property on the high seas. There are pirates active in a number of areas throughout the world. Most importantly, the situation arising from Gulf of Aden and the Indian Ocean clearly dominates global statistics and media coverage. Despite serious national and regional efforts to counter maritime piracy in Southeast Asia, the threat continues to pose a clear and present danger to the maritime security of this region. The spate of recent pirate hijackings and murders off the East African coast and other places should leave little doubt among policy makers and security officials within the international community that piracy must be tackled head-on.

The international law of maritime piracy is reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS, which is recognised as the constitution for the world's oceans, and reflects customary international law binding on all nations, it defines piracy as having four components: (1) an act of violence, detention or theft; (2) on the high seas ; (3) committed for private ends; and, (4) by one private vessel against another vessel . This definition is accepted as customary international law, i.e., it applies to all the States irrespective of treaty membership.

The UNCLOS law, however, has gaps. UNCLOS confirms the duty of all States to cooperate to *suppress* piracy, but makes the actual *prosecution* of pirates discretionary. UNCLOS includes no express provisions on transferring suspects to other jurisdictions, nor any requirement that States have adequate national laws for prosecuting pirates; much is left to the discretion of States. Apart from UNCLOS, though there are some regional instruments that exist on this issue, they have not been very successful in combating the problem of piracy.

Essentially, there are three main areas that need to be strengthened substantively in our fight against piracy. First, States should, among other measures, consider enacting adequate national legislation to criminalize all acts of piracy and armed robbery at sea as well as providing for effective and modern procedural laws that are indispensable for the suppression of piracy. Second, at the international level, States should try to reinforce the international legal framework by removing any flaws that are found in it. They should also work towards strengthening international cooperation so that the numerous complexities involved in different national systems could be overcome. Thirdly, the root causes of piracy need to be addressed adequately. This is because political instability and lack of economic development obtaining in various societies do contribute towards the creation of this problem to a significant extent.

Excellencies, the objective of this Half-Day Special Meeting is two-fold; *firstly* to stimulate innovative thinking on the subject with a view to improving international law as a way to address the menace of piracy. *Secondly*, and since the legal difficulty in countering piracy arises in implementing the international obligation to act against piracy, this Meeting is also devoted to identifying various means and ways of enabling Member States of AALCO (both individually and acting regionally) to take counter-measures against piracy.

It is my firm belief that the Distinguished Delegates will rise to the occasion and use this opportunity to discuss threadbare all the problems/issues involved in combating piracy. With these initial remarks, I wish you all an excellent and productive deliberation. Thank you.

Vice-President: I thank Dr Xu Xie, the Deputy Secretary General for his excellent introductory remarks. Now I would like to give the microphone to Judge Albert Hoffman, Vice-President of the International Tribunal for the Law of the Sea, to give some remarks on piracy.

Judge Albert Hoffmann, Vice-President of the ITLOS: Mr. Vice President, Excellencies, Ladies and Gentlemen, I wish to thank the Federal Government of Nigeria and particularly the Federal Ministry of Justice for hosting this meeting and for extending to us all the courtesies and facilities. I also thank the Secretary General of AALCO H.E. Professor Dr. Rahmat Mohamad and his staff for the kind invitation to participate in Session and for the excellent arrangements.

It is a distinct honour and privilege for me to be with you at this 51st Annual Session of Asian-African Legal Consultative Organization (AALCO) here in this great city of Abuja in the Federal Republic of Nigeria. AALCO is a consultative body of Asian and African States with a proud history and is well known for influential role it played and continues to play in policy formulation and decision-making in the international legal framework. I have noticed from the agenda and discussions thus far that this Session is no exception and I wish you all the best in your deliberations and a successful outcome for this Session. On a personal note: I am very pleased to continue my long standing association with AALCO over some 17 years, albeit nowadays in different capacity. Not only did I represent my country South Africa at the AALCO Annual Session in Doha, Qatar in 1995 (it must have been the 34th Session), immediately after the adoption of our national Constitution and following the first democratic elections held in our country, but I was also instrumental in South Africa becoming a Member of AALCO the following year. I have closely followed the work of AALCO at the United Nations in New York when I was based there in the nineties; I also attended the 46th Session that was held in Cape Town in 2007 (in my capacity as judge of ITLOS).

Mr. Vice President, I am aware that the item 'Law of the Sea' has always been one of the main features on the Agenda of AALCO and a matter of great importance to Member States. AALCO has made significant contributions to the development of the Law of the

Sea over the years and in the negotiations that led to the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) – and thereafter in the setting up of institutional arrangements envisaged in the Convention as well as promoting the Convention amongst its Member States towards achieving universal acceptance and participation. It is therefore fitting that we pay tribute to AALCO and its Member States this year on the occasion of the 30th Anniversary of the adoption of Convention.

I wish to congratulate AALCO by taking up a matter of grave concern to the international community and a serious threat to maritime safety and security namely, piracy at sea and to convene a special meeting to consider responses to this phenomenon and the legal challenges involved.

It is common knowledge that maritime piracy is a centuries – old practice with its heydays in the seventeenth and eighteenth centuries, where after incidents seemed to have dwindled to negligible levels but have seen resurgence in recent years. According to the figures published by the International Maritime Organization (IMO) and the International Maritime Bureau (IMB) the number of acts of piracy and armed robbery at sea has reached alarming levels that not only seriously affecting international trade and maritime navigation but also resulting in loss of life and threatening the lives and livelihood of seafarers. From these statistics it is noted that many attacks occur in areas under national jurisdiction viz. near coasts (territorial waters) in straits and even in ports, outer harbor works and at the quayside (what is known as internal water). When such attacks are carried out in these areas they are subject to the jurisdiction of the coastal State and no other State would be able to exercise jurisdiction even if the latter's ship or national are involved. State' jurisdiction over ships, whether in terms of policing or enforcement or in terms of prosecution does not as a rule apply to the territorial waters of another State except as provided for in article 27 of UNCLOS. These acts or attacks are not regarded as "piracy" under International Law. They are classified as "armed robbery at sea", a crime over which only the coastal State has jurisdiction and the right to prosecute. Such acts also do not fit the definition of piracy and can therefore not be considered a crime under International law over which any State may exercise jurisdiction (known as universal jurisdiction).

Universal jurisdiction applies only in the case of crimes under customary international law, in respect of which all States have the right to prosecute. Such crimes are limited to piracy, slave trading, war crimes, crimes against humanity, genocide and torture. There are many international crimes that have been created by multilateral treaties, which confer wide jurisdictional powers upon States parties.

Piracy is therefore recognized as an international law crime and subject to universal jurisdiction. It is defined as an act of robbery, or other act of violence or depredation, committed at sea, other than in war, launched from one vessel against another and committed for private gain. Any State may exercise jurisdiction over the pirate ship and those involved in the act which is an exception to the long-standing principle of freedom of the seas and that no State shall interfere with any foreign-flagged ship on the high seas.

This is described as follows in The ‘Lotus’ Case (France v. Turkey) 1927 PCIJ:

Piracy by the law of the nations, in its jurisdictional aspects, is *sui generis*. Though statutes may provide for its punishment, it is as offence against the law of nations; and as the scene of the pirate’s operation is the high seas, which is not the right or the duty of any nation to police, he is denied the protection of the flag he may carry, and is treated as an outlaw, as the enemy of mankind – *hosti humani generis* – whom any nation may in the interest of all capture and punish.

Although already established as crime under customary international law, the first comprehensive definition of piracy was codified in the 1958 Geneva Convention on the High Seas (articles 14 to 21) and later adopted without amendment in the UNCLOS (articles 100 to 107) which may now be regarded as representing the current law of piracy both as conventional and general international law.

Unfortunately, the existing rules for the suppression of piracy have proven to be inadequate to respond to modern-day attacks on shipping and threats to maritime navigation and security. One of the major deficiencies is that the definition of piracy is too narrow in its scope and is often criticized for its lack of clarity. According to article 101 of UNCLOS, only illegal acts of violence and detention, or acts of depredation, committed “for private ends” by the crew or the passengers of a private ship on the high seas against another ship or against persons or property on board such a ship are considered acts of piracy. This “for private ends” requirement restricts the scope of application of the rules considerable. Any act of violence directed against a ship or its crew inspired by political motives such as aiming to destabilize a government or instill fear or terror in the population with a view towards achieving a political end, is excluded from the definition of piracy.

Another restriction is that the act of piracy must be committed by the crew or passengers of a private ship against another ship (the so-called “two ships” requirement). The seizure of a ship by its crew or passengers is excluded from the definition of piracy. This means if a ship is taken over by its crew or passengers that results in violence or killing of those on board or the depredation of cargo and property, a foreign State would lack jurisdiction to intervene since attacks do not constitute acts of piracy according to the definition and the matter would have to be dealt with under the jurisdiction of the flag State.

A further limitation is that only acts committed on the High Seas may qualify as piracy reason. Limiting piracy to the High Seas enables a State to exercise jurisdiction over pirates without interfering in the sovereignty of any other States. Although article 101 of UNCLOS refers to the High Seas only, it also includes the Exclusive Economic Zone (EEZ) through the application of article 58 of the Convention. The EEZ also encompasses the Contiguous Zone by reason of the spatial extend of the zone as defined in article 55.

As I have already indicted, no State has jurisdiction to intervene and seize a pirate ship and arrest the persons responsible in another State’s internal or territorial waters, as only

the coastal State has jurisdiction over such acts in its own waters. It has been argued that by entrenching the sovereign rights of States over their territorial waters has enabled the growth of piracy. This has become particularly prevalent where the territorial waters are poorly monitored and patrolled or where a coastal State, for whatever reason, is unable to exercise effective control in its national waters and thus become a fertile ground for pirates from where they can launch attacks with relative impunity. Unfortunately UNCLOS does not provide for “reverse hot pursuit” which would allow a foreign State ship to continue pursuing a pirate ship from the High Seas into the territorial waters of another State without the latter’s authorization.

According to article 107 of the Convention, a seizure of a pirate ship may only be carried out by a warship or military aircraft or other ships or aircraft clearly marked and identifiable as being in government service and duly authorized to intervene. Some commentators seek to justify the action taken by a warship against a pirate ship attacking another ship in waters of a coastal State on the basis of the obligation to render assistance to persons in distress or under the principle of humanitarian intervention under general international law. This is controversial and where the intervention takes place without the coastal State’s permission or authorization the jurisdiction to prosecute the offenders could be put in jeopardy.

Mr. Vice President, this narrow definition of piracy and its requirements as outlined above and the failure to broaden the existing rules concerning piracy to other forms of violence at sea such as terrorist attacks or the transport of weapons or material that could be used in such attacks, have led to the creation of new rules by international agreements to specifically deal with these situations.

The inadequacies of the piracy regime had been clearly demonstrated in instances of hijacking at sea where no other ship was involved and the motive of the attack was for political purposes thus not meeting the “two ship” and “for private ends” requirements in the definition of piracy. This was highlighted in the Achille Lauro incident in 1985 (when Palestinians, who boarded an Italian cruise ship posing as passengers, seized the ship, took the passengers and crew hostage and demanded the release of Palestinian prisoners in Israeli jails and killed an American passenger in a wheelchair by throwing him overboard).

In response to this incident the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA Convention) was adopted. The Convention does not characterize internal seizures as piracy but extends the crime of hijacking and related offences to ships on the High Seas in a similar manner as the hijacking of aircraft and confers jurisdiction over such offences on; the flag-State of the seized ship; the State of which the offender is a national; the State whose nationals are victims; and the State at which the seizure is directed (i.e. to compel it or do or to refrain from doing something). Since piracy can also be regarded as one of the offences covered by SUA Convention, States Parties are required to establish jurisdiction if they choose not to extradite the offenders to any of the other States parties who have established jurisdiction over the offences. The SUA Convention may, therefore, provide a basis of

jurisdiction where pirates are handed over to a nearby coastal State for investigation and prosecution.

In direct response to the September 11, 2001 terrorist attacks when aircraft, used as weapons, flew into the WTC in New York City and the Pentagon in Washington DC, the 2005 Protocol to the SUA Convention was adopted to expand the scope of the Convention and to define more broadly the offences covered therein so as to include ships being used to launch terrorist attacks or to transport weapons or nuclear material that can be used in acts of terrorism.

Although the SUA Convention and the 2005 Protocol filled gaps left by the narrow UNCLOS definition of piracy and covers attacks that do not meet the requirements of that definition, it should be pointed out that the SUA Convention and its Protocol are only binding between those States that are party to these legal instruments and their provisions therefore have no general application. The SUA Convention and Protocol also provide limited sanction against parties who fail to fulfill their obligations and who decline to act against alleged offenders by neither extraditing not prosecuting them.

Another important aspect of the current piracy regime is its dualistic nature. By its definition piracy is an international crime and it has long been recognized as such under public international law – but the law of piracy does not exist at the international level. It is left to States to decide on the law and to criminalize the act of piracy in their domestic legal systems. Article 105 of UNCLOS allows every States to seize a pirate ship on the High Seas, arrest the persons and seize the property on board and then leaves it to the courts of the State which carried out the seizure to decide upon the penalties to be imposed and to determine the action to be taken with regard to ships, persons and property.

UNCLOS does not require that States enact domestic anti-piracy laws, not does it provide model laws that States can use should they wish to enact legislation for combating piracy. This means that relatively few States have anti-piracy laws in place and where such laws exist there appears to be a lack of harmonization between these laws. The fact that UNCLOS gives such wide discretion to States to enact domestic legislation also means that there is la lack of uniformity in the laws and their application. Some States have adopted broader definitions of piracy in their domestic legislation by extending it to include its territorial waters (e.g. Kenya, Japan) whilst other only recognize piracy in their territorial waters (e.g. Philippines). Some domestic courts recognize piracy only as an act committed for piracy ends (e.g. British) whereas other courts have recognized as piracy, acts committed for other ends as well (e.g. Belgium). Some domestic jurisdictions fail to characterize to codify piracy as a crime. (E.g. Spain).

There are also a number of political and procedural issues that inhibit States from prosecuting pirates such as the possibility that a pirate may seek and receive political asylum if prosecuted. It is also impractical to conduct trials on board a capturing ship consistently with international fair trial standards and highly inconvenient to transferring them to the territory of the capturing flag State to be prosecuted, sentenced and imprisoned there and to return them to their home States after conviction may encounter

objections based on human rights. The problem of capacity and the high cost involved in the investigation, prosecution and imprisonment of convicted pirates have also discouraged States to get involved. As a result, some pirates have simply been released. Others have been handed over to nearby State in the region where the incident occurred for investigation and prosecution under the domestic law of that State in terms of bilateral arrangements. Even in the latter case procedural impediments in domestic laws might constrain national courts from handling the prosecution of expatriated pirates.

International and Regional Cooperation

An important element in ensuring an effective regime in combating international crimes such as piracy, armed robbery and terrorism at sea (or for that matter any other transnational organized crimes such as drug trafficking and human trafficking at sea), is the need for international cooperation. It is essential for States, organizations and enforcement agencies to work together and to coordinate their efforts towards achieving their goal. Cooperation between States, organizations and enforcement agencies are crucial to resolving piracy problems, particularly cooperation in the areas of information-sharing, enforcement, crime investigation, prosecution and punishment.

In terms of article 100 of UNCLOS all States are under an obligation to cooperate to the fullest possible extent in the repression of piracy on the High Seas. Some commentators refer to this provision to point to another restriction in the anti-piracy regime namely that there is no obligation on States to cooperate in the fight against piracy anywhere else than on the High Seas. It is also argued that the use of the expression “to the fullest possible extent” appears to indicate to the potential impossibility of cooperation in the repression of piracy, in particular in respect of States who does not have the means or capability or who no longer have suitable government structures for exercising government authority and control over their territory and / or territorial waters. It is further noted that UNCLOS does not impose any sanctions on a State who fails to cooperate and neglects to discharge its responsibilities under this provision.

Notwithstanding all the impediments and shortcomings in the piracy regime, serious efforts are being made through a number of channels and cooperation arrangements to combat piracy. The United Nations and the International Maritime Organization (IMO) are among the organizations active in this endeavor.

The Contact Group on Piracy off the Coast of Somalia involving 24 UN Member States and 5 international organizations (i.e. UN, IMO, AU, EU AND NATO) established by UNSC Resolution 1851 has a coordinating function for strategies and activities to eradicate piracy in that region.

The UN Office on Drugs and Crime (UNODC) also plays a significant role through its joint EC/UNODC Counter-Piracy Project based in Nairobi, Kenya.

An INTERPOL working group on maritime piracy was also established to reinforce police cooperation in the region.

The IMO is also actively involved through facilitating the implementation of relevant international instruments by providing advice to the shipping industry on measures to prevent and repress acts of piracy and armed robbery and by making recommendations and assisting governments in combating piracy. It has also adopted practical texts for conducting enquiries into the crimes of piracy and armed robbery at sea.

The International Chamber of Commerce through its International Maritime Bureau monitors the incidence of piracy and similar attacks throughout the world.

Concerned States and organizations in effected regions have negotiated cooperation agreements and have instituted studies and training programmes.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery (ReCAAP) launched in 2006 is the first multilateral government-to government anti-piracy mechanism in Asia. It is a cooperation agreement that focuses mainly on information-sharing (through an Information Exchange Centre), capacity building and cooperation arrangements.

The Djibouti Code of Conduct adopted under the auspices of the IMO in 2009 is an important initiative between Arab and African States towards combating piracy and armed robbery in the Gulf of Aden, the Red Sea and Western Indian Ocean.

The Code is based on ReCAAP and established regional information-sharing centers in Tanzania, Kenya and Yemen. It commits States to cooperate and to criminalize piracy and armed robbery at the domestic level. States also commit to apprehend and prosecute offenders and also agree to ensure that there is adequate guidance for exercising jurisdiction, procedures for investigation and prosecution of offenders. Although the Code still treats piracy as a High Seas crimes, it allows for the foreign-flagged ship to pursue the offenders in to the territorial waters of a coastal State subject to the latter's authorization.

Member States of Maritime Organization of West and Central Africa have adopted a resolution and a Memorandum of Understanding of the Establishment of a Sub-regional Integrated coastguard Network in West and Central Africa in Dakar in 2008. This network enables coastguards in the participating States to pursue ships suspected of piracy and armed robbery in each other's territorial waters. Other regions of world such as Caribbean have taken measures and adopted regional agreements to ensure improved cooperation between States with a view to combating threats to maritime security. Such as piracy and drug trafficking.

Bilateral agreements also exist to facilitate prosecution of pirates in the regions where they operate. Such agreements have been concluded between countries involved in international task forces patrolling the Indian Ocean such as the United Kingdom, the United States and European Union and East African States such as Kenya, Seychelles and recently Mauritius in terms of which captured suspects and seized property are transferred to latter's territories for investigation, prosecution and sentencing. These

countries had to adopt anti-piracy legislation to deal with such cases and due to the increasing number of prosecutions they now seem reluctant to accept any more cases.

United Nations Security Council Resolutions

The UN Security Council also remains seized of the phenomenon of piracy and its potential threat to international peace and security. The Security Council has passed a number of resolutions to tackle this problem and to ensure an effective response by the international community to this scourge against maritime safety and security. In its Resolution 1816 (2008) proposed by France and the United States, the Council decided that States cooperating with Somalia's Transitional Federal Government (TFG) in the fight against piracy and armed robbery off the coast of Somalia were authorized to enter the territorial waters of Somalia for the purpose of repressing such acts. This extension to foreign States of criminal jurisdiction in sovereign areas is quite except. The wider significance of this resolution is doubtful in view of the express declaration that it was approved by the TFG, that it is not applicable to waters other than those of Somalia and that it shall not be considered as establishing customary international law. Resolution 1851 (2008) extended the authority of cooperating State, at the request of the TFG, to undertake all necessary measures that are appropriate in Somalia, thus authorizing a right of entry into Somalia land territory. Resolution 1950 (2010) extended this authorization for another year and required that States entering Somalia's territorial waters act consistently with applicable international law. In subsequent resolutions the Security Council inter alia urged protection for humanitarian aid destined for displaced peoples in Somalia and noted with approval the launching of the EU maritime protection operation 'Atlanta' to assist with the protection of WFP vessels and other vulnerable vessels sailing off the Somalia coast.

The Security Council in its Resolution 1918 (2010) requested the UN Secretary-General to prepare a report on possible options to further the aim of prosecuting and imprisoning persons responsible for piracy and armed robbery at sea off the coast of Somalia, including in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements.

The report proposed the following options:

- Enhancement of UN assistance to States in the region to prosecute and imprison persons responsible for piracy and armed robbery. (The UN Office on Drugs and Crime already provide assistance to Kenya and Seychelles for this purpose).
- Establishment of a Somali Court sitting in the territory of a third State in the region (with or without UN assistance).
- Establishment of a Special Chamber within the national jurisdiction of a State or States in the region (with or without UN participation).
- Establishment of a Regional Tribunal on the basis of a multilateral agreement among regional States (with UN participation).

- Establishment of an International Tribunal on the basis of an agreement between a State in the region and the United Nations with both UN and national components.
- Establishment of an International Tribunal by a Security Council resolution under Chapter VII (similar to the International Criminal Tribunals for Yugoslavia and Rwanda).

The problem is except for the last option all the other options only relates to the piracy problem off the coast of Somalia and do not take into account that piracy also occurs in other regions such as West Africa, South and Southeast Asia and the Caribbean.

The idea of creating new regional or international courts or tribunals to deal with piracy and related crimes committed at sea raises a number of issues, such as the time it takes to establish such judicial structures and for it to become operational. Funding also seems to be problematic due to some States' resistance to the proliferation of international courts and tribunals and their reluctance to contribute to the escalating costs of such institutions. There is also no guarantee that all States would be able and willing to cooperate with the court or tribunal and that those cases would be dealt with more efficiently and expeditiously.

In the meantime it is absolutely critical that the situation be brought under control and that measures are taken to make the current system more effective.

Short-term measures include:

- (i) Regional cooperation – the enhancement of cooperation amongst States and organizations in the region is fundamental to achieving and maintaining maritime safety and security. The main areas of cooperation include information-sharing, policing and enforcement, investigation, prosecution and sentencing. Support and assistance should be given to States who lack the capacity and resources to fulfill their obligations and implement these measures. I have already mentioned the assistance given by the United Nations Office on Drugs and Crime, through its Counter Piracy Program to States in the region.
- (ii) The enactment of domestic legislation and criminalizing acts of piracy, armed robbery and related crimes at sea. An effective criminal justice system to deal with such crimes is essential and it is incumbent on all States to take the necessary measures. The Security Council in Resolution 1918(2010) affirmed that the failure to prosecute persons responsible for acts of piracy and acts of armed robbery off the Somalia coast undermines international anti-piracy efforts and called on all States to criminalize piracy, to prosecute suspected pirates and to imprison convicted pirates in accordance with international human rights law. Although this resolution sought to ensure a level of legal and procedural uniformity at the domestic level it does not specify the scope and content of such domestic laws. In order to ensure the harmonization of anti-piracy legislation and the unified procedural standards are applied by

each State it would be helpful if a draft model law could be prepared for adoption in domestic jurisdictions. It is noted in this regard that the Comité Maritime International has published a draft model law on acts of piracy and violence at sea which may be useful for this purpose.

- (iii) The problem of piracy and armed robbery off the coast of Somalia will not be solved unless real and meaningful steps are taken towards achieving State-building and reconstruction in the country. It is a reality that where there is a total break-down in law and order (and in this case, for so many years) and where communities live in abject poverty due to long lasting droughts and unemployment it provides a breeding ground for illegal activities and where piracy become a means of survival and a way to sustain communities. States and international organizations in close cooperation with the Transitional Federal Government of Somalia and regional authorities should enhance efforts to restore government authority in that State and to impose the rule of law. I believe AALCO has an important role to play in this regard.

Mr. Vice President, Excellencies, Ladies and Gentlemen, this concludes my intervention and I thank for your kind attention.

Vice-President: Thank you Judge Hoffman for that detailed account of piracy. Now I'd like to invite Ms. Mariam Sissoko, Representative of the UNODC, to give some remarks.

Ms. Mariam Sissoko, Country Representative of the United Nations Office on Drugs and Crimes (UNODC) : Distinguished Delegates, Ladies and Gentlemen, it gives me great pleasure to address you today on the issue of "Law of the Sea: Responses to Piracy: International Legal Challenges" during this very important Fifty-First annual session of the Asia-African Legal Consultative Organization.

My name is Mariam Sissoko and I am the Country Representative of the United Nations Office on Drugs and Crime (UNODC) in Nigeria. UNODC has the mission to contribute to the achievement of security and justice, by making the world safer from drugs, crime and terrorism.

The mandates of UNODC are embodied in several Conventions, in particular the Three International Drug Control Conventions (1961, 1971 and 1988); the UN Convention against Corruption; the UN Convention against Transnational Organized Crime; and the UN Global Counter-Terrorism Strategy. Several Security Council Resolutions also set the framework for our interventions in the fight against drugs and organized crime. Acts of piracy continue to be a serious issue of concern in East Africa, resulting in the mounting of an international concerted effort to curb this phenomenon. Piracy has also emerged as a threat to the countries of the Gulf of Guinea, with the recent multiplication of piracy acts off the coasts of countries like Nigeria and Benin. In both East Africa and West and Central Africa, UNODC has been active in assisting countries in their fight against piracy.

In East Africa, piracy off the Horn of Africa and in the Indian Ocean has been steadily increasing over the past few years. The lack of rule of law in Somalia has provoked a surge of hijackings and piracy in the region. Over time, pirates off the coast of Somalia have become much more organized and aggressive. The use of “Mother ships” continues, allowing them to operate hundreds of kilometres off the coast to hijack larger vessels.

Pirate groups may often be linked to other forms of organized crime since they maintain relatively good intelligence collection networks and have been reported to be engaged in the corruption of local officials. Funds from ransoms are widely distributed within local communities, and piracy is becoming a major source of income in some areas. A parallel illicit economy has been created, leading to a growing dependency of coastal communities on funds obtained from piracy. There is also evidence that the rise of maritime piracy feeds the conflicts in Somalia and contributes to further destabilizing the country by strengthening the resources available to certain groups.

Reports by the International Maritime Organization (IMO) indicate that during 2011, there were 286 attacks against ships in the waters off the coast of Somalia, of which 31 were successful. The presence of naval forces close to the coast of Somalia to contain and disrupt the activities of pirate groups has proven effective for the Gulf of Aden, but has led to a geographical expansion of pirate operations into the Red Sea, the Somali Basin and further off the coast of Somalia into the Indian Ocean. Pirates now operate in the high seas at distances of up to 1,750 nautical miles from the coast of Somalia.

The UN Security Council Resolution 1816 of 2008 provided a key international response to piracy off the Somali coast and allowed foreign ships to take action within the territorial waters of Somalia to repress piracy and armed robbery against ships in the same way that international law does in respect of the high seas. UN Security Council Resolution 1851 also adopted in 2008 further authorized “all necessary measures that are appropriate in Somalia”, for the purpose of suppressing piracy and armed robbery at sea upon the request of the Transitional Federal Government (TFG), in accordance “with applicable international humanitarian and human rights law”.

Pursuant to Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established to facilitate the discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. The membership of the Contact Group has continued to expand and there are now representatives of more than 60 countries and international organizations that participate in the plenary sessions and the various Working Groups.

UNODC is an active participant in the Contact Group, and successive Security Council Resolutions on the issue acknowledged the role of UNODC in providing technical assistance to States for the fight against piracy, specifically for the development of the necessary legal frameworks and judicial and law enforcement capacities to enable the prosecution and incarceration of suspected and convicted pirates, as well as allowing for transfers of convicted pirates to serve sentences in Somalia, and to improve prison capacity and conduct prison training in Somalia.

Through its Counter-Piracy Programme launched in 2009, UNODC provides substantial support to countries of the region in their efforts to bring suspected pirates captured off the coast of Somalia to justice. UNODC has worked with a number of countries, principally Kenya and Seychelles, to provide support to their full criminal justice system including police, courts, prosecutors and prisons ensuring that the trials of suspected pirates are effective, efficient and fair. The same support is being expanded to Mauritius and Tanzania.

UNODC is providing assistance to States in the region in the review and updating of their counter-piracy legislation; supporting prosecutors through training and office improvements; developing court facilities; facilitating the attendance of witnesses at trial; substantially improving prison conditions and reducing overcrowding; and improving police practices and evidence handling.

The UNODC Counter-Piracy Programme further implements an Advocacy Programme looking into preventive measures in countering piracy, by reaching out to Somali youth, dissuading them from a career in piracy, and liaising with key stakeholders including community leaders, politicians and religious leaders. UNODC has also engaged in initiatives against illicit financial flows linked to piracy aiming to establish efficient mechanisms and procedures to identify, freeze and seize illicit financial flows from piracy and efficiently prosecute the responsible financiers and sponsors.

UNODC has also started the implementation of the Piracy Prisoner Transfer Programme endorsed by the Security Council in its Resolution 2015 adopted in 2011, through which support is provided for the transfer of convicted pirates back to Somalia to serve their sentences in their own country. UNODC is working, particularly with the authorities in Somaliland and Puntland, to ensure that suitable long-term imprisonment facilities are available. The Programme proposes initiatives to ensure the improvement of the prison conditions including construction, mentoring and monitoring of new prisons.

Turning now to piracy in West and Central Africa, it is worth mentioning that a joint UN Assessment Mission was conducted in November 2011, following Security Council Resolution 2018 of 2011 in which the Council expressed deep concern about the threat posed by piracy and armed robbery to international navigation, to security and stability and to the economic development of States in the Gulf of Guinea region. The mission took place following the multiplication of acts of piracy, especially off the coast of Benin Republic.

Piracy in the Gulf of Guinea is not a new phenomenon. Since the late 1990s, the region has been facing acts of piracy targeting high-value assets, particularly oil shipments. The Gulf of Guinea is a geographical area that stretches from Guinea in the north-western part of the African continent to Angola in the south-central part of the continent. Collectively, the Gulf of Guinea countries produce more than 5 million barrels of oil per day. The region is also rich in minerals, including bauxite in Guinea, gold in Ghana and unexploited resources such as iron ore in Liberia and other countries. Since 2010,

incidents of piracy and armed robbery in the area have risen significantly, making the region the second most acute piracy problem on the African continent.

Pirates in the Central African part of the Gulf of Guinea mainly target both oil drilling platforms and ships, with the intention of seizing money, radio equipment and goods from the crew and the passengers. On some occasions, hostages are taken for ransom. On the other hand, attacks in the West African sub-region generally occur during ship-to-ship transfer operations, with a view to stealing oil cargo and other high-value assets.

In its 2010 annual report, the International Maritime Organization (IMO) listed the West African coast among the top six piracy hotspots in the world. According to IMO, 58 attacks were reported in the region during the first 10 months of 2011, as opposed to 45 in 2010. Twenty-one of the reported attacks in 2011 occurred off the coast of Benin Republic, 14 off the coast of Nigeria, 7 off the coast of Togo, 4 off the coasts of the Democratic Republic of Congo, the Republic of Congo and Guinea, 2 off the coast of Ghana and 1 off the coasts of Angola and Côte d'Ivoire.

The mission, which I had the pleasure of co-leading together with a colleague from the UN Department of Political Affairs, specifically assessed the case of Benin Republic as one of the most vulnerable countries affected by piracy in the Gulf of Guinea. As mentioned earlier, 21 pirate attacks in the waters off Benin Republic were reported in 2011, as compared with none in 2010 and 1 in 2009. The majority of attacks occur at night and target oil and chemical vessels that are stationary while conducting ship-to-ship transfer operations, usually at a distance of over 40 nautical miles offshore. The attacks are therefore not seen as isolated or opportunistic, but rather as systematic and organized.

The assessment mission was informed that the pirates generally utilize faster boats and more advanced equipment during these attacks than those operated by the Benin navy. Acts of piracy off the coasts of Benin are likely to involve corruption as well, as the fact that the stolen oil subsequently resurfaces on the informal market in the main ports along the Gulf of Guinea is indicative of some level of collusion with officials at the ports. In this regard, several Benin officials acknowledged that corruption at the Port of Cotonou is likely, and that the attacks could not occur without the complicity of Benin nationals operating on land.

The crackdown by the Government of Nigeria on piracy and oil bunkering off its shores might have led criminal organizations operating in Nigerian waters to shift their operations to the waters of Benin. According to IMO, the number of pirate attacks off the coast of Nigeria decreased from 48 in 2007 to 25 in 2010 and 14 in 2011. While acting to deter piracy off its coasts, Nigeria also provided support to Benin Republic through the conduct of joint patrols along Benin's coast. The programme, known as Operation Prosperity, is being conducted under Nigeria's tactical command and Benin's operational command, and appears to have been successful in deterring acts of piracy off the coasts of Benin Republic.

In both Central and West Africa, regional interlocutors underscored the need for implementing African solutions to African problems. While some expressed their openness to the idea of having foreign warships patrolling in the Gulf of Guinea, similar to international naval operations off the coast of Somalia, many others cautioned that a robust international naval response in the Gulf of Guinea would be a highly controversial issue, especially given broad regional concern over perceptions of external interference.

There were repeated calls from various interlocutors for the United Nations to play a facilitation and coordination role with respect to the issue of piracy. It was widely agreed that as a neutral intergovernmental body responsible for the maintenance of international peace and security, the United Nations was the ideal forum to mobilize the leaders, countries and organizations of West and Central Africa towards a joint maritime security framework for the Gulf of Guinea and, eventually, to mobilize and coordinate international assistance to support those regional efforts. It was also proposed that the United Nations assist in ensuring that there would be no duplication of efforts or gaps in addressing the threat of piracy in the Gulf of Guinea. In particular, matching identified needs with adequate resources was seen as vital.

The assessment mission recommended several courses of action to face the threat of piracy in the Gulf of Guinea, including stronger regional cooperation, as no country in the region appears to have the capacity to tackle maritime insecurity alone, with many pirate attacks occurring beyond national territorial waters and reaching into the exclusive economic zones. It is worth mentioning in that context that a regional summit of Gulf of Guinea Heads of State, called for by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission should be convened in 2012, with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea. This initiative would be closely coordinated with the African Union.

UNODC stands ready to assist the countries of the Gulf of Guinea both at national and regional level. At national level, UNODC is supporting the implementation of the recommendations of the assessment mission, as well as UN Security Council resolutions 2018 (2011) and 2039 (2012). Given the prevalence of attacks off the coast of Benin, UNODC is supporting the development of a National Integrated Programme to comprehensively counter illicit trafficking and transnational organized crime, including piracy. UNODC also stands ready to assist other countries which will request so, to develop maritime security strategies and enhance national legal frameworks.

I thank you for your attention.

Vice-President: I would like to thank Ms. Mariam Sissoko for her very instructive presentation. Now I would like to invite His Excellency Ambassador Yasuji Ishigaki of Japan to give his presentation.

H.E. Amb. Y. Ishigaki, the Leader of the Delegation of Japan: Mr. President, Distinguished colleagues, Ladies and gentlemen, it is great pleasure and honour for me to deliver this presentation on the issue of piracy. Piracy has been dealt with in international law as a serious crime for the international community since its very early days. But in contemporary times the provisions on piracy tended to be considered by some as legacy from the past centuries.

However, today piracy has reemerged as one of major issues facing the world. The international community has already been trying its utmost to address the issue of piracy for some years now, but it remains to be a real and grave threat to the safe navigation of ships.

Japan's economy depends to a great extent on import of energy resources and raw materials and export of manufactured goods, all of which hinges on security of sea lanes. For this reason, for many years, Japan has been tackling with piracy question in Malacca Strait in cooperation with the countries of Southeast Asia and upon the surge of piracy along the coast off Somalia, Japan has been actively participating in the international efforts to combat piracy.

My presentation today is composed of the following four blocks:

- First, I will give a very brief overview of the current situations of piracy, to get an idea of what we are dealing with.
- Second, I will outline the international legal regime regarding piracy as well as some major international and regional frameworks aimed at coordinating the work of the international community in addressing the piracy issue.
- Third, I will discuss the challenges, both legal and practical, and identify the major issues that need to be addressed in order to ensure effective anti-piracy responses of the international community.
- Finally, I will present briefly Japan's anti-piracy efforts and experiences.

1. Overview

- (1) According to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), in 2011, there were 439 incidents of piracy and armed robbery at sea worldwide, down 1% from 2010. Geographically, of these, 237 incidents occurred in the Gulf of Aden and surrounding areas off the coast of Somalia, which is about 54% of the incidents worldwide. In comparison, there were 80 incidents in South East Asia, including the Straits of Malacca and Singapore, which is about 18% of those occurred worldwide.
- (2) As for the statistics in 2012, also according to the IMB, there have been 157 attacks and 18 hijacks worldwide as of 13 June 2012. 62 attacks and 12 hijacks occurred in the waters off the coast of Somalia, involving 219 hostages.
- (3) Since we are gathered here in Africa, and given the overwhelming number of incidents occurring in waters off the coast of Somalia, I will try to focus my presentation on piracy in this region.

2. International anti-piracy law and the efforts by the international community

Let me now turn to the law governing anti-piracy measures and the efforts by the international community.

(1) United Nations Convention on the Law of the Sea (UNCLOS)

(i) Definition of Piracy

Article 101 of the UNCLOS stipulates the definition of piracy as shown. The three important conditions are that the illegal acts of violence are:

- (a) committed for private ends;
- (b) committed by the crew or the passengers of a private ship or a private aircraft; and
- (c) directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.

(ii) Universal jurisdiction

Article 105 of the UNCLOS provides for universal jurisdiction. It stipulates that every State may seize a pirate ship or aircraft and arrest the persons and seize the property on board. It further stipulates that the courts of the State which seized pirates may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property.

(iii) Ships and aircraft which are entitled to seize on account of piracy

However, it is not that any ship may seize and arrest pirates on the high seas. UNCLOS Article 107 stipulates that “a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.” It is only the warships, military aircrafts, and/or government ships and aircraft that are authorized to carry out the seizure and arrest.

That, in a nutshell, is the international law governing anti-piracy measures. I will now give a brief outline of the various international and regional anti-piracy efforts to coordinate the actions of States. These frameworks serve to supplement the international anti-piracy regime.

(2) Anti-piracy efforts of the international community

(i) UN Security Council Resolutions

UN Security Council has adopted a number of resolutions concerning piracy issues, some notable ones for the purpose of this presentation are: S/RES/1816, S/RES/1846, S/RES/1851, S/RES/1897 and S/RES/2020, all of which are acts under Chapter VII of the UN Charter. Resolution 1897 combined Resolution 1851 and 1846, authorising States, regional and international organizations to “take all necessary measures that are appropriate in Somalia” under certain conditions.

(ii) Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

In November 2011 the then Prime Minister Koizumi of Japan proposed to establish a legal framework to promote regional anti-piracy cooperation in Asia, and Japan led the negotiations to conclude the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, a.k.a. ReCAAP, and the agreement was concluded November 2004. It is the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia. To date, 17 States have become Contracting Parties to the ReCAAP. The main feature of the Agreement is the establishment of ReCAAP Information Sharing Center (ReCAAP ISC) to facilitate exchange of information among the ReCAAP Focal Points. ReCAAP ISC was officially launched in Singapore on 29 November 2006.

(iii) IMO Djibouti Meeting

In January 2009, a high-level sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for western Indian Ocean, Gulf of Aden and Red Sea States was convened by the International Maritime Organization (IMO) in Djibouti, and an important agreement was concluded by States in the region. Signatories to the agreement, known as the Djibouti Code of Conduct, declare their intention to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships.

(iv) Contact Group on Piracy off the Coast of Somalia (CGPCS)

Pursuant to UN Security Council Resolution 1851 mentioned earlier, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. This international forum has brought together more than 60 countries and international organizations all working towards the prevention of piracy off the Somali coast. The CGPCS consist of five Working Groups, established to address the focus areas. The Working Groups are tasked with: military and operational coordination; capacity building; judicial issues; shipping self-awareness; public information related to piracy; and financial flows related to piracy.

(v) G8 Process

The G8 Foreign Ministers' Meeting held recently in April 2012 in Washington, the Ministers agreed to a Chair's statement reiterating "their firm condemnation of maritime piracy and armed robbery at sea off the coast of Somalia and called for the TFG to enact counterpiracy legislation". The Ministers also recognized that the issues of piracy and armed robbery at sea "can only be effectively addressed through broad, coordinated, and comprehensive national and international efforts, along with the strengthening of coastal states' as well as regional organizations' capabilities".

(vi) Counter-piracy activities: patrolling the Internationally Recommended Transit Corridor (IRTC) in the Gulf Aden.

In the Gulf of Aden, there are coordinated efforts by organizations and independent States to patrol the area designated as the Internationally Recommended Transit Corridor (IRTC). Currently the EU Naval Force (EU NAVFOR), EU and the Combined Task Force 151 of the Combined Maritime Forces (CMF CTF-151) have frigates, destroyers and surveillance aircrafts deployed. There are also naval ships of independent States, such as Japan, Russia, India, China, Malaysia, Saudi Arabia, Australia and Iran, joining the coordinated effort to counter-piracy.

(3) SUA Convention

I would also like to touch briefly upon the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or SUA Convention, adopted in March 1988. While it is not an anti-piracy framework, it is a legal instrument aimed to prevent unlawful acts against passengers and crews on board ships. The Convention criminalizes certain unlawful acts against ships, and it obliges State Parties to establish jurisdiction over the offences set forth in the Convention. The Convention further obliges State Parties either to extradite or prosecute alleged offenders.

In 2005, a Protocol amending the SUA Convention was adopted, which added terrorism and transportation of weapons of mass destruction using ships as offences under the Convention. It also added provisions for co-operation and procedures to be followed if a State Party desires to board a ship flying the flag of another State Party, when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.

3. Legal and practical challenges

I would now like to discuss the legal and practical challenges of combating piracy.

(1) Legal issues

First, please take a look at Article 100 of the UNCLOS. It only stipulates a general duty to cooperate in the repression of acts of piracy, but it does not set forth specific methods of cooperation that should be carried out by each country. It is thus the various international and regional frameworks I just described that are filling the gaps.

Second, let us go back to the provisions of Article 105. Under the Article, “every State may seize a pirate ship or aircraft ... and arrest the persons and seize the property on board.” It sets forth a universal jurisdiction authorizing every State to apprehend pirates, but of course the discretion whether or not to actually exercise jurisdiction rests with individual States.

Also under Article 105, “[t]he courts of the State which carried out the seizure may decide upon the penalties to be imposed”, in other words once a State apprehends pirates, that State is given the right to prosecute. Prosecution is not an obligation under the Article, and also, it is not necessarily clear from the text of the Article what States other than the State which carried out the seizure can or should prosecute the arrested pirates.

In view of the above, in order to ensure effective seizure, arrest, extradition, prosecution and punishment of pirates, major challenges under the current legal framework are whether we could establish international and regional effective framework for cooperation, coordinating jurisdictions among several interested States, and develop the judicial and other infrastructure including domestic legislation in each State.

(2) Practical challenges: how to ensure prosecution of pirates

There is no doubt that there exists a strong consensus in the international community that piracy is a serious threat and must be condemned, and that the issue requires coordinated effort of the international community as a whole, as represented in the series of UN Security Council Resolutions and other instruments. In fact, there already exist various international and regional frameworks, and many States are engaged in counter piracy activities as discussed earlier.

However, above all, difficult challenge is how to address the issue of impunity. In fact, many of the pirates arrested off the coast of Somalia have been released due to lack of evidence. Furthermore, even in cases where there is sufficient evidence, States which carries out the seizure and arrest are often reluctant to take the pirates to its own country for prosecution.

Given the growing concern in the international community, a report was prepared in January 2011 by Jack Lang, a Special Advisor to the UN Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia. The purpose of the report was “to identify any additional steps that can be taken ... to prosecute and imprison persons who engage in piracy, and explore the willingness of States in the region to serve as potential hosts for any of the options for potential new judicial mechanisms.” In the report, the Special Advisor made 25 proposals, and as regards the issue of prosecution, he proposed to establish, within eight months, “a court system comprising a specialized court in Puntland, a specialized court in Somaliland and a specialized extraterritorial Somali court that could be located in Arusha”, and gave the first and the third options priorities.

Following the report by Jack Lang, the Security Council unanimously adopted Resolution 1976 in April 2011, which decided “to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region”, and requested the Secretary-General “to report within two months on the modalities of such prosecution mechanisms”. Such report was produced by the Secretary-General in June.

The SG endeavored to seek possible formula of solutions but his efforts produced no specific solutions as yet.

4. Japan’s contributions

Finally, let me now turn to the efforts and experiences of Japan.

(1) Anti-piracy law

Japan enacted Law on Punishment of and Measures against Acts of Piracy in July 2009, which is one of the first comprehensive piracy legislation in the world after the entry into force of the UNCLOS. It uniquely defines acts of piracy and prescribes penalties. It can be contrasted with other types of anti-piracy legislations in other countries, such as those substantially ensure penalties for acts of piracy through application of different provisions under criminal laws, or those that have provisions regarding the punishment of acts of piracy but do not establish unique definitions for the crimes of piracy.

Another feature of Japan's anti-piracy law is that it establishes a truly universal jurisdiction: under this law, acts of piracy are punishable even if it is not committed by or against Japanese nationals, and even if the suspects are arrested by non-Japanese warships etc. and transferred to the Japanese authorities.

(2) Deployment of destroyers and surveillance aircrafts

Under the anti-piracy law, Japan has two destroyers of the Maritime Self-Defense Force (MSDF) deployed in the waters off the coast of Somalia. So far, they have escorted 320 times, 2,560 ships (as of 6 June 2012).

Japan also has two P-3C maritime patrol aircrafts in the region since 11 June 2009, providing information to naval warships of other countries deployed in the region. In June 2011, Japan's Self-Defense Forces opened its first full-fledged overseas base in Djibouti.

(3) The incident involving M/V Guanabara

In March 2011, Japan related oil tanker M/V Guanabara was attacked by Somali pirates off the coast of Oman. The ship and the crew were freed by the U.S. Navy, and the four pirates were transferred to Japanese authorities and brought to Japan. They were indicted in May 2011, and they are in the pre-trial arrangement proceeding. This was the first case of piracy to be prosecuted under the anti-piracy law of Japan. The trial has been quite difficult especially due to difficulties in finding Somali/Japanese interpreters.

(4) Assisting development of maritime security capabilities of the States in the region

Japan has contributed 14.6 million US dollars to the IMO, which is to be utilized for establishment of a training center in Djibouti. Japan has also assisted maintenance and operation of piracy information centers in Yemen, Kenya and Tanzania. Further, Japan has contributed 3.5 million US dollars to the trust fund to support prosecution pirates. Japan has also invited coast-guard officials from Yemen, Oman, Kenya, Djibouti and Tanzania for training in Japan.

5. Concluding remarks

In order to address the root causes of piracy in the region, we must work to stabilize the political, economic and social situations in Somalia. In this regard, Japan has been extending assistance to Somalia, in areas such as improvement of security situations, humanitarian assistance and development of infrastructure. It is essential that the

international community provides coordinated and unified assistance to Somalia in order to truly address the issues of piracy.

Japan is planning to take-up the issue of piracy as one of the agenda items for TICAD V to be held next year in June. Japan is ready to continue working closely with the international community to fight against piracy.

Thank you.

Vice-President: I thank His Excellency Ambassador Ishigaki. Now I call Commodore Austin Owkhor-Chuku of the Navy of the Federal Republic of Nigeria to deliver his paper.

Commodore Austin Owkhor-Chuku of the Federal Republic of Nigeria: Mr. Vice-President, it is indeed a cherished privilege to discuss with you this day the thorny issue of “Piracy within the West African Coast of the Gulf of Guinea”. This paper is coming as a matter of fact at a time when the twin menace of piracy and sea robbery are taking serious tolls on international maritime commerce and age-long business of carriage of goods by sea. The grave danger posed by piracy has been globally visible and it is no less the same particularly in the continents of Africa and Asia. There has been obvious distortion, reduction and hampering of maritime trades as a result.

As you all know trade and most international commerce are conducted by littoral nations through the medium of the sea lanes and oceans of the world linking us all as global commons. Hence, it is usually asserted that the sea is man’s common heritage and succinctly captured by HUGO GROTIUS in his 17th century work titled “The Wealth of Nations”, where he developed the concept of “MARE LIBERUM” which simply means freedom of use of the sea. It highlighted the right of all nations to use the seas equally, according to their ability without let or hindrance.

Albeit history is replete with instances of denial by powerful maritime nations the right to use the sea and resources thereof by less powerful states. Thus in 1493, the world oceans were divided between Spain and Portugal vide the PAPAL BILL OF DEMARCATION. In a like manner the Great Britain as it then was, in the 17th and 18th centuries respectively used its AMANDA to deprive weaker states the right to optimally use the sea for their economic benefits. In today’s China the authorities of this great maritime nation have used copious military forces to prevent its neighbours (Philippines and Vietnam) access to the resources at the oil-rich South China Sea.

Finally, beyond states’ controls and domination of the seas, criminal activities by pirates and sea robbers have in no small measure limited the opportunity to freely use the sea by stakeholders. Notably, piracy, sea robbery and other contemporary impediments across the globe and particularly in the Gulf of Aden, east Coast of Africa, the wider Indian Ocean and of course the Gulf of Guinea, are posing serious security challenges on international maritime commerce. This situation calls for unified action by stakeholders for our respective economies to thrive.

Africa and Asia have been engaged overtime in different commercial and legal relationships. Most of which are facilitated by an interrelated maritime culture and tradition. It is thus an imperative that problems of piracy currently ravaging our maritime commerce is addressed through an integrated synergy to boost further and better business relationship. Therefore, the 51st Session of the Asian – African Legal Consultative Organisation in the end would serve as the driver for such integration and synergy for our mutual benefits.

1. Aim

The aim of this paper is to examine acts of piracy within the Gulf of Guinea.

2. Scope

This paper would therefore cover the following:

- a. Location and strategic importance of the Gulf of Guinea.
- b. Piracy within the Gulf of Guinea.
- c. Other atrocities committed in the Gulf.
- d. The way forward.

Location and Strategic Importance of the Gulf of Guinea

Definitively, a gulf is the body of water within an indentation or curve of the coastline. In size, it is between the bay and the sea. Whereas a bay is the body of water enclosed by land and an arm of the sea towards land. Some prominent Gulfs of the world include the famous Gulf of Mexico – which suffered a deep water oil spill in 2010, Gulf of California, Gulf of Fonseca, Gulf of Finland, the Persian Gulf, Gulf of Aden and Gulf of Guinea.

The Gulf of Guinea is the maritime environment stretching from the coast of Liberia to Luanda in Angola and lying between Latitude 40 22' 34" N, Longitude 70 43'01" W and Latitude 00 38' 00" S, Longitude 80 42' E within the South Atlantic. It covers an area of about 250,000nm². It is the maritime zone of the Gulf of Guinea Commission. Rivers Niger and Volta both empty into the Gulf. Its coastlines include the Bight of Benin and Bight of Bonny. The region is encompassed within the West African sub-region.

Having established the geography of the Gulf of Guinea, it is pertinent to note here that strategically, the Gulf is globally and regionally important in many ways particularly as a major trade and shipping route linking the North and South Atlantic in one hand and to some extent, the continents of South America and Africa (East to West Coasts respectively). Furthermore, the Gulf provides an ample sea area for military exercises, researches and rich ecosystems. The region is now regarded as one of the world's top oil and gas exploration hotspots. According to Gene Van Dyke, an oil and gas exploration mogul and Chairman Vanco Energy, Houston US, notes;

“West Africa’s potential is really phenomenal. West Africa is now, and will be in future, fantastically important to the global oil economy”.

Former US Vice President Dick Cheney, once noted in a National Energy Policy Report that;

“West Africa is the fastest growing supply source of oil and gas for the American market”.

Buttressing the points made by these great men about the strategic importance of the Gulf of Guinea, the region finds relevance in a Global Deep water Oil Reserves 2003 assessment chart as follows:

- a. West Africa (Gulf of Guinea) – 14.5 Billion Barrels.
- b. Gulf of Mexico – 12.393 Billion Barrels.
- c. Northwest Europe – 3.126 Billion Barrels.
- d. Mediterranean Sea – 1.868 Billion Barrels.
- e. Brazil – 8.396 Billion Barrels.
- f. Asia Pacific – 2.139 Billion Barrels.

Source: Douglas – Westwood/Infield Systems’ World.

Projected Oil Production of some Member States of GGC 2005 – 2030 in Millions of Barrel

Sl.No. (a)	Country (b)	2005 (c)	2010 (d)	2015 (e)	2030 (f)
1.	Angola	1,098,000	2,026,000	3,729,000	4,422,000
2.	Cameroon	84,000	72,000	66,000	61,000
3.	Congo	285,000	300,000	314,000	327,000
4.	DRC	30,000	33,000	30,000	25,000
5.	Equatorial Guinea	313,000	466,000	653,000	724,000
6.	Gabon	303,000	291,000	279,000	269,000
7.	Nigeria	9,893,000	11,988,00	13,892,000	16,148,000

Source: EIA, US Department of Energy.

You would note that this position has not changed. The US would depend on the region for a quarter of its oil imports by 2015. Regarding food and other mineral resources the region stands out. It is however sadly noted that the full potentials of this great region cannot be fully achieved in the face of pervasive criminality by pirates.

To partly solve the problems of the region the Gulf of Guinea Commission was established on 3 July 2011. Its membership is limited to sovereign states bordering the Gulf of Guinea. These are:

- a. Nigeria.
- b. Cameroon.
- c. Equatorial Guinea.
- d. Gabon.
- e. Republic of Congo.

- f. Democratic Republic of Congo (DRC).
- g. Sao Tome and Principe.
- h. Angola.

The Commission would:

- a. Create mutual confidence and trust among members.
- b. Create an atmosphere of mutually beneficial economic activities pursued peacefully by their citizens.
- c. Harmonize the exploration of national resources (fishing, oil and gas) in overlapping areas of Exclusive Economic Zones.
- d. Provide framework for monitoring and controlling environmental degradation.
- e. Articulate and coordinate common positions on issues of interest to enhance peace and stability in the region.

In sum, the veritable strategic credentials of the region include:

- a. Emergence as a cauldron of global energy politics.
- b. Supplier of energy to the highly industrialised and emerging economies of the world.
- c. Reservoir of high grade hydrocarbon deposit with estimated strategic reserves of over 16 billion barrels.
- d. Ensuring shorter delivery distance to US East Coast refineries. With better safety delivery credentials.
- e. Bestriding the strategic East-West trade routes linking the rich East raw materials and industrialized centres of the West.
- f. Reservoir of Human and material resources. These are potentials necessary for emergence as regional power and important ally to international partners.

Piracy within the Gulf of Guinea

The new International Webster's Encyclopedic Dictionary of English Languages defines piracy simply as robbery on the high sea. Acts of robbery on the high seas have reached a crescendo particularly at the Gulf of Aden, east African Coast, the wider India Ocean and the Gulf of Guinea. These areas have been designated as high risk areas by the International Maritime Organisation (IMO). Piracy in these areas has become phenomenal and monumental occasioning hijacking, hostage-taking, killing of crew members, etc. Shipping activities along these routes have been so badly distorted that the IMO is recommending onboard embarkation of Privately Contracted Armed Security Personnel (PCASP for short) to provide security and safety of vessels plying these high risk areas. These recommendations have been forwarded to coastal flag states including Nigeria and also to ship-owners and ship operators for consideration. For us in Nigeria, this policy is currently undergoing necessary scrutiny by stakeholders to unravel possible infringements and implications to national security and sovereignty.

Added to this, is the problem of high cost of insurance and exorbitant cost of sundry goods which would accrue as a result of embarking PCASP and transshipment. It is no doubt therefore that the overall effect is that the economies of these littoral states under the siege of pirates have been performing abysmally overtime. The Gross Domestic Products of these countries have remained backward.

Piracy in the Gulf of Guinea affects a number of countries in West Africa and is fast becoming an issue of international concern. Piracy in the Gulf evolved over the first decade of the century. For sometime shipping and oil services had been at risk particularly at the Niger Delta area of Nigeria. In general pirates had become more aggressive and very sophisticated. Thus in 2010, forty five incidents and in 2011, sixty four incidents were reported to the UN (IMO). However, many events go unreported. Primarily vessels are captured for their valuable cargo rather than for hostage-taking. Hence, seized oil tankers are redirected to chartered tankers that receive the stolen oil.

Piracy interferes with legitimate trading interests of the Gulf of Guinea countries. For instance, trade in Benin's major port, the Port of Cotonou has been reported in 2012 to have dropped by 70%. In all, loss of revenue due to piracy in the Gulf of Guinea arising from stolen goods, provision of extra security and higher insurance charges has been estimated to about 2 Billion US Dollars.

The international community has expressed concern over the rising spate of piracy attacks in the Gulf of Guinea. It is reported that attacks and violence against ships and crew are becoming "dangerously high" within this region. Thus, in November 2011, the UN Secretary General Ban Ki-Moon assembled a team to examine the situation. As a result, recommendation was made to convene a regional summit to form a united front by affected African countries to tackle piracy. It has been recognised that the area needs a comprehensive maritime security framework across national boundaries to fight piracy. Nevertheless, logistics and technical assistance would be needed from the international community to achieve piracy-free maritime domain in the Gulf of Guinea. Some of the attacks so far recorded are:

- a. 2003 – 39 incidents.
- b. First half of 2004 – 13 incidents.
- c. 2007– 56 incidents.
- d. 2008– 40 incidents.
- e. First half of 2011 – 18 incidents within the waters of Nigeria and Benin and 64 incident overall.

On the whole, incidents of piracy and sea robbery within the Gulf of Guinea is continually on the rise and therefore evokes concern from all quarters. Remarkably, the Nigerian President DrGoodluckEbele Jonathan and his Beninois counterpart, Thomas BoniYani launched joint naval operations in the Gulf of Guinea among other diplomatic efforts. In any case Nigeria has the lion's share in respect of funding and human resources contribution.

Other Atrocities Committed in the Gulf

Besides piracy other atrocities committed against the region include:

- a. Illegal oil bunkering.
- b. Hostage-taking.
- c. Drug trafficking.
- d. Human trafficking.
- e. Terrorism and militancy.
- f. Poaching.
- g. Smuggling in contrabands.
- h. Gun running.
- i. Environmental degradation.

The most unfortunate is that some unscrupulous Western and Asian business patrons encourage and/or sponsors piracy and militancy within the region and in particular the Niger Delta area to boost their takes in the “Monkey Business” in oil and going on in the general area. Therefore, tackling piracy and other atrocities committed within the region would require the concerted effort and assistance of the UN, US and EU, acting sincerely, faithfully and committedly.

The Way Forward

Piracy has become a serious threat to peace, security and development in the Gulf of Guinea area. To fully tackle the menace of piracy and other atrocities in the Gulf, the followings are recommended as way forward:

- a. A comprehensive and united action by the states within the region against pirates, terrorists, militants and their sponsors or patrons should be undertaken. To do this effectively, necessary political will along strong policy option is a quintessential. This would ensure adequate patrols, surveillance, and integrated anti-piracy strategy.
- b. Establishment of a Maritime Development Bank. This would ensure availability of capital to undertake innovative research programmes, technology and logistics acquisition.
- c. Development of Maritime awareness curriculum in schools.
- d. Employment generation strategy by the respective regional governments. This would take off the streets, creeks and other pirate sanctuaries unemployed youths who are ready tools for engagement and employment in militancy and piracy.
- e. Good governance, zero corruption tolerance and broad synergy/integration by regional governments.
- f. International assistance through the provision of technical and logistical aid including training and training manuals as well as the provision of air and water platforms.

- g.** UN coordination of a joint ECCAS, ECOWAS GOG Commission efforts on anti-piracy as well as mobilization of international support.
- h.** Adequate sanction by the international community against identified foreign patrons and sponsors of pirates and militants in the region.
- i.** Industrial and technological development in the region.
- j.** Embrace the concept of “Total Spectrum Maritime Strategy (TSMS) through cooperative maritime security consisting of Gulf of Guinea Guard Force, AU/ECOWAS Standby Force, African Partnership Station and other Global Maritime Partnership Initiative. The Nigerian Navy is already working on the various phases of this concept. The region could avail itself of this integrative effort for reasons of economy of scale, economy of effort, concentration of force, force multiplier and allied advantages.

Conclusion

Ladies and gentlemen, thus far, this paper had taken a bird’s eye view of the subject “Piracy within the Gulf of Guinea”. It noted that the high seas and oceans of the world are man’s common heritage and global commons respectively. Upon this HUGO GROTUS couched the concept of “MARE LIBERIUM” – freedom of use of the sea in his work “Wealth of the Nations”.

You would agree with me that the paper promptly highlighted that the freedom of use of the sea by all has been greatly affected by several impediments, all of which are man made. It also identified the strategic importance of the Gulf not just to the region but its global relevance is fully acknowledged. A systematic review of the incidents of piracy and other ongoing atrocities in the Gulf are captured by the paper including the “Monkey Business” in the Niger Delta. Sadly, it noted that some unscrupulous businessmen from both West and Asia are sponsors of such criminality for their parochial benefits and interests.

Furthermore, the paper suggested the way forward and it is advised that all hands must be on deck to check criminality in the region.

Vice-President: I thank Commodore Austin for his paper.

I would to remind all the speakers that AALCO is governed by the spirit of Bandung, which means that if AALCO Member States have issues with each other they should not use this forum.

I would now like to ask Mr. Mathew Egbadon, to deliver his paper.

Mr. Mathew Egbadon, Secretary/Legal Advisor at the Nigerian Maritime Administration & Safety Agency (NIMASA): Your Excellencies, Distinguished ladies and gentlemen; good evening. My name is Matthew Egbadon. The topic I was chosen for is piracy on the West African Coast and we have tried to highlight the subjects or issues that were covered, from the introduction and scope of the paper; the international law piracy and armed robbery; the definition of piracy and armed robbery; the maritime zones relevant to piracy because this is critical; characteristics of each maritime zone; piracy in West Africa, the strategic importance of the Gulf of Guinea which was referred to by the last speaker; The UN assessment mission of piracy conferred by the UNODC; The Nigeria-Republic of Benin joint patrol which will involve the Nigerian Navy; Measures that have been adopted by Nigeria to combat this menace till date; and, the way forward for the sub-region in the fight against piracy.

Some of the issues have been covered by the previous speakers. The topicality of the issue was underscored last year by the International Maritime Organization. That was to bring to the fore, the need for the world to appreciate the enormity of the issues that are surrounding the issue of piracy, and the need for us to have concerted efforts towards finding a solution to it.

Maritime Piracy is today, a major threat to shipping and related activities globally. This issue assumed renewed global focus during the period 2008 to 2009, not because it never existed before but because the period witnessed a surge in Piracy that has not been seen in generations, with the rumblings in the Horn of Africa. It became a serious issue and generated a lot of extra interest, particularly in the Gulf of Aden and the waters off the coast of Somalia. It became a greater threat to vital sea lanes of communication, disrupted commerce, encouraged political aggression and insurgency, and in the process, constricted socio-economic development globally. These worrisome consequences led to the current global effort and that is one reason why we are discussing it this afternoon, with a view to finding a solution to the menace. This paper therefore will take a cursory look, as I have said, at what is piracy.

To briefly explain let me recall the immortal words of Justice Basset Moore in the Lotus Case between France and Turkey that went to the Hague on the issue of jurisdiction of coastal states in an incident that occurred on the high seas. What is of relevance to us is the issue of piracy, which was addressed by Justice Moore, and I quote him:

“Piracy by law of nations, in its jurisdictional aspects, is *sui generis*. Though statutes may provide for its punishment, it is an offence against the law of nations; and as the scene of the pirate's operations is the high seas, which it is not the right or duty of any nation to police, he is denied the protection of the flag which he may carry, and is treated as an outlaw, as the enemy of all mankind – *hostis humani generis* - whom any nation may in the interest of all capture and punish.”

That is what is encapsulated in Section 105 of the UNCLOS.

Section 101 clearly states what piracy is, and as has been stated this afternoon, the definition is grossly inadequate with the present day reality. Anything that happens outside the high seas and to a very large extent the EEZ will not fall under the term currently defined as piracy under international law. Looking at the definition as it is; it must be committed for private ends, so even if it is committed for political ends it does not amount to piracy; two vessels, at least, must be involved; it must be done by the crew of the vessel or the passengers of the vessel; all these make it a very restrictive definition and it has become necessary to take a second look at that definition.

Now in an attempt to find a solution to the gap between the definition of piracy as it happens on the high seas, and what happens in territorial waters, the IMO came up with the definition called “Armed Robbery”, and it stated there:

“Armed robbery against ships means any unlawful act of detention or any act of depredation, or threat thereof, other than an act of “piracy”, committed for private gains, directed against a ship or against persons or property on board such ship, within a State’s internal waters, archipelagic waters, and territorial seas.”

As long as the definition of piracy in UNCLOS did not cover territorial seas, archipelagic waters and territorial waters, IMO had to find the solution and said that this is the definition. When there is piracy within territorial water or internal waters it will be called armed robbery. Then came the IMB definition. As far as the IMB is concerned: “Any act of boarding, or attempting to board, any ship, with the intent to commit theft or any other crime and with the intent or capability to use force in furtherance of that act” is regarded as piracy.

As far as the IMB is concerned, whether it happens in internal waters, whether it happens in territorial waters, or on the high seas, it is piracy. That is the definition of the IMB. And that appears to be enjoying universal acclaim, because a great number of scholars and institutions are adopting this approach to defining what maritime piracy is despite the fact that that legally under international law, those acts do not amount to piracy.

Now looking at the Maritime Zones as I have said, relevant to our discourse this evening are six maritime zones. Where so-called piracy can occur, starts from the contiguous zone, the EEZ, up to the high seas. Anything outside that area is not piracy. I’ve tried in the paper to explain what are maritime zones, international waters, territorial waters, archipelagic waters, EEZ and the high seas.

Piracy in West Africa, looking at the Gulf of Guinea; statistics have been read out all this afternoon, and in particular I want to refer to the report by the UN Office on Drugs and Crime. The statistics show a level of criminality that goes on in the name of piracy and armed robbery in this sub-region. I want to refer to IMB reports that say they will increase their activities on the West-African coast with Nigerian water accounting for incidents on Ten (10) vessels. The report went further to note that the Nigerian Pirates were going further into the sea to attack ships with the level of violence against crew also increasing.

Now what is the strategic importance and attraction of this region? The region is very rich in natural resources. The oil in the Gulf of Guinea is some of the best in the world, in terms of sulphur content which is very low, and so it is something that is highly sought after, globally. That is one of the attractions. Of course, shipping costs, between the Gulf of Guinea and Europe and America, is cheaper than other regions, so that is another way to attract and bring people to the area. There are other resources like cocoa, and of course the fisheries and fishing that we have in the Gulf of Guinea is some of the best globally. And a lot of people come to the area and fish without authorization. So this is what brings people to the region that has aggravated the issue of piracy and armed robbery that we have in the Gulf of Guinea.

Nigeria is strategically located along one of the most important and resource endowed coastal regions - the Gulf of Guinea. Nigeria has a coastline of 850 kilometers and it has a total Exclusive Economic Zone measuring 84,000 square kilometers. The hydrocarbon gas region is very high.

In addition, this region has a very high population. Up to about 350 million people reside in the West-African sub-region. Out of these about 160 million are Nigerians. So, it's a very good market for goods coming from Europe, America and other areas. That's why it is another source of attraction and that is why we have duty to ensure that we protect the region.

On the issue of the UN assessment mission on piracy in the Gulf of Guinea, so much has already been said, but I want to say that that was initiated by President Boni Yayi of the Republic of Benin, who appealed to the international community to help fight piracy in his country and in the Gulf of Guinea. This request was contained in a letter to the Secretary-General of the United Nations.

On October 2011, during an open debate in the Security Council on the matter of "Peace and Security in Africa: Piracy in the gulf of Guinea" convened by Nigeria in its capacity as President of the Security Council, the Secretary General confirmed his intention to dispatch an assessment mission to the region and appealed to ECOWAS and ECCAS (Economic Community of Central African States) to work together to develop a comprehensive and integrated regional anti-piracy strategy for the Gulf of Guinea.

So, the mission came out with these reports, and as we have been told this afternoon, they came up with a lot of findings. More than 5 million barrels of oil was produced per day in the region. This is in addition to the fact that the region supplies more than three quarters of the World supply of Cocoa, aside the abundant riches in minerals. These "riches" and other political considerations have unfortunately accounted for the surge in these incidents of piracy which no country in the region can singularly confront. The report in this regard took cognizance of the efforts of the Nigerian government to assist neighboring Benin Republic, which I will come to later.

The report makes some recommendations. First, the need to convene a regional summit of Gulf of Guinea Heads of State as supported by the Security Council in its resolution

2018 of (2011), as early as possible in 2012, with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea. That is one strategy. The imperative of cooperation among ECCAS, ECOWAS and the Gulf of Guinea Commission take into account provisions of the IMO/MOWCA MOU. This is in addition to intensifying the joint patrol at sea in the Gulf of Guinea.

It was also recommended for the need to develop land based patrolling, surveillance and information gathering systems among the countries in the sub-region. ECOWAS and ECCAS states were also encouraged to take active measures to criminalize acts of piracy and to support the development of a proper judicial institution, because most of the states in the region do not have a proper legal framework to punish acts of piracy. And the law enforcement agencies of ECOWAS and ECCAS Member States were also advised to consider taking steps to be connected to existing regional and international networks for combating organized crime including criminal activities at sea. In particular, they should consider joining the secure global police communication system of INTERPOL referred to as I-24/7, which will allow them to share information, coordinate their activities and access INTERPOL databases.

The Republic of Benin as you've been told is one of the most vulnerable countries, affected by piracy in the Gulf of Guinea. Twenty-one piratical attacks were reported in 2011 as opposed to no single incident in 2010. Because of this trend, President Boni Yayi sought regional support in the quest to fight piracy. He came to Nigeria and met Mr. President Goodluck Jonathan, which resulted in the President directing NIMASA to move to the Republic of Benin's territorial water with the Nigerian Navy, for an initial period of six months, to conduct a joint patrol. That has brought a level of sanity to the issue of piracy. For the first six months, there was not a single incident of piracy reported in those waters.

ECOWAS, ECCAS, MOWCA, all these can be harnessed to have a common platform to fight, as this is a regional issue that cannot be fought by a single country. Of course, Nigeria has started by collaborating with the Republic of Benin to patrol the waters of the Republic of Benin and Nigeria, and we hope that this will be replicated across the region.

There is a need to strengthen regulations and to require people and countries to pool their resources together and that's why we are also getting the private sector involved. Why the private sectors are not involved is because the environment is not conducive for them to carry out their business.

The Sub-region has a number of institutional bodies addressing a wide range of issues. These include ECOWAS and MOWCA. In line with the IMO/MOWCA Memorandum of Understanding (MOU) concluded in Dakar in 2006, which aims at enhancing maritime safety, security and Law enforcement throughout the sub-region, there is a need to take further concrete steps towards building a joint maritime security approach through ECOWAS.

It is also imperative for the Economic Community of Central African States (ECCAS) and West African States to further integrate their operational response to this scourge taking a cue from the efforts of ECCAS States which has led to the establishment of the Regional Centre for Maritime Security in Central Africa located in Pointe-Noire Congo.

A joint maritime force arrangement exists within ECCAS States but there is no arrangement for effective patrolling and radar monitoring of the Maritime domain for the entire Gulf of Guinea. There is a need therefore for an integrated coastal radar system in the region to support the activities of the Joint Maritime Forces.

The dictates of IMO circular No.1333 of 2009 encouraging Regional Joint Patrols, should be implemented immediately. Nigerian has already taken the initiative with the on-going patrols with Benin Republic and it is hoped that this model will be replicated across the region.

Funding is a major requirement to any successful operation. The on-going collaboration between Nigeria and Cotonou is costing billions of Naira. There is the need therefore for a sustainable process for equipping and funding maritime security activities. It is proposed that states should provide budgetary allocations while also encouraging private sector stakeholders in the maritime sector to contribute to a funding pool. A case in point was a proposal which targeted a certain percentage of the profits from oil companies into a consolidated funding pool.

Another key component of any attempt to fight piracy is the exchange of information, and should logically derive from an integrated African strategy to address problems of insecurity in the Continent. The effective integration of inter-Agency and intergovernmental data sources will go a long way in addressing this menace coupled with the development of joint training programmes on maritime policing.

A robust legal framework is also an urgent necessity to address this menace as criminals will continuously source for safe havens or places where the offence is punished with a slap on the wrist. Appropriate Legal instruments should therefore criminalize these Acts with commensurate punishment provided in addition to ensuring relative uniformity in the objective and spirit of such laws across the region.

Let me conclude by saying that The challenge posed by Piracy and armed robbery at sea in the West African coast as in other parts of the globe is fundamental given the raging Economic and Political undertones. There is a compelling need to take urgent and pragmatic steps towards addressing this problem. It is our conviction that firstly there is the need for a strong government buy-in, supported by relevant private sector interests in the project to rid our waters of Piracy and armed robbery. The problems of poverty, food insecurity, political manipulations and rising insurgencies, as well as inequitable distribution of National resources must also be addressed in a bid to eliminate the root causes of the penchant for criminality in our waters. And as Ban Ki-moon said recently in one of his meetings, and I agree with him, "Piracy is not a water-borne disease." So it is man-made and we must fight it.

Thank you.

Vice-President: I thank Mr. Mathew Egbadon for his excellent presentation, and now the floor is open for discussion. The first on our speaker's list is the delegation from Indonesia. I invite the delegate from Indonesia to take the floor.

The Delegate of Indonesia: Mr. Vice-President, Distinguished delegates, as an archipelagic state, Indonesia is of the view that maritime security should be interpreted in accordance to the unique characteristic of archipelagic state such as its strategic geographical position. Such position gives Indonesia benefits in the management of natural resources and also the importance of having similar perception concerning threats and challenges as practical aspect to enhance cooperation between states.

In dealing with maritime security issues, Indonesia is of the view that maritime security should be seen in a comprehensive manner since there are various kinds of crimes at sea and we decline the selective approach only on the issue of piracy and armed robbery at sea. In the perspective of archipelagic states, the compelling issues for Indonesia is the eradication of smuggling of goods and illegal, unreported and unregulated fishing, transnational crimes i.e. people smuggling and trafficking in persons, small armed smuggling as well as illicit trafficking of drugs and psychotropic substance.

In dealing with maritime piracy issues especially which occur on off the coast of Somalia and Eastern part of Indian Ocean, UN and other international organizations has already deliberated the effort to combat piracy incident in the waters off the coast of Somalia and Gulf of Aden. At the same time, IMO has also adopted some practical resolutions and guidance for international shipping community to encounter the act of piracy in waters off the coast of Somalia and Gulf of Aden.

In this matter, Indonesia is of the view that the definition of piracy should be differentiated with armed robbery against ship. The definition of Piracy should be referred to back to what have been defined in UNCLOS 1982 in article 101 in which mentioned that the elements of piracy is any illegal acts of violence or detention, or any act of depredation, committed for private ends, by crew or passenger of private ship or aircraft. Such acts are directed on the high seas or outside the jurisdiction of any State.

Meanwhile, the definition of Armed Robbery has been clearly defined in Code of IMO Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ship (Res A.922(22)). Therefore, the Government of the Republic of Indonesia has consistently rejected any declaration which is of the view that piracy acts also consist of all kind of crimes toward ship, regardless their position, even in the port, territorial sea or exclusive economic zone as well as straits used for international navigation.

Furthermore, in our common efforts to counter maritime piracy, it is necessary not to generalize the approach and measures taken for such addressing the issue. In this regard, Indonesia would also like to recall Paragraph 9 of the UN Security Council Resolution

1816 (2008) stating that the anti piracy efforts applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law.

Indonesia considers that the approach taken by the Secretariat of AALCO by unifying both definitions is against international law and could create confusion amongst the lawyers attending this conference. Indonesia would like to request the Organization to ensure that there is a distinction between the piracy and armed robbery against ship since there are different legal implications for such actions.

In this regards, the Indonesian government is also supporting the effort to combat piracy that occurs off the coast of Somalia and Gulf of Aden. We wish such concerted efforts could also be followed by legal efforts to deliberate the legal theories to answer the question of the Law to respond to piracy.

I thank you.

Vice-President: I thank the delegate from Indonesia. Next, I would like to invite the representative from Kenya to take the floor.

The Delegate of Kenya: Mr. Vice-President, Distinguished Delegates and Ladies and Gentlemen, allow me at the onset, on behalf of my Delegation, to extend congratulatory wishes to the commissioners who were recently elected to the Commission on the Limits of Continental Shelf (CLCS). As you are aware, the CLCS is charged with the implementation of the United Nations Convention on the Law of the Sea. We are also grateful to all those countries present here, which supported the election of Mr. Simon Njuguna, a Kenyan geologist, to the CLCS.

Mr. Vice-President, the issue of piracy and armed robbery against ships at sea off the coast of Somalia remains of grave concern to my country. These activities have greatly affected trade and commerce in the entire East African region. Acts of piracy have continued to adversely affect fishing, tourism and shipping industries in East Africa. This has significantly contributed to the increase of cost of goods and services in the East African region. Indeed, Kenya's revenues from fishing have fallen drastically owing to the insecurity in the waters at her EEZ on account of the fact that few commercial fishing vessels are willing to take up licenses and engage in commercial fishing around the affected area.

The resurgence in piracy at sea, particularly hijackings off the coast of Somalia, has prompted a range of efforts to tackle it. These throw up a series of legal issues including the use of force and transferring of suspects for trial or imprisonment. Kenya welcomes the efforts made by the international community to combat piracy, which efforts have had some deterrent effect on piracy and armed robbery in our region. In this regard, my Delegation would like to commend the steps taken by the International Maritime

Organisation in seeking to combat piracy off the coast of Somalia and in the Gulf of Aden. This was evidenced when in May 2011 IMO's Maritime Safety Committee (MSC) approved the Interim Guidelines on the employment of privately contracted armed security personnel on board ships transiting the high-risk piracy area off the coast of Somalia and in the Gulf of Aden and the wider Indian Ocean. The Interim Guidelines are aimed at addressing the complex issue of the employment of private, armed security on board ships as a temporary measure in combating piracy.

Ship-owners are increasingly turning to private security companies to provide armed guards for their vessels. Private armed security guards cannot board vessels and detain suspected pirates, but they seem to be having a deterrent effect as no ship with private armed security guards on board has been hijacked. However, since this is still an interim measure, there are legal issues that require to be addressed under public international law on the use of private armed security guards.

Ladies and Gentlemen, prosecuting suspected pirates is seen as a major potential deterrent. Under international law any country can prosecute piracy on the high seas; but in practice few do so unless there are national interests at stake, and many suspected pirates are released without trial. Kenya, together with other States in the region, have taken steps to prosecute, or incarcerate in a third state after prosecution elsewhere, pirates and facilitators or financiers consistent with applicable international human rights law. However, we are faced with challenges of capacity, particularly prison facilities. We urge the all States and international organizations to further enhance international efforts in this regard.

I thank you.

Vice-President: I thank the delegate from Kenya and now I would like to invite the representative from Thailand to take floor.

The Delegate of Thailand: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, One cannot deny that acts of piracy cause immense obstructions to numerous sea-related activities. Commercial shipping and oil transportation, sectors of crucial importance for both developed and developing economies, are among those badly affected by the piracy. Historically, the maritime sector has been one of the main industries that lead the way for a country's growth. As the world population expands and, subsequently, the needs for more energy and resources increase, the sector significantly enables new explorations to be conducted and provide a network of trade routes across the global waters. For such developments to continue, the international community must ensure that our seas and oceans are safe.

Maritime security is therefore central to a healthy growth in the world economy. In a climate where pirate attacks are rife, protecting and safeguarding Sea Lanes of Communication (SLOCs) has become more important than ever for the international community. Because of the nature of piracy, greater co-operation among states is of utmost important and is the way forward to solve this problem.

Mr. Vice- President, as an active member of the international community, Thailand is determined to ensure the world's economic and social resources such as the seas and the oceans are well protected. With effective protection through international efforts, our livelihoods will be preserved and we can all prosper together. Therefore, Thailand fully supports these international efforts in this regard by ratifying UNCLOS on 14 May 2011.

As a state party to UNCLOS, Thailand intends to fulfil our obligations as a responsible member of the international community. Becoming a state party to UNCLOS is a very important milestone for us. The instrument, recognized as the "Constitution for the Seas", lays down all basic principles of international law of the sea and regulates various maritime activities. Hence, by adhering to this important instrument, Thailand will be able to effectively contribute to the international interests in maritime sphere as well as strengthen its role in regional and multilateral arena.

Moreover, we has actively participated in several regional and international fora on maritime security, namely ASEAN Maritime Forum (AMF), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), International Maritime Organization (IMO), and the Contact Group on Piracy off the Coast of Somalia (CGPCS).

With regard to countering and suppressing the Somali pirates, the rise of piracy-related incidents from off the coast of Somalia and in the Gulf of Aden, which is a major route connecting Asia, the Middle East and Europe, is a global cause for concerns.

During 2008-2011, eight Thai vessels and ships had been hijacked by Somali pirates, with one fishing vessel still being held captive by pirates. Such incident causes damages to our social as well as economic developments, not only for Thailand but also for the communities of seafarers around the world. Somali piracy is therefore a direct threat to the world at large and to Thailand. This is why, in our view, it must be addressed through concerted efforts of the international community. As a result, the Royal Thai Government dispatched the Royal Thai Navy's Counter-Piracy Task Unit (RTN CPTU) to join the anti-Somali piracy operation under the umbrella of the Combined Maritime Forces (CMF) during September 2010 – January 2011 and July – November 2011. The results of both operations have been satisfactory. We recognise, however, that the international community cannot afford to be complacent and more needs to be done. This is why Thailand is considering participating in such anti-piracy patrol continuously. Given the success of the RTN CPTU operations, the Royal Thai Navy, by the approval of the cabinet, has appointed Rear Admiral Tanin Likitwong, the previous commander of RTN CPTU, the commander of Combined Task Force 151 – one of the three Task Forces under CMF – to continue with the project. Rear Admiral Likitwong, along with other 14 Thai navy officials have taken up their duties in commanding and administering the joint naval patrol in the Internationally Recommended Transit Corridor between Bahrain and Somalia during 29 March – 14 July 2012.

Mr. Vice-President, Thailand's policy regarding the issues surrounding piracy has always been to promote stability, security and prosperity across our regions through co-operation in all areas under various regional frameworks as well as expeditiously resolving issues of our concerns through peaceful means based on treaties and laws.

We believe that strategic partnerships with other member countries will play important roles in solving this long-suffered problem. Interactions with the global community will help with the preservation and restoration of peace and security as well as the promotion and protection of human rights. Thailand believes that transnational issues such as piracy call for transnational efforts to constructively forge a network of co-operation strong enough to deal with the complexity and sensitivity of the problem.

Thank you very much for your kind attention.

Vice-President: I thank the representative from Thailand and I would now like to invite representative of the delegation from Tanzania to take the floor.

The Delegate of Tanzania: Mr. Vice President, we would like to commend AALCO for putting this issue on the agenda and giving it the prominence it deserves at this time. This clearly shows AALCO continued commitment in addressing issues related to peace and security. We note with grave concern on the soaring incidents of piracy and armed robbery against ships at sea off the coast and high seas of Somalia and surroundings of coastal areas. We reiterate on our position outlined in the general statement made earlier that, these acts of piracy have adversely affected trade, tourism and shipping industries and impacting all countries surrounding economies of horn of Africa.

Mr. Vice President, Piracy has turned to be an international concern which requires international multifaceted solutions. This includes political, military and individual ship security actions. In this regard, it is necessary to consider and implement measures at international level to repress piracy including sharing of required resources and information. It is also important to ensure timely prosecution of detainees suspected of piracy and criminal activities in the high seas.

Mr. Vice President, whilst we commend various efforts by the international community to facilitate, apprehend, transfer and prosecute suspected pirates, we feel there is a need to provide essential support both international and national to countries currently challenged in responding to the effects of piracy. Therefore, on our part we insist on the urgency of establishing robust law enforcement mechanisms and functional judicial and prosecutorial systems to deal with piracy. Further, we continue to urge each member state to criminalize acts related to piracy.

Further to that, we appeal to the international community to explore other means of enforcing prosecutions of pirates by exercising jurisdiction within the purview of article 105 of the UNCLOS. We must summon the spirit of revisiting the Convention so as to make it better serve the mankind. My Government is committed towards working in

cooperation with her neighbors and the international community in general, to fight piracy for the interest of its people and of maritime security.

Thank you very much.

Vice-President: I thank the delegate from Tanzania. I would now like to invite the delegate from Malaysia to take the floor.

The Delegate of Malaysia: Mr. Vice-President, the Secretary General, Distinguished Members of the Panel, Ladies and Gentlemen, the incidents of piracy, especially in the Gulf of Aden and Indian Ocean have greatly affected the safety and security of navigation as well as the international shipping community as a whole.

Malaysia is committed to its role in support of the relevant Security Council Resolutions, and has amply demonstrated it thus far. Aside from its operational contributions in the Gulf of Aden, Malaysia is in the process of prosecuting the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman in Malaysia.

At the same time, Malaysia is also in the process of reinforcing its anti-piracy legislative framework with reference to the UNCLOS, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol) regimes.

In this regard, for guidance, Malaysia had looked at the draft guidelines for national legislation on maritime criminal acts submitted by the Comité Maritime International (CMI) to the Legal Committee of the International Maritime Organization (IMO) in 2007 as well as the documents submitted by the IMO Secretariat, the UN Division for Ocean Affairs and the Law of the Sea (UN-DOALOS) and the UN Office on Drugs and Crime (UNODC) at the ninety-eighth session of the Legal Committee of the IMO.

At the Fiftieth Annual Session Malaysia had urged AALCO to come forward to provide the necessary technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Malaysia appreciates the willingness of AALCO Secretariat in playing a vital role, through the collaboration with other inter-governmental organizations, to develop a model legislation that could be used by its Member States as mentioned in paragraph 100 of the report entitled “The Law of the Sea – Responses to Piracy: International Legal Challenges” prepared by the AALCO Secretariat.

We are of the view that the AALCO Secretariat could use as guide, the draft guidelines submitted by the CMI, which were the result of deliberations by a Joint International Working Group of International Organizations consisting of representatives from the CMI, the Baltic and International Maritime Council (BIMCO), the International Chamber of Shipping (ICS), the International Criminal Police Organization (INTERPOL), the International Group of P&I Clubs, the International Maritime Bureau (IMB), IMO, the

International Transport Workers Federation (ITF) and the International Union of Maritime Insurance (IUMI), and the documents submitted at the ninety-eighth session of the Legal Committee of the IMO could also be used as a guide.

Malaysia hopes that the model legislation on piracy and other maritime security offences to be prepared by AALCO Secretariat could be completed and distributed for the consideration of all Member States in due time.

Thank you.

Vice-President: I thank the delegate from Malaysia. I would now like to invite the delegate from Sri Lanka to take the floor.

The Delegate from Sri Lanka: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen; Piracy on the high seas has been recognized over centuries as a crime against all nations. The issue of law of the Sea and piracy was deliberated at the Fiftieth Annual Session as an important issue of urgency and recognized as a major security concern for Member States. According to sources at the UN, the total loss caused by Somali pirates is over US\$ 3 billion annually. The recent escalation of piracy attacks off the coast of Somalia and off the Horn of Africa has posed serious global security threats that demand heightened attention of the international community. A number of Sri Lankans were held in captivity by the sea pirates in the high seas over the last few years and a number of fatalities have also occurred. As a result, Sri Lanka takes a very serious view on the matter of sea piracy.

Sri Lanka considers sea piracy as a grave security that demands both collective and individual response of all the nations in the international community. Sri Lanka ratified the United Nations Convention on the Law of the Sea (UNCLOS) on July 19, 1994 after signing on December 10, 1982. Sri Lanka is also a party to the Regional Cooperative Agreement against Piracy and Armed Robbery in Asia (ReCAPP) which was brought to force in September 2006. The ReCAPP agreement is the first inter-governmental agreement in the Asian region to combat maritime piracy in the region. The ReCAPP Agreement provides for the establishment of an International Information Sharing Center [ISC] to share information among focal points via a secure network.. It also obliges Member States to strengthen international cooperation among Member States to prevent maritime piracy attacks. Sri Lanka urges the AALCO Member States to adopt similar inter-governmental coordinated mechanisms to implement coordinated international counter piracy programmes in view of the fact that maritime piracy is a transnational organized crime.

Sri Lanka considers individual national response to piracy by Member States to be of equal importance in the efforts of combating piracy. Although piracy is not a common feature within the territorial waters of Sri Lanka, Sri Lanka has taken steps to develop a national maritime policy to minimize such incidents with the strengthening of coast guard service and other maritime related security arrangements. Somali pirates have been widening their area of attacks and extended their raids further east into the Indian Ocean

as foreign navies increased security of the coast of Somalia. Sri Lanka is taking all possible steps of regional and international cooperation to ensure free movements of vessels within the territorial waters of Sri Lanka.

Sri Lanka also wishes to stress the importance of information sharing in the efforts of combating maritime piracy. In the present globalized world of transnational threats and organized cross border crimes, it is only through a cooperative approach of sharing information and mutual assistance that any of us can succeed in protecting maritime security. Information sharing in maritime could include intelligence information. For Sri Lanka and our partners in South East Asia, information sharing on maritime security is an essential part of our regional approach.

Sri Lanka also adopted legislation by way of Act No 09 of 2001 which criminalizes maritime piracy as a serious offence and provides for piracy to be a cognizable and non bailable offence. In terms of section 03 of the Piracy Act of Sri Lanka, piracy is defined as “Any person who dishonestly takes or appropriates any ship by means of theft, force, intimidation, deception, fraud or by any other means”. The Act addressed offences of Taking of property from a ship; Boarding a ship without lawful authority; Retention, possession, and transportation of pirated ship and property, Forfeiture; Use of weapons or intimidation while committing an offence. Sri Lanka calls on the Member States to take adequate national measures to combat piracy and to enact stringent national legislation to make maritime piracy a serious criminal offence.

Vice-President: I thank the delegate from Sri Lanka and now would like to invite the delegate from Saudi Arabia to take the floor.

The Delegate of Saudi Arabia: In the name of my country’s delegation I would like to thank the participants who have presented action papers on this issue. KSA supports international efforts to combat piracy and promotes further coordination among the regional states in combating piracy. The Arab States of the Red sea are considering measures to combat piracy in the Gulf of Aden and the Red sea. I have a query to the respected participants about the legal status of prosecution of pirates by invoking the national criminal laws in the states which are yet to promulgate a special law on piracy.

Thank you Mr. Vice President.

Vice-President: I thank the delegate from Saudi Arabia. I would now like to invite the representative from Ghana to take the floor.

The Delegate of Ghana: The Ghana delegation would like to commend the AALCO Secretariat for the preparation of a very detailed and comprehensive paper on the topic. Ghana agrees with the view held by the Secretariat that the United Nations Convention on the Law of the Sea (UNCLOS) while not ratified by all countries, including the United States represents the best evidence of international law relating to the maritime regime and is binding on all nations as customary international law. Therefore its provisions on

piracy contained in Articles 100-107 are recognized as the most authoritative codification of piracy law.

However, as a 1982 Convention which came into effect in 1994, the definition of piracy in UNCLOS which appears to limit the geographical scope of the crime to the high seas is its major limitation in the face of modern day piracy which occurs in the Exclusive Economic Zone (EEZ) and Territorial Sea of affected States. Article 58(2) of UNCLOS contained in Chapter V on the EEZ states that Articles 88 -115 relating to the high seas (and for that matter Articles 100 -107 on suppression of piracy) apply in the EEZ. The effect of Article 58(2) *inter alia* is therefore that every State may seize a pirate ship or aircraft and arrest the persons on board and also have its courts try the offenders and decide upon the penalties to be imposed even when the offence is committed in the EEZ of a State. Often, when piracy is considered, Articles 100 -107 of UNCLOS are referred to and Article 58(2) is overlooked.

Whilst there are about 162 State Parties to UNCLOS out of an international world community States numbering 180, the provisions of UNCLOS do not automatically apply in the State Parties to the Convention that are dualist States. In these States, enabling legislation (domestic legislation) is required to give effect to the provisions of the Convention. Whilst the attention of both Monist and Dualist States must be drawn to Article 58(2) in applying the provisions of the UNCLOS on piracy, Dualist States may require assistance in drafting implementing legislation which clearly gives effect to Article 58(2) of UNCLOS. Ghana humbly suggests that it would be of great assistance if AALCO would explore the possibility of a legislative drafting workshop on anti-piracy legislation in order to assist Member States on the subject matter.

As regards the application of the provisions of piracy in UNCLOS to acts of “piracy” which occur in the Territorial Sea, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) which came into force in 1992 deals with violent acts against ships and persons on board and obliges States to suppress unlawful acts against the safety of maritime navigation which occur in the Territorial Sea. The 2005 SUA Protocol which entered into force in 2010 also expands the ambit of the SUA Convention to include politically motivated “piracy”. However, whereas the SUA Convention addresses some of the limitations of UNCLOS in dealing with piracy, the SUA Convention does not expressly cover the crime of piracy. Thus, the offences created by the Convention which involve threats of acts of violence against a ship and persons on board it may in some instances constitute both piracy and an offence under the SUA Convention whereas in other instances an act of piracy would not be a SUA Convention offence. Even where the offences created by the SUA Convention overlap with the crime of “piracy”, as a treaty, the SUA Convention is only binding on its State Parties.

In the light of the above, Ghana suggests that AALCO may wish to encourage State Parties of UNCLOS to become parties to the SUA Convention. Ghana is of the view that whilst States are willing to work to facilitate the peace process in countries such as Somalia in an attempt to solve the root cause of piracy, States should also be consistently

reminded of the importance of the peace and stability they enjoy in their own countries and urged to do their best to maintain such peace as the root cause of modern day piracy that has surged in Somalia seem to be driven by poverty and lack of effective government machinery.

Thank you very much for your attention.

Vice-President: I thank the distinguished delegate from Ghana.

I would like to clarify Saudi Arabia; I believe Saudi Arabia asked a question, and that question was on the international legal status of the death penalty as given for acts of piracy. In that case, I believe that Mr. Mathew Egbadon would like to reply to it.

Mathew Egbadon, Secretary/Legal Advisor NIMASA: Thank you Mr. Vice-President. As far as UNCLOS is concerned the matter is left for the jurisdiction of the relevant coastal states. It is the responsibility of the state to decide on the punishment for piracy. As I have said, in our case there are proposals, and for a country like Nigeria that practices dualism, it is left for our legislature to decide at the end of the day how they want these crimes to be punished.

So, to that extent, it is left to the individual states how they want to punish piracy.

Vice-President: Thank you Mr. Egbadon. I would now like to invite the delegate from China to take the floor.

The Delegate of People's Republic of China: Mr. President, Distinguished Delegates, at the beginning, the Chinese delegation would like to express its appreciation to this Annual Session for holding a half-day Special Meeting on Law of the Sea.

In field of the law of sea, the most important universally legal instrument is UN Convention on the Law of the Sea. During the negotiation process of the Convention, AALCO played a prominent role serving itself as an important forum for developing countries to coordinate positions and forge consensus. This year marks the 30th anniversary of the opening for signature of UNCLOS. Today we are holding this Special Meeting to carry forward the spirit of consultation and cooperation, give full play to the unique role of AALCO, and jointly facilitate the solution of the piracy issue. The Chinese delegation looks forward to a full and useful discussion at this session, and making our due contribution to resolving piracy, an issue of common concern shared by Asian and African countries.

Mr. Vice- President, the Secretariat has prepared an in-depth and thorough report on relevant international legal issues. The Chinese delegation appreciates the work done by the Secretariat.

The Secretariat Report points out that despite intensified international efforts to combat piracy, pirate attacks have become more common and violent. In China's view, it shows

that naval escort operations and judicial prosecution may curtail piracy off the coast of Somalia, the root causes are far from being resolved. The fundamental solution to the issue lies in the political stability, economic development and social tranquility in Somalia. China is committed to working with all parties to actively promote the peace process in Somalia and help Somalia to launch its reconstruction efforts.

The Secretariat Report also touches upon the practical difficulties in the prosecution and adjudication of pirates. In this respect, the Chinese delegation supports international efforts to strengthen judicial mechanism against piracy, and believes that such mechanism should be based on the respect for sovereignty and enhanced judicial capacity of the coastal States, and should take into full consideration of the practical circumstances of the coastal States as well as States carrying out escort operations. The Chinese delegation believes, as was pointed out by the UN Secretary-General in his report in January of this year, the emphasis of our work should be placed on judicial capacity-building in Somalia and other regional countries through international assistance. The international community should, therefore, provide all necessary assistance, including the effective use of relevant international trust funds, to assist such capacity-building efforts.

Mr. Vice-President, China may exercise jurisdiction on acts of piracy based on UNCLOS, or do so for acts of murder, malicious injury, robbery and abduction on the basis of territorial, nationality or protective jurisdiction. The provisions in China's Criminal Procedural Law concerning investigation, arrest, interrogation, prosecution, adjudication and extradition, provide legal procedure to prosecute and adjudicate pirates.

The Chinese Government has always worked to enhance international cooperation on piracy and ensure the safety of navigation. The Chinese navy has strengthened its coordination and cooperation with other navies when carrying out its escort operations. China has taken an active part in the relevant work including those of the Contact Group on the Piracy off the Coast of Somalia, the UN Security Council and the International Maritime Organization. China attaches great importance to reaching agreement with the coastal States in order to effectively prosecute and adjudicate pirates. So far, China has signed agreements on the transfer of pirates with Kenya, Seychelles and the Transitional Government of Somalia.

Mr. Vice-President, piracy poses a serious threat to peace and tranquility at sea, and is a common challenge facing the international community. To address this challenge, while countries continuing to consider all possible domestic measures, it needs to explore solutions within the framework of international law including UNCLOS, and taking into account UNSC relevant resolutions as well, and also requires the joint effort and wisdom of the international community. We would stand ready to further exchange views with Asian African countries on piracy. The AALCO may continue its study in depth on relevant legal issues, and explore useful and effective solution so as to contribute to the establishment and preservation of a harmonious order at sea.

Thank you, Mr. President.

Vice-President: I thank the delegate from China.

I would like to remind all delegates that they are requested to hand over their comments and any changes they want to the resolutions to the Secretariat early so that they can be duly be reflected in the resolution to be adopted on Friday.

And now, I give the floor to the representative from India.

The Delegate of India: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

The increasing acts of piracy and armed robbery against ships represent a serious threat to the life of sea-farers, the safety of navigation, the marine environment and the security of coastal states, as well as impacting negatively on the entire maritime industry, thereby leading to higher costs and even suspension of shipping services to high risk areas.

Mr. Vice President, we welcome the Code of Practice for the investigation of the crime of piracy and armed robbery against ships adopted by the 22nd Assembly of the IMO. We also support IMO's efforts at promoting regional cooperation to address this problem and we have actively participated in many meetings and seminars organized by the IMO for enhancing implementation of its guidelines on preventing such attacks. The main problem areas identified by IMO include resource constraints on law enforcement agencies, lack of communication and cooperation between the agencies involved and lack of regional cooperation apart from the problems posed by the prosecution. All these constraints need to be urgently and effectively addressed by giving higher national and international priority and efforts to eradicate these crimes.

Mr. Vice President, Piracy off the coast of Somalia has become an urgent maritime security matter attracting the attention of the international community. The Gulf of Aden which separates Somalia and Yemen, connects the Arabian Sea to the Red Sea, and through the Suez Canal to the Mediterranean Sea, has seen a major spurt of attacks by pirates. This has attracted the focus of the UN General Assembly and Security Council. In this regard, a contact group on piracy off the coast of Somalia was established with the four Working Groups of which one is devoted for legal issues. India is also a Party to this Working Group. This Working Group has been dealing with national prosecution of pirates, arrangements between States to prosecute the pirates, supporting prosecution, capacity building, trust fund besides the concept of 'ship riders'.

Mr. Vice President, India is among the countries which have been seriously affected by the problem of maritime piracy. Our Navy and Coast Guard, during the course of conducting anti-piracy operations off our western coast, have apprehended several suspected pirates. Given the increasing incidence of piracy within India's EEZ (Exclusive Economic Zone), the Government of India felt that a comprehensive domestic legislation on piracy should be in place. India is actively working for such a domestic anti-piracy legislation to provide the necessary legal framework within the country for prosecution of persons for piracy related crimes. The enactment of such legislation would provide for

certainty and clarity in the law as well as a sound legal basis for prosecuting and punishing the pirates for committing acts of piracy. In our view it would also promote the safety and security of India's maritime trade including the safety of our vessels and crew members.

Mr. President, India has furthermore been fully involved in the deliberations at the UN on the subject of an international legal mechanism to deal with pirates. We have also been discussing this issue with other interested countries in the contact group on piracy off the coast of Somalia, which is the main multilateral group deliberating in all aspects of maritime piracy emanating from Somalia.

Mr. President, India has been raising its voice against piracy in the regional and international forums keeping in mind that acts of piracy and armed robberies against ships would affect the entire maritime transport industry, leading to higher cost. In this regard, the Indian Navy also joined with other Navies in escorting the maritime transport vessels in the Gulf of Aden.

Thank you.

Vice-President: I thank the distinguished representative from India for her statement and now I give the floor to the representative from the Republic of Korea.

The Delegate of Republic of Korea: Mr. Secretary-General, Mr. Vice-President, Distinguished Panels and delegates, on behalf of my delegation, I appreciate the Secretary-General and the Secretariat for their work in preparing the 51st session's report on the issue of piracy. It is highly relevant and timely, and I noticed many AALCO Member States share their concerns on this matter.

On behalf of my delegation, I'd like to introduce efforts, being taken by Republic of Korea in fight against piracy, on multilateral and bilateral level.

One is through our participation in the Contact Group on Piracy off the Coast of Somalia, which was established under the UN Security Council Resolution 1851. Especially, we are closely following up on discussions in the Second Working Group which focuses on the legal aspects of the piracy matter with a view to build mutual legal assistance system to prosecute and punish pirates.

The Government of Republic of Korea is also closely cooperating bilaterally with its allies, and is willing to share its legal experience and information in implementing criminal jurisdiction over pirates with AALCO Member States. We think AALCO can provide a unique forum for addressing piracy issue. AALCO also can provide capacity-building programmes on legislation and implementation of law against piracy, in collaboration with AALCO Member States and UN organizations.

To conclude, recalling the vital role played by AALCO in developing the UN Law of the Sea, the Government of Korea expects AALCO's leadership and initiative in developing

appropriate accountability system against piracy. As we mentioned in our General Statement, we hope this issue remains high on AALCO agenda.

Thank you.

Vice-President: I thank the distinguished delegate from the Republic of Korea.

We have now come to the end of our list of speakers. If any other delegates wish to speak they may now do so.

The Delegate of Republic of Yemen: Mr. Vice President, Distinguished Delegates, the Republic of Yemen express high appreciation to the Secretariat of AALCO for their report on “The Law of the sea-Response to piracy: International Legal Challenges. Yemen is party to the UNCLOS. Yemen has a very long coastal line which begins from the boundaries with Saudi Arabia, in the Red Sea and ends at the boundaries with the Sultanate of Oman, in the Arab sea, in addition to the coasts of Sapotra Island and other Yemeni islands. These coasts stretch up to more than 25,000 kilometers.

The marine biodiversity, species and resources are in great danger due to the passing of big ships and oil vessels which discharge wastes, chemicals and hazardous materials in the territorial and international waters, which are adjacent to Yemeni territorial waters, without having any permission from the Yemeni Government. So, protecting and preserving the marine environment, biodiversity, species and resources is the biggest priority. But Yemen has not enough funds for such a purpose and the reasons will be mentioned in the statements on terrorism and environment and sustainable development. So other states are requested to assist Yemen by providing financial support to Yemen.

Yemen has made a submission to the commission on the limits of the Continental Shelf (CLCS) and is still waiting as CLCS is faced with workload issue caused by a large number of submissions.

The issue of piracy is very crucial and important for Yemen because it is connected to terrorism, poverty, organized crime and other criminal activities. The pirate attacks on ships have increased drastically in the international and territorial waters, particularly in this year and the last which we connect it with the Peaceful Resolution against the previous President Ali Abdullah Sale, his relatives and his officials. As a matter of fact, Yemen is unable to combat and prevent piracy even within its territorial waters as there are no specially trained marine forces which are qualified and armed with very modern weapons to face challenges.

The capacity building is very urgent and important issue for Yemen in this respect. Further Yemen is also willing to enact a law on piracy and other marine crimes and will need technical assistance to draft and pass such a law. The Regional and International Communities are requested to assist Yemen to combat and prevent piracy by providing all kinds of assistance.

Yemen firmly believes that there is a close connection between piracy and terrorism because terrorist organizations leave no stones unturned to secure their financial resources and piracy is the earliest and the easiest way to provide them with financial succor.

Thank you for your attention

Vice-President: I thank you for your presentation.

We have come to the end of our session for today. Tomorrow, as usual, we shall start at 9 o'clock, so please do be on time.

The Meeting was thereafter adjourned.

**XI. VERBATIM RECORD OF THE
HALF-DAY SPECIAL MEETING
ON “INTERNATIONAL
TERRORISM”**

**XI. VERBATIM RECORD OF THE HALF-DAY SPECIAL MEETING ON
“INTERNATIONAL TERRORISM”
HELD ON THURSDAY, 21 JUNE 2012 AT 9.30 AM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

Vice-President: Good morning everyone. Today we begin the day's proceedings with the Special Meeting on International terrorism and I invite Dr. Soleimani, for his introductory remarks.

Dr. Hassan Soleimani, Deputy Secretary-General: Mr. Vice-President, Hon'ble Ministers, Attornies-General, Excellencies, Dr. Rohan Perera, the Chairman of the UN Ad Hoc Committee on International Terrorism, Delegates, Ladies and Gentlemen. Today's Special Meeting is on a very important subject "International Terrorism" The Report prepared by the AALCO Secretariat is contained in Document AALCO/51/ABUJA/2012/SD/S 7.

Before I present some views on the theme of the special meeting, I would like to formally thank Dr. Rohan Perera for readily agreeing to cooperate with us and agreeing to give us an insight into the progress in the work of the Ad Hoc Committee on International Terrorism. I welcome all the panelists who are here with us today.

Considering that this is a serious issue that needs to be thoroughly debated upon in order to find a solution, it was deemed appropriate to conduct this Half Day Special meeting in conjunction to the Fifty First Annual Session. This proposal was made by the Attorney General and the Minister of Justice of the Federal Republic of Nigeria. The issues that would be discussed in the course of this Special Meeting would focus on three issues: (i) Challenges before the Ad Hoc Committee on International terrorism; (ii) International legal cooperation in criminal matters against terrorism; and (iii) countering financing of international terrorism.

The concept of International Terrorism was included on the agenda of AALCO's Fortieth Session held in New Delhi in June 2001, upon a reference made by the Government of India. It was held that consideration of this item at AALCO would turn out to be useful and relevant in the context of the ongoing negotiations in the AD Hoc Committee on elaboration of the Comprehensive Convention on International Terrorism.

It may be recalled that during the Forty First Annual Session of AALCO held in Abuja, Nigeria 2002, a special meeting was organized on Human Rights and combating Terrorism by AALCO with the help and assistance of the Office of the High Commissioner for Human Rights (OHCHR). As a result the successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee on negotiations relating to the comprehensive international convention to combat terrorism.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, although the term *terrorism* doesn't have a universally accepted definition as such it is always understood as acts of violence by the extremist forces (terrorists or insurgents), in an attempt to create fear in the society and to further their goals. That is to say it is understood as the systematic use of terror, especially as a means of coercion against the ordinary and innocent civilians. Over the last few decades the Asian and the African continents have experienced a number of terrorist attacks and threats.

Stressing on this issue, UN Secretary-General H.E. Ban Ki Moon on the 3rd of June 2012 called on Member States to join hands and stand united against global terrorism and help in combating terror outfits. Mr. Ban also highlighted 4 key areas that the nations need to work on for tackling terrors, that is:

- a) Tackling conditions favorable to the spread of terrorism,
- b) prevention of terrorism,
- c) strengthening up the States capacity to counter terrorism; and
- d) promotion of inter community engagements.

He further claimed that (suppression) control of terror funds happens to be the most critical area of operation where internationally accepted guidelines need to be effectively sanctioned and implemented to further the goals of the UN. And at the strategic level he pointed out that one needs to understand and counter the appeal of terrorism which meant building a culture of dialogue processes, spreading of education and inter-community engagements.

Mr. Vice-President, the entire discussion in the Ad Hoc Committee at its 48th meeting on the 15th of April last year (2011) was focused on the definition of terrorism, without which certain areas of law seems to be lacking and has not resulted in effective implementation to combat terror.

The statements made by the delegations during the meeting and the previous meetings drew attention to particular incidents of terror attacks regardless of their motivations and it was held that measures to be adopted to counter terrorism must be in conformity with the UN Charter, International Law, Human Rights Law, Humanitarian Law and Refugee law.

Realizing that terrorism was a multi challenging phenomenon, the need for a comprehensive counter terrorism strategies, was proposed. The delegations also drew attention to the recommendations of the Twelfth United Nations on Crime Prevention and Criminal Justice Conference that was held at Salvador, Brazil 2010. While some delegations also highlighted the need for assistance to States towards capacity building and sharing of information that would help in combating terror, some other delegations expressed their deepest concern over the interrelationship between (i) illegal trade in arms and drugs, (ii) human trafficking and money laundering and (iii) also challenges raised by the menace of suicide bombings. With such expressions and voicing out of multiple

concerns, there appears to be a growing consensus on the need for a universally accepted definition of *Terrorism*.

The definition must include under its ambit the various rules and principles of international law that safeguards human rights and dignity as well as fundamental freedoms. The framing of such a definition would only be possible with the experts from all the concerned fields as well as the Member States.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, a special meeting of the Counter Terrorism Committee (CTC) commemorating the adoption of the Security Council Resolution 1373 (2001) and establishment of the committee took place on 18th September 2011 at New York.

In furtherance to the request of the Security Council in its resolution 1963 (2010) the Executive Directorate of the CTC made a careful analysis on a study updating the 2009 survey on the strengths and weaknesses of the Member States in the implementation of the Resolution 1624 (2005). The report provided recommendations for practical ways to implement the resolution with regard to the thematic area in each region. The report **notified that positive developments** were evident with the growth in the number of states showcasing the following efforts, namely:

- (i) their increased commitment to international cooperation by signing and ratifying the international instruments,
- (ii) criminalizing acts of terrorism in their domestic legislation,
- (iii) adopting measures to cut terror funding,
- (iv) preventive border security measures,
- (v) The use of modern Communication and Information and Technology for (enrolment) or recruitment and transfer of funds and organization across international borders was noted with alarm.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, the Committee also noted the close and compatible relationship between terrorism and transnational organized crime, including trafficking of illegal drugs, money laundering, illegal arms trafficking and resolved to monitor and assist, to ensure the full implementation of resolution 1373 (2001), with the support of CTED, as well as to continue to focus on means to address the identified gaps and loopholes in the implementation of the resolution, in cooperation with international, regional and sub-regional organizations, by strengthening its role in providing technical assistance, aimed at providing full implementation of the resolution.

As Criminals find it easier to take advantage of the differences in legal systems in different countries and also make use of the concern for sovereignty of most states and often the fact that certain countries are unable to overcome their differences in order to work together.

The international community has developed a series of mechanisms for international co-operation in criminal matters concerned in particular with extradition laws, mutual legal assistance, transfer of criminal proceedings, transfer of convicted persons, recognition of

decisions of foreign criminal jurisdictions and legislations, the freezing the assets of terrorist outfits. Therefore, at this stage co-operation among Member States in criminal matters is necessary particularly in relation to combat and halt terror crimes.

At the 66th session of the General Assembly of the UN, resolutions that would impact the formation of a legal regime to combat terrorism was adopted. At this session, the General Assembly had also considered the report of the Secretary General on measures to eliminate international terrorism.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, I hope I have been able to highlight briefly the points on which we need to focus our attention in this meeting. Now I invite the Chairman of the Ad Hoc Committee, Dr. Rohan Perera to give his thoughts on the ongoing work in the Ad Hoc Committee on International Terrorism. I thank you all for a patient hearing.

Vice-President: Thank you Dr. Soleimani, and now as Dr. Soleimani has just said I would like to invite Dr. Rohan Perera, Chairman of the UN Ad Hoc Committee on Measures to Eliminate International Terrorism to make his presentation.

Dr. Rohan Perera, Chairman of the UN Ad Hoc Committee on Measures to Eliminate International Terrorism: I would like to begin my presentation on how the issue of terrorism was dealt with, first by the League of Nations predecessor of the the United Nations. It began with the response to the terrorist attack on the then French Minister of Foreign Affairs, in Yugoslavia in 1934 and some more attacks elsewhere. It is very interesting to see the type of issues then and issues that confront us today. These targets at the high level personalities lead to the adoption of the Resolution of the Council of the League of Nations in December 1934. I quote, “It is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose and every State shall use all its power to prevent and repress acts of this nature and to lend its assistance to Governments that request it”. Even the principle of non-use of one’s territory for this purpose to perpetrate hostile or terrorist act. Thus, there were many instruments on anti-terrorism including the landmark Declaration of the United Nations on the Principles of International Law on Friendly Relations and Cooperation among States. These events led to the outcome of two Conventions in the League of Nations, first is the “Convention for the Prevention and Punishment of Terrorism¹” and accompanying that Convention was a “Convention for the Creation of an International Criminal Court²” in 1937. Although these never entered into force it set the backdrop for the work undertaken later, perhaps in a different context.

The significance of the Convention for the Prevention and Punishment of Terrorism was that it contained a definition of the term “terrorism”, and I quote

¹ Convention for the Prevention and Punishment of Terrorism, 19 League of Nations OJ 23 (1938) League of Nations Doc. C. 546(I). M. 383(I). 1937.V (1938) (16 November, 1937)

² Convention for the Creation of an International Criminal Court, League of Nations OJ Spec. Supp. No. 156 (1936), LN Doc. C.547(I).M.384(I). 1937. V (1938)

“All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public”.

When we come to the more recent times we find that all the instruments containing the definition of terrorism go back to the League of Nations Convention. By way of observation it is also interesting to note that the League of Nations Convention in the International Criminal Court and terrorist crimes within the jurisdiction of the proposed Court. It is interesting to note that it has not found place in the Rome Statute of the International Criminal Court. With that background I now come to the “Current Initiatives in the United Nations – The definitional Issue and the Sectoral Approach”.

The current initiatives being undertaken in the United Nations have been at two levels. Firstly, the norm creating role of the General Assembly, Specialised Agencies and its Ad-Hoc bodies, such as the Ad-Hoc Committee on Measures to Eliminate International Terrorism, through which specific Conventions are adopted, and secondly, the measures adopted by way of enforcement action by the Security Council, under Chapter VII of the Charter of the United Nations. The latter, treating international terrorism as a threat to international peace and security, was resorted to increasingly, particularly after the events of 9/11 in the United States, where urgent action became a necessity. The thrust of my presentation would be on the first aspect, the norm creating process in the UN Ad-Hoc Committee on Terrorism, given my close association with this process, as Chairperson of the Committee. I will, of course, make some concluding observations on the mutually supportive nature of the norm creating process in the General Assembly and the enforcement measures adopted by the Security Council.

When the agenda Item Measures to Eliminate International Terrorism was inscribed on the UN Agenda, in the early seventies, consequent to a West European initiative, in the aftermath of the “Munich Massacre”, it was immediately confronted with the “definitional issue”. At the core of the problem was the demarcation between “terrorists” and “freedom fighters”, exercising the right of self-determination in the context of situations of foreign occupation and alien domination”. The dilemma confronting the United Nations initiatives was aptly captured by the statement, “*one man’s freedom fighter is another man’s terrorist*”.

Faced with this dilemma, the United Nations adopted what has now come to be known as the “Sectoral Approach”, criminalizing specific criminal acts, irrespective of motive, and containing a criminal law or operational definition of such acts. The series of Convention adopted based on the “Sectoral Approach”, cover unlawful acts against aircraft³, safety of maritime navigation, hostage taking⁴, etc. to the more recent, suppression of terrorist bombings⁵, terrorist financing⁶, and finally the suppression of acts of nuclear terrorism⁷.

³ Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105, entry into force October 14, 1971; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 974 UNTS 178, entry into force January 26, 1973

⁴ International Convention Against the Taking of Hostages, 1316 UNTS 205, entry into force June 3, 1983

⁵ International Convention on the Suppression of Terrorist Bombings, 2149 UNTS 256, entry into force May 23, 2001

These Conventions had a common architecture. They obliged State parties to criminalize under their domestic laws, the specific acts covered under the Conventions; to establish their jurisdiction over these acts, going beyond the traditional grounds of territoriality and nationality, and the fundamental obligation to “*Extradite or Prosecute*” (*aut dedere aut judicare*) an offender, the underlying rationale being that no terrorist offender should find safe haven in the territory of any State. The “*Extradite or Prosecute*” regime was complimented by wide ranging provisions on Mutual Legal Assistance and facilitating extradition, particularly in the recent Convention on Terrorist Bombings, Terrorist Financing and Nuclear Terrorism by treating the offences covered under these Conventions, as “non-political offences”, for the purposes of extradition and Mutual Legal Assistance, given the heinous nature of these crimes.

Thus, a corpus of international legislation was constructed over the recent by the United Nations, adopting a pragmatic approach designed to enhance practical co-operation among States, in combating terrorism, avoiding the divisive issue of defining the generic term “Terrorism”. Thus, these Conventions adopted by the UN are the practical framework for combating terrorism. With this background, now I will proceed to the next part of my presentation the “Rationale for a Comprehensive Convention on Terrorism”.

The UNGA mandated the Ad-Hoc Committee to elaborate a “Comprehensive Convention on International Terrorism” as a means of further developing a comprehensive legal framework of Conventions dealing with international terrorism. The objective of the Convention is to provide comprehensive coverage to terrorist crimes not covered under existing Conventions and to adopt enhanced measures of co-operation and assistance between States. The offences sought to be covered include, in addition to causing death or serious bodily injury to any person and serious danger to public or private property, offences such as serious attacks on the environment, a serious and credible threat to commit a terrorist act, as an offence in itself, and an obligation on State parties to ensure that “refugee status” is not accorded to a person, if there are serious reasons for considering that such a person has committed a “terrorist offence”, which are all elements not covered in existing Sectoral Conventions. New areas in which draft convention was developing, it was felt it would be a useful tool to combat terrorism.

Now I would like to dwell on the “Definitional Issue” and the current status of negotiations and issues holding up the definition. Negotiations on a Draft Comprehensive Convention on Terrorism brought to surface the much debated question of defining the term “Terrorism”. The Draft Text⁸ proposed by the sponsor State India, contained an operational definition of the term terrorism as found in the Sectoral Conventions. The operational definition covered specific criminal acts, such as unlawful and intentional causing of death or serious bodily injury to any person, serious damage to public or

⁶ International Convention on the Suppression of Financing of Terrorism, 2178 UNTS 197, entry into force April 10, 2002

⁷ International Convention for the Suppression of Acts of Nuclear Terrorism, 2445 UNTS 89, entry into force July 7, 2007

⁸ A/C.6/51/6

private property, when these acts are committed with a terrorist intent, i.e., with the purpose of intimidating a population or to compel a government or an international organization, to do or abstain from doing any act.

The Delegations of the Organization of Islamic Conference (OIC) on the other hand, opted for a generic definition of the term, and sought in their proposal, to have a clear distinction between acts of terrorism and those acts committed in the course of an armed struggle in the exercise of the right of self-determination. This approach was opposed by the European States, who favoured an operational definition on the basis that, the Comprehensive Convention, which is a law enforcement instrument involving individual criminal responsibility, was not the instrument for addressing such issue.

In the light of these divergent approaches, to the Comprehensive Convention, the challenges before the negotiators and for the Committee was to shift the focus of the negotiations, away from the definitional issue and to address the concerns that have arisen, in the context of the scope of application of the Convention and to clearly demarcate the field of application of the Convention and to distinguish it from the different legal regimes that are applicable in cases of armed conflict.

Thus, the negotiators are now proceeding on the basis of a compromise package presented by the Co-ordinator, to meet these concerns, through what has come to be known as a “Choice of Law” provision which carves out the scope of application of the Convention, rather than going down the politically sensitive path of attempting to draw a distinction between acts of terrorism and those committed during an armed struggle for national liberation.

The key elements of the Compromise Package are as follows:

- Activities of “armed forces” during an armed conflict, (the term covers both State and non-State forces in conflict situations) as those terms are understood under International Humanitarian Law, which are governed by that law, are not governed by the Convention;
- Activities undertaken by the military forces of a State, in the exercise of their official duties, in as much as they are governed by other rules of International Law, are not governed by the Convention. This provision seeks to address concerns of Western States that official activities of State military forces, outside the context of an “armed conflict”, should not be governed by the Convention, as Other Rules of International Law, viz Principle of State Responsibility would apply in such situations. (Choice of law provision).

Thus, the basic approach and rationale of the “compromise package” is the recognition of the fact that the Comprehensive Convention, is not “Comprehensive” in the absolute sense of the term, but that it would operate alongside other applicable legal regimes, in given situations, and seeks to preserve the integrity of such other laws. Thus, for instance, an element of the package specifically provides that “This Convention is without prejudice to the Rules of International Law, applicable in armed conflict, in particular

those rules applicable to acts lawful under International Humanitarian Law”. The essence of this provision is that the Convention would not criminalise, what is not prohibited under IHL.

In order to allay possible concerns of impunity, the “Compromise Package” also stipulates that the exclusion of certain acts, which may be materially incriminating, from the scope of application of the Convention, will not lead to impunity, in respect of such acts, if they are unlawful under other rules of applicable International Law and would be punishable under such laws.

Therefore, the negotiations, are now proceeding on the basis of an approach, of addressing the different concerns of delegations, through “carve outs”, of specific legal regimes, by carefully delineating the scope of application of the Convention, rather than attempting to exclude specific acts from the generic definition of terrorism.

The prolonged nature of these negotiations, while giving cause for concern that it sends out a negative signal from the United Nations in enhancing international cooperation to combat terrorism, nevertheless is understandable, given the backdrop of sensitive political issues involved, particularly the situation of occupied territories in the Middle East.

However, the fact that all delegations are now prepared to negotiate on the basis of the approach in the Coordinator’s Text, recognizing however, that all proposals remain on the table, until there is an acceptable outcome in respect of their concerns, is a positive, that need to be underlined.

As mentioned at the commencement of this presentation, it is also important to bear in mind that in the context of United Nations’ efforts to address the need for international efforts to enhance co-operation in combating terrorism, there is an all important role of the Security Council, by way of Enforcement Measures in terms of Chapter VII of the Charter. These address measures required by way of immediate action by Member States, in given situations, in contrast to the slower norm creating process. Yet, it needs to be emphasized that the Basic Approach now is the Compromise Approach and it emphasizes the fact that the Convention would be open alongside other legal regimes. The Comprehensive Convention is also an instrument of law enforcement, it would be accompanied by a draft resolution and it continues to be negotiated. It does not have a generic definition rather it takes into account concerns of different groups. Once adopted it will go alongside other legal regimes and will help States under general international law.

I once again thank you for giving me this opportunity.

Vice-President: Thank you Dr. Rohan Perera, for that most enlightening and lucid presentation. I now invite Mr. Peter Terkaa Akper SAN, Senior Special Assistant to the Attorney-General of the federation and Minister of Justice, Federal Republic of Nigeria,

to make his presentation on “Legal Response to Terrorism in Nigeria: Issues and Challenges”.

Mr. Peter Terkaa Akper SAN, Senior Special Assistant to the Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria: I am honoured to have been invited by the Attorney General of the Federation and Minister of Justice, **Mr. Mohammed Bello Adoke, SAN, CFR** to deliver this paper at the 51st Annual Session of the Asian-African Legal Consultative Organisation (AALCO). Although I was invited to speak on “Terrorism in Nigeria”, for want of special knowledge on the subject matter, I have taken the liberty of amending the topic to read **“Legal Response to Terrorism in Nigeria: Issues and Challenges.”** I have approached the subject with due humility, conscious that the subject matter is relatively novel to us in Nigeria and that our legal response can reasonably be adjudged to be at its infant stage, when compared to other jurisdictions like South Africa and the United Kingdom.⁹

Until, recently terrorism or the threat of terrorism was a negligible phenomenon in Nigeria. President Goodluck Ebele Jonathan, GCFR recently reiterated this position in his Democracy Day Address where he stated that “... *terrorism, a new menace, is totally alien to our way of life and culture; it has reared its head and is posing serious challenge*”¹⁰ The first major incident of what can be described as an act of terrorism was the aircraft hijacking which occurred on Monday 25th October 1993 when in the heat of June 12 election annulment in 1993, four Nigerians hijacked a Nigeria Airways, Airbus A310 and diverted it to the Republic of Niger.¹¹ Adewale Adeoye describing the hijack and its apparent strangeness in the Nigerian environment at the time of its occurrence stated as follows:

“...they did not only seize the plane, they also held in awe all the bewildered passengers, some of who were business people or top government officials flying to Abuja, the seat of power.... The boys cited the need to enthrone democracy and actualise the annulled June 12 election as the reason for **what appeared a desperate action, quite strange to their social milieu**”(**emphasis mine**)¹²

It is reported that in the course of the aftermath of the agitations for the actualization of June 12 election in 1993, the country witnessed several bombing incidents targeted

⁹ See Nigeria’s principal legislation on terrorism the Terrorism (Prevention) Act came into force on 3rd June 2011, while the United Kingdom’s core legislation, the Terrorism Act, was enacted in 2000.

¹⁰ See Democracy Day Address by His Excellency, Dr. Goodluck Ebele Jonathan, GCFR Tuesday, 29th May 2012.

¹¹ See Adewale Adeoye- The Nation Newspaper on “ The June 12 Nigeria Airways Plane Hijack: The Untold Story <http://maxsiollum.wordpress.com/2009/06/22/the-june-12-plan-hijack-the-untold-story/07/06/2012> for a detail story on the hijack which was mainly to further the political interest of the 4 -young person’s calling themselves the Movement for the Advancement of Democracy (MAD) that were involved in the hijack.

¹² Adewale Adeoye, Deputy Director, The Nation Newspaper interviewed Richard Ogunderu one of the hijackers of the Nigeria Airways Airbus A310 , sixteen years after the encounter. In The June 12Nigeria Airways plane Hijack: The Untold Story. Ibid.

mainly at military convoys, although the exit of the military in the body politics of the country and the advent of democracy in 1999 put a lull to these activities and agitations.¹³ The spate of bombings in the country however started on 1st October 2010 when terrorist struck near the eagle square where the independence activities were taking place in Abuja. Since then, other bombing incidents were recorded in Jos, Bayelsa and Lagos.

The Boko Haram sect has also added another dimension to the bombings as they routinely attack Police stations, churches and Schools. But, the most profound of their terrorist activities was the UN House bombings in Abuja which attracted international condemnation. This, coupled with the Mutallab's attempted bombing of Delta Airline in December 2009, brought Nigeria to the global discourse on international terrorism. Although, acts of terrorism have been on the increase in the country, Nigeria did not have a comprehensive legislation on terrorism before June, 2011. This is despite the fact that Nigeria had ratified more than ten out of the 16 United Nations Terrorism Conventions.

Government's counter terrorism strategy is to confront all those threatening the nation's collective peace and security and bring the perpetrators to Justice. To give effect to this strategy, government responded to the menace of terrorism by taking steps to enact the Anti-terrorism legislation which had been in the force for about 5 years.¹⁴ The collective resolve of the government came to fruition with the enactment by the National Assembly of the Terrorism (Prevention) Act, 2011. This paper examines the legal regime that has been put in place to combat terrorism in Nigeria, the extent to which it complies with global standards and offer suitable recommendations where necessary to address growing terrorism threats in Nigeria.

2. Overview of the Terrorism (Prevention) Act, 2011

The objectives of the Terrorism (Prevention) Act 2011 (TPA 2011) are "to provide for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of terrorism and the Convention on the Suppression of the Financing or Terrorism".¹⁵ TPA is divided into eight major parts. These include:

- (i) provision of acts of terrorism and related offences;
- (ii) prohibition of terrorist funding and seizure of terrorist property;
- (iii) provision of cooperation to other countries through mutual legal assistance and seizure of terrorist assets;

¹³ See Onwuka Nzeshi " 5 Years on, Anti-terrorism Bill 5 Years on, Anti –terrorism Bill, <http://w.w.w.Thisdaylive.com/articles/5-years-on-anti-terrorism-bill-5-years> 07/06/12

¹⁴ Unsuccessful attempts were made by President Olusegun Obasanjo, GCFR and President Umaru Musa Yar Adua GCFR in 2006 and 2007, respectively

¹⁵ See Explanatory Memorandum to TPA 2011

- (iv) provision of cooperation to other countries through extradition of suspects linked to terrorism;
- (v) investigative powers;
- (vi) prosecution
- (vii) power to register or refuse registration of charities, and
- (viii) miscellaneous powers.

2.1 Terrorist Offences

The Terrorism (Prevention) Act, 2011 (TPA 2011) creates a number of terrorism offences which range from attempted acts of terrorism to actual commission, assistance and facilitation of the activities of persons engaged in terrorism. Section 1 of TPA 2011¹⁶ provides that:

- (1) A person who knowingly –
 - (a) does, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism;
 - (b) commits to do anything that is reasonably necessary to promote an act of terrorism, or
 - (c) assists or facilitates the activities of persons engaged in an act of terrorism, commits an offence under this Act.¹⁷

2.2 Definition of terrorism

The 2011 Act provides a definition of ‘terrorism’ as an act which is deliberately done with malice, aforethought and which:

- (a) may seriously harm or damage a country or an international organisation;
- (b) is intended or can reasonably be regarded as having been intended to-
 - (i) unduly compel a government or international organisation to perform or abstain from performing an act;
 - (ii) seriously intimidate a population;

¹⁶ The Terrorism (Prevention) Act, 2011 was passed by the National Assembly on 1st June 2011 and assented to by President Goodluck Ebele Jonathan, GCFR on 3rd June 2011.

¹⁷ See section 1(1) (a) (b) (c) TPA 2011

- (iii) seriously destabilize or destroy the fundamental political, constitutional, economic, or social structures of a country or an international organisation, or
- (iv) otherwise, influence such government or international organisation by intimidation or coercion.¹⁸

2.3 Terrorist acts

The definition of terrorism also sets out a list of terrorist acts and includes acts which involves or causes, as the case may be-

- (i) an attack upon a person's life which may cause serious bodily harm or death;
- (ii) Kidnapping of a person;
- (iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
- (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection;
- (v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into and development of biological and chemical weapons without lawful authority;
- (vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;
- (vii) Interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life.¹⁹

It is instructive to note that the scope of TPA 2011 extends to acts or omissions in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.²⁰ However, demonstrations or stoppage of work are excluded where such acts are not intended to result in any harm referred to in subsection (2) (b)(I), (ii) or (iv) of the Act.²¹

It is clear from the definition that the TPA takes cognisance of all groups, individuals, and states as well as factors that engender terrorism such as political reasons, which may

¹⁸ See section 1(2) (a) (b) (i)-(iv) TPA 2011

¹⁹ See section 1(2) (c) (i) -(vii) TPA 2011

²⁰ Section 1(2) (d) TPL 2011

²¹ Section 1(3) TLA 2011

manifest in form of liberation movements, resistance to foreign occupation, and attempts by countries to influence the decisions or policies of another country, or trying to force its policies on other countries through intimidation or coercive means. The description of terrorism under TPA also conforms with Nigeria's obligation under the various United Nations Terrorism Conventions.

2.4 Proscribed Organisation

The TPA 2011 empowers the government to proscribe any organisation that engages, participates, collaborates, promotes, encourages, exhorts, and sets up or pursues acts of terrorism. The Attorney General, National Security Adviser or the Inspector General of Police may with the approval of the President apply to a judge in chambers to declare any entity to be a proscribed organisation and the notice would be published in an official gazette.²²

2.5 Terrorist Meetings

The TPA 2011 also criminalises terrorist meetings and punishes those who arrange, manage, or assist in these endeavours, provide logistics, equipment or facilities or attends meeting in support of a proscribed organisation with a maximum term of imprisonment of 10 years.²³ Similarly, those who knowingly solicit or render support²⁴ for an act of terrorism or proscribed organisation or an internationally suspected terrorist group are liable on conviction to a maximum of 20 years imprisonment.²⁵ Equally significant is the provision that where death results from any of the terrorist acts, the penalty shall be death sentence.²⁶

2.6 Harbouring of Terrorist

The TPA 2011 also creates the offence of harbouring of terrorists and punishes any person who knowingly harbours or conceals a person who has committed a terrorist act or has been convicted of terrorism or against whom a warrant of arrest or imprisonment for such an act has been issued. The TPA 2011 has proscribed a maximum term of 10 years imprisonment for any person convicted for the offence.²⁷

2.7 Provision of Training for Terrorist

²² See section 2 (1) (a) –(c) TPL 2011

²³ See section 3 (a)-(c) TPL 2011

²⁴ “Support “ includes incitement to commit a terrorist act; offer of material assistance, weapons, training, transportation, false documentation or identification; offer or provision of moral assistance including invitation to adhere to a proscribed organisation and provision of , or making available , such financial or other related services as may be proscribed in this Act. See section 4 (3) (a)-(d) TPA 2011.

²⁵ See section 4 (1) (a) (b) TPA 2011

²⁶ See section 4 (2) TPA 2011

²⁷ See section 5 TPA 2011

The TPA 2011 criminalises the training of terrorists and punishes any person who knowingly agrees to provide training or instruction in the making or use of explosive device or other lethal device or in carrying out a terrorist act with a maximum term of 10 years imprisonment.²⁸

2.8 Failure to disclose Information about acts of Terrorism

The TPA 2011 makes the non disclosure of information about acts of terrorism an offence and punishes those found guilty of the offence with a maximum term of 10 years imprisonment.²⁹ It is important to note that TPA excludes professional confidential information between a legal practitioner and his client especially where the disclosure is in connection with the provision of legal advice or in contemplation of a legal proceeding.³⁰

2.9 Obstruction of Terrorism Investigation

The offence of obstruction of terrorism investigation is also created by TPA 2011. The offence includes disclosures likely to prejudice terrorist investigation and interference with material which is likely to be relevant to terrorist investigation. The law punishes such offences with a maximum term of 10 years imprisonment.³¹ Confidential communication between a legal practitioner and his client made in connection with the provision of legal advice and for purposes of contemplated legal proceedings are however excluded.³²

2.10 International terrorism

In recognition of the effect of international terrorism, the TPA has empowered the President on the recommendation of the National Security Adviser or the Inspector General of Police to declare a person to be a suspected international terrorist. The person so declared must be involved or has been involved in the commission, preparation or instigation of acts of international terrorism, is a member of, or belongs to or has links to an international terrorist group, or recognised as such under the Act or listed as a person involved in terrorist acts in any resolution of the United Nation's Security Council, or any instrument of the African Union and the Economic Community of West African States (ECOWAS).³³

A significant provision in the TPA 2011 is the power given to the President to withdraw the citizenship of any person declared to be an international terrorist or has links to

²⁸ Section 6 (a) (b) TPA 2011

²⁹ Section 7 (a) (b) TPA 2011

³⁰ Section 7 (3) (4) TPA 2011

³¹ See section 8 (1) (a) –(b) TPA 2011

³² See section 8 (2) (3) TPA 2011

³³ See section 9 (1) (2) TPA 2011. The Act defines “acts of international terrorism” to mean an act of terrorism involving; a non citizen, a person possessing dual citizenship or a groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries.

international terrorist groups.³⁴ The President is similarly empowered to declare a group to be an international terrorist group. Where that happens, the Attorney General may by regulations provide for the freezing of his or its funds, financial assets or other economic resources including proceeds derived from property, owned or controlled directly or indirectly by him or it, by persons acting on his behalf or at his or its direction.³⁵

In addition, the Attorney General of the Federation is empowered to make regulations for the prevention of entry into, or transit in Nigeria of a person declared to be an international terrorist or an organisation. He can also prohibit the direct or indirect supply, sale and transfer of arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, spare parts and related material, technical advice, assistance or training related to military activities. The contravention of the regulations so made by the Attorney General of the Federation attracts a maximum of five years imprisonment.³⁶

2.11 Suppression of Financing of international terrorism

To ensure that terrorist do not access funds for their criminal enterprise, the TPA criminalises the direct or indirect provision or collection of funds with the intention or knowledge that they may be used, in full or in part to commit breaches of specified laws or to do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation or armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organisation to do or abstain from doing any act. The contravention of the law is punishable by a maximum term of imprisonment of 10 years.³⁷ It is however important to note that for an act to constitute an offence under this provision, it is not necessary to prove that the funds were actually used to commit the offence in question.³⁸

2.12 Hostage Taking

The TPA 2011 also criminalises hostage taking by providing that a person who knowingly seizes, detains or attempts to seize or detain; or threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence under the Act and shall on conviction be liable to imprisonment for a maximum term of 10 years.³⁹

3. Terrorist Funds and Property

³⁴ See section 9 (3) TPA 2011. The power to withdraw citizenship is however limited to those who acquired citizenship other than by birth.

³⁵ Section 9 (4) (5) (6) TPA 2011

³⁶ Section 9 (6) TPA 2011

³⁷ Section 10 (1) TPA 2011

³⁸ See section 10 (2) 2011

³⁹ Section 11 (1) TPA 2011. A “third party “ under this provision means a State, an international governmental organisation, a natural or legal person or a group of persons.

Part II of TPA contains provisions relating to terrorist funds and property. Combating of terrorist financing is a critical component of the war against terror. Experience has shown that in most jurisdictions, the financing of terrorism is given special attention in order to ensure that access to such funds is prohibited. Under the TPA 2011 elaborate provisions have been made for seizure of terrorist cash;⁴⁰ the prohibition of terrorist funding;⁴¹ obligation to report suspicious transaction relating to terrorism;⁴² dealings in terrorist property;⁴³ attachment of property⁴⁴ and property tracking.⁴⁵

The law empowers the National Security Adviser and Inspector General of Police to seize any cash where he has reasonable grounds to suspect that the cash is tended to be used for the purposes of terrorism, belongs to or is held on trust for, a proscribed organisation or represents property obtained through acts terrorism. Furthermore, those who fund terrorism are liable to conviction to a maximum of 10 years imprisonment.

Similarly, those who fail to report suspicious transactions commit an offence and are liable on conviction to a minimum of fine of N 5, 000,000,00 or a term of imprisonment not exceeding five years. Where the obligation to report is breached and in circumstances which cannot be adjudged to be deliberate, the Financial Intelligence Unit shall impose such administrative sanctions as it may deem necessary. The law further provides that where an institution is in persistent breach of its reporting obligations, such institution shall on conviction, be liable to a minimum fine of N5,000,000.00 or imprisonment for a maximum term of five years for the principal officers of the institution or defaulting officer.

The State Security Service is empowered to apply to a Judge in chambers for a provisional order to attach all the monies or other property belonging to or held on behalf of a suspect. The court is empowered to make the order whether or not the suspect has been charged to court.

4. Mutual Assistance and Extradition

In view of the transnational nature and dimension that terrorism has assumed, Part III of the TPA 2011 contains provisions relating to mutual assistance and extradition. As part of Nigeria's international obligations and to further international cooperation with other countries in the investigation and prosecution of criminal matters, the TPA empowers the Attorney General as the constituted Central Authority in Nigeria to respond to requests for assistance from other countries in relation to the investigation, prosecution and extradition of persons suspected of having committed any of the offences in the TPA.

⁴⁰ Section 12 (1)-(7) TPA 2011

⁴¹ Section 13 TPA 2011

⁴² Section 14 (1)-(6) TPA 2011

⁴³ Section 15 (1) –(7) TPA 2011

⁴⁴ Section 16(1) TPA 2011

⁴⁵ Section 17 (1) TPA 2011

In the same vein, Nigeria, through the office of the Attorney General may also seek assistance from other countries on matters related to the provision of evidence or the restraint or forfeiture of terrorist property in that other country. Offences listed in this Act are all deemed extraditable offences and anybody suspected of having committed the offence of terrorism can be extradited to a country requesting his appearance in accordance with the Extradition Act.⁴⁶

5. Information Sharing

Part IV of TPA 2011 contains provisions for information sharing and Mutual Assistance on criminal matters. Under the law, the Attorney General, the National Security Adviser or the Inspector General of Police may on the request made by an appropriate authority of a foreign state, disclose to that authority, any information in his possession or in the possession of any other government department or agency relating to any terrorist acts or terrorism.⁴⁷ The provision of the requested information is however subject to its non prohibition by national law and the satisfaction of the condition that it will not prejudice national security or public safety.⁴⁸

6. Investigation

What is generally considered to be of fundamental importance to the investigation of terrorist activities are powers to enter, search, seize, and retain any relevant material belonging to suspected terrorists and to detain persons suspected of having committed such offences. Part V of TPA 2011 is dedicated to terrorism investigation and contains provisions for the issuance of warrants by the court on the application of the National Security Adviser or Inspector General of Police to enter premises, search and seize any relevant material found therein.⁴⁹ The law also contemplates instances where in the case of verifiable urgency; delay may be prejudicial to the maintenance of public safety and order. In such instances, the NSA or IGP may proceed to seal up the premises while a search warrant is sought.⁵⁰

The law also empowers the NSA or IGP to carry out a wide range of enforcement measures upon the grant of a warrant by the court. These include the power to: enter and search premises, search any person or vehicle found on the premises, stop, board and search any vessel, aircraft or vehicle; seize, remove and detain anything, arrest, search and detain any person. The exercise of these powers is subject to the satisfaction that there are reasonable grounds or evidence that an offence has been committed or the likelihood of the commission of an offence.⁵¹

⁴⁶ See Sections 19, 20, 21 and 22 of TPA 2011

⁴⁷ See section 23 (1) TPA 2011

⁴⁸ Section 23 (1) (d) TPA 2011

⁴⁹ Section 24(1) TPA 2011

⁵⁰ Section 25(1) TPA 2011

⁵¹ See section 25(1) (a) –(e) TPA 2011

To enhance intelligence gathering, the AGF, NSA or IGP are empowered by law to give such directions as appear to him to be necessary to a communications service provider for the purposes of prevention or detection of offences or the prosecution of offenders under the Act.⁵² The communication service provider may be required to retain communication as may be directed by these State officials.⁵³

The TPA 2011 also provides that a detention order may be issued in respect of a conveyance by an authorised officer where in his opinion, he believes that a threat has been made to commit an act of violence against a conveyance or against any person or property on board the conveyance; or the conveyance is used for an act of illegality or intended to commit an offence under the Act.⁵⁴ Where the detention order is made and the operator of the conveyance fails to comply with such order, the authorised person may enter or authorise any person to enter the conveyance, and arrange for a person or thing to be removed from the conveyance.⁵⁵

Where the operator of the conveyance objects to the detention order, a judge in chambers may on the advice of the AGF, confirm, vary or cancel the detention order.⁵⁶ The law punishes any failure to comply with the detention order with a maximum fine of N 1,000,000.00 or imprisonment for a maximum term of five years.⁵⁷ The TPA 2011 empowers the NSA or IGP or a delegated officer, not below the rank of Chief Superintendent of Police or its equivalent to direct that the person arrested for terrorism offences be detained in custody for a period not exceeding 24 hours from his arrest, without having access to any person other than his Medical Doctor and legal counsel of the detaining agency.⁵⁸ The TPA 2011 also provides for custody of records and video recording in respect of the person detained for terrorism offences and that such records or recordings may be used in evidence.⁵⁹

7. Prosecution

The object of the criminal process is to apprehend terrorists or suspected terrorists for the purposes of prosecuting and punishing them. Part VI of TPA 2011 contains provisions relating to the prosecution of terrorists. The AGF who is invested with constitutional power over public prosecutions is empowered to delegate his prosecutorial powers under the Constitution⁶⁰ to any agency charged with the responsibility of terrorist investigation to institute criminal proceedings against any person in respect of offences created by the

⁵² Section 26(1) TPA 2011

⁵³ Section 26(3) TPA 2011. A 'communications service provider' under this section means a person who provides postal information or communication services, including telecommunications service, while 'Data' means any information, generated, sent, received, or stored, that can be retrieved by electronic, magnetic, optical or any similar means. See section 26(4) TPA 2011

⁵⁴ See section 27 (1) TPA 2011.

⁵⁵ Section 27 (2) (3) TPA 2011

⁵⁶ Section 27(4) TPA 2011

⁵⁷ Section 27 (7) (a) (b) TPA 2011

⁵⁸ Section 28(1) TPA 2011

⁵⁹ Section 29(1) (2) (3) TPA 2011

⁶⁰ See section 174 of the Constitution of the Federal Republic of Nigeria, 1999

Act.⁶¹ The law also enjoins law enforcement agencies to collaborate and cooperate with the investigating agency in the investigation and prosecution of any offence relating to terrorism.⁶² Although, inter-agency cooperation is not a matter that should ordinarily be legislated as it remains within the realm of national coordination and strategy, the provision enables the country to meet with the international requirements under the Financial Action Task Force (FATF) Recommendation 36.

Witness Protection

The imperative of witness protection schemes to successful criminal prosecution has been taken due cognisance by the TPA 2011. The law empowers the court upon a motion by or on behalf of the prosecuting agency, to protect a witness in any proceedings before it. The court can also act *suo motu* where it is satisfied that the life of the witness is in danger and may take such measures as it deems fit to keep the identity and address of the witness secret.⁶³

Jurisdiction

The jurisdiction to try terrorism offences is vested in the Federal High Court (FHC). The FHC will assume jurisdiction to hear such matters when: (a) the victim is a citizen of Nigeria or has a link with Nigeria or is dealing with and on behalf of the federal government; (b) the alleged offender is in Nigeria; or (c) the alleged offender is in Nigeria and Nigeria does not extradite him.⁶⁴ The court is empowered to impose a wide range of sentences as specified in the Act.⁶⁵ In addition to any penalty imposed under the Act, the Court is empowered to order the forfeiture of funds or properties belonging, used or intended to be used for the terrorist act. It should however be noted that where death occurs as a result of terrorist acts, the law imposes a mandatory sentence of life imprisonment.⁶⁶

8. Charities

To stem the funding of terrorist activities and organisations, Part VII of the TPA provides for the refusal of application for registration and the revocation of Charities linked to terrorist groups.⁶⁷ This is in apparent recognition that Charity Organizations may become vulnerable to those who want to disguise their identity, in furtherance of a terrorist objective. In compliance with FATF Recommendations 8 and in accordance with best practices, Nigeria has provided for measures to permit the Corporate Affairs Commission⁶⁸ responsible for the registration of corporate bodies and charities to: (i) review existing certificates and new applications by a Charity and to reject or approve the

⁶¹ Section 30 (1) TPA 2011

⁶² See section 30(2) TPA 2011

⁶³ Section 31(1) TPA 2011

⁶⁴ See section 32 (1) (2) TPA 2011

⁶⁵ See section 33(1) (a) - (e) TPA 2011 for details of the penalties that can be imposed by the Court.

⁶⁶ See section 33(1) (e) TPA 2011

⁶⁷ Section 35 (1) TPA 2011

⁶⁸ Established by the Companies and Allied Matters Act, 1990

request for registration based on intelligence provided by security, criminal or intelligence reports where there are likelihood that the applicant is making or is likely to make resources available to a terrorist group.⁶⁹ Where an application is rejected or certificate is revoked, the applicant could appeal to the court within 60 days from the time the certificate was issued and the court shall, based on the evidence before it, determine whether the certificate was properly revoked or refused or that revocation is not reasonable. In either case, the judge shall order the registration or continued registration of the Charity.⁷⁰

9. Miscellaneous

Part VII contains miscellaneous provisions which include the power to demand information from operators of aircraft, or master of vessel departing from Nigeria or those departing from other point but are registered in Nigeria, and are subject to regulations issued by the Nigerian Attorney General. Such information would be related to persons on board, expected to be on board the aircraft or vessel. With regard to immigration matters, the Minister of Interior is empowered to refuse to grant an endorsement to other authorities to permit a person to enter Nigeria where it is reasonably suspected that the person has been, is, or will be involved in a terrorist act. Similarly, the Minister of Internal Affairs may having regard to the interests of national security and public safety, refuse the application of any person applying for status of a refugee, if he has reasonable grounds to believe that the applicant has committed a terrorist act or is involved in the commission of a terrorist act.⁷¹

10. Human Rights Guarantees.

One of the issues that has confronted the development of counter-terrorism legislation is the need to ensure that people are not haunted and marked as terrorists on the basis of their belief, political association, religious belief, sex or social affiliations. In this regard, the United Nations has developed the UN Counter-terrorism strategy⁷² that encourages countries to provide protection within the laws for those suspected of being involved in terrorist activities. These concerns have also been expressed by human rights activists and were very topical in the negotiation of the African Union Convention for the Prevention and Combating of Terrorism, 2002 otherwise known as the “Algiers Convention” and during the negotiation of the Nigerian TPA.

Accordingly, the Nigerian law has made commendable efforts to imbibe these international standards and has provided for the following exclusion clauses and human rights protection measures:

⁶⁹ See section 35(1) TPA 2011

⁷⁰ See section 35 (5) (6) (7) (8) TPA 2011

⁷¹ See sections 36, 37 and 38 TPA 2011

⁷² The UN Counter Terrorism Strategy was released in 2006 to assist countries in formulating their national counter –terrorism strategies.

(i) provision of exclusion of circumstances that indicate that an action undertaken by certain persons is a protest, demonstration, or stoppage of work. Such actions should not come within the definition of terrorism if such act was never intended to lead to that outcome.⁷³ This provision seeks to protect in particular constitutional guarantees related to freedom of expression, movement and association as well as rights of workers to express opinions different from their employers as long as no physical harm, economic loss or any criminal act is intended. This provision also partly resolves the controversy surrounding the enactment of the terrorism law and how it may be used to curtail the observance of existing human rights obligations.⁷⁴

(ii) There is recourse to judicial arm of government where the rights of individuals and persons are involved. For instance, warrants must be issued by a Judge in Chambers before searches, arrests and detentions can be embarked upon by relevant law enforcement agencies. This is to ensure that the rights and liberties of persons are not unduly abridged without reasonable cause. This is in addition to the remedy of judicial review that is available against any of the coercive measures provided by the law.

11. Appraisal of the Terrorism (Prevention) Act, 2011

We have already alluded to the relative infancy of the TPA and the counterterrorism measures contained in it. It may therefore be unrealistic to objectively assess its efficacy in combating the menace of terrorism in Nigeria. The Act is barely one year in existence and many of the accompanying regulations to give effect to the Act are just being gazetted. The Attorney General recently issued the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2011 in relation to freezing and forfeiture measures as well as prosecution measures for terrorist groups provided under Section 9 on international terrorists in accordance with FATF Special Recommendation 3 and the United Nations Security Council Resolutions 1269 (1999) and Resolution 1373 (2001).⁷⁵

It is obvious that a lot of work needs to be done in terms of providing the requisite policy and regulatory frameworks and advice to support various measures in the law and to assist the implementing institutions and the financial and non-financial institutions that are required to submit suspicious transaction reports to the Nigerian Financial Intelligence Unit. There is also the need for financial regulatory institutions to understand the TPA and to develop further guidance for its sector.

The office of the Attorney General of the Federation is working on additional regulations that will underpin the various aspects of the TPA related to Charities, Immigration, Aviation, prosecution guidelines, investigation guidelines and the development of proscription list which will be forwarded to the banks on a monthly basis. The effective implementation of this law calls for a pragmatic and proactive approach and the

⁷³ See section 1(3) TPA 2011

⁷⁴ See J. Ford "African Counter- Terrorism Legal Frameworks: A Decade after 2001" Institute for Security Studies, Brooklyn Square, Pretoria, 2011.

⁷⁵ Made pursuant to sections 9 (6) and 39 TPA 2011 and gazetted on 30th September 2011

development of a national strategy to ensure that each agency, financial sector regulators, reporting entities, prosecution and investigation officials understand their remits and are able to secure convictions in a manner that respects and guarantees constitutional rights.

A proactive strategy that responds to the need for community based organisations (CBOs) to be actors in the prevention of terrorist activities in our communities, towns and cities needs to be developed to make the terrorism prevention efforts effective. Also central to the terrorism prevention efforts is the need for a comprehensive witness protection programme that will encourage voluntary provision of intelligence and information needed to combat terrorism.

Equally important is the need for proper coordination of our counter terrorism efforts. The TPA appears to have placed heavy responsibilities on the NSA, IGP and the Attorney General of the Federation with respect to the administration of the Act. This means that these state officials must work closely and cooperatively to prevent duplication of efforts that may militate against effective implementation of the Act. Given the large number of institutions (financial and non- financial) whose inputs are required for the proper implementation of the Act, the need for a properly coordinated counter-terrorism strategy cannot be overemphasised. It is important for all relevant institutions to understand the strategy and collectively align their efforts to ensure success.

It is however important to observe that despite the commendable efforts made to adopt internationally recommended standards and practices in the TPA 2011, the TPA still falls short of FAFT standards and the United Nations Convention on the Suppression of Terrorism in some critical areas. This calls for a comprehensive review of the TPA to bring it in conformity with international standards set by FATF and the UN Convention on the Suppression of Terrorism. For instance, the provisions of the TPA have been adjudged to be grossly inadequate to combat terrorism in line with international best practices. Furthermore, some of the provisions of the TPA do not align with or are in direct conflict with provisions of earlier legislations such as the Economic and Financial crimes Commission (Establishment) Act, 2004 and the National security Agencies Act, 2004.

To cure these defects, the Federal Ministry of Justice embarked on the drafting of a new Bill known as “ A Bill for an Act to Repeal the Terrorism (Prevention) Act, 2011 and Re-enact the Terrorism (Prohibition) Act, 2012. During the review period, comments were received from relevant Nigerian Agencies involved in the implementation of TPA 2011 and other international agencies such as the United Nations Office of Drugs and Crime (UNODC), the United States Department of Justice and the United Kingdom High Commission, the UK Home Office and FATF Secretariat.

The new Bill takes on board most of the provisions of TPA 2011 and further improve on some of the provisions on the TPA. The highlights of the new Bill include:

- (i) the empowering of the ONSA and State Security Service to serve as the lead agency and central coordinating agency in the investigation and intelligence gathering on terrorism;
- (ii) the prescription of life imprisonment for all acts of terrorism;
- (iii) the number of terrorist offences have been increased from 13 in TPA to 26 under the new Bill to include all offences prescribed by international conventions;
- (iv) the obligation on the part of airlines, commercial carriers and tour operators and travel agents not to aid and abet, facilitate and promote terrorist activities and obligation to notify its clients accordingly;
- (v) re-affirmation of the Attorney General's power to institute and undertake criminal proceedings against any person in respect of the offences committed under the Act or any law relating to acts of terrorism;
- (vi) the re-affirmation of the Jurisdiction of the Federal High Court to try terrorism offences and power to refuse any application for stay of proceedings in respect of any criminal matter brought under the Act until judgment is delivered, and
- (v) the provision for the establishment of Victims Trust Fund to be managed by a Trust Fund Board.

12. Conclusion

Nigeria's experience with terrorism is relatively new. The legal regime that has been put in place to tackle terrorism in Nigeria is also new and undergoing review to bring it in conformity with internationally recommended standards and practices. Despite some of the identified short comings, we have shown that Nigeria has made commendable efforts to domesticate international standards relating to the strengthening of counter-terrorism strategies. However, its implementation has not been long enough for its efficacy to be tested. But, until the review process is completed and enacted into law, the extant legal regime on terrorism is the TPA 2011. It is therefore important for institutions and agencies charged with the implementation of the law to rise up to the challenge of implementing the legislation.

Finally, it should be appreciated that the task of combating domestic and international terrorism in Nigeria should not be left to Nigeria alone. It must be the collective responsibility of all. It is in this connection that Nigeria will benefit from knowledge sharing and the rich experiences of other Asian and African countries in the global fight against terrorism.

Vice-President: I thank Mr. Peter Akper for his very extensive presentation sharing the experience of his country with all the Member States of AALCO. Before we proceed

with discussions and invite speakers for their statements, we will have a short break and resume at 11.30 AM.

Vice-President: Ladies and gentlemen, now I invite the Delegate of the People's Republic of China to make their statement.

The Delegate of the **People's Republic of China:** Mr. Vice-President, and Distinguished Delegates, the year 2011 witnessed a series of major events in the international campaign against terrorism. Terrorist activities resurged across the world with new dimensions, for example, Internet and social media become new vehicles for organizing and committing terrorist activities; terrorist activities are more commonplace and multi-centered, and are carried out on smallest scales and with sophisticated technologies. What's more, cross-border strike and the use of force against terrorism attract more attention and concern of the international community.

Mr. Vice-President, the Chinese Government has consistently opposed and resolutely fought against terrorism in all its forms and manifestations. We believe that the fight against terrorism should be carried out in strict accordance with the purposes and principles of the Charter of the United Nations and other recognized norms of international law. In this regard, state sovereignty should be respected and double standards must be abandoned. Counter-terrorism requires strengthened international cooperation. The Chinese Government supports the UN in continuing to play a leading and coordinating role in this area. Furthermore, we suggest that further studies be carried out on international rules relating to the use of force in combating terrorism, so as to ensure that counter-terrorism efforts are made in conformity with international law.

Mr. Vice-President, China has always worked to improve the counter-terrorism legal framework at the national level. In October 2011, the Standing Committee of National People's Congress of China adopted the Decision on Issues Related to the Strengthening of Counter-terrorism Work. It is the first specialized anti-terrorism legislation of China, providing a legal basis for China's participation in international cooperation against terrorism. China has joined various anti-terrorism conventions of the UN. The most recent event was that on 8th November 2010, China ratified the International Convention for the Suppression of Acts of Nuclear Terrorism. China has also taken comprehensive measures to implement its obligations including improving domestic legislation.

Mr. Vice-President, China firmly supports and actively participates in international cooperation to respond to the challenges posed by terrorism. For example, China has been constructively participating in the elaboration of a comprehensive counter-terrorism convention within UN framework and will remain committed to this endeavor. China has also been actively involved in the discussions under the Global Counter-Terrorism Forum.

At the regional level, China attaches great importance to the Shanghai Cooperation Organization and other regional efforts in advancing pragmatic cooperation against terrorism. At the summit of Shanghai Cooperation Organization held in Beijing, China

early this month, heads of Member States agreed to strengthen cooperation against terrorism, and passed Resolution on the Cooperative Programme on Fighting Terrorism, Separatism and Extremism for 2013-2015.

Bilaterally, China has signed anti-terrorism agreements with Pakistan, Kazakhstan, Kyrgyzstan and others respectively, and held relevant consultations with countries such as Japan, India, Russia and the Republic of Korea.

Mr. Vice-President, the Chinese Delegation would like to reaffirm that China will continue to enhance cooperation with Asian and African countries in fighting terrorism and jointly safeguard international peace and security. Thank you, Mr. Vice-President.

Vice-President: I thank the delegate of China and now call upon the delegate of Myanmar to make their statement.

The delegate of the Union of Myanmar: Mr. Vice- President, Distinguish Guests, Ladies and Gentlemen, it is indeed an honour and a privilege for me to be here. First of all, I would like to express on behalf the Myanmar Delegation to this Conference our sincere thanks to the President of the Fifty-First Annual Session and the Organizing Committee for the warm reception extended to us. We congratulate you on your election to the chair and we are confident that under your able leadership this Conference will reach great height of success. We are very grateful to the host country for its efforts in making all possible favourable conditions for the success of our Conference.

Mr. Vice-President, Terrorism is not concern of a nation but for all nations. We feel that the crime of Terrorism is one of the most serious challenges facing the international community today, and we firmly believe that who perpetrate organize and sponsor terrorist acts must be brought to justice and duly punished.

Mr. Vice-President, International Terrorism constitutes a threat to international peace and security. We believe in the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations. We are also deeply concerned by the increase, in various region of the world, of acts of terrorism motivated by the intolerance and extremism. Recently, we all are facing with horrific event of terrorist attacks everywhere in the world.

It is our sincere desire to cooperate with States, both regionally and on global basis, to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions through all lawful means.

Mr. Vice-President, It is clear that terrorism is a global challenge that the fight against it requires concerted regionally and globally action. In this juncture, we wish to share with you the law development of Myanmar in the area of effective measures of combating terrorism, Myanmar is not immune to terrorism and has political will to combat terrorism. We are committed against terrorism in all its forms and manifestations. International conventions relating to prevention and suppression of international terrorism Myanmar

has acceded or ratified 12 conventions. At the same time, we already have nine domestic laws on the subject and they are either in the nature of laws or special laws as our legal system signifies them. To adopt domestic legal effect to these conventions, our legislative draftsmen are now drafting a General Anti-Terrorism Law.

Myanmar has reported to the Counter terrorism Committee (CTC) pursuant to paragraph 6 of Resolution 1373(2001) of 28 September, 2001. It is our sincere desire to cooperate with CTC for the interests of international community and our citizens.

Regionally, within the framework of ASEAN, Myanmar has participated and cooperated on a number of issues to counter terrorism. Myanmar is a signatory to ASEAN Counter-Terrorism Treaty in 2009.

Mr. Vice-President, I would like to share, that will further galvanize one of our efforts to effectively fight terrorism was Myanmar acceded to the United Nations Convention against Transnational Organized Crime and its Two Protocol on 30th March 2004. The domestic law for TIP has been promulgated as the Anti- Trafficking in Persons Law on 13th September 2005. On the other hand, terrorism is taking part in the area of Financial Crimes. The Control of Money Laundering Law was promulgated in 2002 and it is enforced with its rules. This law has been drafted in accordance with international standards and Financial Action Task Force (FATF) 40 Recommendations and 8 Special Recommendations.

Domestically, another milestone in the area of combating transnational organized crime is the promulgation of the Mutual Legal Assistance in Criminal Matters Law on 28th April, 2004. The law was drafted in line with the international conventions and regional agreements to facilitate combating crimes of transnational nature.

Mr. Vice-President, Myanmar's commitment to combat terrorism and other transnational crimes is evident. We are determined to cooperate with the international community to combat these crimes. We sincerely believe that the present conference will positively contribute in harmonizing global solidarity in combating these heinous crimes.

Mr. Vice-President, in conclusion, we are well aware of the fact that combating terrorism is a complex and complicated issue involving a number of factors. Terrorism and other transnational crimes in its present form and stage are the crimes that the international community has to counter with all its might. We hopefully believe that combating these unscrupulous crimes of both national and international nature will be successful. Thank you

Vice-President: I thank the delegate of Myanmar for her statement and now call upon the delegate of Sri Lanka for their statement.

The Delegate of the Democratic Socialist Republic of Sri Lanka: Thank you Mr. Vice-President. Terrorism is a subject of considerable concern. It has consequences both legal and political. We in Sri Lanka have faced terrorism for decades and are more sensitive to the problem, perhaps more than anyone else. Persons with broken limbs, widowed women and orphaned children bring back memories of the most lamentable era in the

history of our nation. We therefore, feel committed and would extend our whole hearted support to all endeavours of the international community in combating terrorism.

Even though differences may arise on how we should proceed to overcome this problem which not only endangers our lives but those of our children, the international community should stand united so that international rules are evolved which hopefully we could subscribe to successfully encounter international terrorism. Sri Lanka has from the outset lent its unstinted support to the international community on measures to eliminate international terrorism and played a constructive role in obtaining consensus on the measures taken by the United Nations. The United Nations Ad Hoc Committee on Measures to Eliminate International Terrorism has played a vital role since its inception in 1997, in the formulation of a legal framework for combating different manifestations of terrorism. The output in the form of producing an International Convention for the Suppression of Terrorism; and International Convention on the Suppression of the Financing of International Terrorism; and International Convention on Nuclear Terrorism constitute important landmarks in the fight against international terrorism. Sri Lanka has been actively involved in this regard in many United Nations fora and has been the Chair of the UN Ad-Hoc Committee on Measures to Eliminate International Terrorism. We have listened carefully this morning to the statement made by the Chair of the Ad-Hoc Committee Dr. Rohan Perera, on the current status of the Ad-hoc Committee. This was an important initiative taken by the Government of India, the founder member of AALCO and Sri Lanka has consistently emphasized on the need to reach a consensus in these negotiations which have taken almost ten years to reach a conclusion. This is an important legal instrument which seeks to bridge the existing gaps in the Convention regime. In its definition it includes offences such as terrorist act conducted against environment and certain other acts. The compromise proposal made by the Co-ordinator in 2007 referred to by the Chairman in his statement provided the current status. The other issues and regimes which applied to armed conflicts gave rise to certain political considerations by some States. Failing to conclude this convention would send a signal that the United Nations has failed in the vital task of providing a comprehensive legal framework to address the questions of international terrorism. Thus, Sri Lanka would continue to make every effort at the next United Nations General Assembly Session to bring the negotiations on the Draft Comprehensive Convention on Terrorism to a conclusion.

At the international level Sri Lanka has signed 11 international conventions to counter terrorism. Sri Lanka will be taking steps to sign the 1979 Convention on the Physical Protection of Nuclear Material; and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. With regard to our domestic legal framework we are currently engaged in the finalization of a series of measures which would effectively fulfill the requirements of international conventions on international terrorism. The reason why Sri Lanka has undertaken several important legislations in order to give effect in its domestic territory alone is to abide by international conventions to which Sri Lanka is a party. Many measures are being taken to abide by the Convention on the Physical Protection of Nuclear Material, will give effect to the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. The strengthening of national legislative frameworks will enhance the

capacity of States to deal with the terrorist groups, constitutes an essential prerequisite to the successful implementation of the international corroborative efforts aimed at curtailing international terrorism. Sri Lanka is ready to adopt all necessary frameworks by way of enabling national legislation. Past experiences have shown that the enactment of enabling legislations in Sri Lanka even though have been time consuming, has helped reach the desired results. All endeavours are being made to have enabling legislations enacted for international conventions on counter terrorism. Investigation and Prosecution for offences involving terrorism has faced us with numerous difficulties. Thus, establishing an international network based on international cooperation is one of the important prerequisites of our times. I would suggest that the international community should strive hard to evolve some such strategies.

Extradition and mutual legal assistance are some of the most important weapons in the armory of States in the fight against international terrorism. However, extradition and mutual legal assistance are possible only on the basis of bilateral treaties and in the case of Commonwealth countries of which Sri Lanka is also a part. We have however, taken steps to render assistance on reciprocal basis whenever requests are made outside without bilateral dispute. Counter terrorism methods would involve measures to freeze assets would be made possible by effective international cooperation in the area. This needs to be reviewed and restructured with a view to enhance international cooperation. We have over a long period faced difficulties that the prosecution system has faced due to the absence of a strong international network in this field.

Past experience has shown that those involved with the acts of international terrorism derive sources from beyond national borders. Inability to penetrate into the cadres of such activity beyond national borders without the network of established cooperation of agencies can be identified as a major hurdle in the sphere of international terrorists. The delay to prosecute the offenders is sometimes equated with violation of the rights of the accused persons. Expeditious disposal of cases would help in combating terrorist activity without compromising with the other factors on the agenda of the law enforcement agencies. International cooperation in these areas would undoubtedly help in accelerating such measures.

Mr. Vice-President I would like to conclude by expressing the fullest cooperation of Sri Lanka towards the successful accomplishment of all the UN initiatives towards combating international terrorism in all its forms and manifestations.

Vice-President: Thank you. Now I request the delegate of Indonesia for the statement.

The Delegate of the Republic of Indonesia: Mr. Vice-President, Distinguished delegates, Indonesia consistently condemns all forms of terrorism in whatever motivation and manifestation. This leads to the strong commitment to enhance international cooperation in order to prevent and eradicate terrorism, at a multilateral and regional level, as well as bilateral level. These commitments has been implemented through capacity enhancement, law enforcement, improvement of legislation/legal framework, information and various experience exchange, sending experts and providing expert advice, and other technical cooperation.

Mr. Vice-President, Distinguished delegates, allow us to share a few of important points on how to further strengthening the efforts at fighting terrorism. First, Indonesia believes that regional and national measures should be in concert with global efforts.

At multilateral level, Indonesia is ever mindful of the significance to cooperate under the UN framework and to continuously support the UN to play key role in eradicating international terrorism subject to international laws. In this regard, the establishment of a Comprehensive Convention on International Terrorism is significant as well. Meanwhile, Indonesia will positively continue to utilize and enhance the cooperation under the framework of the UN Global Counter-Terrorism Strategy (UNGCTS). The Strategy focus on the four key areas of action consisting of tackling the conditions conducive to the spread of terrorism, preventing and combating terrorism, building States' capacity to counter terrorism, and ensuring respect for human rights against the backdrop of the fight against terrorism.

Indonesia views that it is necessary to give attention to the implementation of UNGCTS, taking into mind that UNGCTS is a joint agreement of all member countries of the UN and includes the commitment of all countries to combat terrorism effectively. In the framework of implementing global strategy, the Indonesian Government has supported various efforts to enhance understanding of UNGCTS, including through the implementation of several activities, in regional and multilateral level.

In line to these efforts, at regional level, Indonesia has adopted an ASEAN Convention on Counter-terrorism to strengthen cooperation and capacity building among ASEAN member countries in the fight against terrorism. As in national level, Indonesia has enacted a national Law on Counter Terrorism. In strengthening the efforts to prevent and eradicate the acts of terrorism, Indonesia has established the National Anti-Terrorism Agency. Subsequently, the critical need to suppress the financing of terrorism has also led to the establishing of national Law on Preventing and Combating Money Laundering, and Law on the Electronic Information and Transaction. Indonesia also holds a high commitment to cooperate with *Financial Action Task Force* (FATF) in implementing the FATF standards, particularly the *40+9 Recommendations*.

Second, Indonesia views that it is necessary for us to have broad and long-term strategies that make use of soft power, and to address the root causes or condition conducive to terrorism.

Indonesia believes that prevention and eradication steps should also be implemented by soft power approaches. Such steps has also been implemented through various initiatives to push interfaith dialogue which aims to build an understanding and harmonious relation between religious communities and regional beliefs of various countries. In this regard, we need to build a culture of dialogue, spreading education and promoting inter-community engagements, which aim to overcome terrorism, radicalism and extremism.

Indonesia would like to underline the importance of putting de-radicalization program to the forefront of counter terrorism strategy. Activities such as promoting network among the moderates, disrupting radical networks, fostering mosques and pesantrens/madrassas, directing extrimists to leave their violent tactics behind and pursue their objectives

through democratic process, may do significant impacts to pursue the de-radicalization program. Contribution of the media, with its power to influence larger audience will also certainly be very significant.

It is also necessary to overcome the conditions conducive to the spreading of terrorism, such as prolonged conflicts, defects in the rule of law, violation of human rights, the lack of good governments and discrimination on ethnicity, nation and religion. Indonesia also firmly agrees that terrorism cannot and must not be associated with any particular religion, culture, nationality, race civilization or ethnic group and that those attributions should not be used for the adoption of measures to counter terrorism.

Third, efforts to eradicate terrorism must be inconformity with democratic principles.

All measures against terrorism must be consistent with the rule of law and a deep and abiding respect for human rights. They must be in accordance with international law, including the Charter of the United Nations. Effective law enforcement measure is an essential component of the fight against terrorism. We must deter, frustrate and put out of commission every terrorist cell and operative that we discover, while fully respecting human rights. In this regard, our National Law on Counter Terrorism provides the protection to the rights of the victims and the accused ones. I thank you.

Vice-President: I thank the delegate of Indonesia for that statement and now call upon the delegate of the Islamic Republic of Iran to express their views on the topic.

The Delegate of the Islamic Republic of Iran: In the name of God, the Compassionate, the Merciful at the outset, I would like to thank the Secretariat of the AALCO for preparing the informative report on “International Terrorism”, as contained in document AALCO/51/ ABUJA/2012/SD/S 7. My delegation has found the report as a useful and instructive document.

Mr. Vice President, International terrorism is a challenge to international peace and security; it threatens all nations and countries in the world, regardless of geography, status or power.

Despite all efforts made at various fronts, we are far from uprooting this menace and the threat of terrorism continues to affect our societies.

Unfortunately terrorism has long been manipulated by some as a political leverage against others; they have not hesitated to sit and work with terrorists whenever they saw it as beneficial to their narrowly defined geopolitical interests. Such sinister functionalist approach toward terrorism which is, almost inevitably, ensued by double standards in dealing with terrorist groups or terrorist acts, gives room for terrorist groups to take hold and survive. Terrorism could not be overcome without addressing also State terrorism which has caused catastrophic consequences to many nations of the world.

Mr. Vice President, my country has long been a target of terrorism, and we fully understand the untold consequences of acts of terrorism for the victims and for the society at large. Our scientists have fallen victim to acts of terrorism directly ordered

from outside in line with the vicious campaign to deprive Iran of its legal and legitimate right to use nuclear energy for peaceful purposes.

We firmly believe that resorting to indiscriminate violence and acts of terrorism, whether by terrorist groups or by State military forces, and killing and injuring civilians and generating terror and intimidation among the public are criminal acts which could not be justified in any manner.

Fighting terrorism requires the concreted and concerted efforts and political will of all nations in international community. All countries should organize their efforts under the auspices of the United Nations and in conformity with the United Nations Charter and international law avoiding double standards and selectivity.

Mr. Vice President, before concluding, my delegation would like to underline that the appalling cruelty of terrorist's acts should not divert our attention from the bitter fact that terrorism could not be eradicated unless its root causes or the conditions conducive to its spread are identified and removed.

My delegation is of the view that a consensual definition of terrorism should strengthen international cooperation against terrorism and end subject-to-abuse ambiguities concerning this term. Such definition has to make a clear distinction between heinous acts of terrorism and legitimate struggle of peoples under foreign occupation for restoring their fundamental right of self determination. Thank you Mr. Vice President.

Vice-President: I thank the representative of Iran and now call upon the distinguished delegate of India to make the statement.

The **Delegate of India:** Mr. Vice-President India continues to believe that terrorism in all its forms and manifestations irrespective of its motivations is a criminal and punishable act. It cannot be condoned or accepted as legitimate in any situation. Justifications on diplomatic, political, social, philosophical or any other grounds are untenable. The 1994 Declaration is most categorical in this respect and provides that “no considerations of political, philosophical, racial, ethnical, religious or any other nature could justify criminal acts in creating to promote a state of terror in the public”. This principle is also reiterated in several other conventions and UN General Assembly Resolutions which condemn terrorism in all its forms and manifestations, which signals the resolve of the international community that it will no longer tolerate the actions of the sponsors of terrorism or those who give them shelter. India has established a comprehensive legal framework on counter terrorism. The 13 UN anti terrorism conventions relating to specific terrorist activities remain the fundamental tools in the fight against terrorism. India is party to all these 13 international instruments. India is also taking measures of becoming a member of the financial action task force under FATF and will cooperate and share information on money laundering and terrorist financing with other members of FATF.

Mr. Vice-President we hope that the UN Instruments on terrorism and other important developments in the past years which included institutionalization of the CITF and other efforts of States and organizations to address the acts of terrorist acts we hope that the next efforts would be more focused and give an opportunity to States as well as UN agencies to highlight and share the experiences so that ways and means can be found for addressing the difficulties so as to ensure that the synergies evident in the document are essential for effective implementation. With regard to the Comprehensive Convention against International Terrorism, Mr. Vice-President, we appreciate the efforts of the Chairman of the Working Group in trying to forge a consensus on the 2007 proposal. We sincerely hope that in a spirit of mutual accommodation and flexibility Member States would respond constructively and help in the early conclusion of the Comprehensive Convention, So that the mandate of completing the framework of conventions aimed at combating international terrorism can be brought to a successful close. With regard to the background note on the framework convention, I need not take much time as the Chair of the Working Group has already given an in depth picture of the status of the negotiations as members recall since October 2000, the Ad-hoc Committee has been considering the Ad-hoc Convention Against International terrorism proposed by India, which had been proposed as an umbrella Convention which will deal with the terrorist acts, committed by any means as against the present sectoral conventions which have dealt with specific offences only as regards their means of commissions for example, terrorist bombings or the subjects of the acts that is civilians or attacks against diplomats.

Mr. Vice-President as was mentioned by the Chairman of the working group the substantive provisions of the draft convention have been already discussed, however, further progress on the convention has been stalled by the insistence of some members for excluding “State terrorism” from the scope of the convention for peoples effected by foreign occupation. In respect of excluding persons from the armed forces of states, which are subject to other rules of international law, we are happy to note that this year there was more active and substantive participation from states as far as the process of FTFA and the move on urgency, the facilitator also had formal contacts with delegations during the inter-sessional period and reported that the 2007 proposal was still under active consideration. We appreciate that and in our view the new proposals put forward seem to address the issues of impunity as well as delimitation of this convention and the international human rights law. We are of the view that these issues are already clearly addressed under draft article 18. Mr. Vice-President we continue to believe that killing of innocent civilians cannot be justified for any cause therefore, a legitimate cause for the national struggle for liberation have to be permitted within the parameters of the IHL. These principles must be respected in all circumstances as it does not legitimize the use of force for anybody for whatever reason or whatever way. Mr. Vice-President we appreciate the efforts of the Chairman on trying to forge a consensus on the proposal and shall continue to support the 2007 proposal and continue to reiterate the need for the early conclusion of the comprehensive convention. I thank you Mr. Vice-President.

Vice-President: I thank the delegate of India for her statement and now I give the floor to the Attorney-General of Uganda for the statement.

The **Delegate of Uganda:** I thank the panelists for their presentations and also to those who responded. I have listened carefully to this discussion and wish to state that in Uganda we take terrorists as cowardice, we take them to be dedicated devils and would like to give the example of what happened in Uganda on 11 July 2010 when these terrorists attacked groups of young people who were watching the final match of the world cup match, over 70 people died in that attack and several others were injured. It was a reprehensible act. So Mr. Chairman I support for instance the position taken by Sri Lankan delegation that we should emphasize as many bilateral arrangements as possible. For instance in extraditing suspects we need to actually promote advocacy of bilateral agreements in that area, which I think will be useful. Talking about another challenge, I don't know what it is in other jurisdictions but in our own jurisdiction, in our Constitution there is a provision that provides for a "48 hour rule" with a condition that you have to produce a suspect in Court and charge the suspect. In cases of terrorism Mr. Chairman, there are challenges involved for complying with that requirement the "48 hour rule". Prof. Perera here in his very well made presentation and in view of his experience would tell us about other jurisdictions. But certainly complying with the 48 hour rule in cases of terrorism is a very complex matter.

Another challenge that is always faced is domesticating the ICC statute as was our experience in Uganda, because the Rome Statute does not have death penalty and we have death penalty in Uganda. But the Supreme Court had given a ruling that we should not have compulsory death penalties in our rules. But I think the earlier we discuss the issue of death penalty and come close to the issue of deterrent. Thank you Mr. Chairman.

Vice-President: Thank you the representative of Uganda for that statement. Prof. Perera has told me that he does not yet wish to make a statement. So now I request the delegate of Japan to make his statement.

The **Delegate of Japan:** Mr. Vice-President, Japan considers that the international community continues to face the threat of terrorism which manifests itself in recent years in varied forms including the so-called home grown terrorists or incidents of terror staged by individuals such as the one which happened in a Nordic country.

Therefore, today, more strongly than before, international cooperation is called for to share information on terrorists, to make rules and standards on counter-terrorism measures, to assist capacity-building on anti-terrorist measures and also to look into the root causes of terrorism. Having in mind such needs, Japan has been making efforts on three pillars: (1) to strengthen national counter-terrorism measures, (2) to promote further a wide-range of international cooperation, (3) to assist the developing countries to improve capacity to cope with terrorism.

To prevent and eradicate terrorist activities, it is vital to enhance international legal framework to deal effectively with international terrorism.

Japan attaches great importance to Comprehensive Convention on International Terrorism and sincerely hopes that the Convention would be finalized by way of

overcoming remaining difficulties as it could complement enormously the existing international conventions in combating terrorism.

Mr. Vice-President, It is one of the most important pillars of preventing and eradicating international terrorism to discontinue and prevent the financial inflow to terrorist networks.

Thus, Japan has been actively participating in the international efforts for that end through various G8, UN, FATF (Financial Action Task Force), APG (Asia-Pacific Group on Money Laundering) frameworks to build cooperative networks including developing countries. Thank you.

Vice-President: Thank you the delegate of Japan. Now I call upon the delegate of Republic of Korea to make the statement.

The **Delegate of the Republic of Korea:** Republic of Korea has ratified or acceded to 12 terrorism-related international conventions and also signed the Convention for Suppression of Acts of Nuclear Terrorism in 2005.

Republic of Korea has been faithfully implementing all the relevant Resolutions of the United Nations Security Council on terrorism including, inter alia, Resolution 66/50 on "Measures to prevent terrorists from acquiring Weapons of Mass Destruction" and the United Nations Global Counter Terrorism Strategy. The ROK is also closely cooperating with the Counter-Terrorism Committee in implementing UNSC Resolution 1373.

In this regard, the Government of the Republic of Korea strongly supports the adoption of the Draft Comprehensive Convention on International Terrorism to eradicate the terrorism which threatens international peace and security.

Given that 2005 World Summit at the United Nations condemned the terrorism in all its forms and manifestations, my delegations hope that the draft Comprehensive Convention could be adopted at the earliest on the basis of constructive cooperation.

Vice-President: Thank you. Now the next speaker on the list is the delegate of Malaysia.

The **Delegate of Malaysia:** Mr. Vice-President, Malaysia notes that the issues for focused deliberation revolve around the unresolved issues at the United Nations relating to its agenda item entitled "measures to eliminate terrorism" particularly on the draft Comprehensive Convention on International Terrorism (draft CCIT). In this regard, Malaysia's position pertaining to these issues has been sufficiently during the Sixth Committee and the Ad-Hoc Committee meetings at the United Nations and Malaysia does not wish to elaborate the position in this meeting.

Despite the current stalemate situation regarding the draft CCIT, this does not mean that States should halt their efforts to combat terrorism. With respect areas which are not covered by the existing sectoral international instruments on terrorism, Malaysia is of the

view that State still has the sovereign right to cover the grey areas by means of its own domestic legal framework. Additionally, other international legal instruments particularly the International Humanitarian Law and Human Rights Law are relevant to ensure accountability of certain acts of terrorism.

Mr. Vice-President, in fighting terrorism, it is imperative that States engage in international cooperation, be it bilateral, multilateral or regional. The cooperation will ensure that States are able to render help to one another in times of need and most importantly, keep abreast with the ever evolving facets of terrorism through information exchanges. It is with this in mind, the ASEAN countries had negotiated and deliberated on a Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (ASEAN MLAT). The ASEAN MLAT is a beneficial tool in fighting transnational crimes, including terrorism. In this regard, Malaysia is of view that similar legal instrument may be valuable for the Asian-African countries. Referring to 49th AALCO Annual Session Resolution AALCO/RES/49/S8, Malaysia notes that the AALCO Member States have already decided to constitute an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States for their further consideration. Malaysia looks forward for the constitution of the open-ended Committee of Experts deliberations with the end-result of an AALCO Mutual Legal Assistance Treaty in Criminal Matters.

Malaysia also notes that the report by the Executive Directorate of the Counter-Terrorism Committee (CTED) highlighted the issue that some States, particularly in Asia, are yet to enact legislations concerning criminalization of terrorist financing. Malaysia wishes to highlight that the main legal framework in Malaysia dealing with this matter is Chapter VIA of the Penal Code and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

My delegation had listened to the recent Statement by the Honorable Attorney-General of Uganda, particularly regarding the difficulties faced due to the so-called “48-hours rule”. We had noted the difficulties posed by such restrictions as mentioned by the Honorable AG of Uganda in dealing with terrorists cases in our research when we transformed our legislation dealing with terrorists act recently. Acknowledging the grave risks to internal security and public order presented by threat of terrorism, sabotage and espionage still persists, to replace the Internal Security Act 1960, the Security Offence (Special Measures) Act 2012 was drafted. The process under the Act provides the balance between the responsibility of the State to ensure peace and security with the rights of the accused person to fair trial and due process of law. Careful consideration based on international norms and standard in relation to the period of detention and the total autonomy of the executive to allow detention without trial has been addressed in the Bill. Therefore, currently the detention under the Act only relates to investigation. Malaysia also wishes to highlight that the period of 30 days detention for purposes of investigation is subject to a sunset clause, where this provision will be revisited every 5 years. A Special Review Committee, chaired by the former Chief Justice and with members including the Attorney General, the Inspector General of Police, Chairman of the Malaysian Human Rights Commission, had also been established for purposes of

reviewing the implementation of the law every six month. Again, Malaysia wishes to reiterate that the new law only allows detention for purposes of investigation and not detention without trial. Thank you.

Vice-President: I thank the delegate of Malaysia and now call upon the delegate of Kuwait to make the statement.

The **Delegate of the State of Kuwait**⁷⁶: Mr. Vice-President, undoubtedly international terrorism is one of the greatest evils that the international community is facing today. Every day we receive news of unfortunate killings of innocent people in different parts of the world. It is therefore important that we all should cooperate with each other not only for eradicating terrorism but also for reducing the effects of the tragedy. Kuwait has reiterated its position in many UN Meetings that there should be a universal strategy for fighting this menace, specifically, a clear definition of terrorism. It had also been reiterated that terrorism should not be linked to any particular nationality. Besides this it was important that all countries should united fight against the factors that gave rise to terrorism. He cited the example of the Arab League which had taken a lead for such a strategy by adopting “**The Arab Convention for the Suppression of Terrorism, adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice, in Cairo, April 1998**” and that definition had also been tabled subsequently at the UNGA. The delegate also mentioned that Kuwait was currently in the process of formulating a special law on the subject, which would be comprehensive in all aspects, including money laundering, drug trafficking and confiscation of such proceeds, however till such time as it was formulated, there was currently a national law in Kuwait by virtue of which terrorists could be punished. He mentioned that recently a meeting of Arab States had been convened at the International Centre in London to discuss the problem of terrorism, the factors leading to it and the suppression of terrorism. The delegate added that an important factor to be considered was the importance of confiscation of charities that were aimed at providing humanitarian relief, but in fact were being used for terrorist aims. He said that Kuwait was one of the many countries that provided charities for humanitarian purposes to many countries and felt that it was important to devise methods whereby this money could not be misused.

Vice-President: I thank the distinguished delegate of Kuwait and now call upon the distinguished delegate of Palestine for the statement.

The **delegate of State of Palestine**⁷⁷: Mr. Vice-President, international terrorism is an enemy of humanity which needs to be condemned by one and all, therefore international cooperation is a must to curb this menace. The most dangerous aspect of this crime is the killing of innocent civilians and this is more so in the case of state sponsored terrorism which is being committed by Israel against innocent Palestinians since 1967. Killing innocent civilians through use of tanks, and aerial attacks has been going on for a fairly long time now. As a result of these attacks scores of people are severely injured and these

⁷⁶ Statement delivered in Arabic. Unofficial translation from interpreter's version.

⁷⁷ Statement delivered in Arabic. Unofficial translation from interpreter's version.

attacks have a very negative impact on the farm lands as well. All these activities fall within the purview of State sponsored terrorism. We urge AALCO to raise its voice to punish Israel for the criminal acts committed against Palestinians. We also demand that a neutral international force be deployed to protect the Palestinians from state sponsored terrorism. At this stage we think it is very important to be able to distinguish between resistance and terrorism. Thank you.

Vice-President: I thank the delegate of Palestine and now call upon the distinguished delegate of Iraq for his statement.

The delegate of the Republic of Iraq⁷⁸: Mr. Vice-President, no doubt terrorism constitutes a great danger for protecting people as it tends to end peace and security. My Government joins the international community in its efforts towards finding a solution to international terrorism particularly the efforts made by the Arab league in 2011. This Convention included a definition of the term terrorism and was endorsed by many states. We propose that the Asian-African legal Consultative Organization (AALCO) could also prepare a convention on terrorism. This convention could be based on the existing UN Conventions as well as the Arab League convention, this we feel could facilitate in combating terrorism.

Vice-President: I thank the delegate of Iraq and now call upon the distinguished delegate of Saudi Arabia for his statement.

The delegate of the Kingdom of Saudi Arabia⁷⁹: Mr. Vice-President, we would like to reaffirm what we had said in our general statement that soon Saudi Arabia would have a new legislation for combating terrorism, which at present is in its final stage. As and when the same is finalized we will inform AALCO Member States about the same.

Vice-President: I thank the delegate of Saudi Arabia for his statement. Now I call upon the Observer from the ICRC for his statement.

The Observer Delegation of ICRC: Thank you, Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and gentlemen, the ICRC recognizes that states have a right and duty to suppress and prevent acts of terrorism, and that they may take appropriate measures to deal with threats or acts of terrorism against their populations.

The ICRC is concerned, however, that certain measures taken by states and international organizations aimed at suppressing or preventing terrorism have the potential to impede or restrict humanitarian action by means of provisions prohibiting, under threat of criminal and other sanctions, the provisions of “support” or “services to” groups or individuals designated as “terrorist”. The relevant anti-terrorism financing legislation/resolutions that have been adopted at both the national and international level do not exempt exclusively humanitarian action from the scope of their prohibitions, and

⁷⁸ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

⁷⁹ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

thus may have a stifling effect on humanitarian operations. Organizations working in the field cannot be expected to fulfill their humanitarian mandate if criminal or other sanctions may potentially be threatened or carried out against their staff.

At the policy level, the situation may be summarized as follows: on the one hand, states favour humanitarian action on behalf of persons affected by armed conflicts and other situations of violence by supporting domestic aid programmes and related multilateral initiatives, and expect the ICRC and other impartial organizations to carry out humanitarian action for persons in need. On the other hand, certain anti-terrorist financing measures that states and international organizations have endorsed in the fight against terrorism may have the effect of penalizing, and thus stifling humanitarian action. It would thus appear that states and international organizations should attempt to harmonize their humanitarian and anti-terrorist policies and obligations, which are not contradictory, in order to properly achieve the desired aim in both realms.

The criminalization of humanitarian action may also be said to run counter to neutrality and impartiality, which are two Fundamental Principles of the International Red Cross and Red Crescent Movement. The ICRC and other components of the Movement could not be, or be seen to be neutral if they were obliged, as result of anti-terrorism measures criminalizing engagement with non-state armed groups, to carry out their activities for the benefit only of persons on one side of an armed conflict. Similarly, impartiality could not be sustained if, for example, medical services to the wounded or sick could not be provided to persons who belong to or are under the control of a non-state armed group because of prohibitions on “support” or “services” to terrorism.

Finally, the potential criminalization of humanitarian engagement with organized armed groups designated as “terrorist” organizations may be said to reflect a non-acceptance of the notion of neutral, independent and impartial humanitarian action (NIIHA). This specific approach is at the heart of ICRC’s identity and one which the ICRC promotes and adheres to in its operational work in the field. The basic premise is that the ICRC works to assist and protect all persons affected by armed conflict or other situations of violence who may need its services, regardless of political or other affiliation. It does so as an independent humanitarian organization that autonomously determines to whom, where and when it will provide such services.

By way of sum-up, the following two points could be reiterated:

- Measures adopted by governments, whether internationally and nationally, aimed at criminally repressing acts of terrorism should be crafted so as not to impede humanitarian action. In particular, legislation creating criminal offences of “material support”, services and assistance to or association with persons or entities involved in terrorism should exclude from the ambit of such offences activities that are exclusively humanitarian and impartial in character and are conducted without adverse distinction.
- In respect of the ICRC in particular, it should be recognized that humanitarian engagement of non-state armed groups is a task foreseen and expected from the

ICRC under Common Article 3 to the Geneva Conventions, which allows the ICRC to offer its services to the parties to non-international armed conflicts (NIAC's), criminalization of humanitarian action would thus run counter to the letter and spirit of the Geneva Conventions, i.e. broad language prohibiting "services" or "support" to terrorism could make it impossible for the ICRC to fulfill its conventional (and statutory) mandate in contexts in which armed groups party to non-international armed conflicts are designated as "terrorist organizations".

Thank you, Mr. Vice-President.

Vice-President: Thank you. Distinguished delegates we now come to an end on this special meeting. The Fourth General Meeting will consider "Recent Developments in the International Criminal Court". May I now invite the Secretary-General to deliver the opening remarks.

The Meeting was thereafter adjourned.

XII. VERBATIM RECORD OF THE FOURTH GENERAL MEETING

XII. VERBATIM RECORD OF THE FOURTH GENERAL MEETING HELD ON THURSDAY, 21 JUNE 2012, AT 2.20 PM

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

Agenda Item: The International Criminal Court: Recent Developments

Vice-President: Good afternoon everyone. Now we begin our next session and take up the agenda item “The International Criminal Court: Recent developments”. May I invite the Secretary-General to give his report.

Prof. Dr. Rahmat Mohamad, Secretary-General: Mr. Vice-President, Hon’ble Ministers, Attorneys-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is indeed an honour and privilege to introduce to this august gathering the agenda item “International Criminal Court: Recent Developments” contained in Secretariat Document AALCO/51/ ABUJA/ 2012/ S 9.

The International Criminal Court (ICC), established by the Rome Statute in 1998 filled in the gaps left by ad- hoc tribunals (Nuremburg and Tokyo established by the Allied powers and tribunals at Rwanda and Yugoslavia established by the United Nations Security Council), previously established to deal with criminal breaches of international peace. The Rome Statute and the ICC came into force in 2002.

The ICC’s mandate is to dispense justice without undermining ongoing peace processes. The endeavor is always to make the perpetrator of international crimes accountable; however, attempts are made to bolster reconciliation and negotiation efforts as well.

After ten years of its establishment, on 14 March 2012, in the first verdict issued by an ICC Trial Chamber I of the International Criminal Court (ICC) decided unanimously that Thomas Lubanga Dyilo is guilty, as a co-perpetrator, of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities from 1 September 2002 to 13 August 2003. At present, 14 other cases are before the Court, three of which are at the final stage of trial.

The President of the Assembly of States Parties to the Rome Statute, Ambassador Tiina Intelmann (Estonia) welcomed the rendering of the verdict of Trial Chamber I in the above mentioned case and stated that “this verdict, which completes the trial phase of the first-ever case before the International Criminal Court, demonstrates that the ICC works: the system set up by the Rome Statute to bring an end to impunity for the worst crimes under international law is an operational reality. We have left the age of impunity behind us and entered the age of accountability”.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, it may be recalled that AALCO has been following the developments relating to the work of the ICC since its Thirty Fifth Session at Manila (1996). Apart from this, AALCO has also conducted Seminars and

Work Shops on specific thematic concerns relating to the ICC. For three consecutive years in 2009, 2010 and 2011 AALCO in collaboration with the Governments of Japan and Malaysia and the ICC Secretariat convened three Expert Group Meetings on various issues and challenges facing the ICC in New Delhi and Putrajaya. Subsequently, reports of these meetings were disseminated to the Member States. I thank the Governments of Japan and Malaysia as well as the ICC for rendering technical and financial support in hosting these events.

The issues for focused deliberation at the Fifty-First Annual Session could be the following: (i) the relationship between the ICC and the UN Security Council; (ii) the principle of complementarity in light of the post ICC Review Conference developments; (iii) why Asian states are hesitant to ratify the Rome Statute; (iv) the immunity of Heads of States; (v) it is critical that States Parties and non-state parties to the Rome Statute strengthen their domestic legal institutions; (vi) domestication of the provisions of the Rome Statute into the domestic legislations and (vii) imparting proper training to Prosecutors and Judges (State Parties and non State-Parties) about the provisions of the Rome Statute.

Mr. President, Excellencies, Ladies and Gentlemen, having said that, I would like to draw your attention to some more pertinent information relating to the ICC.

The ICC has a more global outreach than ad- hoc tribunals, given that such tribunals were geographic and situation specific and their creation depended on the political will of the international community at that time. A permanent court, founded by an international treaty and achieving near- universal acceptance, the ICC is truly an advancement in the sphere of international criminal justice. Some of the core features that enhance its achievements are encapsulated below:

1. **Jurisdiction:** The ICC's jurisdiction is limited to crimes committed by nationals of or in the territory of States that voluntarily submit to its jurisdiction. It does not exercise retroactive jurisdiction, limited to events taking place after the Rome Statute came into force in 2002. With respect to subject- matter jurisdiction, it has the authority to try war crimes, crimes against humanity as well as genocide. Further, its ability to exercise jurisdiction over the crime of aggression, the definition of which was adopted at the 2010 Kampala Conference, will depend on a final decision that will be taken in 2017. Therefore, one may note that the ICC has an expansive jurisdiction, both territorially, given that it has 121 States Parties and covers by subject- matter most of the serious international crimes witnessed by the world today.
2. **Complementarity:** The ICC is a court of last resort and the notion of complementarity under the Rome Statute is premised on the basis that a case before that Court is only admissible when national courts are 'unwilling or unable' to investigate or prosecute the statutory crimes concerned. Complementarity can be brought up as a challenge to the admissibility of a case by the accused, *suo motu* by the ICC or by a State with national jurisdiction. Also,

- a State which has referred a matter to the Court may regain jurisdiction under Article 17 and 19 by a judicial submission to the Court. Thus, the State needs to have put in place a credible national accountability mechanism, going further than legislative sanctions or arrest warrants. Under Article 16 of the Statute, the UNSC by a Chapter VII resolution, may request the Court to suspend any investigation or prosecution for a one- year period. Article 95 also allows for postponement of the execution of cooperation requests, without affecting the State's obligation to cooperate. The ICC through this flexibility may ensure that it may not be seen as a stumbling block to peace processes that may gather momentum. (In 2007, when peace processes gathered momentum in Uganda, the ICC arrest warrants were seen as an obstacle, however, such negotiations finally broke down, after which an ICC prosecution, was an aid to bringing the perpetrators to justice)
3. **UN-ICC cooperation:** Another highlight of the position of the ICC in the international sphere may be adjudged through its close cooperation with the United Nations, bringing to it the paramount legitimacy of a near- universal criminal court. This partnership, solidified by a Relationship Agreement in 2004, has only been progressively evolving and expanding. Cooperation requests are now standard procedure, such as the highly publicized issue of confidential information in connection with the Lubanga case.
 4. **Victim Outreach:** This particular feature of the ICC which is different again from the ad hoc tribunals, allows for the participation of victims in international proceedings, beyond being witnesses for the prosecution. The ICC may also order reparation for victims including restitution, compensation, and rehabilitation. The ICC has the obligation to take into account the particular interests of victims of violence against women and children. The Trust Fund for Victims also has a mandate to assist victims outside the context of the court proceedings, and it has already supported tens of thousands of beneficiaries.

The establishment of the ICC signaled the conviction of the international community that justice is an intrinsic component of durable peace. Therefore, the objective of the ICC is to find a solution which is compatible with the Rome Statute and, to the greatest extent possible, with local and traditional cultures and national laws so that accountability is ensured and justice and peace work effectively together. With respect to reconciliation efforts, since amnesties and impunity for those bearing the greatest responsibility for serious crimes is not consistent with the Statute, it is argued that the ICC is an obstacle to peace. However, the ICC, besides its efforts to prosecute serious crime, creates conditions conducive to reconciliation and negotiation processes.

By ensuring that the most responsible people are held individually responsible for the atrocities they committed, the ICC can prevent entire groups –national, ethnic or religious groups from being stigmatized by the rest of society. By neutralizing major players in the perpetration of serious crimes, and providing the victims an objective forum, the ICC facilitates the creation of new, violence- free environment and society.

The Court's intervention aids in focusing international attention towards these horrific crimes. International attention contributes in building up international pressure to deliver justice to the victims by punishing the perpetrators. This also helps in the cohesion of the world in matters relating to international criminal justice. The threat of the Court's intervention can help to bring the belligerents to the negotiating table.

In N. Uganda, for instance, as a result of the warrants issued against the LRA's senior commanders, the LRA felt able to take part in the peace process. Finally, the Court can help to marginalize those who bear the greatest responsibility for serious crimes and exclude them from the negotiating frame. This occurred in the International Criminal Tribunal for the former Yugoslavia where two of the accused Generals Mladic and Karadzic were marginalized in the peace process which resulted in the Dayton Peace Accords, therefore enhancing the legitimacy of the negotiations.

The ICC has been referred situations by three State parties to the Rome Statute (Uganda, Democratic Republic of Congo and the Central African Republic) and by the Security Council (situation in Darfur, Sudan and situation in Libya, both non-State parties). In March 2010 and October 2011, the Pre-Trial Chamber II and III respectively, granted the Prosecution the authorization to open an investigation *proprio motu* in the situation in Kenya and Côte d'Ivoire.

All these developments show that the ICC is playing an increasingly active and central role in the global struggle against impunity. But to achieve a truly global reach, the ICC requires as many States to ratify the Rome Statute as possible.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, at the same time, it should be remembered that ratifying the Statute was far from being enough. A genuine commitment to the Court required the adoption of necessary implementing legislation. The outcome of the Review Conference has clearly demonstrated that the principle of complementarity would remain as one of the pillars for the effective functioning of the Court, and to be used as the Court of last resort. This principle needs to be further strengthened.

In this regard, it is pertinent to mention that despite the repeated calls from the Secretary-General of the United Nations for universalization of the Rome Statute; it has evoked lesser participation particularly from the Asian States.

Mr. President, Excellencies, Ladies and Gentlemen, generally speaking the situation of non-party States is governed by article 34 of the *Vienna Convention on the Law of Treaties*, which states that: "A treaty does not create either obligations or rights for a third State without its consent." Nevertheless, significant legal issues arise concerning the relationship between non-party States and the *Rome Statute*. These issues can be broadly divided into questions of jurisdiction of the Court and cooperation with the Court. Many of these concerns were expressed by the Member States of AALCO during the recent Expert Group Meeting on the Rome Statute of the ICC: Issues and Challenges, which was held in Putrajaya, Malaysia and has been discussed in Part IV of the AALCO Secretariat document. Besides, some non-State Parties have expressed concern regarding

the immunities of Heads of States particularly if it is a Monarch. Some other States are also apprehensive of the cost that would entail in becoming a Party i.e. the annual contribution to the ICC, which would be an additional burden on their economies.

The other major challenges before the ICC are mainly universality, sustainability and complementarity. In order to achieve the universality of membership of the Rome Statute, it should be recognized that each country has its own legal culture and ratification of the Statute that which has different political implications on the home front of each State. Therefore, sustainable efforts should be taken on the part of international community to iron out the differences, misconceptions revolving around the Rome Statute of the ICC and thereby accommodate the non-States parties in to the system to attain the universality of the international criminal justice system. I thank you all for a patient hearing, and open the floor for discussions.

Vice-President: I would like to thank our Secretary-General for his very comprehensive report and now I open the floor for discussion. The first speaker on my list is the representative of Indonesia.

The Delegate of the Republic of Indonesia: Mr. President, Indonesia reiterates its support to the global efforts to end any form of impunity for crimes against humanity, war crimes and the crime of aggression and supports the International Criminal Court since its inception. In our view, the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

The establishment of the Court is the reflection of a global cooperation of all nations regardless of their political, economic, social and cultural differences. Therefore universal participation of all States should become the spear point of the Court.

We also maintain that the International Criminal Court as the first and only permanent tribunal in dealing with those serious crimes is expected to deliberate equal justice and promote impartiality. For this reason, Indonesia supported the adoption of the Rome Statute and the establishment of the International Criminal Court.

In light of this, accession of the Rome Statute remains a priority in our National Plan of Action on Human Rights for 2011-2014. With a view, the Government of the Republic of Indonesia has also taken several important steps to build and develop both normative and institutional infrastructures. Indonesia has enacted law concerning Human Rights and Law concerning Human Rights Law.

Several principles of the Rome Statute have been recognized within our national legislations related to human rights. Reflecting firm stand against impunity, our national human rights court comes with the authorization to prosecute criminals of genocide and crimes against humanity, along with the recognition of non-retroactive principle.

Furthermore, allow me to highlight the two important principles contained in Article 1 and Article 11 of the Rome Statute regarding the principle of non-retroactive effect and the principle of complementarity.

In relation to the principle of complementarity, Indonesia would like to re-emphasize the importance of Paragraph 10 of the Preamble and Article 17 of the Statute. The concept of ‘inability’ and ‘unwillingness’ should not serve easily as pretext to provide continuous preference to ICC intervention. The principle is one of the cornerstones of the architecture of the Rome Statute.

We believe that the effective implementation of the principle of non-retroactive and complementarity is a key to the success of the ICC in further promoting criminal prosecution related to human rights violations and would increase the universality of the Rome Statute. In this respect, the prosecution of human rights violations should be the primary role of the national court.

Indonesia would also like to stress the importance of Article 17 on the principle of inadmissibility. Indonesia believes that the effective implementation of this principle would increase the universality of the Rome Statute. Bearing in mind also that these principles are closely related to a country’s sovereignty, it is important for us to see how the principles can be sustained and further strengthened, notably in honoring the supremacy and integrity of a sovereign country. Thank you.

Vice-President: I thank the distinguished representative of Indonesia and give the floor to the distinguished representative of Japan.

The Delegate of Japan: Excellencies, Distinguished Participants, Ladies and Gentlemen, this year is the tenth anniversary of the International Criminal Court since the entry into force of the Rome Statute on 1 July 2002. It was surprising for many that such an important treaty as the Rome Statute entered into force with the ratification by more than 60 States only four years after it had been adopted in July 1998. Today, 121 States are parties to the Rome Statute, including 33 States from Africa and 18 States from the Asia-Pacific. Last year three States from the Asia-Pacific, namely, the Philippines, the Maldives and Vanuatu, and two States from Africa, namely, Tunisia and Cape Verde, joined the Rome Statute. Japan warmly welcomes those five new members which have joined our serious efforts towards the fight against impunity and the establishment of the rule of law in the international community.

Mr. Vice-President, this year marks a turning point for the ICC not only because it is the tenth anniversary but also there are two more reasons. The first reason is that major actors inside the Court and the Assembly of States Parties have changed. First, the former President of the Assembly of States Parties, Ambassador Christian Wenaweser of Lichtenstein, was succeeded by the newly elected President, Ambassador Tiina Intelmann of Estonia. Second, six new judges, including Judge Miriam Defensor-Santiago of the Philippines and Judge Chile Eboe-Osuji of Nigeria, were elected in December last year and took office in March. Third, the composition of the Presidency of the Court also

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

Mr. Vice-President, the second reason why this year marks a turning point for the ICC is that in March this year, the Trial Chamber of the Court rendered its first judgment in its history on the Thomas Lubanga Dyilo case, convicting the accused of charges on conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities in the context of an internal armed conflict in the Democratic Republic of the Congo. Japan praises the ICC for having fulfilled its role in refusing the impunity of the most serious crimes of concern to the international community as a whole and in preventing the recurrence of such crimes. However, it must be borne in mind that the same Trial Chamber of the Court will render its sentence against the accused in due course and then a decision on reparations to the victims of the crimes of which the accused was convicted. After all these procedures have completed, the accused may appeal to the Appeals Chamber. Thus, this case remains to be seen.

Mr. Vice-President, at present, the ICC has seven situations and fifteen cases before it. Two new situations in Libya and Cote d'Ivoire have been referred to the ICC and have posed significant challenges for the Court, such as the heavy financial burden on States Parties. Now the world is concerned with the situation in Syria, with some countries suggesting possible referral by the Security Council to the ICC. In light of the current situations surrounding the ICC, We have to carefully envision and define the future direction of the Court.

Mr. Vice-President, Japan attaches great importance to the activities of the ICC as the only permanent judicial organ for international criminal justice, and expects that the ICC will continue to fulfill its role by prosecuting and punishing the most serious crimes in accordance with the Rome Statute. Securing the future of the ICC depends primarily upon whether we can achieve the universality of its membership. As the number of States Parties increases, there will be fewer safe havens for perpetrators of the most serious crimes, and preventive effects should be enhanced. In closing my remarks, I would like to ask more AALCO members to consider ratifying the Rome Statute with a view to joining our common efforts to fight against the most serious crimes of concern to the international community as a whole. Thank you.

Vice-President: I thank the representative of Japan and now invite the distinguished representative of China.

The Delegate of the People's Republic of China: Mr. Vice- President, Distinguished Delegates, China supports an independent, impartial, effective and universally

recognized international criminal court, and hopes that it will promote world peace and judicial justice by punishing the most serious international crimes.

This year marks the 10th anniversary of entry into force of the Rome Statute and the founding of the International Criminal Court (ICC). During the past 10 years, China has followed closely the Court's activities. It is the hope of China that the ICC will win the trust and support of the international community through its concrete work.

It is true that the ICC has made some progress since its establishment. It has become an important international judicial organ, and influenced the development of international criminal law. At the same time, some activities of the Court caused controversy in the international community, and even affected process of peace and stability in certain regions. States parties to the Rome Statute, including some from Asia and Africa, are questioning the Court's impartiality and believing that the court has been selective in its exercise of jurisdiction. Furthermore, many Asian countries are not yet parties to the Rome Statute, and the African countries have been reconsidering their cooperation with the ICC, these facts reveal a lack of trust in the Court among Asian and African countries.

Mr. Vice-President, the Court is now at a critical stage of its development. Looking back and forward, we, as many others do, have one important question in mind: Where to go, ICC?

To meet the purposes of its being created, ICC should make extraordinary to abandon prejudice, refrain from being politically interfered, keep in mind the principle of complementarity, impartiality as well, and win confidence, trust and support of state parties of both developed and developing countries. We are glad to note that today in the court, Asian and African judges, claims a big part of the whole judges of the court. We expect and believe that with the cultural and legal traditions they represent, they will make further contributions to the work of ICC. We also believe that through communication and cooperation, countries from Asia and Africa, can play a unique role in promoting the positive development of the Court, and contribute to international peace and justice. Chinese delegation is ready to work towards this end. Thank you.

Vice-President: Thank you China for the statement. Now I give the floor to the representative of Malaysia for their statement.

The Delegate of Malaysia: Mr. Vice-President, Malaysia expresses its appreciation to the AALCO Secretariat for its report which brings Member States up-to-date with the most recent developments of the ICC. In this opportunity, Malaysia wishes to congratulate Ms. Fatou Bensouda on her appointment as the Prosecutor of the ICC by the 10th Assembly of State Parties of the Rome Statute of ICC in New York on 12 December 2011. Malaysia also wishes to express its sincerest gratitude to the outgoing prosecutor, Mr. Luis Moreno-Ocampo.

Malaysia sincerely hopes that Ms. Fatou Bensouda, as the new Prosecutor, would exercise the powers conferred upon her impartially, with due respect to the customary

and currently acceptable notions of international law and domestic legal proceedings. As an independent separate organ of the ICC, the Office of the Prosecutor has vast powers. With regard to this, Malaysia wishes to highlight the importance of impartiality and universality by the Prosecutor in dealing with situations or internalizing information that comes to the Office of the Prosecutor. Any perception of bias must be avoided, for bias is not only actual, but may also be imputed or apparent.

In light of the situation in Palestine, it is noted that on 3 April 2012, the Office of the Prosecutor has announced its incompetence to decide on the issue of recognising Palestine as a “state” for purposes of Article 12 (3) of the Rome Statute. The Office of the Prosecutor views that this issue should be referred to the relevant bodies of the United Nations or the Assembly of State Parties to make that legal determination. This decision indirectly implies that Palestine does not have the power to make such a declaration because it does not fulfil the requirements of statehood. Malaysia is of the view that the OTP should first and foremost took into account the basis of the establishment of the ICC, that is to punish serious crimes of international concern instead of technical requirements. In order for impunity to not go unpunished, the Office of the Prosecutor should have examined whether there existed serious crimes of international concern as claimed by Palestine i.e. a consideration of substantive issues. If there were, then the declaration by the Palestinians should not have been rejected *ab initio*.

On the issue of interpretation and implementation of the principle of Complementarity by the ICC and the Prosecutor, Malaysia reiterates its concern that Member States are required to give effect to the principle by enhancing the capability of national jurisdiction to exercise jurisdiction over serious violations of international law or international crimes committed on their territory. A view that was mooted recently was “positive complementarity” which comes with “technical assistance and capacity building” from the Office of the Prosecutor, such as supplying judges and prosecutors to assist national courts. Malaysia is of the perspective that such assistance implies indirect interference from the ICC into the domestic courts and may subject Member States to political pressure to comply with the ICC’s standards in the name of eliminating impunity gap between national and international courts. This concept clearly differs from the original Complementarity scheme.

Malaysia is further of the view that the principle of Complementarity should be applicable even in situations of Security Council referrals. Malaysia recalls that the principle of Complementarity under the Rome Statute recognizes that States have the first responsibility and right to prosecute international crimes. Articles 17 and 19 of the Rome Statute do not indicate any exception to such referral. In determining the issue of admissibility vis-a-vis cases originating from a Security Council referral, the ICC needs to be clear in its principles, practice and jurisprudence, and to demonstrate that its decision on the case’s admissibility is free from any political influence. According to Malaysia’s observation, in some cases, the discretion of the Prosecutor does not adhere to the principle of complementarity as States were not given the priority to take action in addressing atrocities.

Mr. Vice-President, the commitment to end the impunity of serious crimes of international concern by becoming a State Party to the Rome Statute cannot materialize by the simple act of depositing the instrument of accession or ratification. In light of this, Malaysia wishes to emphasize on the need to have a suitable legal framework in place which would adequately address the legal concerns highlighted.

Lastly, Malaysia is firmly committed to ending impunity and will continue to support in principle the ideals and purpose of the ICC towards that end. Thank you.

Vice-President: I thank the representative of Malaysia and now give the floor to the representative of the republic of Korea.

The Delegate of the Republic of Korea: Thank you Mr. Vice-President. I am grateful to the AALCO and to the Secretary-General for the initiatives for the development of the ICC in its tenth year. With regard to the universality of the Rome Statute it still has to go a long way till the Rome Statute truly becomes a universal instrument. Although 7 states have acceded to the Rome Statute this year out of which there are three states from Asia. I hope many more states from AALCO can ratify the Rome Statute of the ICC. Since the inception of the ICC the republic of Korea has fulfilled its obligations with sincerity and given the Court its full attention. We have also done our bit towards the effective functioning of the ICC by providing voluntary contributions and proactive leadership of Judge Sang-Hyun Song, the President of the Court. The republic of Korea will continue to make every effort to support the Court in order to end the culture of impunity and furthering international criminal justice. Thank you.

Vice-President: Thank you distinguished delegate of the republic of Korea. Now I give the floor to the distinguished representative of Saudi Arabia.

The Delegate of the Kingdom of Saudi Arabia¹: stated that the activities of the ICC were of interest to them since on the one hand arrest warrants were issued by the ICC against the Sudanese President on the other hand Israeli criminals were let off scot free by the ICC. He maintained that this was a clear illustration of political considerations in matters relating to the Court. He posed a question to the Secretary-General whether it was possible for AALCO to reflect the concerns of its Member States to the ICC specially the role of the Security Council.

Vice-President I thank you for this question and the AALCO Secretariat would soon circulate a paper on this issue. Now we have come to an end of discussions on this topic, but before we move on to the next topic, I wish to ask if any other delegation wishes to make a comment. In that case we move on to our next agenda item which is “Environment and Sustainable development”. I request Dr. Yashukata Fukahori, to introduce this item.

¹ Statement was delivered in Arabic. Unofficial translation from interpreters version.

Agenda Item: *Environment and Sustainable Development*

Vice-President: We move on to the next agenda item “Environment and Sustainable Development” and I invite Dr. Yasukata Fukahori, Deputy Secretary-General of AALCO to make his presentation.

Dr. Yasukata Fukahori, Deputy Secretary-General (DSG) of AALCO: Excellencies, Distinguished Delegates, Ladies and Gentlemen; may I invite you all to an important agenda item “Environment and Sustainable Development” as contained in the Secretariat document AALCO/51/ABUJA/2012/SD/S 10. The Organization has been following the developments on Environment and Sustainable Development since 1975 with the contemporary focus being on the implementation of the three Rio Conventions namely, the: United Nations Framework Convention on Climate Change, 1992; Convention on Biological Diversity, 1992; and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994; and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002.

The present Secretariat report contains developments in the area International regime on climate change, international regime on desertification, and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development.

Excellencies, Distinguished delegates, Ladies and Gentlemen; climate change issues have been the most prominent issue that the international community faces today. In the year 2011, at the Seventeenth Conference of Parties to the United Nations Framework Convention on Climate Change held in Durban, South Africa, Durban Outcome which was a “package deal” was adopted. The focus at the Durban Conference was on post-2012 Kyoto Protocol commitment or second-term commitment period. The hope was that the negotiations would produce more ambitious greenhouse gas emission reduction pledges by developed countries, a second commitment period under the Kyoto Protocol, and a mandate for a new legally-binding agreement. Further, it also wanted the institutions mandated by the 2010 Cancun Agreements to become fully operational and to complete the terms of reference for the review of the long-term global goal for emission reductions.

The Durban Package seems to fulfill several objectives of countries that are among the most vulnerable to climate change: the Pacific Island Developing States and the larger Alliance of Small Island States. In fact, the Durban Package comprises decisions under both the UNFCCC and the Kyoto Protocol that accomplish many of the PSIDS and AOSIS goals for adaptation, finance, technology transfer, and capacity building. However, there was a shortcoming in terms of mitigation, and the action taken on the Kyoto Protocol’s second commitment period was mere proposal to formalize pledges made in Cancun in 2012 by developed country Kyoto Protocol parties and does not include major emitting countries. The Durban Outcome dealt with UNFCCC parties agreeing to establish the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“AWG-DPEA”) which would adopt, a new “protocol, legal instrument or agreed

outcome with legal force” by 2015. The new AWG-DPEA has a mandate to develop proposals on the full range of climate change issues, its focus would clearly be on raising the “level of ambition” with respect to mitigation for all parties.

Excellencies, Distinguished delegates, Ladies and Gentlemen; in the field of desertification, at the Tenth Session of the Conference of Parties to the United Nations Convention to Combat Desertification convened in Republic of Korea in 2011, a high-level segment was held. The discussions centred around three major concepts: (i) food security, (ii) green economy, and (iii) scientific knowledge. To solve development problems, climate change, desertification and food security, efficient use of renewable energy is an important potential tool. Promoting investment, combined with a renewed synergy of Rio conventions can produce holistic and robust strategies, strategic partnerships and cooperative frameworks.

Excellencies, Distinguished delegates, Ladies and Gentlemen; at this time of the year (June 2012), when the States marks the commemoration of 20 years of the Rio Conference and 10 years of WSSD, it is essential to recall the role and importance of the UNEP. Therefore, 40th Anniversary Year of the UNEP is also historic. Since 1972 Stockholm Conference, the environmental summits have played a crucial role in bringing sustainable development on international political agenda. Many of the countries have changed their national policies favouring green economy which would in future be beneficial for protection of environment and ensuring sustainable development for succeeding generations. It is essential that countries take adequate efforts for protection of the environment besides safeguarding their national interests with a vision to transform their societies into a green economy which would be less polluting and be environmentally sustainable. The Secretariat report covers the Twelfth Special session of the UNEP Governing Council/Global Ministerial Environment Forum held in Nairobi in February this Year and the 19th session of the UN Commission on Sustainable Development held in New York in May 2011. The themes for the Rio+20 are (a) a green economy in the context of sustainable development poverty eradication; and (b) the institutional framework for sustainable development. The seven priority areas identified are decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.

The issues for focused deliberations on this agenda item are:

- (i) Issues for deliberating upon the forthcoming Protocol/legal instrument on second-term commitment of countries in climate change, encompassing the principle of common but differentiated responsibility to be completed by 2015;
- (ii) Importance of Green economy and preparations for the Rio+20 Conference; and
- (iii) Challenges facing environmental sustainability.

I look forward for a fruitful deliberation on this topic. Thank you very much.

Vice-President: Thank you very much. First on my list of speakers is Nepal. I invite the distinguished representative from Nepal to make his presentation.

The Delegate of Nepal: Thank you Mr. President for giving me the floor on this very important topic. It is coincidence that we are discussing the topic on 'environment and sustainable development' which is being discussed in the Earth Summit, Rio+20. I hope we all AALCO Member States are participating in that Conference.

I would like to recall the 50th Session of AALCO where we expected that United Nations Climate Conference which took place at Durban, would come up with the ambitious quantified emission reduction targets set for developed countries for second commitment period under Kyoto Protocol and those developed that were not parties to the Kyoto Protocol should also take comparable emission reduction commitments after 2012. Instead it just concluded with the extension of tenure of the two Ad hoc Working Groups. Capitalization of Green Climate Fund and decision on future of Kyoto Protocol after 2012 is still not so clear.

Mr. Vice-President, sustainable development emphasizes a holistic, equitable and far-sighted approach to decision-making at all levels. It emphasizes not just strong economic performance but intra-generational and inter-generational equity. It rests on integration and a balanced consideration of social, economic and environmental goals and objectives. The concept of green economy that we are going to emphasize in Rio, focuses primarily on the intersection between environment and economy.

Mr. Vice-President, we are aware that human-induced multiple impacts of climate change on mountain ecosystems, goods and services and implications on livelihoods, health and welfare of the mountain people and environment is serious. We must need to take urgent, collaborative and effective actions at all levels for addressing climate induced vulnerabilities and impacts on mountains, coastal zones and other areas for enhancing the well-being of climate vulnerable communities and also strengthening the climate resilience measures by peoples. We want AALCO to engage expert-teams in formulating ecological zone-specific strategies that ensure practical solutions to the climate change vulnerability and measures that ensures sustainable application of those solutions.

I would like to recall the International Conference of Mountain Countries on Climate Change held in Kathmandu from 5-6 April 2012. This Conference agreed to enhance cooperation among the mountain countries and countries with mountainous regions for addressing the common problems recognizing that the mountains provide solutions for sustainable development using ecosystem services, in particular, water, biodiversity, energy, and for enhancing food security. Our view is that if AALCO could create a dedicated forum within it for better understanding of the challenges posed by the climate change and possible measures for mutual cooperation among the members, that would be instrumental in responding to this global problem.

The Kathmandu Call for Action 2012 would be a good initiative to protect the high potentials of mountain ecosystem service to promote green growth strategies and

strengthen linkages between mountain ecosystem and other ecosystems to reduce poverty and promote sustainable development which is prime concern of Asia and Africa. Thank you.

Vice-President: Thank you. I now give the floor to the representative of Japan.

The Delegate of Japan: Mr. Vice-President, as I stated in my General Statement, Japan considers that the Rio+20 Conference currently underway in Brazil is a most important big event in which the government leaders are participating to discuss the questions relating to economy, society and environment of the world for the coming 10 years. We hope that the Conference will achieve its objectives and bring about fruitful results.

Japan believes that in order to realize the sustainable development, it is essential that the world make transition to Green Economy, and will actively endeavor to contribute to making that transition possible, taking into account the importance of sharing knowledge and wisdom and also capacity building.

Not to mention Great East Japan Earthquake, in recent years, many large scale natural disasters has taken place. Coping with such adverse circumstances, Japan has been advocating the innovative concept of city building such as “Environmental Future City Vision”. On the occasion of ongoing Rio+20 Conference, Japan wishes to actively share its ideas, knowledge and experiences with the international community in such areas as building of disaster-resilient society and Environmental Future City.

Mr. Vice-President, with regard to the question of climate change, Japan considers that the COP17 held in Durban, South Africa last year has brought about a significant outcome, in line with Japan’s stance, such as clarifying the pathway to the establishment of a new legal framework in which all economies participate.

Japan made it clear that it remains committed to tackle climate change, despite immense challenges caused by the Great East Japan Earthquake. Based upon the results of COP17, Japan wishes to contribute to the international discussions toward COP18, as to how to build a most desirable future framework. In particular, Japan would like to participate and contribute positively in the newly set up Ad-Hoc working Group on the Durban Platform for Enhanced Action in order to establish a new, fair and effective international framework in which all major economies participate, which Japan aims for.

Lastly, I wish to touch briefly upon the question of international regime on desertification.

We wish to congratulate the successful conclusion of the 10th Meeting of the Conference of Parties (COP) to the UN Convention to Combat Desertification in those countries Experiencing Serious Drought and Desertification, Particularly in Africa (UNCCD) held in Changwon, Republic of Korea. We are very grateful to the efforts of the government of the Republic of Korea which hosted the said meeting.

The task of combating desertification relates closely to the questions of climate change and bio-diversity. Japan considers that it is very important to deepen and enhance the awareness of necessity of combating desertification by way of strengthening the linkage with the two conventions of climate change and diversity. Thank you.

Vice-President: Thank you and now I give the floor to the representative of People's Republic of China.

The Delegate of People's Republic of China: Mr. Vice-President, Distinguished delegates; sustainable development is closely related to the practical and long-term interests of all countries, especially those of developing countries. The UN Conference on Environment and Development and the World Summit on Sustainable Development provide action plans on sustainable development for individual countries and the international community as a whole. During the past 20 years, these action plans have contributed to the improvement of human welfare. The UN Framework Convention on Climate Change, the Convention on Biological Diversity and the Convention to Combat Desertification, have made positive achievements in their respective areas.

Mr. Vice-President, among all environmental challenges, climate change has attracted much attention. It is China's consistent view that, climate change is, in essence, a development issue, and that sustainable development is both the aim and the right path for its effective solution. In order to address both development and climate change challenges and upholds right to development, we developing countries should, under the framework of sustainable development, take a holistic approach to economic development, poverty eradication and climate protection. Based on the aforementioned views, we welcome the outcomes of the Durban Conference, in particular progress related to the second commitment period of the Kyoto Protocol, finance and strengthened implementation of the UNFCCC.

However, many problems are yet to be tackled for the implementation of the Durban outcomes. China hopes that all parties, while respecting and accommodating each other's core concerns, will take into full account both the historical responsibilities of developed countries and the practical needs of developing countries, based on the principles of equity and "common but differentiated responsibilities", and carry out further discussions on the establishment of a fair and equitable international cooperation regime addressing climate change. China would like to stress that, as a community of shared interests, developing countries must maintain solidarity and strengthen coordination in urging developed countries to fulfill their historical responsibilities and provide financial, technical and capacity-building support to developing countries. This is the only way to truly safeguard our long-term and fundamental interests.

The ongoing Rio+20 Summit Conference on Sustainable Development provides an important opportunity to promote global cooperation on sustainable development. China attaches great importance to the conference and Premier Wen Jiabao is present at the conference. We expect that the conference will take stock of the international cooperation on environment and sustainable development over the past 20 years, build consensus and

take concrete steps to promote global sustainable development. We are delighted to know that an “action plan” to be adopted by heads of states at the conclusion of the summit tomorrow, which will reaffirm the principle of CBDR. We stress that it is important that the conference adhere to the Rio spirit and principles, especially the principle of “common but differentiated responsibilities”, advance the three pillars of economic, social and environmental development in a balanced manner, respect the right of countries to independently choose their mode of sustainable development, and pay special attention to the concerns of developing countries.

China is a developing country confronted by pressing issues with regards to environmental protection and sustainable development. Fully recognizing the severity and urgency of environmental issues including climate change, China, out of a strong sense of responsibility for mankind’s long-term development, has resolutely embarked on the path of sustainable development and taken positive and vigorous policies and measures, thus contributing to the resolution of environmental issues. China's next Five-year Economic and Social Development Plan emphasizes that China will pursue green and low-carbon development, focus on energy conservation and emission reduction, develop a resource-saving and environment-friendly pattern of production and consumption, and enhance our capacity for sustainable development.

Mr. Vice-President, as premier Wen said yesterday, China is a staunch supporter of the concept of sustainable development, and an active practitioner of the strategy of sustainable development, and also an energetic promoter for international cooperation in sustainable development. China has been actively engaged in South-South cooperation, earnestly fulfilled the responsibilities commensurate with its capabilities. With an open and pragmatic attitude, China stands ready to deepen cooperation and exchange with all Asian and African countries, and make new contribution to the global cause of environmental protection and sustainable development. Thank you, Mr. Vice-President.

Vice-President: Thank you China and now I give the floor to the representative of Thailand.

The Delegate of Thailand: Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

It cannot be denied that climate change is a topic that affects all of us. One would be hard pushed to find a place in the world where the pinch of climate change has not been felt. Many of us have been and will continue to be suffering from adverse impacts of climatic anomaly if we do not effectively address this global problem.

Thailand therefore attaches great importance to environmental issues and sustainable development and urges that in order to achieve a long-lasting economic development; members of global community must take this matter seriously and collectively.

Mr. Vice-President, in order to move the country forward and to respond to the global challenge, Thailand has many priorities. Among them are food security, poverty

eradication, and sustainable economic development. Nonetheless, we strongly believe that a paradigm shift toward building low-carbon societies is necessary in addressing climate change.

We are committed to lowering greenhouse gas emissions through innovative energy conservation and efficiency policies with the aim of reducing the country's Energy Intensity by 25 percent below the current level within 20 years. Even though 70 percent of electricity generation in Thailand currently comes from natural gas, a low-carbon energy source, we still plan to propose and implement progressive policies to promote increased use of renewable and alternative energy in both the industrial and agricultural sectors. It is our ultimate objective to replace 25 percent of the energy generated by fossil fuels with green energy within the next decade.

Our National Energy Policy Board has approved the 20-year Energy Conservation Plan from 2011-2030, and the 10-year Renewable and Alternative Energy Development Plan from 2012-2021. It is expected that, as a result of these plans, Thailand will reduce 206 million tons of greenhouse gas emissions by the year 2030. Furthermore, domestically, we provide considerable supports in helping our local authorities incorporate climate mitigation and adaptation into their decision-making and planning, and in helping them to enable a transition to low-carbon and resilient communities.

Mr. Vice-President, green economy can serve as an effective implementation tool to move a country towards sustainable development, but should not be a substitute for sustainable development itself. In this regard, Thailand is of the view that the discussion on green economy should be based on the agreed 1992 Rio Principles.

Given the vast differences in development stages among countries, Thailand believes that there is no "one-size-fits-all" green economy strategy. Countries should be given sufficient policy space and flexibility to develop their own green economy policies aimed at sustainable development. However, Thailand believes that there are common elements that are essential to improving cross-sectoral coordination and coherence in the implementation of the sustainable development agenda. This includes, among others, collaboration among stakeholders, including the international community, government, private sector and civil society.

Thailand attaches great importance to the Rio+20 conference and stands ready to work constructively with the international community in its collective actions to advance sustainable development at all levels – local, national, regional and international. Without doubt, progress towards sustainable development is not possible without our collective efforts and strong political commitment.

Mr. Vice-President, it is imperative that we, as member of AALCO, work together, here in Abuja, to achieve greater understanding and co-operation in order to enable the realization of full, effective and sustained implementation of the UN Framework Convention on Climate Change (UNFCCC).

It is absolutely essential that Annex I Parties to the Kyoto Protocol commit themselves to the second-term commitment period and ensure the continuity of this legally binding agreement with more ambitious targets. Comparable mitigation efforts are needed in order to measure the emission targets and achievements of the parties effectively.

Mr. Vice-President, we recognize that our common goals will not be easy to achieve on a global scale and one also has to approach these sensitive issues realistically. Thailand places great importance on securing long-term financial commitments from both private and public sources, from developed countries for climate mitigation and adaptation undertaken by developing countries. It is our conviction that, in order to adequately address the need of developing countries, the scale of the commitments must be the same as that stipulated in the Cancun Agreements – 100 billion US dollars per year.

In this regard, Thailand would like to see the implementation of the Green Climate Fund. We therefore call upon developed Parties to make substantial financial commitments toward the fund in order to ensure its adequate capitalization and speedy access to the fund by developing Parties.

Moreover, Thailand calls for meaningful steps to be taken by developed countries to promote, facilitate, and finance the transfer of or access to, environmentally sound technologies to developing countries, in order to enable them to meet their mitigation and adaptation needs.

Reiterating the rights to sustainable economic growth and development of all Parties, we call on all Parties to firmly observe Article 3, paragraph 5 of the Convention, and refrain from adopting any measure, including unilateral ones that constitute a trade barrier or a disguised restriction on international trade.

Mr. Vice-President, I sincerely wish that ambitious outcomes could be achieved through a party-driven, inclusive and transparent process. I would like to take this opportunity to reaffirm our commitment that Thailand aims to work in consultation and cooperation with all parties concerned in order to achieve the results desired. Thank you for your attention.

Vice-President: Thank you and now I give the floor to the representative of Republic of Korea.

The Delegate of Republic of Korea: Mr. Vice President, regarding second commitment period post Kyoto Protocol which is very important for all, my government is also of the view that in order to bring about a genuine transformation in the measures against climate change, “common but differentiated responsibilities” is needed. Based on this principle, my delegation urges the Member States of AALCO to act together to achieve the goal of sustainable development.

In order to take appropriate measures against climate change, the Republic of Korea considers that the difference in positions between developed and developing countries

should be narrowed in terms of core issues such as the Second Commitment period for the Kyoto Protocol.

In addition, my government generally supports the two-track negotiation system, which divides developed countries duties and developing countries actions to reduce greenhouse gas emissions.

My government has been preparing for the transformation of the GGGI into a new international organization in October 2012. The Republic of Korea appreciates the participation in the GGGI by Japan, Cambodia, Ethiopia, Thailand, the Philippines, the United Arab Emirates and Indonesia and hopes that other AALCO Member States will participate in the GGGI.

Against this backdrop, my delegation would like to remind you that the Republic of Korea will be hosting the Ministerial-level COP 18 meeting in 2012. On behalf of my delegation; I would like to thank all the Member States of AALCO for giving their warm support for the Republic of Korea in hosting the COP 18 meeting. Thank you Mr. Vice-President.

Vice-President: Thank you representative of Republic of Korea and now I give the floor to the representative of United Republic of Tanzania.

The Delegate of United Republic of Tanzania: Mr. Vice President, the Tanzania Government attaches great importance to the environment and its sustainable development. The focus being protection of the environment and human health from all types of pollutants; efforts have started by putting in place mechanisms to mitigate the impact to climate change, environmental degradation and related matters.

We would like to commend AALCO for putting this issue on the agenda and the well-researched introductory papers which provide a lot of insights. This clearly shows AALCO confers great significance to issues of global relevance such as environment and sustainable development; climate change being an integral part of this discussions.

Mr. Vice-President, in order to go through the challenges of climate change mentioned above, Tanzania has already set its priorities including formulation of a National Adaptation Strategy and Action Plan built upon experience in preparing National Adaptation Program of Action (NAPA) as well as putting in place the National Climate change Steering Committee (NCCSC) and National Climate Change Technical Committee (NCCTC) contributing to a greener economic growth.

Mr. Vice President, the world made some progress during the climate change conference in Cancun, particularly bringing back the hope that multilateralism needs to be instituted in order to address a problem of such a global magnitude. However, much remains to be done after Durban especially ensuring that countries commit to emission reduction levels that are consistent with science; unless this is done poor countries will not avoid facing

the envisaged challenges of climate change if global temperatures go beyond 1.5 degrees centigrade.

The Cancun agreement offered not only unprecedented opportunities for developing countries, in particular developing countries, to implement their strategies so as to strengthen their national institutional frameworks and capacities, but also made progress on reducing emissions from deforestation and forest degradation, the initiative known as REDD.

Mr. Vice President, whilst commending various efforts by the international community in addressing this important issue, Tanzania is of the view that finance and technology to develop cleaner sources of energy are essential.

We know the future impacts of climate change will be serious in developing countries in Africa and Asia. Still, many options are available to address these challenges. Some require major investments built upon sound development initiatives. These could include protecting catchments, promoting diversified livelihoods, expanding water resources and access to water, increasing irrigation, protecting coastal zones and malaria control programmes in highland areas were due to climate change now malaria is rampant. Integrating climate change in development process and poverty eradication actions will be a continuous and unavoidable undertaking that will need increased financial support to the overall of our government's budget.

As well, a road towards a Greener economy is prone to challenges such as difficulties in protecting forests since they are the only source of energy for the majority of developing countries such as Tanzania. We can't simply stop people from using wood or charcoal. It is their life. We need to address the root cause of deforestation by providing affordable, readily available renewable alternative sources of energy in terms of rural electrification and increase of the percentage of urban communities with alternative, reliable and affordable sources of energy. This is key in addressing deforestation and an important contribution to the climate solution. Greater access to energy will address adaptation to climate impacts as well.

Therefore, on our part we insist on the urgency to understand the true implications of climate change to the economy and the people and also provide options to move our economy forward while contributing to global climate change mitigation in a low carbon growth economy in order to establish a mechanisms and functional systems to deal with environment sustainability.

Tanzania shall continue to join hands other AALCO Member States in order to achieve our goals towards realization of sustainable development and environment for global benefit and serve mankind. We are so engaged! Thank you very much.

Vice-President: Thank you representative of Tanzania for the speech and now I give the floor to the representative of India.

The Delegate of India: Mr. Vice-President, there is a need to extend one's commitment and support to the UN Action Plan on Climate change and Sustainable Development. As I mentioned in my opening statement, the world community has moved far in the positive direction from Bali Roadmap to the Durban Conference in their efforts to tackle the challenges posed by climate change. Particularly, The Durban Conference is one of the most significant Conferences on Climate Change since the second commitment period to the Kyoto Protocol was agreed upon for the developed countries (Kyoto Protocol Parties). In addition, the inclusion of Green Climate fund, a key demand for financing the efforts of developing countries in the technology mechanism, etc. have also seen light in the form of an agreed decision by the members.

Mr. Vice-President, It may not be out of place to highlight that due to India's insistence the issue of Equity was brought back to the centre stage of the Climate debate at Durban. Accordingly, it has been agreed to hold a workshop on the issue of equitable access to sustainable development which would advance the understanding and relevance of the approach in evolving the climate change regime.

Mr. Vice-President, India as a developing country has huge developmental challenges as I stated, is initiating steps towards environmental concerns including our action plan on climate change. India has declared its commitment to keep its per capita emissions lower than the average per capita emissions of many of the advanced countries. We have adopted National Action Plan on Climate Change along with National Missions. These Missions go beyond mitigation and adaptation and are anchored to our overall national prospective of sustainable development. We have been working strenuously to improve energy efficiency and reduce energy intensity of our production.

Mr. Vice-President, with respect to the concept of sustainable development, we are of the view that sustainable development is a much larger canvas than merely addressing the environmental issues. India is of the view that the challenges related to all the three pillars of sustainable development should be addressed in a balanced manner. Global development path should recognize the fact that human beings are at the centre of sustainable development. Disproportionate weight to the environmental pillar will lead to unbalanced development and further threaten the abilities of the developing countries to achieve the Sustainable Development Goals (SDGs).

The concept of green economy, as it appears from previous speakers attracted wide attention. Green economy is one of the means to achieve the overarching goals of sustainable development and poverty eradication. In India's view, the tools of policies and practices in the pursuit of green economy should be nationally appropriate "within the differential capacities and circumstances of the countries". In our view it cannot be a single roadmap for green economy or green growth. In our view, green economy must be seen as one of the means to achieve fundamental and overriding priorities and not an end itself. In our view green economy shall be essentially one which directly relates to the overriding priorities of poverty eradication, food security, universal access to modern energy services and employment generation. India believes that Green Economy is a dynamic concept intended to infuse every activity towards poverty eradication with

sustainability thereby greening the economy as we develop economically, socially and environmentally. We strongly believe that there should be clear integration of these three pillars to achieve the path of Green Economy.

Therefore, Mr. Vice-President, the enthusiasm for 'Green Economy', in our view needs to be tempered with caution so that the fundamental goal of "sustainable development", which has certain subjective flexibility for each country according to its capacity and development imperatives, is not supplanted by a new prescriptive model which could then raise questions about our own development path and for which we are still quite ill-equipped in terms of required resources. Green Economy could only be in terms of a gradual transition, while remaining firmly anchored within the overarching framework of "sustainable development" and equally importantly, the sustainability of livelihood. The overriding objective of socio-economic development and poverty eradication in the developing countries cannot be diluted by setting new norms for development. In addition, to the fact that there has to be an equal emphasis on the imperative for advanced countries to make enabling resources, both financial and technological, available to developing countries in an affordable and transparent manner to achieve any gradual transition to Green Economy, it is also important that a country's natural resource endowment is given due consideration in any discourse on transition to "green economy".

Mr. Vice-President, it is our view that access to environmentally sound/clean technology at affordable cost is crucial for the countries for sustained economic growth and progress towards a green economy. Developing countries need access to cost effective technologies appropriate to their resource endowments and geographical factors to enable them to accelerate the transition to sustainable development. Any approach to Green Economy should facilitate research and development in environment friendly technologies in public domain so that developing countries can access at affordable prices. I thank you Mr. Vice-President.

Vice-President: Thank you India for very important speech and now I give the floor to the representative of Iraq.

The Delegate of Republic of Iraq²: The Republic of Iraq is suffering from bad environmental impacts; one of them is because of wars which Iraq had faced and other one is due to human activities which caused lack of rain that lead to continuous desertification and other negative impact on the environment. Further, lack of financial resources due to unequal distribution of those resources between the partner countries has also been instrumental in this.

However, we need cooperation to develop and in accordance with international law make agreements to ensure the rights and obligations of individuals. We appeal through this esteemed organization to our brothers in neighboring countries to open factories and increase the resources of factories.

² Statement was delivered in Arabic. Unofficial translation from translators version.

We in Iraq have made many laws which deal with the topic of environment from pollution and desertification that set the way for many agreements in this regard. However, regarding environment and sustainable development the Republic of Iraq has drafted legislations which provides legal framework to bring investment, and make easy and provided all necessary tools to strengthen this.

There is need to assist the investors from other member countries of organization to return to Iraq to explore the beneficial investment opportunities in all economic sectors. That assistance will achieve many benefits like reducing the level of unemployment, better use of the petrol and improving the level of livelihood that will create economical and social positive impacts and positive impact of security to serve the humanity, and in this regard the Republic of Iraq has signed few agreements with the governments of several countries.

At the end, we support the efforts of the organization in achieving environment and sustainable development and we again repeat our invitation for exploring and grabbing the investment opportunities in the Republic of Iraq. May Allah give to all to serve the humanity and get the clean environment and sustainable development. “Wassalaam Alaikum”.

Vice-President: Thank you and now I give the floor to the representative of Indonesia.

The Delegate of Indonesia: Mr. Vice-President, Distinguished Delegates; first of all, allow me to thank the AALCO Secretariat in preparing a comprehensive research on the agenda item of Environment and Sustainable Development. On our points of intervention on this agenda item, allow me also to reiterate some of important statements as have been conveyed by our President at the UN Conference on Sustainable Development (Rio+20), in Rio De Janeiro, yesterday, on 20 June 2012.

Mr. Vice-President, Distinguished Delegates; we had an achievement at the UN Conference on the Environment and Development 1992. It was the first time the global community got together, took stock of development and environmental challenges, and charted a common path forward. Since then, we have seen many encouraging developments. Along with economic achievements, the environmental agenda has made significant advances. Environmental regimes itself have grown, for example on biodiversity, on climate change and on forestry. These days more nations are adopting green growth strategies.

Mr. Vice-President, Distinguished Delegates; Indonesia has actively pursued a policy of ‘growth with equity’, with 3 basic components, namely pro-growth, pro-poor and pro-jobs. Then after successfully hosted the UN Climate Conference in 2007 in Bali, Indonesia has become very active in global climate diplomacy and expanded our development strategy: not just pro-growth, pro-poor and pro-jobs, but also pro-environment. Today, environmental sustainable is at the heart of our long-term development plans, both at the national and local levels.

Mr. Vice-President, Distinguished Delegates; it is necessary for us to redefine modernity, development and prosperity, and move from overconsumption and excessive consumerism. These steps may support the efforts to move from 'greed economy' to 'green economy'. For Indonesia, green economy is viewed as an economic development approach that no longer relies on overexploited natural resources and environment, but aims to reach an environment friendly economic development.

It is our challenge to ensure that the world economic problems do not detract or distract us from sustainability goals and climate change objectives. It is important for us to focus on our national commitments and global responsibilities.

To secure our climate future, it is also important for us to stress the 'common but differentiated responsibility and respective capability'. Indonesia believes that developed countries must take lead, along with the increasing role of the developing countries too. In this regard, Indonesia in the midst of a deadlock in 2009 has made the voluntary decision to reduce emissions of 26% by 2020, or 41% with international support. I thank you

Vice-President: I thank Indonesia for their presentation and now I give the floor to the representative of Malaysia.

The Delegate of Malaysia: Mr. Vice-President, on behalf of the Malaysian delegation, I would like to thank the Secretariat of AALCO for the Report on the environment and sustainable development and for the professionalism in ensuring the effective management of this session. The Report provides an excellent and timely opportunity for discussions and facilitates the smooth completion of the tasks ahead of us.

Malaysia recalls the Decision 1/CP.17 from COP17 in Durban, South Africa to launch a process to develop a "protocol", "another legal instrument" or "an agreed outcome with legal force under the Convention" through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-DP). It was also decided for a work plan to be launched on enhancing mitigation ambition and exploring options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties. In this regard, all participating States are expected to undertake higher Greenhouse Gas emissions cuts, or lower the growth rates of their emissions.

In respect of the AWG-DP negotiations, Malaysia is of the view that priority should be given by the negotiating parties to deliberate on the work plan to enhance mitigation ambition rather than on the form of the outcome document. To this, it is Malaysia's position that such work plan shall reflect the principle of "common but differentiated responsibilities" (CBDR) and the options and ways to increase the level of mitigation ambition must be understood in the context of promoting sustainable development, with equal and balanced consideration to the economic, social and environmental sectors.

Therefore, in the context of the existing AALCO's mandate to continue to monitor the progress in the implementation of climate change negotiations, Malaysia proposes for

AALCO to establish a mechanism to streamline the AALCO Member States' views and positions on this matter and to urge the respective AALCO Member States to bring forth such views and positions in the future UNFCCC negotiations.

Mr. Vice-President, as we are all aware, currently the United Nations Conference on Sustainable Development or Rio+20 is taking place in Rio de Janeiro. The focus of Rio+20 is a green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development. Of this, it is envisaged that the positive outcome of this Conference will result in the finalization of the document "*The Future We Want*".

Malaysia observes that certain commitments in the outcome document relate to international obligations governed by various international legal regimes. In reference to the proposed commitment to establish a more effective wastes management and lifecycle regime, the issues may arise when the disposal of the chemical or electronic wastes involves transboundary movements of such substances which is governed under the export control regime.

With regard to the proposed commitments on global marine environment, global program of action for the protection of the marine environment from land-based activities etc., Malaysia is of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).

Last but not least, Malaysia would like to support AALCO in urging the AALCO Member States to actively participate and express their approaches in particular their stands on CBDR at the forthcoming negotiations on environmental issues. Thank you.

Vice-President: I thank the distinguished representative of Malaysia for her speech and no Indonesia for their presentation and now before we move on to the report of AALCO's Regional Arbitration Centres and Report of Centre for Research and Training, I would like to announce a tea break for ten minutes.

The Delegate of Republic of Yemen³: Mr. Vice President, Distinguished delegates; the delegation of Yemen express high appreciation to the Secretariat of AALCO for their report on environment and sustainable development.

Yemen is confronting with serious and dangerous environmental situation where the water is not easily available for the use of drinking and other necessary human needs and there is a misuse of the water resources by over exploiting it for purposes which are not necessary for human life. Further, farmers use chemicals and other materials which are dangerous and prohibited regionally and internationally. However, these chemicals and other materials were brought into the country by corrupt officials of the previous

³ The Secretariat would like to acknowledge the delegation of Yemen for submitting the written statement which was not delivered when this agenda item was taken deliberated.

president Ali Abdollah Saheh. Briefly the former President is behind the corruption issues.

Biodiversity, species and environment are in danger because of the above-mentioned.

As regards to the economic situation of Yemen, it is now considered as one of the ten poor countries, if it is not the only one in the special list of poverty and that because it was ruled by Ali Abdollah Saheh, his relatives and officials.

The previous corrupt President Ali Abdollah Saheh, his sons and relatives had stolen the wealth of Yemen and deposited it in European countries and the USA. The result of stealing wealth in Yemen by Ali Abdolla Saheh and his relatives in a poor country led to the rise in terrorism, piracy, organized crime and possibly every worse imaginable crime.

The other big problem created by Ali Abdollah Saheh and his officials is the various conflicts in the country such as north-south conflict, regional, family religious and other types of social conflicts. Sustainable development is a very urgent need of the hour in Yemen in order to have reconciliation, peace and security. Otherwise the turbulent atmosphere would be conducive to terrorism, crimes and piracy.

So we again call Gulf, Regional and International Community to assist Yemen by all means and kinds so as to pro-enhance and develop the country in purpose of meeting the real challenges.

Finally we want to assure that Yemen is a party to almost all environment agreements.

As regards to the national environmental law, Yemen has passed almost all the necessary laws and now considering reviewing and amending the Law of Environmental Protection Act of 1994.

Thank you for your attention.

The Meeting was thereafter adjourned.

XIII. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS

**XIII. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS OF
AALCO MEMBER STATES HELD ON THURSDAY,
21 JUNE 2012 AT 04.30 PM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

Agenda Item: Report of the Regional Arbitration Centres

Vice-President: Now I would like to invite Dr. Xu Jie, Deputy Secretary-General of AALCO for presenting his report on the regional arbitration centres of AALCO.

Dr. Xu Jie, Deputy Secretary-General (DSG) of AALCO: His Excellency Mr. President, H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO; Excellencies,

It is my pleasure to introduce the report of the AALCO's Regional Arbitration Centres as contained in the Secretariat Document AALCO/51/ABUJA/2012/ORG 3 which consists of the Reports of the Directors of Lagos and Kuala Lumpur Regional Arbitration Centres. The AALCO Secretariat received the report of the Director of the Tehran Regional Arbitration Centre very recently, henceforth the same has been circulated in this meeting.

AALCO's association with this area goes back to 1970's when there were hardly any permanent arbitral institutions in the Asian-African region. AALCO was prompted to realize the need to develop and improve the procedure for international commercial arbitration, the necessity for institutional support, develop necessary expertise and creative environment conducive to conduct arbitration in the Asian and African regions. The AALCO Regional Arbitration Centres, it may be recalled, were the result of the AALCO's Scheme for the Settlement of Disputes in Economic and Commercial Transactions and the decision to establish Regional Centres for International Commercial Arbitration at the Doha Session in 1978.

In consonance with the scheme, the Regional Centres for Arbitration at Cairo, Arab Republic of Egypt for the African region and at Kuala Lumpur, Malaysia for the Asian region were established in 1978 and 1979 respectively. Later two more such Centres were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. AALCO has also concluded an agreement with the Government of the Republic of Kenya in 2007, to establish its Fifth Regional Arbitration Centre in Nairobi to cater to the needs of the Eastern and Southern parts of the African continent. It was informed that the establishment and functioning of the Nairobi Regional Arbitration Center was ongoing and the Attorney General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Centre. It is our firm belief that with the support of Government of Kenya, the Nairobi Regional Arbitration Centre would start functioning at the earliest.

Excellencies, the role of Regional Arbitration Centres to mark a difference in the arbitration culture within the region is highly commendable. Their progress and efforts to fulfill their mandate and effectively function has given them reputation across borders. Infact, it is an honour for us to have these Regional Arbitration Centres under the auspices of AALCO as these Centres are one of the most successful ventures of the Organization. AALCO holds the view that the Centres successful activities would have been impossible without the active support and cooperation of the Host Governments. I would like to take this opportunity to congratulate our Directors and thank the Host Governments hosting these Centres and all other Member States for energetically supporting and assisting the Centres.

Excellencies, may I extend our warm welcome to the Directors of Lagos and Kuala Lumpur Regional Arbitration Centres who are among us to present their respective reports to the Session. Thank you.

Vice-President: Thank you Dr. Xu Jie. May I now call upon Mr. Sundra Rajoo, Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) for presenting his report.

Mr. Sundra Rajoo, Director, Kuala Lumpur Regional Centre for Arbitration (KLRCA): Ladies and Gentlemen; this is the third year that I am attending the AALCO Annual Session as the Director of the Kuala Lumpur Regional Centre for Arbitration and my last year of the contract with the Government of Malaysia. I take this opportunity to thank the Government of Malaysia for asking me to continue. The report of the KLRCA containing the financial report is circulated including the financial commitment by the Malaysian government. I would like to highlight the activities of the KLRCA because the key objective of the Center is, as the stakeholders like AALCO and the Malaysian government have agreed that we have to make Kuala Lumpur Regional Centre for Arbitration the preferred centre for commercial arbitration within Asia. Towards that end, resources have been pooled in and we have devised a strategic plan.

On the activities of the centre, firstly, it has been a continuing story since last two years that we entered into an agreement last year with the biggest business organization in Malaysia which is the Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM) which consists of nearly 30,000 small and medium size enterprises other than being a big corporations, they are really the engine of economic growth and have been growing easily overseas particularly in East Asia, China, Korea and Japan; and they have been having problems with their disputes within their contracts. We have actually advised them about the means and importance of Alternate Dispute Resolution (ADR) mechanism and tried to convince them that they should actually include the KLRCA's clauses within their contracts. One of key things is that, KLRCA embarked on a nationwide roadshow to promote and encourage the adoption of ADR among ACCCIM constituent members in 7 states in Malaysia. We entered into MoU, which was presented by the President, Chief with the Government's department, and Deputy Minister in charge of Legal Affairs of Malaysia were also present. The interesting part was that roadshow was conducted even in Madrid and it was quite successful.

The second thing, was the launch of new products starting with the KLRCA Mediation/Conciliation Rules 2011. The commitment of the KLRCA just like any other AALCO Arbitration Centre is towards UNCITRAL, which sets out negotiated texts of documents in the form of rules which are applicable and encouraged to be used by Member States. so, we have taken the approach that we would adopt the latest UNICTRAL mediation rules, modify them and produce better rules for the benefit of Member States. Hence, with that intent we set a small committee headed by the former Chairman of the Bar Council of Malaysia and we launched the Mediation/Conciliation Rules in 2010. We are very interested in China which is our biggest trading partner and we attend some of the exhibitions and roadshows in order to make sure that our brand name is known to China. We have been engaged in a series of talks for reaching out to business people in China for updating than on the relevance of KLRCA as a centre for ADR.

We did a roadshow in Asia in Korea where we worked with Korean Commercial Arbitration Institute, which was very well received as the Judge from the Bar alongwith the President of the Bar Council of Malaysia were present. The judiciary and the ADR system has to work together because the enforcement to the arbitration awards is much dependent on the support of the judiciary.

We have been having a big outreach programme wherein there was extensive coverage by the media and we have received lot of coverage both locally in Malaysia and internationally. Number of foreign magazines have been reporting that we are upcoming and very active in this field. Next thing is that we have been focusing on East Asia, but we should not forget that the other people who come to South Asia or East Asia are people across the world from business groups. Of course, the very established institutions like the London Court of International Arbitration (LCIA), International Chamber of Commerce (ICC) are very enthusiastic and are able to take care of the market demands, however, there are smaller organizations also which are extremely active like the Vienna International Arbitration Centre (VIAC). They are also very active in Eastern Europe and there are lots of economic activities happening there thus there are immense opportunities if we collaborate with them. In order to tie up with them, I met them when they came to Malaysia, we had a case study arrangement and we got very good response. There was good opportunity for European businessman and the businessmen from South East Asia.

We also work with the Hong Kong International Arbitration Centre and the motive is to work towards the success and promotion of the Centre. We organize series of seminars, knowledge sharing and capacity-building programmes and we gave about 27 talks last year. One of them was the KLRCA Fast Track Rules 2010 for expediting the arbitration process.

Malaysia is world known for promoting Islamic Finance and we issue Sukuk bonds. KLRCA has been closely working with the Central Bank of Malaysia and the Securities Commissions to promote ADR given the position of Malaysia as the Muslim majority population with the help of non-Muslim minorities. Hence, we are trying to capitalize Malaysia as the neutral venues for implementing Islamic laws. Regarding highlights,

other activities are that one of the things that's happening across jurisdictions is the regional groupings and arbitration is no different from them. One of the regional groupings that is becoming prominent is Asia-Pacific Regional Arbitration Grouping (APRAG) which is a grouping of arbitral institutions which come together to share the information to work together and promote arbitration in the Asia-Pacific region. It was founded by Prof. Michael Pryles, the Chairman of the Singapore International Arbitration Centre. Last year, the KLRCA was chosen to be the Secretariat and I assumed the Presidency of the APRAG. We started off with 30 Members last year and we have 40 members. It's going to be a powerhouse, we have our own Newsletter regionally where we share informations. One of our goals is to promote arbitration and ADR in any respect within the region. We had conducted a conference last year where we had 270 delegates. It's theme was "Arbitration in the Challenging Region". I am pleased to announce that the World Powerhouse of Arbitration would be the Arbitration Commission of China in Beijing. The APRAG Conference was officiated by our former Chief Justice.

Another event that happened last year was that KLRCA set up an Advisory Board, with the permission of His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO, which was selected very carefully and is headed by the Attorney-General of Malaysia Tan Sri Abdul Gani Patail. It consists of many renowned Malaysian and international arbitrators. The reason for setting up this Advisory Board is to advise the KLRCA towards achieving strategic objectives of the Centre. We have Tan Sri Dato' Tan Sri Dato' Cecil Abraham, Mr Vinayak Pradhan, Professor Robert Volterra, Mr. Sumeet Kachwaha and Professor Philip Yang (who has been Past President of the APRAG and the current Hong Kong Representative of ICC International Court of Arbitration) as the other board members.

In 2010, we came out with fast track rules. With the overwhelming feedback on it, last year we started working on it and this year on 27th February we launched the second edition of the fast track rules. Basically it is the number of state panels that allows the oral hearings must be completed within a maximum of 120 days and tried before a sole arbitrator (unless parties prefer a larger panel). The Rules also caps the Tribunals fees and recoverable costs to a fixed scale. This has become very popular now because there is allegation that arbitration process is very slow.

There is a major change in dispute resolution in Malaysia. The construction industry has agreed to have payment adjudication clause in their contract, no matter how big or small the construction contract would be. Hence, it becomes statutory to include payment adjudication clause. Malaysia would be the fifth jurisdiction to have adopted this method, apart from UK, Australia, New Zealand, and Singapore. The KLRCA has become the adjudication control authority; we do the training and also the accreditation. There is a testimony that the Malaysian government has given to the KLRCA. As the legislation was getting presented in the Malaysian parliament, we did a roadshow for raising awareness among the public for the changes that would come in future. The other

achievement was when KLRCA along with Cairo Regional Arbitration Center was named the alternative hearing venue for Court of Arbitration for Sports for hearings in Asia. With that we think that we are preparing some arbitration rules for sports and we would be able to promote more arbitration in sports related activity, which included selection of athletes, viewing rights, sponsorship rights and so on. On this we had signing ceremony and we hope to get going soon.

The KLRCA building is coming along very well and we would have our own building by the end of next year. We have just launched the second edition of KLRCA Arbitration Rules in 2010 at par with the UNCITRAL Rules and is coming into effect on 2nd July 2012. With this I come to the end of my report.

Thank you.

Vice-President: Thank you Mr. Sundra Rajoo. May I now call upon Director of the Regional Centre for International Commercial Arbitration-Lagos for presenting her report.

Mrs. Eunice Oddiri, Director, Regional Centre for International Commercial Arbitration-Lagos (RCICAL), Nigeria: Thank you Mr. Vice-President.

The Secretary General Professor Dr. Rahmat Mohamad; Excellencies, Distinguished Delegates, Ladies & Gentlemen;

The Regional Centre for International Commercial Arbitration Lagos, Nigeria, I hereby present a report on its activities during 2011 and the anticipated activities in the remaining segment of 2012.

Taken in order of priority we report firstly on the Centre's Case Load for 2011/2012.

In the period under review, 6 (six) new cases were added to the current disputes/cases registered at the Centre. All the fresh cases newly added to the Centre's case load are still on-going.

The cases relate to aviation, banking, maritime and a newly added sub-division of power supply.

An interesting development in one of the cases is the re-evaluation of the domestic arbitration clause of the Centre contained in the contract. It was agreed by the host government Nigeria that in most of the contracts, arbitration clauses would be included which is the Regional Centre for International Commercial Arbitration Lagos.

Although desperate efforts were made in the course of the proceedings to deny the Centre's jurisdiction in the administration of the case, at the end of the day the Centre was invited to assume jurisdiction when it became apparent that the arbitral panel could not do otherwise as the representative of the government refused to accept the jurisdiction of any other tribunals except the Regional Centre for International Commercial Arbitration Lagos, which has been referred by the parties and agreed in the contract.

Participation in Arbitral Events

International Bar Association (IBA) Conference held in Dubai in October 2011

The Centre was represented at the arbitration session of the International Bar Association (IBA) Conference held in Dubai in October 2011.

The international arbitration session dwelt extensively on the enforcement of foreign arbitral awards. In particular, being signatory to the UN Convention on the Enforcement of Foreign Arbitral Awards of 10th June, 1958 (New York Convention) was used as a yardstick to ascertain arbitration friendly countries or otherwise.

It was the prevailing opinion that it would be difficult to enforce foreign arbitral awards in countries who are not signatories to the New York Convention; hence such countries would certainly not be arbitration friendly.

Obviously, the ease or otherwise of the enforcement of foreign arbitral award by a successful party in a country has a direct link on consideration of that country for foreign direct investment.

It is our opinion that AALCO members who are not yet parties to the New York Convention should consider doing so; in order to enhance a favourable foreign direct investment climate in their countries.

Educational Activities

ADR Moot Competition

In 2010/2011 Annual Report, we reported that some universities participated in the preparations for the Annual Willem C. Vis Arbitration Moot in Vienna-Austria; and the African International Arbitration Moot Competition under the auspices of the Centre.

The Centre is happy to report that the 1st African international arbitration moot competition was held in August, 2011 in Nairobi, Kenya. It was a huge success. The

competition was supported by the organizers of the Willem C. Vis moot competition based in Vienna and the Chartered Institute of Arbitrators, Kenya branch.

At the end of the competition, the Panel of Arbitrators used audience votes to determine the winner; and consequently University of Ilorin, Nigeria emerged winner; while Delta State University, Nigeria was the runner-up.

Collaborations

Forum on Business Meets Politics Organized by the Embassy of Switzerland in Nigeria in Collaboration with the Centre, 5th October, 2011

The Centre co-hosted the forum on Business Meets Politics with the Embassy of Switzerland in Nigeria on 5th October, 2011; where it showcased arbitration as an alternative dispute resolution option for business operators in Nigeria.

The forum brought together, the Swiss business community in Nigeria with their Nigerian counterparts, as well as the delegation of the European Union in Nigeria.

Visit by the China Law Society, 14th November 2011

A four-man delegation of the China Law Society visited the Centre on 14th November, 2011. Both organizations exchanged ideas and documents relating to arbitration in China and Nigeria.

In consideration of the increased commercial and investment activities between Chinese Companies and Nigerian Companies, there were discussions on mutual co-operation in the area of the use of arbitration and arbitrators between Nigeria and China.

ICCA New York Convention Road Show for Mauritian and African Judges, 2nd – 4th May, 2012

The General Counsel, Mr. Emmanuel Dike contributed to doing research for the first New York Convention Road Show in Mauritius for Mauritian and African Judges; which was conducted by the International Council of Commercial Arbitrators (ICCA) and Young ICCA in conjunction with the Mauritian office of the Permanent Court of Arbitration. It was hosted by the Chief Justice of the Mauritian Supreme Court.

The Road Show involved a high-level training workshop on implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, specially designed for senior judicial officers in Mauritius and other African countries.

Future Activities of the Centre

The underlisted events are slated for 2012 and beyond:

- 1- Moot Arbitration for African Universities, ongoing from 2008/2009. Its duration is for two Weeks and the Venue is Nigeria.
- 2- Sensitization Meetings with Commercial Attaches and Trade Officers of Foreign Missions. It's for one day and conducted in Nigeria.
- 3- Business Meetings with Companies who use Arbitration to resolve disputes. It's for one day and conducted in Nigeria.
- 4- Promotional activities in mediation for new users for two days and conducted in Nigeria.

The challenge we face, is that it was misconstrued to be an agency of the Host Government that is Nigeria and that has blocked lot of people from approaching the Center. So I would like to take the opportunity now to state before the Secretary-General that the Centre is part of an Inter-governmental Organization and not the Government – Nigeria.

On that note, I would like to say thank you very much for listening to me and God Bless you.

Vice-President: Thank you Mrs. Eunice Oddiri for a very able presentation.

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

Vice-President: I now invite the Deputy Secretary-General of AALCO, Dr. Xu Jie, to introduce the item on “The Report on the Centre for Research and Training of the AALCO.

Dr. Xu Jie, Deputy Secretary-General: Mr. President, Hon'ble Ministers; Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is my privilege and honour to introduce the “Report on the Centre for Research and Training of AALCO” contained in Document No: AALCO/51/Abuja /2012/SD/ORG.4. In my statement I would give a brief overview of activities of CRT in the period under review.

Mr. President, the Centre for Research and Training (CRT) of AALCO, evolved from the AALCO's “Data Collection Unit”, which was established based on the proposal made by the Government of Republic of Korea at the Twenty- Eighth Session of AALCO in 1989. It was renamed as the Centre for Research and Training in the Fortieth Annual Session of AALCO in the year 2011. This marked a new chapter in the efforts of the Member States towards undertaking research activities as well as training programmes within the AALCO. The mandate was further strengthened at the Abuja Session, Nigeria in the year 2002.

Mr. President, one of the primary objectives of the AALCO is to undertake activities for the promotion and wider dissemination of international law and strengthen international

law expertise in the Asian-African region. Pursuant to this object, CRT has over the years undertaken various activities, including organizing Training Programmes. For examples,

A WTO Training Programme on the theme “Trade and Development” was organized by CRT along with WTO Headquarters, Geneva and the Centre for WTO Studies, Indian Institute of Foreign Trade (IIFT), New Delhi at the Headquarters of AALCO from the 21st to the 25th of May 2012. This was attended by more than 35 Participants which included Representatives from 14 Member States of AALCO.

Similarly, a Two-Day Conference was jointly organized by the Secretariat of AALCO in collaboration with O.P Jindal Global University on 28th and 29th February 2012 on the topic “Competition Law in Emerging Economies: Trends and Developments in India” The Conference had attracted a number of participants which included: students, scholars, government officials and Liaison Officers of AALCO Member States.

Lastly, a two day Training Programme on the ‘Working of AALCO’ was convened at the AALCO Headquarters from 12 to 13 March 2012. The programme was specially arranged for Officials of the Ministry of Foreign Affairs and Interior from the Kingdom of Saudi Arabia. It was attended by more than 20 diplomats and officials from the concerned Ministry of Kingdom of Saudi Arabia.

Mr. President, one of the Centre’s activities is to encourage the young students of law from the Member States, who are interested in learning more about the various branches of international law, to get familiarized with the workings of inter-governmental Organization. During the course of the last year and until June 2012, nine students from India and Malaysia have successfully completed/ are doing their internship programme at the Secretariat. As the internship programme is available throughout the year in the AALCO Secretariat, the Member States are requested to make use of this opportunity and thereby encourage the law students to undertake such internship programme with AALCO in New Delhi.

Mr. President, as part of the Revitalization Plan of AALCO, the web-site of the AALCO has been upgraded significantly in recent months. The current AALCO web-site, which bears a brand new look and is indeed user-friendly, has got a wealth of information about all the activities of AALCO in it.

I also take this opportunity to inform the distinguished delegates that one of the primary publications of AALCO, namely the AALCO Quarterly Bulletin, has been renamed as *AALCO Journal of International Law* since this year. We have also constituted a body for the journal namely, *International Advisory Board*, which would exercise oversight and provide guidance as to the many possible ways through which the quality of the Journal could be enhanced. The Inaugural Issue of this Journal, it might be recalled, was released during the Second Meeting of Delegations held on 19th June 2012.

Mr. President, in the period 2012-13, the AALCO Secretariat has plans to identify new ways and means to strengthen its existing programs and to introduce new programmes. Some of the proposed new programs include: “Training Course in Public International Law” organized jointly by AALCO Secretariat, United Nations Office of Legal Affairs

(UNOLA) and the Ministry of Foreign Affairs, United Arab Emirates to be held at Dubai in the later part of this year; Expert Group Meetings/Workshops on International Law; Workshop/Seminar on Biological Diversity; and Young Jurist Conference.

The Secretariat is intending to formulate a database on the national legislations of the Member States of AALCO on the various fields of International Law. Towards that objective, AALCO is presently preparing a database of the Member States on the area of International Humanitarian Law (ILC) jointly with ICRC. The preliminary database of the same was released at the Fiftieth Annual Session held at Colombo, Sri Lanka. The AALCO Secretariat is planning to bring more such database in the near future.

Mr. President, the Funding of the Centre is from the regular budget and because of the budgetary constraints difficulty arises in expanding its activities. To promote Research and Training under the CRT, and to provide a sustainable financial base to the Centre to undertake its mandated activities, any Member State of AALCO could provide voluntary contribution to the “Research and Training Fund”. The Fund will be exclusively devoted to research on international law issues of common interest to Member States and for the training of the officials of Member States.

To conclude, I once again thank all the Member States for their immense support and cooperation. Thank you very much for your patient hearing.

Vice-President: I invite any comments on the reports presented. Since there are no comments, in that case, Secretary-General of AALCO has an announcement to make.

Secretary-General: Thank you Mr. Vice-President. Tomorrow there would be sight-seeing in the first half, followed by the concluding session. Any suggestions to the resolutions may be kindly forwarded to the Secretariat for incorporation. Thank you.

**VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS OF
AALCO MEMBER STATES (Contd.) HELD ON THURSDAY,
22 JUNE 2012 AT 03.30 PM**

His Excellency Mr. Mohammed Bello Adoke, SAN, President of the Fifty-First Annual Session of AALCO in the Chair.

President: I now invite the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad to deliver his Message of Thanks to His Excellency Mr. Goodluck Jonathan, the President of the Federal Republic of Nigeria.

Message of Thanks: The Secretary-General of the Asian-African Legal Consultative Organization Prof. Dr. Rahmat Mohamad delivered the following 'Message of Thanks' addressed to His Excellency, the President of the Federal Republic of Nigeria.

"Excellency,

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

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

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

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

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

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

Thank You.”

President: Thank you very much. I take that message of thanks to be adopted by the delegations with no addition or subtraction. Thank you. Excellencies, Distinguished delegates, Ladies and Gentlemen, we have the next issue on the agenda, which is the Venue of the Fifty-Second annual session of AALCO. I am told by the Secretariat that no state has notified their intention to host the annual session. I open the floor for any delegation to come forward and would like to host. The Secretary-General through the Secretariat would communicate to the Member States and any member state willing to host the forthcoming annual; session may inform in consultation with their respective governments. Thank you very much.

Let me notify the delegations that in accordance with the statutory rules, we would adopt the resolutions of the Organizational and Substantive matters and the Summary Report.

Adoption of the Resolutions

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

AALCO/RES/51/ORG 1	Report of the Secretary-General on Organizational, Administrative and Financial Matters
AALCO/RES/51/ORG 1A	Revision of AALCO’s Gratuity Scheme for the Locally Recruited Staff
AALCO/RES/51/ORG 2	AALCO’S Budget for the Year 2013
AALCO/RES/51/ORG 2A	Sub-Committee on AALCO Secretariat’s Human Resources and Financial Matters

The delegate from Malaysia proposed the following amendments be made to this Resolution.

1. That the (Fifth paragraph) be deleted
2. That the [Sixth paragraph] be amended to begin:
“Noting that the report also stressed that a few legal

officers need to be employed to conduct sufficient professional work to meet the expectation and mandate received from Member States,”

The Resolution and the suggested amendments were subsequently adopted.

AALCO/RES/51/ORG 3	Report on AALCO’s Regional Centers for Arbitration
AALCO/RES/51/ORG 4	Report on the Center for Research and Training of the AALCO
AALCO/RES/51/ORG 5	Reappointment of the Secretary-General
AALCO/RES/51/S 3	The Status and Treatment of Refugees (Non-Deliberated)
AALCO/RES/51/S 4	The Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949 (Deliberated)
AALCO/RES/51/S 5	Legal Protection of Migrant Workers (Non-Deliberated) The delegate from Malaysia proposed that the Resolution be amended and that the Second and Third paragraph to be deleted. The Resolution was subsequently adopted.
AALCO/RES/51/S 6	Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties (Deliberated)
AALCO/RES/51/S 8	Establishing Cooperation against Trafficking of Women and Children (Non-Deliberated)
AALCO/RES/51/S 9	International Criminal Court: Recent Developments (Deliberated)
AALCO/RES/51/S 10	Environment and Sustainable Development (Deliberated)
AALCO/RES/51/S 11	Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption (Non-Deliberated)
AALCO/RES/51/S 12	Report on the Work of the UNCITRAL and Other International Organizations Concerned with International Trade Law (Non-Deliberated)
AALCO/RES/51/S 13	WTO as a Framework Agreement and Code of Conduct for World Trade (Non-Deliberated)

AALCO/RES/51/S 14	Expressions of Folklore and its International Protection (Non-Deliberated)
AALCO/RES/51/SP 1	Resolution on the Special Meeting on “Selected Items on the Agenda of the International Law Commission”
AALCO/RES/51/SP 2	Resolution on the Special Meeting on “Law of the Sea: Responses to Piracy: International Legal Challenges”
AALCO/RES/51/SP 3	Resolution on the Special Meeting on “International Terrorism”

Consideration of the Summary Report:

The Draft Summary Report of the Fifty-First Annual Session of the Asian-African Legal Consultative Organizations was placed for consideration of the Member States.

President: The resolutions on both organizational and substantive matters alongwith the Draft Summary Report have been adopted.

XIV. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND CONCLUDING SESSION

**XIV. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND
CONCLUDING SESSION HELD ON FRIDAY, 22 JUNE 2012 AT 4.00 PM**

His Excellency Mr. Mohammed Bello Adoke, SAN, President of the Fifty-First Annual Session of AALCO in the Chair.

President: Now we move on to the Fifth General Meeting of the Session and also to the Concluding Session. May I now ask an Asian Member State to propose the vote of thanks. For that, I invite the distinguished representative from Iran to propose the vote of thanks on behalf of the Asian States.

Statement by the Leader of Delegation of Islamic Republic of Iran:

Mr. President, Hon'ble Ministers, Attornies-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen;

It is a great honor and privilege to be called upon to propose the vote of thanks on behalf of the Asian Member States of AALCO to the gracious host of the Fifty-First Annual Session of AALCO. I express my profound gratitude and appreciation to the Your Excellency Mr. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria and the President of the Fifty-First Annual Session of AALCO for inviting us to this beautiful city of Abuja to attend this Annual Session. I also deeply appreciate the warm hospitality accorded to us by the government and the people of Nigeria.

Mr. President, please receive our warm appreciation for the excellent manner in which you have steered the course of the proceedings of this Fifty-First Annual Session with your expertise and guidance.

I would also like to extend my deep gratitude to the Vice-President of this Fiftieth Annual Session Mr. Thiha Han, Director, Ministry of Foreign Affairs of the Union of Myanmar, for extending his support and guidance to all the delegates during the deliberations of this Session.

The National Organizing Committee of the host government also deserves our special appreciation for all the arrangements that they have made for conducting this Session's proceedings.

Allow me to commend the determined efforts of the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad for his excellent leadership in order to promote the Asian-African solidarity and the initiatives that he has taken towards that end. I extend His Excellency all our support for his next term as the Secretary-General of AALCO for coming four years. I thank his able Deputy Secretaries-General Dr. Xu Jie, Dr. Hassan Soleimani and Dr. Yasukata Fukahori for their constant support throughout the Session.

I am also very pleased to extend my sincere and heartfelt appreciation for all the staffs of the Secretariat of AALCO for all their valuable efforts in making our work easier. Their

efficiency and professionalism must be appreciated. I also thank the interpreters for performing their job with considerable skill and professionalism.

Finally, I would like to thank all of Your Excellencies, the Ministers, Ambassadors, the heads of Delegations, and all the Delegates, your presence has been invaluable and without any doubt has helped make this Session a success.

Thank You.

President: Thank you very much for those kind words. May I now call upon an African Member State to propose a vote of thanks on behalf of the African States. I invite the delegation from Kenya to propose his vote of thanks on behalf of African States.

Statement by the Leader of Delegation of Ghana:

Mr. President, Hon'ble Ministers, Attornies-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

As we come to the end of our historic Fifty-First Annual Session of AALCO, I deem it a great honour and privilege to propose the vote of thanks on behalf of the African Member States of AALCO to the host government. I express my profound gratitude and sincere appreciation to Hon'ble, Mr. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria, and the President of the Fifty-First Annual Session of AALCO for inviting us to this historic city of Abuja to attend AALCO's Fifty-First Annual Session. I express my heartfelt gratitude to the government and the people of this great country the Federal Republic of Nigeria for the warm and exceptional hospitality that you have bestowed on us. We indeed felt at home throughout.

Mr. President,

You commend our heartfelt applause for the articulate manner in which you have admirably guided and conducted the proceedings of this Annual Session. The successful culmination of this Session owes much to your wit, guidance and wisdom.

By the same token, I would also like to express our very sincere gratitude to the Vice-President of the Fifty-First Annual Session of AALCO His Excellency Mr. Thiha Han for his cooperation and leadership which has inspired all of us. The comments and interventions that both of you had made were indeed critical and insightful.

An event like this cannot take place overnight. The wheels start rolling months before. It requires meticulous planning and a eagle's eye for details. We have been fortunate enough to be backed by the Members of the National Organizing Committee who have made all the possible efforts and worked with great dedication to make this Session a resounding success. We, indeed, owe a special gratitude to you.

I also would like to extend my warm appreciation to the Secretary-General of AALCO Prof. Dr. Rahmat Mohamad for his vision and commitment towards the cause of the third world which has been steering AALCO in the right direction. We also congratulate him

on his re-appointment as the Secretary-General of AALCO for a second term beginning with this year. We sincerely believe that he would make a significant contribution towards attaining the objectives for which AALCO was set up. In any such endeavor, we stand ready to work closely with you and your team.

I also wish to express my deepest regard to the staff of the Secretariat of AALCO for working so hard and earnestly to produce a lot of documents which were very useful for our debates and deliberations.

The interpreters also deserve our heartfelt appreciation for the way they have done their job with utmost care and great efficiency.

Finally, the success of this Annual Session would not have been possible without the goodwill, co operation and understanding of all our delegates and participants. Praise, is therefore, due to all of you.

Thank You.

President: I thank you very much for your kind sentiments. May I now invite the distinguished representative from the International Committee of the Red Cross (ICRC) to propose the vote of thanks on behalf of the international organizations and observers.

Statement of the Representative of the International Committee of the Red Cross (ICRC):

Mr. President,

Excellencies, distinguished delegates, ladies and gentlemen,

I am speaking here on behalf of international organizations that have been accorded observer status for the 51st Annual Session of AALCO, as well as, on behalf of my own organization, the International Committee of the Red Cross.

As you all know, we, the observer organizations, are engaged in promotion, comprehension and development of different areas of international law falling within the purview of our respective mandates. Over the years, we have attended AALCO Annual Sessions, organized joint events and engaged in a constructive dialogue with AALCO members on issues of common interest. It is gratifying to note that AALCO is very seriously engaged in addressing many complex and challenging international law related issues with a view to make an effective contribution to the proves of development, articulation and application of international law. AALCO has facilitated a unified, well-informed and responsible stand on the part of its Member States in various international for a on international law issues. Obviously it is important for the observer organizations to follow these developments closely. At the same time, it is equally important for us to understand the views of individual Member States on these complex issues. The opportunity to do so was afforded to us by our participation as observers in this Annual Session.

Therefore, Mr. President, on behalf of the observer organizations, I would like to express our deep sense of gratitude to AALCO Secretariat and all the Member States.

We would like to appreciate and thank the Government of the Federal Republic of Nigeria for hosting this Annual Session in this impressive city of Abuja and for extending to all of us their warm hospitality.

For ensuring success of any large and major event like this Session, a lot of ground work and meticulous preparation on the part of the Secretariat before and during the event is indispensable. I, therefore, thank the AALCO Secretariat team that has tirelessly worked to make this event a resounding success.

Finally, Mr. President, I thank all the participating delegations for their contributions to various working sessions that undoubtedly enriched the quality of debate and discussion.

I thank you, Mr. President, for giving us this opportunity and wish you success for your President ship of this remarkable Organization.

Thank you and good bye.

President: Our deliberations over the last four days have been quite fruitful and beneficial, and we have had an opportunity to interact and exchange views on issues of common concern to members of the organization.

Let me, on behalf of the government and people of Nigeria; express our gratitude to all the delegations who have attended the Fifty-First Annual Session and for honouring us with your esteemed presence.

I similarly appreciate and thank the AALCO Secretariat and the Local Organizing Committee for working tirelessly to ensure effective session. as President of this annual session, I am particularly pleased with the wide participation and deliberations on various agenda items. The specific discussions on the Special Meetings, particularly, have been very useful for understanding and delving upon the issues addressed upon. Therefore, I call upon all the delegations for their in-depth participation. Finally, I ensure the Member States that during my tenure as President of the Organization, I shall work towards achieving the objectives on behalf of the Organization with cooperation and collaboration between our Organization, ILC, and AALCO Member States. I ensure to work towards attaining the ideals for which AALCO was established. Once more I thank you very much and wish you the very best and have a safe travel back to your capitals.

Secretary-General: Excellencies, Ladies and Gentlemen; there is an announcement. There would be a farewell dinner hosted by the Federal Ministry of Justice and Federal Capital Territory tonight at 7.30 PM at this hall. We hope you all would join us for the dinner and for the cultural show also. Thank you.

**XV. TEXTS OF DOCUMENTS
ADOPTED AT THE FIFTY-
FIRST ANNUAL SESSION**

A. SUMMARY REPORT



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

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

1. Introduction

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

2. Inaugural Session

- 2.1 The Session commenced on 18 June 2012 with the Master of Ceremonies welcoming all

the Delegations to the Federal Republic of Nigeria for the Fifty-First Annual Session.

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

- the Fiftieth Annual Session. In that regard, an inter-sessional meeting of legal experts to discuss matters relating to the ILC was convened at AALCO Headquarters in April this year. In conjunction with the Fifty-First Annual Session, there would be three Special Half-Day Meetings on contemporary global challenges like international terrorism, piracy at Sea, protection of persons in the event of disasters and immunity of State Officials from Foreign Criminal Jurisdiction.
- 2.6 He recalled what H. E. Mahinda Rajapaksa, President of the Democratic Socialist Republic of Sri Lanka who was the Chief Guest of the Inaugural Session of the Fiftieth Annual Session held last year, observed at the General Debate of the Sixty-Sixth Session of the UN General Assembly; the core concern for developing countries would be the challenges that they face from terrorism, dumping of commercial and industrial goods manufactured in developed countries that imperils the economies of many Asian and African countries, disproportionate pollution of the environment by industrialized countries and so on. Simultaneously, G 20 Leaders are meeting in Mexico and the Rio Summit was also taking place in Brazil, where world leaders were meeting to resolve current contentious issues pertaining to the world economy, with the resurrection of the Eurozone crisis and going beyond the Durban deadlock.
- 2.7 He also said that, as the current President he had visited the AALCO Headquarters in New Delhi. He thanked AALCO for the opportunity provided to Sri Lanka to host the milestone 50th Annual Session of the Organization in Colombo in June 2011 and recalled the role and contribution of AALCO in the international legal arena with reference to the law of the sea, concept of archipelagic states, Bangkok Principles on the status and treatment of refugees, law related to trafficking of women and children etc., which were ground-breaking. He appreciated the initiatives taken by the AALCO Secretariat to conduct training programmes and workshops for the benefit of the Member States. He also informed the delegates about the convening of the 2nd Meeting of the AALCO-Eminent Persons Group which was constituted at the Fiftieth Annual Session, under the chairmanship of Dr. A. Rohan Perera, former Member of the ILC from Sri Lanka. In that regard, he urged Member States of AALCO who were in arrears to take a firm decision to place AALCO on a sound financial footing. He said that could happen only when Member States fulfill their financial obligation towards the Organization and nurture the Organization as their own institution that had in the past and has the potential of being the voice of Asia and Africa in future. He appreciated the Secretary-General and the Staff for their continued efforts in serving the Organization with utmost sincerity.
- 2.8 **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria**, the incoming President of the Fifty-First Session in his inaugural address, welcomed all the delegates attending the 51st Annual Session of AALCO to Abuja, Nigeria and said that as the host government they were grateful for AALCO and its Secretariat for the unique opportunity to host the 51st Annual Session. He extended profound gratitude towards various delegations and participants, and stated that it clearly demonstrated their commitment to the ideals of AALCO and commitment to ensure that the objective for which the Organization was established has been attained. He said that it was in that regard that Nigeria's resolve was to effectively harness the resource base of the Organization for socio-political and economic development as well as strengthening of the bonds of friendship between the people of both continents.

- 2.9 He said topics that would be discussed during the Annual Session were very important and essentially the ones which many developing countries were finding it difficult to deal with them. The issues like piracy, International terrorism, and so on. The focus on the topics like International Criminal Court (ICC) and International Law Commission (ILC) would be beneficial to Member States of AALCO and indeed to the entire global community. He said that large numbers of Members from the African continent (33) were State Parties and yet the relationship between ICC and the African Union (AU) were not satisfactory. On those lines, it was essential for ICC to engage Africa constructively in the global effort to end impunity.
- 2.10 He also mentioned that the work of the ILC should mirror the interest of the developing world. As a member of the ILC, he appreciated AALCO for taking up selected items on the agenda of the ILC for deliberation at the Half-Day Special Meeting. He observed that the ever increasing relevance of AALCO in the competitive and complimentary world was a matter of pride as AALCO offers a useful platform for developing close and enduring partnerships among countries for sustainable development and global stability. He also placed on record the immense support his Ministry received from the Federal Government of Nigeria, under the leadership of President His Excellency Mr. Goodluck Ebele Jonathan, GCFR, towards hosting the Session. He expressed his gratitude towards AALCO Secretariat and the Local organizing Committee for their tireless efforts. He wished a memorable stay for the delegates in the city of Abuja and officially inaugurated the Fifty-First Annual Session of AALCO.
- 2.11 **Mr. Nixon Ntimbwa, Assistant Director of Constitutional and Human Rights Affairs, Office of the Attorney-General, United Republic of Tanzania on behalf of Hon. Mathais Neinrad Chikawe (MP), Minister of Justice and Constitutional Affairs, United Republic of Tanzania and President of the Forty-Ninth Annual Session of AALCO** proposed a Vote of Thanks on behalf of the Member States of AALCO to the Government of the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO. He said that the Annual Session of AALCO was a unique platform where one witnessed the essence of mutual cooperation and support extended among Member States of the Asian and African countries. The Organization's role in bringing together nations from the two prominent continents, in order to address international legal matters which have serious implications in international relations was commendable. He also extended whole-hearted support and cooperation to the incoming President His Excellency Mr. Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria who was also a Member of the ILC for inaugurating and the Organizing Committee for all their efforts in conducting the Fifty-First Annual Session of AALCO. He also thanked his predecessor Honourable Celina Ompeshi Kombani, who had discharged her responsibilities as President of the Forty-Ninth Annual Session of AALCO till recently.
- 2.12 He also thanked Honourable Mr. Rauff Hakeem, Minister of Justice of Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of AALCO for successfully guiding the activities and works of AALCO during his term in the last one year. He also congratulated him for ably conducting and presiding over the meeting of AALCO Legal Advisors which was held on the sidelines of the Sixth Committee of the Sixty-sixth session of the United Nations General Assembly in New York at the end of the year 2011. He recalled the significant role played by the Secretary-General His Excellency Professor Dr. Rahmat Mohamad during his term especially in

relation to revitalizing the Organization. He commended the Secretary-General and his Secretariat officials and staff for their untiring efforts in discharging their duties and carrying out the objectives of AALCO. He urged Member States of AALCO to take necessary action to protect and promote AALCO by ensuring that it was financially sound for an effective functioning of the Secretariat and in conducting its activities as well. As the President of the Forty-Ninth Annual Session of AALCO and on behalf of the Government of Tanzania and its people, he extended their gratitude towards the Organization for having given them an opportunity to hold the position in the year 2010.

3. First Meeting of the Delegations of AALCO Member States

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

3.2 Agenda:

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

I. Organizational Matters

1. Consideration and Adoption of the Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Re-appointment of the Secretary-General
5. Report of the Secretary-General on the Work of AALCO
6. Proposed Budget for the Year 2013
7. Report on the Work of the AALCO's Regional Arbitration Centres
8. Report of the Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters
9. Report of the Chairman on the Second Meeting of AALCO-EPG
10. Report on the AALCO's Centre for Research and Training (CRT)
11. Venue of the Fifty-Second Session

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

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

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

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

VI. Three Half-Day Special Meetings

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

VII. Any Other Matter

- 3.3 **Adoption of the Provisional Agenda and Tentative Schedule of Meetings:** The President placed for consideration the Provisional Agenda and Tentative Schedule of meetings during the course of the Fifty-First Annual Session of AALCO. There being no comments and observations from the participating delegations, the same were declared adopted.
- 3.4 **Admission of Observers:** The Admission of Observers to the Session, pursuant to Statutory Rule 18, was unanimously approved.
- 3.5 **Election of President and Vice-President:** The President of the Fiftieth Annual Session, His Excellency Mr. Rauff Hakeem invited the Member States to propose candidates for the posts of President and the Vice-President of the Fifty-First Annual Session of AALCO. The **Leader of the Delegation of the People’s Republic of China** proposed the name of **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria** to be the **President** of the Fifty-First Annual Session of the AALCO. The proposal was seconded by the **Leader of the Delegation of Ghana**. With regard to the position of **Vice-President**, the **Leader of the Delegation of United Republic of Tanzania** proposed the name of **Mr Thiha Han, Director, Ministry of Foreign Affairs of the Union of Myanmar**. The proposal was seconded by the **Leader of Delegation of Japan**. The Member States unanimously elected with acclamation, **H.E. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria** and Mr. Thiha Han of the Union of Myanmar, respectively as the President and the Vice-President of the Fifty-First Annual Session of AALCO.
- 3.6 **Re-appointment of the Secretary-General of AALCO:** The President in his statement introduced the agenda item, ‘Reappointment of the Secretary- General’. He referred to Paragraph 20(1) of the AALCO’s Statutory Rules regarding appointment and re-appointment of the Secretary- General. Further, the President mentioned the following Member States: Syrian Arab Republic; Singapore; State of Qatar; United Republic of Tanzania; Union of Myanmar; Japan; Republic of Mauritius; Sultanate of Oman; and Republic of South Africa which positively responded to letters of support sent by the Attorney General of Malaysia and the Secretariat for the reappointment of the current Secretary- General Prof. Dr. Rahmat Mohamad and opened the floor for further deliberations.
- 3.7 **The Leader of Delegation of Malaysia** recalled that during the 50th Annual Session of AALCO in the Democratic Socialist Republic of Sri Lanka, the Malaysian delegation announced its intention of seeking H.E. Professor Dr. Rahmat Mohamad’s reappointment as the Secretary-General of AALCO for a further 4-year term (2012 - 2016). He announced that Professor Dr. Rahmat Mohamad’s re-appointment had the full support of the Government of Malaysia. A mandate pertaining to this re-appointment had been

- obtained as early as 30 March 2012 by virtue of a Malaysian Cabinet decision. This mandate clearly showed the support and confidence that the Government of Malaysia has in Professor Dr. Rahmat to continue his duties and responsibilities as the Secretary-General for a second term.
- 3.8 He further added that, during the 48th Annual Session of AALCO held in Putrajaya, Malaysia in 2009, the “Putrajaya Declaration on Revitalizing and Strengthening AALCO” was adopted whereby the Member States of AALCO reaffirmed their faith in the Organization and recognized its vital contribution in the progressive development and codification of international law. Significantly, the Declaration symbolizes the mandate that AALCO had given Professor Dr. Rahmat to not only revitalize and strengthen AALCO, but to also transform the organization.
- 3.9 He noted with satisfaction that it was undeniable that for the past four years, Professor Dr. Rahmat Mohamad had successfully served the given mandate by leading and transforming AALCO to meet the challenges of the new century. He had enlarged the scope of activities to ensure AALCO’s relevance within both the Asian and African communities, while balancing the regional peculiarities of the 47 Member States of AALCO.
- 3.10 Under his helm, he had undertaken various initiatives to revitalize and strengthen AALCO, including the creation of the AALCO Eminent Persons Group (EPG), the initiation of the AALCO Lecture Series and the adoption of various measures to improve the financial situation of AALCO. Through his efforts in fostering ties with the United Nations, International Court of Justice and the International Law Commission, among others, and through the collaboration with international organisations such as the International Committee of the Red Cross, AALCO’s standing and presence in the international community has been enhanced. This is an attestation of Professor Dr. Rahmat Mohamad’s efforts and success in fulfilling his mandate by the AALCO Member States.
- 3.11 Therefore, to allow for the continuation of the remarkable work he has done for AALCO and its progress, Malaysia sought the support and endorsement of the Governments of Member States of AALCO for the reappointment of Professor Dr. Rahmat Mohamad, as provided under Article 3 of the AALCO Statute.
- 3.12 He concluded that he was confident that Professor Dr. Rahmat was in the best position to continue the fulfilment of the mandate of the Secretary-General. His task was now to move into the second phase of revitalizing and transforming AALCO. Therefore, Malaysia urges Professor Dr. Rahmat to ensure that AALCO remains as one of the most important legal regional intergovernmental organization, and not a political one.
- 3.13 In light of the support of the Member States mentioned above, the President concluded by endorsing the reappointment of Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO for one further term (2012-2016).
- 3.14 Thereafter, the Leaders of Delegations of the following Member States namely: Islamic Republic of Iran, People’s Republic of China, India, Ghana, Indonesia, State of Kuwait, State of Palestine, Republic of Kenya, Federal Republic of Nigeria, Kingdom of Saudi Arabia, Republic of Yemen, and Thailand also acknowledged the efficient and effective

work done by Prof. Dr. Rahmat Mohamad, Secretary-General in his first term and lent him their unanimous support for his re-appointment for another term of four years (2012-2016).

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

- 3.15 The Outgoing President, **His Excellency Mr. Rauff Hakeem** in his farewell remarks thanked the Member States for the co-operation extended to him in the discharge of his duties as the President of AALCO. He also expressed gratitude to the Secretary-General of AALCO and the Secretariat staff members for faithfully observing the mandate entrusted to them by the Fiftieth Annual Session of AALCO. The outgoing President called upon the Member States to render full support to the Secretariat so as to enable it to perform the responsibilities entrusted to it in an efficient manner. Commending the electees for the posts of the President and Vice-President, the outgoing President stated that there could not have been a better choice than those elected for those positions.
- 3.16 Thereafter, the **newly elected President and the Vice-President assumed their positions on the dais.**
- 3.17 The newly elected President Mr. Mohammad Bello Adoke, SAN, CFR, in his opening Statement thanked the Member States for the support extended to him in his election to the post of President of the Fifty-First Annual Session. He congratulated the outgoing President, H.E. Mr. Rauff Hakeem, and the Minister of Justice of the Democratic Socialist Republic of Sri Lanka, for the very successful completion of his tenure and the exemplary leadership and commitment which he brought to bear on the work of the Organization. On assuming the mantle of leadership of the Organization, he assured the Member States that he would work conscientiously with the Secretariat to consolidate the gains recorded during the outgoing President's tenure. His Excellency appreciated the agenda of the Fifty-First Annual Session and hoped that with the co-operation of the participating delegations, the deliberations would be conducted in a friendly spirit to achieve consensus. The President noted with immense satisfaction the excellent work of the AALCO Secretariat under the dynamic leadership of Prof. Dr. Rahmat Mohamad and congratulated him on his reappointment. He also warmly welcomed the delegates to Abuja. He reaffirmed that in the characteristic spirit of candor and objectivity of deliberations in AALCO, he was optimistic that the Fifty-First Annual Session would achieve its objectives and thereby lay the foundation for greater cooperation and partnership among Member States in the years to come.

4 First and Second General Meetings

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

- 4.2 The delegations congratulated His Excellency Mr. Mohammed Bello Adoke, Attorney General of the Federation and the Minister of Justice of the Federal Republic of Nigeria on his election as President of the Fifty-First Annual Session of the AALCO. Delegations also congratulated His Excellency Mr. Thiha Han, Director, Ministry of Foreign Affairs of the Union of Myanmar, on his election as the Vice-President of the Fifty-First Annual Session of the AALCO. The delegations also thanked the Government of the Federal Republic of Nigeria, its peoples and the AALCO Secretariat for their warm hospitality and the excellent preparations for the meeting.
- 4.3 The **Leader of Delegation of Malaysia** at the outset thanked His Excellency the President of the Fifty-First Annual Session of AALCO Mr. Mohammed Bello Adoke, the Secretary General of AALCO Prof. Dr. Rahmat Mohamad, the Host Country, Nigeria and the AALCO Secretariat for making all the arrangements to conduct the Session in an effective manner. While pointing out that his Delegation would take part in the deliberations of the topics placed on the Agenda during the next few days of the Meeting, he shared with the distinguished gathering some of the initial reactions of Malaysia vis-à-vis those topics that it considered most important.
- 4.4 Commenting on the topic of Deportation of Palestinians¹, he noted that this issue had been one of the important topics placed on AALCO Annual Session agenda since 1988, and that AALCO has been discussing this topic continuously for the past 24 years. As regards the outcome of the deliberations that have been happening on this item over these years, he raised a number of pertinent questions. He opined that the delegates needed to ask themselves honestly as to what had been the tangible outcome of the discussion and that whether their views had been conveyed to the relevant parties. He stated that it was time that the delegates asked these questions with a view to proceed further in this issue. He also suggested that if we wanted to retain the topic of Palestine in the Agenda of our Annual Sessions, we should stop our rhetoric and come out with concrete plans.
- 4.5 Dwelling on the legal issues involved in the topic, he pointed out that the fundamental rights of the Palestinian people to self-determination and a sovereign State as provided in

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

Article 1 of the Montevideo Convention² remained unrealized for more than four decades despite Palestine's efforts to be recognised as a sovereign Palestinian State. Drawing attention to the numerous Resolutions adopted by the General Assembly and the Security Council on the establishment of an independent State of Palestine and for the right of the Palestinian people to self-determination, he brought attention to two of the Resolutions adopted by UN bodies; the first one was the Security Council Resolution 1397 (2002) which affirmed a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders and the second one was the General Assembly Resolution 54/152 (1999) which reaffirmed the right of the Palestinian people to self-determination, including the option of a State.

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

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

Security Council resolutions³ might be aptly demonstrated through both its operational contributions in the Gulf of Aden, and the current prosecution in Malaysia of the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman in Malaysia.

- 4.11 In this regard, he wanted the Member States of AALCO to recall that at the 50th Annual Session, Malaysia had urged the AALCO to come forward to provide the necessary technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Hence, Malaysia appreciated the willingness of the AALCO to play an integral role to develop a model legislation that could be used by its Member States. In that regard, he added that Malaysia hoped that the model legislation on piracy and other maritime security offences to be prepared by the AALCO could be completed and circulated for the consideration of all Member States in advance prior to the next Annual Session.. While welcoming the convening of the Half-Day Special Meeting on “piracy” under the rubric of the Law of the Sea, he noted that the incidents of piracy, especially in the Gulf of Aden and Indian Ocean had greatly affected the safety and security of navigation as well as the international shipping community as a whole.
- 4.12 On the topic of “International Terrorism”, he informed that Malaysia had made great strides in countering terrorism by adopting very stringent domestic laws and also in cooperation with other States. He added that the commitment of Malaysia in adhering to the rule of law and fundamental freedoms could be realized from the fact that Malaysia had repealed its Internal Security Act 1960 (‘ISA’), a preventive law which previously was the main legislation that was used to detain suspected terrorists.
- 4.14 While acknowledging the grave risks that are presented to the internal security and public order by threat of terrorism, he informed that in order to replace the ISA, the Security Offence (Special Measures) Act 2012 had been drafted. In his view, the process under the Act provided the balance between the responsibility of the State to ensure peace and security with the rights of the accused person to fair trial and due process of law. Careful consideration based on international norms and standards in relation to the period of detention and the total autonomy of the executive to allow detention without trial had been addressed in the Bill, he added. He further added that Malaysia wished to highlight that the period of 30 days detention for purposes of investigation was subject to a sunset clause, where this provision will be revisited every 5 years. A Special Review Committee, chaired by the former Chief Justice and with members including the Attorney General, the Inspector General of Police, Chairman of the Malaysian Human Rights Commission, had also been established for purposes of reviewing the implementation of the law every six month, he added. He clarified that Malaysia wished to reiterate that the new law only allow detention for purposes of investigation and not detention without trial.
- 4.15 As regards the need to have international cooperation in fighting terrorism, he stated that within the Southeast Asian region, Malaysia found the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (‘ASEAN MLAT’), to be highly valuable in efforts against transnational crimes, including terrorism. Malaysia reiterated its view that an intra-regional Asian-African

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

- legal instrument on the same matter would be highly beneficial in that such instrument would facilitate the implementation of a harmonised mutual assistance in criminal matters among AALCO Member States with both common law and civil law systems. While recalling the decision of the 49th AALCO Annual Session vide Resolution AALCO/RES/49/S8, he informed that Malaysia looked forward to the constitution of an Open-Ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States in near future. For purposes of the study, on its part, he added, Malaysia was prepared to share its knowledge and experience on the negotiation and conclusion of an AALCO MLAT.
- 4.16 **The Leader of Delegation of Japan** expressed great appreciation to the Government of the Federal Republic of Nigeria for hosting the Annual Session, and extended his sincere congratulations to H.E. Mohammed Bello Adoke, Attorney General and Minister of Justice of the Federal Republic of Nigeria, for his election as President of the 51st Annual Session. He congratulated Mr. Thiha Han, Director International Law and Treaties of the Ministry of Foreign Affairs of Myanmar, for his election as Vice-President of this Annual Session. He also extended gratitude to Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO, Deputy Secretaries-General and all the staff for all of their hard work in preparing for the Annual Session.
- 4.17 He listed out the specific reasons as to why the Fifty-First Annual Session of AALCO holds a special significance because it was the first Annual Session after AALCO marked the 50th Annual Session of AALCO meeting which was held very successfully in Sri Lanka, and the Annual Session was held in the Federal Republic of Nigeria, most populous great nation rich in many resources in Africa. He said Africa was today one of the two most rapidly developing dynamic growth center regions of the world and through hosting the Annual Session, the Government of the Federal Republic of Nigeria has eloquently shown its support for the promotion of the rule of law in the international community, and dialogue among States in the two regions on various issues of international law. Thirdly, the AALCO was to undergo an important year in its history for further activities under the able leadership of Prof. Dr. Rahmat Mohammad who would start a second term as the Secretary General of AALCO when he was duly reappointed during the Session. He appreciated Prof. Dr. Rahmat Mohammad as Secretary-General who had a strong leadership towards re-vitalization of AALCO and had made some significant achievements: strengthening the financial basis by revising the scale of contributions of member states; contribution towards adoption of the “Putrajaya Declaration” at the Forty-Eighth Annual Session; collection of arrears; streamlining expenditure and at the same time implementing various seminars and workshops in partnership with member states and with other international organizations; establishment of the Eminent Persons Group, and so on. Fourthly, the Annual Session was held at a juncture of great importance in terms of development of international law.
- 4.18 He recalled that 2012 marked the thirtieth (30th) Anniversary of the opening for signature of the 1982 UN Convention on the Law of the Sea (UNCLOS). Considering the significance of AALCO’s contribution towards the law of the Sea, as UNCLOS has a total of 162 parties we could say that it has attained the status of “the constitution for the oceans”, serving as the core basis of international legal principles of the sea. Hence, it was quite timely that one of the three Half-day Special Sessions was devoted to the topic of the law of the sea and piracy issues. Environment and Sustainable Development was another topic on the agenda for the Annual Session which was deemed quite timely, as

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

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

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

- case of Lubanga in DR Congo in March this year, he added. Since the establishment of the ICC, the Republic of Korea has fulfilled its obligations as a State Party with sincerity and particular attention. The Government of the Republic of Korea has contributed to the effective functioning of the ICC by providing voluntary contributions and also by proactive leadership of H.E. Judge Sang-Hyun Song as the President of the Court, he noted.
- 4.30 On the issue of "Responses to Piracy: International Legal Challenges" he stated that piracy had been an enemy of humanity, not just because it put lives of innocent people at risk, but also because it undermined invaluable trust in the rule of law in the international community. The Government of the Republic of Korea took piracy very seriously. In this regard, he brought attention to the rescue operation that Korean sailors had undertaken to release people held captive by Somali pirates last year. He added that the Korean navy had captured 5 pirates alive, and prosecuted them in domestic criminal court. Some of them were sentenced to more than 10-year imprisonment and one was to life in prison, he stated. He was also of the opinion that criminal justice at the international level could not be brought about by a single State's effort and that close cooperation at the national and international criminal justice system were vital for the effective repression of piracy. This, in his view, demanded that the problem of piracy remained high on the agenda of the AALCO.
- 4.31 **The Leader of Delegation of the People's Republic of China** pointed out that currently, the international system was undergoing complex and profound changes, and that the international law system was facing significant adjustments. The role of International law was getting increasingly important in addressing global issues like security, reform of the financial system, international trade, environmental protection and climate change, which were bringing both opportunities and challenges to the development of international law. Most Asian and African countries are developing countries and share common interests and concerns in promoting social and economic development and coping with global challenges. Through this important platform of the AALCO, Asian and African countries could carry out cooperation and exchange, and build consensus in the field of international law, she explained.
- 4.32 While stressing the need on the part of international law to better reflect the interests and positions of the developing countries, she stated that China was ready to work with other Asian and African countries under the principle of equality, cooperation, mutual benefit and win-win to seize the opportunities and meet the challenges so as to achieve our enduring development and common prosperity. Regarding "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties", she reiterated China's consistent position against abusing domestic legislation to impose sanctions on other countries. China held the view that all countries need to resolve disputes and differences on the basis of respecting state sovereignty and other fundamental principles of international law, and work together to maintain the international peace and build a harmonious world of lasting peace and common prosperity, she added.
- 4.33 Regarding "International Criminal Court", she supported the establishment of an independent, impartial, effective and universally recognized International Criminal Court to effectively punish the most serious international crimes. She also called upon the Court to get rid of prejudice and political distraction, so that it could win the trust of the State Parties from the Developing Countries to the Rome Statute.

- 4.34 Regarding "Environment and Sustainable Development", she stated that China held the position that all parties should stick to the principle of common but differentiated responsibility, and conduct consultations on establishing a just and reasonable international cooperative mechanism in dealing with climate change.
- 4.35 Regarding "Work of the Report of International Law Commission", she noted that the ILC needs to fully consider the concerns' of all states' and research on the drafts on "expulsion of aliens" and "the protection of persons in the event of disasters" so as to improve them constantly.
- 4.36 Regarding "Law of the Sea—Response to Piracy: International Legal Challenges", she hoped that the victim countries concerned would come forward to enhance judicial cooperation and assistance in bringing pirates to justice. She also called on developed countries to strengthen their assistance to developing countries in relation to their capacity building activities.
- 4.37 Regarding the importance that China attached to AALCO, she highly appreciated the achievements made by it since its establishment. He added that China would continue to support and take an active part in the work of the AALCO. While appreciating the efforts and contributions of Dr. Xu Jie who had served as a Deputy Secretary General of AALCO for the past 6 years, she expressed hope that his successor Mr. Feng Qinghu would also get the same invaluable support from all Member States of AALCO.
- 4.38 On the future development of the AALCO, she made a number of points;
- 4.39 Firstly, she expressed hope that the AALCO would continue to follow closely major international issues and events and provide in-depth analyses of the international law issues involved, encourage member states to exchange views and reach consensus, and work to influence the development of relevant International Law.
- 4.40 Secondly, she expressed optimism that AALCO would continue to strengthen its cooperation with important international legal bodies such as the UN International Law Commission, and actively reflect the views on issues, of which AALCO member states concern the most and have the widest consensus, in order to increase the influence of the AALCO to international legislation.
- 4.41 Thirdly, she also expressed hope that AALCO would strengthen its connection with the academia, and continue to hold seminars and training programs for its Member States so as to develop itself into a cradle of talents on international law for Asian and African countries.
- 4.42 The **Leader of Delegation of Saudi Arabia** at the outset informed the sad demise of their Crown Prince.
- 4.43 As regards the work of AALCO, he stated that it played a wonderful role in supporting its Member States in various fields including treaties, international Conventions, and for establishing united understandings of the issues of international law.
- 4.44 On the issue of Palestine, he stated that the actions of Israel violated innumerable laws including the UN Charter, human rights law and the fourth Geneva Convention of 1949.

- On terrorism, he stated that combatting terrorism in all its forms and manifestations was extremely important in protecting the rule of law and human rights throughout the world. In this regard, he made reference to the injunction contained in Holy Quran: Do not kill anybody except for the sake of justice. Accordingly, all the religions of the world require that we combat terrorism relentlessly. He further added that terrorism is terrorism whether it was committed by States, Organizations or individuals. Stressing the role played by Saudi Arabia in this area, he mentioned that his Country had created the 'International Centre for Combating Terrorism' on 19th Sep. 2011 under the banner of New York. Towards this Centre, the Saudi Arabian government had spent 10 million dollars in the first three years alone, he informed.
- 4.45 The **Leader of Delegation of Thailand** stated that Thailand had attached great importance to the work of AALCO and had valued its efforts in developing mutual legal policies and positions of Asian-African States ever since it joined as a Member of the Organization in 1961.
- 4.46 He added that, for its part, Thailand had been actively contributing to the issues of contemporary concerns under AALCO to promote closer co-operation for the development of international law. These issues of interests included those concerning law of the sea, piracy, environmental and sustainable developments as well as selected items relating to the work of the International Legal Commission (the ILC), he added.
- 4.47 On issues relating to Law of the Sea and Piracy, he informed that Thailand became a proud party to the 1982 UN Convention on the Law of the Sea since 14th June 2011 and that even before 2011, Thailand had made substantial contributions to the cause of developing States in this area. This included the assumption of the Chairmanship of the Group of G77 of the whole of the 9th Session of the Preparation Commission for the International Seabed Authority and the International Tribunal on the Law of the Sea, he explained. As for piracy, he noted that Thailand had joined the naval patrol in the Gulf of Aden and the Western Indian Ocean with a view to lend support to the eradication of the global problem of piracy. It had also actively participated in many regional and international fora on maritime security, namely ASEAN Maritime Forum (AMF), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), International Maritime Organization (IMO) and the Contact Group on Piracy off the Coast of Somalia (CGPCS), he added.
- 4.48 On Environment and Sustainable Development, he stated that Thailand remained committed to addressing climate change seriously through a variety of innovative measures including building low-carbon and resilient societies and lowering greenhouse gas emission through innovative energy conservation. In order to achieve these commitments, its work was built on the foundation of the Philosophy of Sufficient Economy introduced by His Majesty the King Bhumibol Adulyadej of Thailand. Such enlightened Philosophy, introduced in the aftermath of the 1997 Asian Financial Crisis, encompassed 3 inter-related principles of Moderation, Reasonableness, and Self-Immunity, he explained.
- 4.49 On the Work of the International Legal Commission (ILC), he noted that Thailand had always closely followed the topics found in the agenda of ILC and that the topics that were of particular interest included; Expulsion of Aliens, Protection of Persons in the Event of Disasters and Immunity of State Officials from Foreign Criminal Jurisdiction.

- He stated that Thailand would aim to approach any issues to be discussed with sensitivity and regards to the complexity of the arguments involved. The balance between international relations and the principle of justice and fairness, principles of human rights as well as state sovereignty should together form the core of its position, he explained.
- 4.50 The **Leader of Delegation of the Democratic People's Republic of Korea** at the outset stated that AALCO, as one and the only regional intergovernmental organization in the field of the international law, had expanded its membership to 47 and made a remarkable contribution to the codification and the progressive development of international law. It had played a positive role in strengthening exchange and cooperation between Member States and in helping them to understand and coordinate their stands on important legal issues including regional issues of common concern. He emphasized that in today's complicated international situations, the Organization had fulfilled its mission successfully by representing and defending the stands and interests of its Member States in main international bodies like UN while increasing Afro-Asian influence on the discussion of international legal issues by establishing close cooperative relationship with relevant international organizations. These were all noticeable successes the AALCO had made in recent years.
- 4.51 Thereafter, he stated the principled stands of the DPRK Government on some issues which were brought on the Fifty-First Annual Session's agenda. Firstly, member states including the DPRK had been hindered unfairly in all areas of the national development such as politics, the economy and culture due to the unilateral sanctions and blockade imposed by the United States which were products of high-handedness and arbitrariness. He added that, the United States in pursuit of its political objectives was making interventions in internal affairs of the other sovereign states and forcing its own values on the other independent states by pursuing double standards in interpretation and application of international law in an undisguised manner. These acts of high-handedness and arbitrariness impede not only the socio-economic development of target states but also the establishment of fair international order. He said that the government of DPRK strongly opposes and rejects the act of imposing unfair sanctions and blockade on the third state by certain states, including the US, by invoking its domestic law, by the act of forcing political and economic pressure on many Afro-Asian countries including the DPRK and by abusing international law as a gross violation of the general principles of international law, which stipulate respect for sovereignty of states, non-interference in internal affairs of the other, equality and reciprocity and the right to free development of the state.
- 4.52 On the issue of deportation of Palestinians and other Israeli inhumane practices, among them massive immigration and settlements of Jews in Occupied Palestinian Territories are grave violations of international law particularly the fourth Geneva Convention of 1949 relative to the protection of civilians in time of war, he mentioned that the blockade of Gaza Strip by Israel which had been in place for the last 5 years gave rise to grave humanitarian catastrophe in this region. The international community has adopted a number of resolutions and statements relative to the Palestinian issue by which they strongly censured the acts of violation by Israel of international law particularly international human rights law and the IHL including the Fourth Geneva Convention of 1949 and urged Israel to immediately implement its obligations under international law. However, Israel paid no heed to these strong demands and protests of the international community and continues violating international law flagrantly. He added that the DPRK

- government would reiterate its principled stand that it was the only way to address the Middle East issue and that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.
- 4.53 He reiterated the consistent position of the government of DPRK, that it opposed terrorism of all forms and any support to it remains unchanged. He also added that attention needs to be focussed on acts of military intervention committed against the sovereign states under the pretext of combating terrorism. Politically motivated military invasions and mass-killings of civilians in Iraq, Afghanistan and Pakistan committed by the US are the examples of state terrorism and extension of high-handedness and domination which causes the vicious circle of terrorism. Therefore, the draft Comprehensive Convention on International Terrorism under deliberation in the UN should clearly stipulate the obligations of the states to establish the international relationship based on the sovereign equality, justice and fairness, to respect each other's ideology, system, culture and custom and to promote international cooperation to achieve common development and prosperity as well as the issue of eliminating terrorism by state army.
- 4.54 He also mentioned that **President Kim Il Sung** and **General Kim Jong Il**, the great leaders of the Korean People had handed down to us, the new generation, the Socialist society where people owned everything and everything served for the interests of people, as precious legacy. In DPRK, the man-centered Juche Idea had been thoroughly introduced in all fields of social life and the state gives a top priority to realizing the demands and interests of the working masses in its activities, thus the human dignity and rights are guaranteed at the highest level.
- 4.55 The cause of building a thriving Socialist nation and the cause of national reunification in DPR Korea would ultimately accomplish under the independent Songun politics carried on by the respected leader Comrade Kim Jong Un was succeeding to the cause of President Kim Il Sung and General Kim Jong Il. In future, it would make strenuous efforts to ensure that the recognized principles of international law were strictly observed and to establish the equal and fair international order.
- 4.56 The **Leader of Delegation of Islamic Republic of Iran** noted that for the last couple of decades, developing countries and the Asian-African States had played a pivotal role in contributing to create an equal and fair framework for the codification and development of international law. In this regard, he expressed his hope that AALCO would continue to carry out cooperation and exchange of views on many critical issues of international law of common concern.
- 4.57 While drawing attention to the need on the part of the developing Countries to carry forward the spirit of Bandung in finding out solutions to the current world challenges, he stated that his Delegation had the honour to announce that the 16th Summit of the Movement of the Non-Aligned States would be convened on 30th – 31st August 2012 in Tehran.
- 4.58 On the role of AALCO, he was of the opinion that AALCO should be a milestone towards cooperation and consultation among its Member States in finding solutions to contemporary challenges such as international terrorism, maritime piracy, cybercrime,

- international criminal law and issues on the agenda of the ILC. In relation to cybercrime, he drew attention to the 12th United Nations Congress on Crime Prevention and Criminal Justice convened in Salvador, Brazil from 12-19 April 2010 which had observed that the development of information and communication technologies and the increasing use of the internet create new opportunities for offenders and facilitate the growth of crime. He added that the challenges faced by States, particularly the developing states, would require technical assistance and capacity-building activities in the prevention, prosecution and punishment of the crime of cyberspace. While stressing the need to intensify international cooperation as well as regional coordination in this regard, he drew attention to the UN General Assembly Resolution 65/230 which recommended that the UNODC provide, in cooperation with Member States and international organizations, assistance to improve national legislations and towards building the capacity of national authorities in dealing with cyber-crimes in all its forms.
- 4.59 On international terrorism he drew the attention of the delegates to the ‘International Conference on Global Fight Against Terrorism’, that was held on June 25-26, 2011 in Tehran. The participants at this Conference reiterated their unequivocal condemnation of all acts of terrorism in all its forms and manifestations including state terrorism and economic terrorism. It was also underlined that state terrorism has posed, for long, a real threat to the peace and stability of many nations across the globe.
- 4.60 On the ‘Revitalization Plan’ of AALCO, he stated that the Member States of AALCO needed to have a ‘financial policy’, that ensured ‘financial discipline’ in the Organization. It should also lead towards the creation of ‘sustained financial resources’, he added. In this regard, he suggested that an Open-Ended Working Group be established during the Annual Session that would analyse all the initiatives related to revitalization of the Organization. The Report of this Group could be considered at the subsequent Annual session and any decisions that do need to be made could be made in them.
- 4.61 The **Leader of Delegation of Indonesia** stated that since its inception in 1956, AALCO had made important contribution to the development of international law especially in the work on the Law of the Sea, when it was an effective forum where Member States engaged in consultations, exchanges of views and fostered coordinated efforts. The work of the AALCO on the Law of the Sea issues in subsequent meetings helped Member States to formulate their respective positions on different issues on the Law of the Sea being considered in the Conference on the Law of the Sea. Then finally in Kingston Bay Jamaica in 1982, the Member States signed the United Nations Convention on the Law of the Sea, and this year it commemorated the 30th year Anniversary of the adoption of UNCLOS. In short, this Organization had succeeded in establishing itself as a prominent organization representing the developing countries from Asia and Africa, serving as an advisory body to its Member States in the field of international law and as a forum for cooperation on legal matters among its Member States.
- 4.62 *Thereafter, he informed that the Indonesian Government would hold the Third Session of Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions/Folklore (LMCM-GRTKTCE/F III) on 27-29 June 2012 in Bali, Indonesia. The Meeting would begin with Preparatory Meeting LMCM 3: International Symposium in Ensuring Protection for GRTKTCE/F through the Creation of Database. He added that Indonesia not only played an active role but it had been recognized by the international community in its efforts to establish the international*

- legally binding instruments or in a multilateral context. The Indonesian Government, represented by the Ministry of Foreign Affairs, would continue to prioritize the efforts to create international legally binding instruments in order to provide protection for GRTKF. He also informed that the Second Like Minded Countries Meeting on the Protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) which was held in Bali last year, had reached an agreement or a common position which was manifested in the *Bali Recommendation*.
- 4.63 Further in an effort to encourage the negotiation on establishing a legally binding international instrument in terms of GRTKF protection, the agreement, which was named the Bali Recommendation to Advance the Work of WIPO to Establish an International Legal Instrument (or instruments) on the Effective Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (Folklore) (GRTKF), had been presented at the 19th Inter-Governmental Committee IGC-WIPO meeting in Geneva, 18-22 July 2011. This agreement represented an achievement and was expected to make an important contribution to the member countries of WIPO.
- 4.64 Thereafter, the Leader of Delegation highlighted that the Government of the Republic of Indonesia was seeking election for membership of the UN Commissions and International Trade Law (UNCITRAL) for the period of 2013-2019, at elections to be held during the 67th Session of the United Nations General Assembly in New York, November 2012. He mentioned the role Indonesia had played over the years as an active observer in UNCITRAL, and remained strongly committed to the development of international trade law, particularly through its active deliberations and best efforts in the UNCITRAL Sessions of Commission and Working Groups. He noted the national initiatives taken by his country in harmonizing national laws and legislation on international trade law by adopting UNCITRAL Conventions, model laws, legal guides, legislative guides, rules, and practice notes, among others, the *UN Convention on Contracts for the International Sale of Goods*, *UN Convention on Independent Guarantees and Stand-by Letter of Credits*, *UNCITRAL Model Law on International Credit Transfers*, and *UNCITRAL Arbitration Rules*. These harmonizations aimed to not only uphold the supremacy of international trade law in Indonesia, but also to give utmost protection to foreign traders and investors in Indonesia in a mutually beneficial manner.
- 4.65 As incoming Chair of APEC in 2013, Indonesia supported the promotion and harmonization of international trade law as a key component to boost the development of Asia Pacific's economy, including the South East Asian's, and committed vigorously in coordinating economic cooperation in the Asia Pacific region and the world. Hence, Indonesia seeks to achieve a leading role in Asia Pacific, including within the framework of APEC, on the harmonization of international private law in the region. At the international level, Indonesia had always acted and engaged constructively as a bridge-builder and problem-solver in the deliberations of international law issues, including in addressing matters on the international trade law, which was taking place in the Sixth (Legal) Committee Meetings. In addition, as a Member State of International Institute for the Unification of Private Law (UNIDROIT) since 2009, Indonesia is of the view that pertaining issues related international private law issues had to be addressed in a multilateral approach.
- 4.66 Further, the Government of Indonesia believed that Indonesia's membership of the UNCITRAL for the period of 2013-2019 would contribute substantially in maintaining

- the focus of UNCITRAL on addressing international trade law as enshrined in its founding resolution, and to ensure that the works of UNCITRAL in the future would be beneficial to all countries, particularly in forging global responses and solutions for global challenges in the area of international trade law. In this regard, the Government of Indonesia would highly appreciate the support of your Government for Indonesia's candidacy for a membership of the UNCITRAL at the election to be held during the 67th Session of the General Assembly in 2012.
- 4.67 Thereafter, he briefly commented on the substantive items on the agenda and said that during deliberations his delegation would present their detailed views.
- 4.68 **The Leader of Delegation of Kenya** thanked the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO and congratulated President and Vice-President on their election. She also appreciated Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO on his re-appointment and for his untiring efforts to place AALCO at greater heights. She recalled the objectives of establishment of AALCO in 1956 and said that since Kenya joined the Organization in 1970, has actively contributed to activities of AALCO as it hosted the 28th (1989) and 44th (2005) Annual Session of AALCO.
- 4.69 Recalling the main function of AALCO as an advisory body, she said that AALCO was very actively contributing through engaging in close relationship with UN General Assembly, ILC and other International Organizations. She thanked the Permanent Observer of AALCO to the UN in New York and Vienna for their commendable work. She said that their delegation looked forward for deliberations on the topics for Half-Day Special Meetings and it attached great importance to the topic of International terrorism and Piracy under the law of the Sea.
- 4.70 The delegate informed that the establishment and functioning of the Nairobi Regional Arbitration Center was ongoing and the Attorney General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Regional Arbitration Centre. Further, the Regional Arbitration Centre has constitutional basis as the Constitution of Kenya also gives prominent to the Alternate Dispute Settlement mechanism. She informed about the progress made in establishment of the Regional Arbitration Centre in Nairobi. She once again thanked the Federal Republic of Nigeria and the AALCO Secretariat Staff for organizing and preparing for the Session.
- 4.71 **The Leader of Delegation of the Republic of Yemen** stated that his country had witnessed people's revolution and armed intervention where violation of laws took place by the authorities which consequently led to intervention at the Gulf Initiative. He thereafter enumerated the three main general phases of the revolution. In the first phase between December and February a rescue government was constituted whereby the election of the President took place. In the second phase which lasted two years a national conference was held which was tasked with formulating a social agreement as well as to initiate a national dialogue. In the third phase the government took upon itself the task of restructuring the security apparatus and armed forces with the aim of ending armed disputes. These tasks included preparing legislations for the transition period, in which justice and related laws were formulated. Another important task undertaken was the formulation of a new Constitution and new election laws. He hoped that his country with the help of AALCO would be able to confront the menace of terrorism and piracy at sea.

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

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

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

- 4.81 On the issue of Law of the Sea, he stated that even as we mark the 30th anniversary of the UNCLOS this year, it was important to take stock of the achievements as well as to reflect on the challenges in the implementation of the UNCLOS. Whereas the UNCLOS has generated positive impact in maintaining international peace and security through sustained use of ocean resources, navigation and protection of marine environment, it remained a matter of concern that the lack of mechanisms to fully implement the Convention has exposed the inability of the international community to govern the sea effectively. This, in his view, demanded that we take the issue of piracy seriously, particularly the problem of piracy as prevailing in Africa in general and the East Africa region, in particular. Further he added that it was a matter of fact that piracy off the Coast of Somalia and along the India Ocean continued to threaten regional trade, tourism and security beyond unimaginable proportions and that although Tanzania had put in place both preventive, deterrent and corrective measures, the same remained palliative and not a panacea. Hence, he appealed to the international community to explore other means of enforcing prosecutions of pirates by exercising jurisdiction within the purview of Article 105 of the UNCLOS.
- 4.82 While explaining some of the internal measures that Tanzania had been taking in this issue, he pointed out that three were very critical in this regard;
- 4.83 First, Tanzania amended its penal legislation so as to allow prosecution of suspected pirates being apprehended at the high seas by foreign vessels. Subsequently, it undertook to negotiate bilateral pirates transfer agreements with a number of countries with the capacity to pursue pirates at the high seas. To this end, it had signed a Memorandum of Understanding with the United Kingdom which allowed transfer of suspected pirates from U.K. Navy forces to Tanzania for prosecution and incarceration. He also informed that Tanzania was also about to sign a similar agreement with the European Union.
- 4.84 Secondly, Tanzania had developed a National Action Plan for countering piracy which elaborated in detail the short and long term strategies against piracy. However, the bottom line remained the lack of capacity both technical and material in implementing such strategies. Therefore they would continue to count on the support and assistance of the international community so as to sustain these efforts, he added.
- 4.85 Thirdly, as a party to the Djibouti Code of Conduct, Tanzania would continue to implement the same with their regional partners and that this legal framework, despite being non-binding, had proven to be useful in the fight against piracy as members continue to exchange best practices and relevant marine surveillance, he added.
- 4.86 On the issue of terrorism, he stated that counter-terrorism, which remained one of the very important components of their efforts at both national and international level, must build on the already strong law enforcement networks that have been built to fight terrorism and trace the funds that finance terrorism. We must also be prepared to be innovative and allow regional jurisdiction to seize proceeds of crime. More importantly, we must now resolve to conclude the prolonged discussion of a *Comprehensive Counterterrorism Convention*, he added.
- 4.87 On the work of the International Criminal Court, he noted that Tanzania remained a staunch member of Rome Statute and recognised the significant role that the Court plays in fostering international peace and security as well as the dispensation of international

justice. However, he added that, it was also mindful of the recent developments such as the sentiments of *double standards* which had brought the prominence of the Court to test. We would strongly appeal that efforts should be taken to rectify the status of this important Court.

- 4.88 **The Leader of Delegation of India** congratulated His Excellency Mohammed Bello Adoke on his election as President and Mr. U Thiha Han on his election as Vice President of the Fifty-First Annual Session of AALCO and said that with their wisdom the session would be successful. The delegate thanked the Federal Republic of Nigeria for organizing and preparing for the Session and for their warm hospitality. The delegate said that India as one of the founding members of the Organization attached great importance to the work of AALCO and was proud to host the Organization as it serves as an advisory body in the field of international law in relation to the work of ILC, UNGA, etc. The importance of AALCO Annual Sessions was to formulate positions on international legal issues and therefore thanked the Secretariat for their efficient work. She said that issues that would be discussed during the session were the ones which the international legal community was grappling with to address them.
- 4.89 Maritime security was one of the areas wherein acts of piracy were serious threat to sea farers, increased areas of robbery, marine pollution, and security of coastal state which would be leading to high risk areas. In that regard, India welcomed the Code of Practice adopted by the 22nd Assembly of IMO and also supported MIOs efforts at promoting regional cooperation to address the problem wherein India had actively participated as the incidents of piracy in Exclusive Economic Zone (EEZ) was a serious threat. India was actively considering a comprehensive legislation which would be adopted soon, and would provide clarity in law, sound legal basis for punishing piracy, safety of crew and trade. The delegate reiterated that India has raised voice in UN legal mechanism and in various multilateral groups that dealt with piracy and that the Indian Navy had joined in escorting other countries also.
- 4.90 On the issue of international terrorism, the delegate said that it was an ongoing challenge and India continued to believe that it should be condemned in all its forms and manifestations as it was a criminal and unjustifiable act under legal, political, ethical, philosophical and religious aspects. The UNGA had established a legal framework for countering terrorism comprising of 13 multilateral legal instruments to which India was a party. On the topic of 'environment and sustainable development, climate change was a very important topic under UNFCCC, which had recently convened the Conference of Parties in Durban. As a developing country it was very important to note that at the insistence of India, the concept of 'equity' was brought back in Durban. Regarding India's efforts to address climate change issue at national level, India being a developing country had huge developmental challenges as 55% of the population does not still have access to energy. There were other commercial challenges as well. India had taken all efforts to reduce its per capita emissions and domestically had adopted certain measures to that end. The delegate mentioned that India was working for energy products sustainability. Sustainable development was much larger issue and human beings should be the centre of development. Green economy should be seen as one of the means to achieve sustainable development and India's position relates to poverty eradication, food security and being a dynamic concept for sustainability, greening economy was essential to develop socially, economical and environmentally.

- 4.91 Extraterritoriality reiterates that unilateralism was not a solution and not acceptable. State practice in international law reflected extraterritorial application of national legislation by third States violated the principles of sovereign equality and non-intervention in the internal affairs of the State. With regard to matters of ILC, immunity of state officials in foreign criminal jurisdiction, one should consider only foreign criminal jurisdiction because source of immunity in international law focused upon national laws.
- 4.92 The delegate reiterated that 2012 was the 30th Anniversary of the UNCLOS and the work of AALCO Secretariat on that topic was very much appreciative. The Organization was successful in bringing together all the Member States during the deliberations of the UNCLOS and the Convention has received universal acceptance. Oceans space, delimitation, technology and the law of the sea, etc. remain to be complemented and there was a need to increase the capacity-building in order to participate fully at global and regional forums (UNGA 64/2009). Maritime delimitation was an important issue as India had geography on vast coast lines.
- 4.93 **The Leader of Delegation of Nepal** stated that AALCO, which was the only legal mechanism that consists of member states from both Asia and Africa, had played a pivotal role in setting norms and standards in various fields of international law. In order to ensure that its Member States have proper laws and regulations in newly emerging areas, it has developed and disseminated model laws and agreements, he added. While appreciating the agenda items selected for the Session, he pointed out that the topics chosen that included; Environment and Sustainable Development; Extraterritorial Application of National Laws and recent developments with regard to the ICC, the issue of piracy and international terrorism were most important and timely and that they demanded extensive deliberations.
- 4.94 On the issue of Environment, he remarked that developing countries, including Nepal, had the challenge of striking a balance between their development activities and protection of environment. Nepal was a Party to a number of multilateral environmental agreements, and had adopted several policies dealing with sustainable use of natural resources and equitable sharing of benefits arising out of their use, he added. In this connection, he felt proud for sharing with the gathering the fact that the Community Forestry Program - in which users' communities themselves, and not the government, are involved in conservation efforts and sustainable use of forest resources in their respective forest areas – has become a symbol of tremendous success and a model conservation program all over the world.
- 4.95 Despite those efforts, worsening environmental conditions, especially climate change, have become a threat not only for Nepal's rich bio-diversity, but also for the very survival of its people. We have been experiencing unusual flash floods in rivers originating in the Himalayan region causing heavy loss of life and property. The rapidly melting snow in the mountains, the barren lands in the hills and the rapidly depleting water table in the plain land symbolized the seriousness of this problem in Nepal, he added. Since in his view, the situation was not much different in other Member States sharing similar ecology, he emphasized that concrete steps needed to be taken immediately to save life and livelihood of peoples of Asian and African continents.
- 4.96 On the issue of international terrorism, he stated that combating international terrorism required resolute responses from all Member States in a coordinated manner as efforts of

- a single country were not enough. As concrete measures to demonstrate its commitment against terrorism, Nepal had ratified the International Convention for the Suppression of the Financing of Terrorism and the United Nations Convention against Transnational Organized Crimes and other instruments, he pointed out. It was high-time for us to devise an international cooperation mechanism, especially among AALCO members, to combat terrorism, he added.
- 4.97 On the issue of piracy, he stated that it was inimical to free and smooth flow of goods all over the world and hence adversely affected international trade. Since uncontrolled piracy and resulting proceeds of crime might assist terrorist activities, he was of the view that maritime security measures must go hand in hand with measures to address the underlying root causes of this global problem.
- 4.98 On the issue of migrant workers, he stated that Nepal, being a source country of migrant workers, had legitimate concerns in protecting and promoting rights and interests of her workers abroad. Its experiences showed that migrant workers, especially the irregular ones, had been subjected to multiple victimization and exploitation everywhere-be it in the home country, transit countries or countries of destination. Since most of the destination countries of our migrant workers are the AALCO Member states, he was of the firm conviction that the AALCO would come up with some special arrangement on this issue and that the Draft Regional Model Cooperation Agreement between States of Origin and States of Destination/employment within AALCO Member States would be instrumental in this regard, he noted.
- 4.99 **The Leader of Delegation of Union of Myanmar** expressed sincere appreciation to the Government of the Federal Republic of Nigeria for hosting this session and for extending a warm welcome and hospitality to the delegation. She also thanked His Excellency Prof. Rahmat Mohamad, the Secretary General of AALCO, and the Secretariat for their hard work and commitment towards the work of AALCO. Myanmar noted with approval the work of the Secretary General's leadership, with his energetic activity towards extending the activities of the organization and has voted for extension of his term of office for an additional term. She also congratulated His Excellency Mohammed Bello Adoke on his election as President and Mr. U Thiha Han on his election as Vice President of the Fifty-First Annual Session of AALCO and thanked the Vice-President for acting on her behalf. She gave their sympathy and deepest condolence to the Government and the people of Saudi Arabia for the late Crown Prince.
- 4.100 The delegate reaffirmed their government's commitment towards AALCO and its important role in providing international legal assistance to its Member States. She said that respect for law and the promotion of rule of law was at the core of Myanmar's foreign policy as witnessed in the light of recent political developments and political reform under the leadership of their President and two Hluttaws/Parliaments. She said that during the recent visit of the Pyithu Hluttaw Delegation led by the Pyithu Hluttaw Speaker to the European Union Parliament and Parliaments of EU member countries, it was informed that changes and reforms were much faster. The delegation believed democracy was the only path towards national prosperity. Political reform, without the economic reform, alone could not make the political system a success. Legal reform too must be compatible with the new democracy system and economic reform, and those developments were at the centre of the mandate of Myanmar Government. During the

First Session of the Pyidaungsu Hluttaw, 14 Laws had been promulgated, 10 laws were amended and 2 laws were repealed.

- 4.101 The delegate mentioned that their democracy was just a year old and had tremendous backlog of obsolete laws that needed to be reviewed and also had an enormous amount of new legislations to be drafted and legislated. She solicited constructive advice from all genuine well-wishers on the necessary legal framework to construct a solid foundation for their new-born Democracy. Reiterating the importance of peaceful settlement of disputes among states, both Myanmar and Bangladesh had consented to institute proceedings under Part XV of the UNCLOS, before the International Tribunal for the Law of the Sea (ITLOS). Recognizing piracy as the challenge on the high seas faced by all the maritime countries of the world, she said that Myanmar had cooperated with her ASEAN partners in the common endeavour to fight that ancient scourge of the seas. She applauded the work of AALCO in the area of terrorism and human trafficking which were not an unfamiliar problem for Myanmar. In common with many other developing nations, Myanmar being a labour exporting country, inevitably suffered from the problem of human trafficking, in particular to her neighbouring countries and her government was actively cooperating with her neighbouring countries to stop trafficking, and to assist in the return of the trafficked persons to their homelands.
- 4.101 On behalf of the Myanmar Government, she fully supported the reappointment of the current His Excellency Prof. Dr. Rahmat Mohamad as Sectary-General and said that the Government would support all the endeavours of AALCO to promote Asian-African solidarity, cooperation towards progressive development and codification of International Law.
- 4.102 **The Leader of Delegation of Republic of South Africa** thanked the Government of the Federal Republic of Nigeria for hosting the 51st Annual Session of AALCO and congratulated the incoming President and Vice President of the 51st Annual Session. The delegate also thanked the Secretary-General of AALCO H.E. Professor Dr. Rahmat Mohamad for leading the Organization into a position of influence and a relevant body in matters of international law and congratulated him on behalf of the Government of the Republic of South Africa towards the extension of the term of the Secretary General for another four years, from 2012-2016. She also conveyed deepest gratitude to the AALCO Secretariat and all those who were involved in the preparations for the 51st Annual Session. The delegate mentioned that South Africa was proud to be a member of the half a century old Organization, since its joining in 2004. She extended condolences to the Kingdom of Saudi Arabia on the passing of the Crown Prince.
- 4.103 The delegate then commented upon the deliberated items on the AALCO's agenda. On the topic of Environment and Sustainable Development, the delegate observed that South Africa had successfully hosted the 17th Session of the Conference of Parties to the United Nations Framework Convention on Climate Change and the 7th Session of the Conference of Parties, herein referred to as COP17/CMP7. COP17/CMP7 were scheduled for 28 November-9 December 2011 in Durban and the negotiations culminated into a breakthrough for the future of the international community's response to climate change whilst realizing the urgent need to raise the collective will to reduce greenhouse gas emission to keep the average global temperature rise below 2° Celsius.

- 4.104 The delegate mentioned that South Africa took note of and welcomed the admission of Palestine as a member state of the United Nations as of November, 23, 2011 but regretted that no convincing progress were made in the Arab-Israeli peace process since it was revived on the 2nd of September 2010. She also urged all parties, including the Israeli Government, to negotiate with the leaders chosen by the Palestinian people and the leadership on both sides should make all effort to establish a free and independent State of Palestine, which would live side-by-side in peace with the State of Israel.
- 4.105 The delegate also raised concerns about the increasing number of women and children being trafficked; and deteriorating conditions of migrant workers and protection of children. The delegate mentioned that while the negotiations for the Rome Statute of the International Criminal Court were taking place in 1998, the Republic of South Africa was only four years old after its democratic transition in 1994 and millions of South Africans suffered for generations the humiliation and human rights abuses associated with apartheid. Thus, it was gratifying that the crime of apartheid was criminalized in Article 7(2) (h) of the Rome Statute as a crime against humanity. She said that her delegation was proud to be part of the African Group which was the biggest block at the Rome negotiations that vigorously supported the adoption of the Rome Statute and the creation of the world's first permanent international criminal tribunal to combat various impunities of most serious crimes of concern to the international community would not have happened without Africa's support. The delegate believed that the scourge of impunity must also be addressed by keeping in place an effective system of individual criminal liability for international crimes, thereby giving full effect to the prohibition of aggressive war in the Charter of the United Nations. In that regard, it was to be remembered that complementarity forms the cornerstone of the Rome Statute and all the AALCO Member States should assist each other to strengthen national jurisdictions to effectively investigate and prosecute those crimes. The delegate welcomed the appointment and congratulated Ms. Fatou Bensouda of The Gambia as the first African and first woman to head the team of prosecutors at the tribunal as Chief Prosecutor of the ICC. We congratulate her on her position and wish her a successful tenure. The delegate acknowledged the efforts made by the AALCO Secretary-General to work in close collaboration with the African Union and encouraged the AALCO to formalize those efforts. She expressed Government of the Republic of South Africa's on-going commitment and support to AALCO.
- 4.106 **The Leader of Delegation of Republic of Iraq** congratulated Prof. Dr. Rahmat Mohamad on his reappointment as the Secretary-General. The delegate also thanked the Federal Republic of Nigeria for hosting the Fifty-First Annual Session of AALCO. The role played by AALCO in addressing some key issues were also appreciated especially in relation to the topic of terrorism, which has become a real challenge for many of the AALCO Member States and other countries of the world as well.
- 4.107 **Observer Delegate from the International Committee of the Red Cross (ICRC)** stated that, the ICRC was an impartial, neutral and independent organization whose exclusively humanitarian mission was to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict and also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. The ICRC's association with AALCO provides a welcomed opportunity to join efforts in the promotion of international humanitarian law, he added.

- 4.108 Commenting on the instruments of IHL, he brought attention to the fact that thirty-five years ago the international community had adopted Protocols I and II, and six years ago, Protocol III additional to the 1949 Geneva Conventions. While the Geneva Conventions have been universally ratified, there are 172 States party to Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, 166 to Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, he noted. While welcoming the sustained progress seen in the participation of States in the Additional Protocols, he informed that 60 States had already become Parties to the Additional Protocol III relating to the Adoption of an Additional Distinctive Emblem, which formed part of the foundation of international humanitarian law.
- 4.109 On the outcomes of the 31st International Conference of the Red Cross and Red Crescent (International Conference) held in November-December 2011 in Geneva, he stated that from an ICRC perspective, the 31st International Conference was a success and that the level of engagement in the different debates and the support received from States and National Societies of the Red Cross and the Red Crescent (National Societies) were unparalleled. Giving the details of it, he informed that, eight Resolutions had been adopted by consensus out of which three touched on IHL issues. They were Resolution 1 on "Strengthening Legal Protection for Victims of Armed Conflicts", Resolution 2 and its annex entitled "4-Year Action Plan for the Implementation of International Humanitarian Law" and Resolution 5 on "Health Care in Danger."
- 4.110 Resolution I reiterated that IHL remained as relevant today as ever before in international and non-international armed conflicts and continued to provide protection for all victims of armed conflict. Hence, Resolution I invited the ICRC to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, to identify and propose a range of options and its recommendations to enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law. The ICRC would also provide information at regular intervals to all members of the International Conference and would submit a report on this work to the 32nd International Conference in 2015.
- 4.111 Resolution II included a "4-Year Action Plan for the Implementation of IHL" adopted by the International Conference. The Action Plan urged States and components of the Red Cross and Red Crescent Movement to take specific action to enhance implementation of IHL in five areas: access by civilian populations to humanitarian assistance in armed conflicts; protection of children, women and persons with disabilities; protection of journalists; incorporation and repression of serious IHL violations in the domestic legal order; and arms transfers.
- 4.112 The 3rd Resolution to be highlighted was on Health Care in Danger. The ICRC had launched the project, 'Health Care in Danger' in 2011 based on the observations from its operational experience that violence against the wounded and sick and medical personnel, facilities and transports was one of the most crucial yet overlooked humanitarian issues of today.
- 4.113 In addition to its protection and assistance activities for victims of armed conflicts and other situations of violence, ICRC's preventive action in the field of weapons was also of utmost importance. The ICRC considered the upcoming negotiations of an Arms Trade

Treaty in July this year as extremely important. He urged that AALCO Member States actively participate in the negotiations to achieve a strong treaty.

- 4.114 As regards the obligation of States to implement the IHL treaties domestically, he informed that they could do so by adopting a wide range of national implementation measures, including by adopting legislation and administrative measures, drawing up military manuals and proper training within the armed and security forces. National IHL Committees or similar bodies can play a valuable role in helping concerned authorities to develop such measures, he added. He also informed that currently, 103 States, including several AALCO Member States, have established National IHL Committee and that as always, through the Advisory Service on IHL, the ICRC continued to stand ready to assist States in their efforts to promote and implement international humanitarian law.
- 4.115 The **Observer Delegation from the Russian Fédération** stated that the topics that have been chosen for délibérations at the Fifty-First Annual Session were of critical importance to the developing countries as a whole and that they could impact the development of international law in a significant manner.

5 Second Meeting of Delegations of AALCO Member States

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

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

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

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

- 5.4 The SG first discussed the steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization. The SG proposed that in order to strengthen the Human Resources in the Secretariat, at least two new legal officers be recruited in the Secretariat

in 2012-2013. In order to ensure African and Arabic representation in AALCO, he requests the African States to second at least one senior official to the Secretariat as Deputy/Assistant Secretary General and also the Arab Member States to depute one senior official to the Secretariat. Further, he proposed offering remuneration and other terms and conditions of services at par with other Inter-governmental Organizations so as to attract the best legal talent and requested Member States to nominate legal officers from their legal ministry to assist in legal research. He finally proposed a Visiting Fellowship Programme for post- graduates from Member States.

- 5.5 The SG then went on to enlist the activities undertaken and participated in by the SG and Secretariat officials since the Fiftieth Annual Session of the AALCO including- Asia Pacific Regional Arbitration Group (APRAG) Conference, Kualan from 9 to 10 July 211; the Sixty-Third Session of the International Law Commission in Geneva on 26 July 2011 where the Eminent Persons Group (EPG) was constituted; meetings with the officials of the WIPO and UNCTAD, Geneva in July 2011; the Annual AALCO Meeting convened on the sidelines of the annual session of the United Nations General Assembly, at the UN Headquarters in New York on 31 October 2011; Luncheon meetings in New York held on 28 October 2011 and 1 November 2011 as a new feature to the 2011 AALCO-ILC Meeting; Fifty-Fifth Constitution day celebrations of AALCO, at Taj Palace Hotel in New Delhi on 11 November 2011; presentation of a paper on “International Criminal Court in the Development of International Rule of Law: A Reflection of Asian-African views” on 21 November 2011 at the Institute for Ethics, Governance and Law (IEGL), Australia; international conference on “Shifting Global Powers: Challenges and Opportunities for International Law” on 25 November 2011; 19th South Asia Teaching Session (SATS) on International Humanitarian Law (IHL), by ICRC and NLS, Bangalore from 27 November to 5 December 2011; International Seminar on Institutional Arbitration and Online Dispute Resolution techniques by CIAC, New Delhi; visit of President of AALCO to the AALCO Headquarters and lecture at the Indian Council of World Affairs (ICWA) on 24 January 2012; Joint Seminar on “Competition Law in Emerging Economies: Trends and Developments in India”, organized at AALCO Headquarters with O. P. Jindal Global University on 28 and 29 January 2012; Workshop on “Trade Law as a Means to Promote Economic Growth”, New York on 7 February 2012; Eighth International Conference organized by the India Society of International Law on the topic “Emerging Concerns in Public International Law” in New Delhi on 23-25 February 2012; Training Programme for the Diplomats and Officials from Kingdom of Saudi Arabia on the “Working of AALCO”, at the AALCO Headquarters in New Delhi from 12-13 March 2012; Discussion on the topic “State to State, Investor to State and Commercial Arbitration: Procedures and Implications”, 26 March 2012 in New York; 2nd Meeting of the AALCO-EPG at the AALCO Secretariat on 9th April, 2012; Inter-Sessional Meeting of Legal Experts to discuss Matters relating to the ILC at the AALCO Secretariat, New Delhi on 10 April 2012; Meeting with the Attorney- General of the Federal Republic of Nigeria on 27th April, 2012; training programme on “Trade and Development issues” at the AALCO Secretariat from 21-25 May 2012 and a Workshop in New York jointly with the Legal Office of the United Nations to celebrate the 30th anniversary of the UNCLOS, 30th May, 2012. Besides, the annual publications brought out by AALCO are: Yearbook of the Asian-African Legal Consultative Organization, AALCO Journal of International Law, Newsletter: Asian-African Legal Consultative Organization which reflects on the current activities of the Organization, and Special Studies published by the Centre.

- 5.6 The SG addressed the financial situation of AALCO by requesting for voluntary contributions and stating that annual contributions from 34 Member States had been received; however, the same had not been received from 13 remaining Member States. Further in light of the Action Plan adopted in 2008, 9 of the Member States had either partly cleared or are in the process of clearing their arrears, whereas efforts are being continued for 4 of the Member States (which have been in arrears for more than 10 years). With respect to the replenishment of the Reserve Fund under Rule 27 (3) of the Statutory Rules of the Organization, the SG suggested that the amount kept be sufficient to meet the expenses of the organization for at least a period of six months.
- 5.7 The SG went on to discuss the AALCO Secretariat and Welfare measures for the Secretariat staff, and stated that three Senior Officials from China, Iran and Japan had been deputed to the Secretariat on secondment. The number of the locally recruited staff (permanent category) in the Secretariat was 13 as of 15 May 2012. The SG mentioned that the ceiling of the gratuity amount payable to employees on the cessation of their employment in AALCO was enhanced and the ceiling limit was brought at par with the Government of India. On the basis of the 2010 session, the SG has implemented the ceiling limit of the 6th Pay Commission of Government of India up to Rs.10, 00,000/- (Ten lakhs). This formula should be retrospectively applied and implemented in AALCO from the year 2006.
- 5.8 In conclusion, the SG discussed the Plan of Action for 2012-2013 including: (i) Establishing Collaboration with Education Institutions and Universities, (ii) Expanding Internship Projects in AALCO, (iii) Improvising the website of AALCO, (iv) Preparation of the Studies on the item on the agenda of AALCO, (v) Preparation of studies on selected items on the agenda of the Sixty Seventh Session of United Nations General Assembly, (vi) Participation in International conferences, (vii) Capacity Building Programmes, (viii) Strengthening the Library, and (ix) bringing out more special studies and briefing papers on various specialized topics of international law.
- 5.9 ***Adoption of the Proposed Budget for the Year 2013:*** The **Secretary-General** introduced the Proposed Budget for the Year 2013 contained in document AALCO/51/ABUJA/2012/ORG.2. He informed that the budgetary papers were adopted at the 315th Meeting of the Liaison Officers in accordance with Statutory Rules 24 (2) and were placed for final approval before the Annual Session as per Rule 24 (4) of the Statutory Rules of AALCO. He explained that the total amount of the proposed budget for the year 2012 was USD 570,268 (US Dollars Five Hundred and Seventy Thousand, Two Hundred and Sixty Eight) which was calculated as per expected assessed contribution of Member States as per the revised and adopted scale of annual contribution of Member States during the Forty-Eighth Annual Session of AALCO held at Putrajaya, Malaysia in the Year 2009 vide resolution AALCO/RES/48/ORG.2.
- 5.10 The Secretary-General explained that during the Forty-Ninth Annual Session of AALCO held in United Republic of Tanzania in 2010, some Member States urged the Secretary-General to prepare a realistic budget on the basis of actual contributions received. Therefore, the budgeted expenditure for the year 2012 had been divided into two parts, (i) the realistic budget of USD 501,621 on the basis of expected contributions from regularly paying Member States; and (ii) the remaining amount of USD 68,647 would fall under the heading 'other projected expenditures', which would be incurred depending upon contributions received from Member States in arrears. The Proposed Budget could be

divided into two main heads namely: (i) Expenses incurred in relation to maintenance of the Headquarters, Pay and Allowances to Secretary-General and Locally recruited Staffs, emoluments to Deputy Secretaries-General, expenses in relation to Annual Session and inter-sessional meetings printing, publication and so on amounting to USD 499,621 and (ii) Expenses under Centre for Research and Training (CRT) was USD 2,000.

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

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

- 5.12 ***Report of the Chairman of the AALCO-Eminent Persons Group (EPG) Meeting:***
- 5.13 The Chairman of the AALCO- EPG presented the report on the Second Meeting of the AALCO-EPG, held on 9th April, 2012 at New Delhi. The Agenda of the meeting was divided into two sessions- Organizational Matters and Substantive Matters.
- 5.14 With respect to Organizational Matters, the Chairman reported that financial matters relating to AALCO were first discussed where the SG mentioned that even though most Member States pay their annual contributions to AALCO regularly, collection of arrears from defaulting Member States remained a challenge, though they were beginning to respond and negotiate. The SG had emphasized the fact that voluntary contributions by Member States need to be intensified in order to alleviate the financial situation of the Organization. Among other measures discussed was the possibility forming an AALCO Foundation. The EPG expressed satisfaction at the progress in this front and endorsed the proposal of Member States sponsoring and hosting Meetings on specific topics and mentioned that the proposal by the private company to provide assistance in maintaining required the Secretariat in return for utilizing space, required careful study and consultations with the Government of India. The EPG emphasized the need to evolve sanctions against defaulting Member States.
- 5.15 The issue of the staffing of the Secretariat, the SG briefed the EPG that presently, the professional category was understaffed. It was mentioned that salaries and other perks given to AALCO professional staff, were not attractive enough to encourage young local talent. Both the SG and EPG supported the proposal to invite Member States to depute officials/experts to AALCO. The EPG was of the view that AALCO could sponsor one of its Legal Officers to attend the Annual ILC Sessions. This would also strengthen AALCO-ILC relations. The EPG also stated that it was imperative that Member States

- responded to the Secretariat, as to how much importance they attached to the substantive work prepared by AALCO. It was of the view that the Secretariat should identify the Focal Points in each country and create a database of email addresses, to facilitate speedy and effective communication with Member States.
- 5.16 The **Leader of Delegation of the Kingdom of Saudi Arabia** noted with concern that one of the reasons for the financial problems of AALCO pertained to the long pending arrears from some Member States. In this respect he inquired from the Secretariat why private funding could not be explored as an additional option. He was also of the opinion that an early solution to the financial difficulties faced by the Organization should be found.
- 5.17 In response the **Secretary-General** stated that this proposal was placed for the consideration of Member States during the 50th Annual Session held in Sri Lanka in 2011. However, many Member States cautioned about receiving private funding as this could in some way alter the basic role of the Organization. However, a detailed scheme for receiving private funding would be drawn out by the Secretariat and possibly be placed for consideration of Member States at the next Annual Session. He also said that other international organizations like the United Nations were receiving funding from some private companies.
- 5.18 The **President** then declared the Report of the Chairman of the AALCO-EPG as adopted.
- 5.19 ***Report of the Chairman of the Sub-Committee to look into the AALCO Secretariat's Human Resources and Financial Matters: On behalf of*** Mr. PG Indera Jaya Shamsu, the Liaison Officer of Brunei Darussalam and the Chairman of the Sub-Committee Dr. Y. Fukahori, Deputy Secretary-General presented the report on the Sub-committee. He recalled that pursuant to the 49th Annual Session of AALCO, Dar Es Salaam, United Republic of Tanzania (2010), upon a recommendation of the Secretary-General, a **Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters** (herein after Sub-Committee) was established at the Resumed 308th Meeting of Liaison Officers of AALCO Member States which was convened at the Headquarters of AALCO, on Wednesday, 1st December 2010. The sub-committee was entrusted with three main tasks, namely:
- i) Salary structure of the Staff;
 - ii) Right size of the AALCO Secretariat and
 - iii) Ways and means to generate income for AALCO other than the contributions received from its Member States.
- 5.20 The Reports of the First and Second meetings of the Sub-Committee were annexed to the document AALCO's Draft Budget for the year 2013 (AALCO/ABUJA/2012/ORG 2).
- 5.21 The DSG informed that the first meeting of the Sub-Committee was convened on 7th March 2012, at that meeting the Chairman proposed that to begin with, "the right size of the Secretariat" could be taken up as the first point of discussion. He asked the Secretariat to provide a list of the AALCO Staff. He was informed that currently there were **13** staff members in the Permanent category: 3 Legal Staff; 5 Administrative staff; and 5 subordinate staff. Besides this there were **9** contractual employees: 1 Librarian/translator; 1 watch and ward; 1 messenger; 1 chauffer; 2 electricians; 2 cleaners and 1 gardener.

- 5.22 In response to this information, the **Liaison Officer of India** said that before arriving at any conclusion on whether the Secretariat was under or over staffed, it was essential to have a look at the Sanctioned Staff for the Secretariat. He referred to the Secretariat document AALCO/50/COLOMBO/2011/SD/ORG 2 “Proposed Budget for the year 2012”, and pointed out that on page 15 of that document, the Sanctioned Staff for the Secretariat was 34, and presently there were only 13 Permanent staff members in the Secretariat. Therefore, in his view there was no need to discuss this issue for the time being.
- 5.23 The **Liaison Officer of Sri Lanka** opined that the Sub-Committee was given a very onerous task, which would require detailed study and assessment of requirements, objectives and the tasks to be undertaken by the Secretariat over the next five years. In view of the fact that the activities were growing it would need a practical assessment. The right way to go about carrying out this task would be that the Chairman should circulate a detailed paper on all the above mentioned points, which could be studied by the Liaison Officers and their capitals, as well as discussed in the Sub-Committee. The **Liaison Officer of Bangladesh** endorsed the views of the Liaison Officer of Sri Lanka. Thereafter, it was decided that before the next meeting of the Sub-Committee a Basic Fact Sheet of the required information would be provided to all the Member States.
- 5.24 The **DSG** informed that the second meeting of the Sub-Committee was convened on 29 May 2012. In that meeting, the Secretariat official first drew attention of the participants to “the Comparison between the Government of India Pay Scale and Benefits accorded to the Permanent Employees of the AALCO Secretariat” which appeared in the Basic Fact Sheet. He stated that it was aptly clear from the list that AALCO local staff employees were in a much inferior state as far as the allowances and benefits when compared to Indian Government employees, he further stated that for this reason during the past few years in general and last year in particular a few precious legal officers chose to leave the Organization as a result of such “less attractive package” at AALCO.
- 5.25 Having said that, he drew attention of the participants to the “Trend and Comparison of Salary Increase Rate between Indian Government and AALCO” which appeared in the “Numerical Analysis of AALCO Budget,” and explained that AALCO had faithfully tried its best to comply with the mandate received from the Member States, i.e. to provide equivalent salary increase to locally recruited staff in consonance with the Indian Government. He pointed out that the inflation rate in India had been very high in recent years and this was the main cause of the salary increase, which suppressed the activity budget of AALCO. He then stated that in a simple mathematical prediction, that if the salary component in the AALCO Budget continued to rise, AALCO was likely to face bankruptcy again in a few years if the current inflation continues and no new measures were taken by the member States.
- 5.26 It was also explained that other international organizations in India also faced the same problem; however, they overcame it with the increase of contribution from member countries or headquarters, or partially by the support from the host government.
- 5.27 After hearing the explanation provided by the Secretariat official, that Chairman summarized the Report of the Secretariat that the increase of contribution from Member States was a logical conclusion to address AALCO’s budget problem in view of the fact that inflation was expected to continue to rise in India and there was an urgent need to employ a few legal officers in AALCO. He stated that discussions could revolve around

- the following points: (i) how to reduce the expenditure; (ii) possibility of increasing contributions from member States; (iii) could AALCO seek financial support from the private sector and (iv) request the host government to explore the possibility of making some additional contributions to AALCO.
- 5.28 The Chairman requested that a comparison should be clearly made between the current amount of contributions received and the increased amount of contributions expected from Member States, so that the effect and degree of the increase should be clearly understood by Member States. The Secretariat stated that such a comparison table would be presented if and when the increase of contributions would become necessary.
- 5.29 **The Secretariat** further commented that an overall review of salary structure of the AALCO Secretariat employees including allowances and benefits would have to be considered under this Sub-Committee, however, the immediate priority was to form a solid financial basis which would, once in place, enable the comprehensive reforms within the Secretariat.
- 5.30 Thereafter, the Liaison Officers from Sri Lanka, Japan, India, and Ghana suggested that the first and for most priority of the Secretariat should be to collect the outstanding arrears of contributions from the Member States in arrears, to cut down further on the Secretariat expenses, send all the documents via email in order to reduce the postage expenses and try and seek voluntary contributions from Member States. The Secretariat was also cautioned on exploring means to raise funds from the private sector.
- 5.31 The Liaison Officer of India while taking note of the financial problems of AALCO, stated that the Indian Government was still concerned about the inadequate disbursement of gratuity to retired officials and requested that the Secretariat pay the remaining amount soon to those entitled. In addition she requested the Secretariat to prepare a detailed transparent paper outlining the current financial status, present and sanctioned staff strength of the Organization as well as enlist the problems of the employees.
- 5.32 In view of the foregoing discussions, and the mammoth task before the Sub-Committee, the DSG informed that the AALCO Secretariat would like to seek a mandate from the Member States, to further extend the tenure of the Sub-Committee. The text of the draft resolution on this topic is annexed to the document containing the Draft Budget for the year 2013 (Doc. No AALCO/51/ABUJA/2012/ORG 2)
- 5.33 The **Delegate of Malaysia** sought a clarification from the Deputy Secretary-General whether the Secretariat had undertaken a comparative study with salaries given to other locally recruited employees say in UN organizations based in New York, Geneva or Vienna. The practice followed in other regional organization like ASEAN could also be explored. He also wondered whether inflationary trends were unique only in India.
- 5.34 The **Deputy Secretary General** responded that the Secretariat was doing such a research and probably by December the findings would be placed for the consideration of Liaison Officers.

6. Third General Meeting

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

- 6.1 **Dr. Hassan Soleimani, Deputy Secretary-General**, while introducing the agenda item, said that Israel had administered a military occupation of the West Bank, the Gaza Strip and East Jerusalem for well over four decades and been perpetrating horrific atrocities on the civilian population in Occupied Palestinian Territories (OPT) in defiance of the will of the international community⁴ and international law. The AALCO Secretariat had been deliberating on this topic since 1988, ever since it was initiated by the Government of the Islamic Republic of Iran. the Israeli activities in the OPT that violated the Fourth Geneva Convention of 1949 and other relevant provisions of international law, included – (1) Annexation and Illegal Expropriation of Palestinian Land; (2) Creation of Jewish Colonial Settlements; (3) Deportation of Palestinians; and (4) Construction of the Wall in the OPT.
- 6.2 He added that, the atrocities carried out by Israel on the civilian population had been given in the **Report of the Special Committee (the Committee) to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arab Territories** according to which Israeli activities in OPT were found to be in violation of International Humanitarian Law and Human Rights obligations. The Committee reiterated the call for Israel to lift its illegal siege of Gaza, in line with Security Council Resolution 1860 (2009) and called Israel to put an end to the perpetration of atrocities on civilians.
- 6.3 He further added that, the **question of Statehood of Palestine was discussed in the UN General Assembly in September 2011** whereby the President of the State of Palestine asserted the right of the people of Palestine to self- determination and confirmed the readiness of the Palestinian people and their institutions for Independence. On receiving an application from Palestine for its admission to the membership of UN, the President of the Security Council referred it to the Committee on the Admission of New Members for examination. The **Report of the Committee (Committee) on the Admission of New Members** noted that the Committee should be mindful of the broader political context, whatever is its outcome. **Positive developments were noted at the 36th General Conference of UNESCO**, where 107 Member States voted in favour of Palestine's membership, resulting in Palestine becoming the 195th member of UNESCO. The membership of Palestine into UNESCO may open the doors to other United Nation specialized agencies that have individualized process of admission.
- 6.4 The DSG also highlighted that the resolutions adopted at the successive Annual Sessions of AALCO, have demanded that the Occupying Power "Israel", should fully comply with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention in order to protect the rights of Palestinians.

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

- 6.5 The **Leader of Delegation of the State of Palestine** stated that security peace, stability, justice, growth, development and prosperity were the important constituents which were demanded by the peoples of the Middle East region as they needed them from their respective governments and states. In order to fulfill their demand it was necessary to respect the rules of international law and not to allow any state to ignore the International law, International Human Rights Law and Humanitarian Law. Thus, combating injustice and securing justice for the peoples was an inevitable goal.
- 6.6 He further noted that the Middle East region was suffering from high tension since many years. This tension, he said would not end unless the Arab-Israel conflict ended upon compliance of all resolutions adopted by the UN. In this regard, the Palestinian leadership under President Mahmud Abbas had demonstrated maximum flexibility for achieving justice and comprehensive peace in the region through full coordination with the Arab brothers, the League of Arab States, Organization of Islamic Cooperation, Non-aligned countries, Asian states, Russian Federation, African Union and the two Americas as well as with all people who loved freedom, independence, peace and justice.
- 6.7 However, he maintained that all these efforts had met with the absolute Israeli refusal to apply the UN resolutions or to comply with the rules of international law, International Human Rights and Humanitarian Law. While briefing this conference, the Palestinian leadership demands that it should take up a special role for putting an end to injustice faced by the Palestinian people and to secure justice for them through ensuring their right to self-determination and establishment of the Palestinian state with Jerusalem as its capital within the borders of 4th June 1967 on the basis of the relevant UN resolutions.
- 6.8 He stated that the Palestinian leadership would like to emphasize the following points:
- “1. Reiterating the need of commitment to the principles agreed upon to achieve the just peace, especially Security Council’s Resolutions 242, 338 and 1515; that the resumption of negotiations requires that Israel should accept the principle of returning to the borders of 1967 and stop all activities of building settlements in the occupied Palestinian territories including East Jerusalem.
 2. Supporting the plan of Palestinian move which President Mahmud Abbas offered to the Ministerial Committee for Arab Peace Initiative on 2.12.2011 and reiterated in the last meeting of the Committee at Doha, Qatar on 2.06.2012; to follow up the efforts being made for the membership of Palestine in the United Nations through Security Council, General Assembly and other international institutions and organizations; to work on the resumption of the conference of the states which are party to the Fourth Geneva Convention of 1949 concerning protection of civilians during the time of war.
 3. To reiterate that the settlement in all forms constitutes violation of the International law and the Fourth Geneva Convention; to ask the international community and UN to intervene immediately for pressurizing Israel to stop construction of settlements, especially in Jerusalem which is faced with the attempts of effacing its historical features.
 4. To call upon the quadruple committee through UN Security Council to speedily move to take actions against the Israeli occupation authorities for continuing the building of settlements and its destructive policies towards the efforts of achieving peace; to ask Israel to resume serious and specific dialogue within a clear time frame which should be based on UN resolutions, Arab Peace Initiative and the road map to be culminated by a

peace accord covering all substantial issues according to the said resolutions.

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

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

7. Demanding an immediate stop to all forms of the oppressive and illegal Israeli siege of Gaza Strip; considering it a flagrant violation of International law and International Human law; urging the International Criminal Court to prosecute some Israeli leaders who committed heinous crimes in Gaza Strip when they assassinated 1500 Palestinians including children, women and old persons in addition to inflicting injuries on 5000 people (as the Israeli war planes used internationally banned and prohibited uranium) as well as attacking the UN offices where the unarmed Palestinians had taken refuge. It is not logical and just to have two standards when it comes to the Israeli crimes and to keep silent on the issue of its criminal leaders who are roaming across the world with all immunity.

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

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

- 6.9 The **Leader of Delegation of the Islamic Republic of Iran** at the outset thanked the AALCO Secretariat for preparing an update report on “Deportation of Palestinian and others Israeli practices among them, the massive immigration and settlement of the Jews in all occupied territories in violation of international law, particularly the Fourth Geneva Convention of 1949”, as contained in document AALCO/51/ ABUJA/2012/SD/S 4.

- 6.10 He said that the Islamic Republic of Iran continued to attach high importance to the agenda item which addressed one of the most crucial matters of the time. He added that the situation in the Occupied Palestinian Territory in recent years, resulted from the abhorrent carnage and the crimes perpetrated by the Israeli regime, which was a clear manifestation of a cold-blooded massacre of innocent civilians, most of them women and children. Further, he noted that the most heinous crimes committed by the Israeli soldiers during their 22 days of aggression against Gaza Strip were well known. Certainly, such military could not be justified under international humanitarian law and there was reasonable ground, to prove this argument. He further referred to the report of the United Nations Fact Finding Mission on the Gaza Conflict presented to the Human Rights Council on 29 September 2009, urging the Council and the international community as a whole to put an end to impunity for violations of international humanitarian law in Israel and the Occupied Palestinian Territory.
- 6.11 He noted with great concern that the blockade of the Gaza Strip, the world's largest open-air Gulag, enters its sixth year. For over five years in Gaza, more than 1.6 million people had been under blockade in violation of international law. More than half of these people were children. More than 80 per cent of families in Gaza were dependent on humanitarian aid. In addition, while some steps had been taken to ease the blockade's impact, Gaza remained subject to severe restrictions on imports, exports and the movement of people, by land, air and sea – which amounts to a “collective punishment” of all those living in Gaza and was a denial of basic human rights in contravention of international law.
- 6.12 He said that the proposal to grant Palestine full membership in the United Nations was discussed in the United Nations General Assembly in September 2011, unfortunately the same was vetoed by United States in Security Council among 46 others resolutions which had been already presented against Israel.
- 6.13 He added that the government of the Islamic Republic of Iran since the beginning of this conflict had announced that the Israeli criminals shall be brought into justice for their actions. In this respect, the Fifth International Conference on Palestine was held in Tehran on October 1-2, 2011, which was attended by delegates from 70 countries. In the final Declaration of Conference, the state terrorism targeted by Israel against Palestinian personalities and civilians, specifically children, women and the elderly, were condemned as “evident instances of war crimes”. Finally, the Declaration undermined Israeli's weapons of mass destruction arsenal, specially its military capabilities and urged the international community to take proper measures for the eradication of such arms, which were threats to regional peace and security.
- 6.14 In conclusion, he said that his delegation believed that the time had come for the international community to put an end to impunity and bring all persons without any distinction who had committed international crimes to justice. In this regard, he regretted the recent decision taken by the ex- Prosecutor of the ICC to refuse to recognize the possibility for the state of Palestine to bring the complaint for the crimes committed by Israeli forces in Occupied Territories.
- 6.15 The **Leader of Delegation of the Republic of Indonesia** re-emphasized Indonesia's three pragmatic steps presented in line with their common efforts to achieve a just, lasting and comprehensive solution to the Question of Palestine, as was stated by Indonesian

Foreign Minister at the Non-Alignment Movement Ministerial Committee on Palestine, in Egypt, in May this year.

- 6.16 First, it was necessary to pave the way for the eventual membership of Palestine in the UN. He underlined that it was important to support Palestine in attaining international recognition as a sovereign State. Palestinian independence was no longer a choice, but a certainty. Indonesia believed that the time of peace and settlement for Palestine would eventually come upon real actions performed by the international community, particularly to assure Palestinian independence according to the borderline set in 1967 that dictates East Jerusalem as the capital of Palestine. Regarding this issue, Indonesia called upon all the like-minded-countries to draw more recognition for Palestine as a sovereign state, from the neighbouring countries in their regions.
- 6.17 According to the second point, continued Israeli illegal actions, including the building of settlements on Palestinian land, must stop. In this regard, a conducive situation must be created to resume the talks between Israel and Palestine and other Arab nations in good faith. He called for support to the current talks between the Palestinian factions toward reconciliation and unity government. He added that it was important to speak as one in demanding an end to all illegal Israeli practices, including the central issue of settlement activities. In this regard he added that it was important that AALCO Members, should reaffirm their unity, to assure and to draw the attention of the international community, on the obligation of the Israel to be bound by the principles of international law contained in Fourth Geneva Convention of 1949, and on the fact that the Palestinians were suffering rampant injustice, through efforts in UN forum, social media and engagement in civil society.
- 6.18 The Third point emphasised was, the need for sustained efforts to help Palestine build its capacity for effective governance. In this regard Indonesia encouraged AALCO Members as part of the international community to sustain these efforts of state building, development and strengthening of Palestinian national institutions, as Palestine prepares itself for statehood. It was also important to gain international support for Palestine's capacity building. On their part, Indonesia had an ongoing capacity building program to train 1000 Palestinians in various fields. They were also open to collaborating to support capacity building programs for the Palestinians.
- 6.19 Finally, regarding the funding issue in UNESCO following the membership of Palestine in UNESCO, Indonesia had once again shown its commitment to support Palestine by giving additional fund of 10 million USD to UNESCO as Indonesia believed that through concrete and meaningful contributions, the plight of the Palestinian people could be alleviated.
- 6.20 The **Leader of Delegation of the Democratic People's Republic of Korea** at the outset said that for the past 60 years of Israeli occupation of Arab territories was the history of systematic violation of international law by Israel. In particular, violations of international law committed by Israel in recent years, was of grave concern to the international community.
- 6.21 He added that the blockade of Gaza Strip which had been enforced for past 5 years was a typical example of collective punishment and state terrorism strictly forbidden by international law particularly the IHL and international human rights law, especially as Israel refused to observe its obligations under the Fourth Geneva Convention of 1949

- relative to the protection of civilians in time of war, and this had jeopardized the lives and safety of more than 1.5 million Palestinians confined in this region. Evidencing this was the report of the special committee to investigate Israeli practices affecting human rights of the Palestinian People and other Arabs of the occupied territories submitted on 22 September, last year.
- 6.22 Next, acts of violation of international law by Israel were being committed against non-belligerent countries in areas beyond occupied Arab territories. It was well known, that in May 2010, Israeli forces, infringing upon the sovereignty of Turkey, the flag state, had attacked the Humanitarian Aid Flotilla heading to the Gaza Strip in the Mediterranean high-seas thus causing the loss of lives of some humanitarian activists. By this, Israel had breached its commitments not only to the IHL and international law of war, but also international law of sea which provides for freedom and safety of navigation by vessels in the high seas.
- 6.23 He noted that the international community had censured in strong terms the recent violations of international law particularly the IHL by Israel in recent years and urged Israel to respect and observe international law. The fact that the UN General Assembly had adopted 18 resolutions during its 66th session, all of which condemned the Israeli practices and supported the just cause of Palestinian people, clearly showed this.
- 6.24 The DPRK delegation appreciated that AALCO, had been considering the Palestinian issue as an important regional issue having serious political and legal implications, and had been making contribution with constructive opinions in deliberations to this date. They also appreciated that AALCO has been representing the positions of its member states in international arena like the UN on this issue.
- 6.25 He emphasized that, it was a consistent position of the DPRK government stated to the world that Israel should immediately stop its acts of terror against Palestinians, lift the blockade of Gaza Strip and withdraw from all the occupied Arab territories.
- 6.26 The international community should pay due attention to the behaviour of the US which connives at, encourages and shelters Israel's acts of violation of international law, and take legally binding concrete steps to ensure the implementation of relevant UN General Assembly resolutions and Advisory Opinion of the International Court of Justice on Gaza Strip without delay.
- 6.27 The DPRK delegation reaffirmed the consistent support and solidarity to the struggle of the Palestinian people for the restoration of their legitimate rights particularly, the right of self-determination, right to return to the State and right to establish an independent state, and the struggle of Arab people to achieve lasting peace in the Middle East. In future, DPRK would strengthen solidarity with other countries in the struggle to end the military occupation by foreign forces which was an obstacle for world peace and security. The DPRK delegation joined other delegations to propose this item to be included as an agenda item for the 52nd Annual Session of the Organization.
- 6.28 The **Leader of Delegation of Japan** had held deep interest and concern on the Palestinian question. It has been Japan's basic position that on the basis of UN Security Council resolutions 242 and 338 (1) Israel should withdraw from all the area which it had occupied since 1967, (2) Palestinian people's rights for self-determination including

- establishment of an independent state should be recognized, (3) Israel's right for existence should be recognized and that peace should be realized, paying due consideration to legitimate security interests of the countries of the region. Thus, Japan had been supporting the efforts to seek the realization of lasting peace in the Middle East based on the two-state solution in which Israel and a future independent Palestinian State coexist in peace and safety and considered that for that end the serious direct negotiations between the two parties were essential and the earliest resumption of such task was most desirable.
- 6.29 On the question of activities for settlement, he said that Japan considered that they are illegal as stated in the UN Security Council resolution 465 which said that the policy and practices of settling parts of its population and new immigrants in the territories occupied since 1967 constitutes "a flagrant violation of the Fourth Geneva Convention", and had all along taken the position that activities for settlement in the west bank including East Jerusalem should be stopped.
- 6.30 Further he added that with a view to alleviate the sufferings of the Palestinian people and to serve to increase their well-being, since 1993, Japan had provided to Palestinians assistance and aid, in such areas as humanitarian assistance, assistance for reforms, confidence building and assistance for a self-sustainable Palestinian economy, totaling 1.2 million US dollars which was the largest only after the US and the EU. Japan considered that assistance to Palestinian people placed in difficult conditions in the West Bank C area, East Jerusalem and Gaza Strip was very much needed and thus contributed 25.8 million US dollars to the UNICEF and UNRWA for their projects and activities in those areas.
- 6.31 He informed that Japan had also been carrying out a middle and long term project named Jericho Agro Industrial Park (JAIP) which aimed at promoting economic and social development in Jericho and the Jordan Valley area with regional cooperation among the Palestinians, Israelis, Jordanians and Japanese under the "Corridor for Peace and Prosperity" initiative. Besides this, Japan was also cooperating with other AALCO countries such as Malaysia and Indonesia for human resources development programs for Palestinians.
- 6.32 The **Delegate of the Republic of Iraq** said that the situation in Palestine was in conflict with the lofty goals of AALCO which included securing peace and justice for the people of the two regions. The Iraqi delegation joined the other speakers in condemning the suffering of the Palestinian people due to the atrocities committed by Israel, including terrorist attacks on its religious places. They also joined the United Nations General Assembly in condemning Israel for its actions which were aimed at changing the demography and geography of the Occupied Palestinian Territories.
- 6.33 The **Leader of Delegation of the Kingdom of Saudi Arabia** stated that AALCO was a legal Organization and not a political one, for this reason the students were taught about legal affairs. In this regard he said that it was essential to take advantage of the experience and expertise of this organization and stand up for the just cause of the suffering people of Palestine. The double standards adopted by some countries on the Palestinian issue should be condemned, and AALCO should have its own legal position on this issue which could also be useful for the next generation. He said that even after 6 decades the Palestinian issue remained unresolved. He said that efforts exerted by Saudi Arabia had resulted in UNESCO granting statehood to Palestine. Therefore, as a legal organization it was important to implement the resolutions adopted at the subsequent

- Annual Sessions of AALCO. He fully supported the stance taken by the Ambassador of Palestine, taken in his statement on this topic in the 51st Annual Session. Furthermore, he urged AALCO to examine the stance taken by the ex-Prosecutor of the ICC in rejecting Palestine's application for probe into the Israeli atrocities, on the ground that the question of statehood of Palestine remained unresolved. He added that the conflict between Israel and Palestine could end by following the initiative of Peace proposed by King Abdulla, according to which Israel should withdraw from all occupied Palestinian Territories. He also urged all Member States of AALCO to support the rights of the Palestinian people and encourage it to become a member of all the International Organizations.
- 6.34 The **Leader of Delegation of the State of Kuwait** reiterated the stance taken by his country in their general statement that demanded justice for the Palestinian people and strengthening ways and means to enforce human rights and humanitarian law.
- 6.35 The **Leader of Delegation of the Republic of Yemen** hoped that AALCO would continue its efforts until Palestinians got independence and freedom. He appreciated the stance taken by the Organization to support the cause of Palestinians and called on Member States to work to achieve justice for the Palestinian people. He supported all the demands of the Palestinian people as enumerated in the statement made by the Ambassador of Palestine. He hoped that those demands could be reflected in the resolution adopted by the Organization on that issue. Until the Palestinians got their legitimate rights, it would remain as a blot on the human conscience. He added that the first step towards Palestinians getting their own independent State was to put an immediate end to the settlement activity being carried out by Israel on the Palestinian land. It was also necessary that all the Palestinian Arab prisoners were released and the Israeli criminals be prosecuted by the ICC. All these efforts taken together would help in the establishment of an independent Palestinian State with Jerusalem as its capital.
- 6.36 The **Delegate of Malaysia** thanked the AALCO Secretariat for the very well written paper on this subject matter. He said that Malaysia would continue to support the Palestinian cause until the creation of an independent Palestinian State. He mentioned that the issue of the statehood of Palestine was being taken up at various international fora as reflected in the Secretariat document and was supported by the Malaysian delegation as was reflected in the three Annexures appended to the AALCO Secretariat report. He requested the AALCO Secretariat to concentrate on this topic specially the application by the State of Palestine to the Prosecutor of the ICC and the proper legal interpretation and application of Article 12 of the Rome Statute of the ICC. He recalled that the Leader of Delegation of Malaysia in his general statement noted that this issue has been one of the important topics placed on AALCO Annual Session agenda since 1988, and that AALCO has been discussing this topic continuously for the past 24 years. As regards the outcome of the deliberations that have been happening on this item over these years, he raised a number of pertinent questions. He opined that the delegates needed to ask themselves honestly as to what had been the tangible outcome of the discussion and that whether their views had been conveyed to the relevant parties? He stated that it was time that the delegates asked these questions with a view to proceed further in this issue. He also had a suggestion that if we wanted to retain the topic of Palestine in the Agenda of our Annual Sessions, we should stop our rhetoric and come out with concrete plans.
- 6.37 Dwelling on the legal issues involved in the topic, he pointed out that the fundamental rights of the Palestinian people to self-determination and a sovereign State as provided in

- Article 1 of the Montevideo Convention⁵ have remained unrealized for more than four decades despite Palestine's efforts to be recognised as a sovereign Palestinian State. Drawing attention to the numerous Resolutions adopted by the General Assembly and the Security Council on the establishment of an independent State of Palestine and for the right of the Palestinian people to self-determination, he brought attention to two of the Resolutions adopted by UN bodies; the first one was the Security Council Resolution 1397 (2002) which affirmed a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders and the second one was the General Assembly Resolution 54/152 (1999) which reaffirmed the right of the Palestinian people to self-determination, including the option of a State.
- 6.38 While drawing attention to the recent decision of the Office of the Prosecutor of ICC not to commence investigation on Palestine's application on the ground that it was in no position to decide whether Palestine is a State or not, he remarked that the question of the statehood of Palestine had been discussed by the Committee on the Admission of New Members under the United Nations Security Council and the same had decided that it was unable to come to an agreement as there were contradicting views regarding whether Palestine have an effective government in control over the claimed territory and also its capacity to enter into relations with other States including the issue of recognition by other States.
- 6.39 While calling for AALCO to have a re-look at the deliberations by Member States on this topic, he stated that AALCO should look at the legal issues pertaining to the elements of determination of a State under the Montevideo Convention and the question as to who or which body has the ultimate determination to decide whether Palestine is a State. The AALCO Secretariat should be given a mandate to conduct a thorough legal research into this subject and prepare it for the deliberations by AALCO Member States. AALCO Member States should take the AALCO legal view for discussions at the UN General Assembly or such other bodies, he added.
- 6.40 The **Leader of Delegation of the People's Republic of China** said that the legal rights of the Palestinian people must be protected and achieved. International law particularly the Fourth Geneva Convention of 1949 should be observed in the occupied territory. China continued to support the Palestinian legitimate cause as well as the Middle East Peace Process.
- 6.41 The Leader of Delegation of the **Democratic Socialist Republic of Sri Lanka** stated that Israeli occupation of the occupied Palestinian Territories had continued for the past 45 years, since it began in 1967. As has been the stance in AALCO resolutions it has demanded Israel to withdraw from the occupied territories in compliance with the relevant provisions of the UN Charter, Universal Declaration of Human Rights, Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention of 1949. On the rejection of Application by the Palestinian authority to the ICC, in order to protect the rights of the Palestinians, he said that it was pertinent to note that general rules of statehood indicated in the Montevideo convention, however in the case of Palestine that convention needs to be re-examined in light of the 1988 Declaration of Palestine, which was not in relation to a new state rather

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

it exerted its stance on being a state which could fulfil all the requirements of a state including entering into relations and agreements with other states and international organizations, as provided in the Oslo accords.

- 6.42 Furthermore, a final set of arguments were based on the situation before 1948, during the Ottoman era and the later League of Nations Mandate Period, which sought to determine whether the Palestine claim to sovereignty is a continuation of a pre-existing State. A number of submissions argued that the 1988 declaration of independence was in relation to an extant statehood and not by an entity that purported to be a new state. The declaration referred to the Covenant of the League, thus indicating a pre-existing claim. It was suggested that after the demise of the Ottoman Empire, Palestine had become an independent State, when the British administered it under the League of Nations mandate System, where it was assigned a class A mandate - in the category belonging to independent States. It was also pointed out that even during the mandate era, Treaties were concluded by the administering power to which Palestine was registered a party under the League of Nations Treaty Series. Palestinians had also lost the Ottoman citizenship and gained a new Palestinian nationality and passports. The pre-existing title to sovereignty was also pointed out to be reflected in the 1947 General Assembly resolution that out the partition plan envisaging two provisional states. Therefore, in the opinion of the Leader of Delegation Palestine statehood should be expedited, and he condemned the office of the Prosecutor of the ICC for denying its competence under Article 12(3) of the Rome Statute of the ICC.

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

- 6.43 **Dr. Hassan Soleimani, Deputy Secretary-General of AALCO** introduced the agenda item “Extraterritorial Application of National Legislations: Sanctions imposed against Third Parties” as discussed in the Secretariat Report AALCO/51/ ABUJA/2012/SD/S 6. He said that the topic was introduced at the Thirty-Sixth Annual Session of AALCO held in Tehran in 1997, upon a proposal made by the Government of Islamic Republic of Iran. Extraterritorial Measures or the application of the domestic laws having extraterritorial effects with the imposition of unilateral sanctions violated the sovereign interests of a State. Imposition of unilateral sanctions was impermissible under international law as they violated the international rule of law, core principles of the Charter of the United Nations, and general principles of international law, he added.
- 6.44 He said that the concept of unilateral sanctions violated certain core principles of the Charter of the United Nations, namely; (i) principle of sovereign equality and territorial integrity, (ii) principle of non-intervention, and (iii) duty to cooperate. Principle of sovereign equality and territorial integrity of a State and principle of non-intervention in the internal affairs of the State are core principles, because through imposing unilateral sanctions, imposing countries were actually trying to influence the policy making by the governments of such countries. Such sanctions also were directed towards changing the political decision-making or general will of the peoples of the targeted countries to choose their own government. Hence, consensus by the international community stating that unilateral sanctions were violative of such principles and also the principle of duty to cooperate should be regarded as rule of law.

- 6.45 The concept of unilateral sanctions does not respect the principle of sovereign equality. Within the framework of international law, a State's jurisdiction within its territory was absolute and exclusive. The principle of non-intervention was the mirror image of the sovereignty of States. Intervention and interference in both internal and external affairs of other States, in view of either transforming the economic or political policy of such countries had been clearly prohibited. Extraterritorial application of national legislation in the form of unilateral sanctions, which also in turn affected the bilateral relations with other States of the targeted State, was contrary to the principle of non-intervention. The principles of non-intervention clearly stated that no State shall interfere in the internal or external affairs of a State which shall be a violation of sovereignty of the State. International economic cooperation was vital to the economic development of all countries of the world, and particularly of the developing countries. On those notes, cooperation in international trade and economic relations was also a very significant aspect of the duty to cooperate.
- 6.46 He noted that the unilateral sanctions imposed against third parties by virtue of application of a State's own national legislation extra-territorially also breached certain basic principles of international law. Those include, (i) principle of self-determination, (ii) right to development of the citizens and individuals living in the targeted territory, and (iii) countermeasures and dispute settlement. The unilateral imposition of sanctions by States deprived the peoples of the target States with basic human rights and also their right to development. Economic sanctions affect the overall development of the individuals and the economy as a whole therefore the burden of sanctions should not be put on the succeeding generations. Those sanctions represent a form of collective punishment and did not comply with the ethical principle of individual responsibility, i.e. with the ability to attribute behaviour to an individual. Comprehensive economic sanctions heavily impacted the life and health of the civilian population. International community recognized that any dispute should be solved peacefully and bilaterally.
- 6.47 He opined that extraterritorial application of national legislation in the form of sanctions was harmful to the right of the targeted States to development and victimized the most disadvantaged sections of the society in those States.
- 6.48 He said that in view of those concerns, the Secretariat report had covered the issues dealing with Impermissibility of Unilateral Imposition of Sanctions, a brief overview of the sanctions imposition against AALCO Member States, Ministerial Declaration adopted by the Thirty-Fifth Annual Meeting of the Ministers of Foreign Affairs of Group of 77, Consideration of the Resolution on the "Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba", at the Sixty-sixth Session of the United Nations General Assembly. The remedy could be sought in terms of encouraging direct dialogue between the parties to resolve their differences for the betterment of citizens of the targeted country. He highlighted the issues for focused deliberations for the meeting which were: (i) Unilateral Sanctions imposed against third parties violated principles enshrined in the Charter of the United Nations and other principles that were recognized through soft laws like the right to development and Friendly Relations Declaration, and (ii) Extraterritorial application of national legislation on third parties was per se illegal.
- 6.49 **The Delegate of People's Republic of China** extended their delegation's appreciation to the Secretariat for preparing such a comprehensive and professional report on the agenda

- item. Imposing unilateral sanctions against another state based on one's own national legislation, showed that the state considered its national legislation over international law. This not only violated core principles of the UN Charter such as sovereign equality, non-intervention and duty to cooperate but seriously undermined the authority of international law. It infringes on the right to development of the sanctioned state and was not in conformity with the attainment of the UN Millennium Development Goals. He emphasized that unilateral sanctions imposed against third state, including its government, organization and citizens, further violated international law, infringed on the right of the third state and would aggravate the negative impact on international relations.
- 6.50 The delegation held the view that every country had the right to choose its own political and social system and development model and no other country was entitled to intervene. However, international conflicts should be resolved peacefully through dialogue and cooperation and the delegation opposed any form of hegemony, power politics and any move to impose sanctions against other countries by abusing domestic legislations. He reiterated that countries need to follow the principle of peace, development and cooperation, conduct equal-footed and mutually beneficial interaction, seek common ground while shelving differences, properly resolve disputes and differences by peaceful means, uphold international fairness and justice and realize common development and progress.
- 6.51 **The Delegate of Islamic Republic of Iran** expressed their appreciation to the Secretariat of AALCO for preparing the useful and informative report on the agenda item. His delegation reiterated the critical importance of the agenda item as “extraterritorial application of national legislation”, especially those manifested by unilateral economic restrictions against some developing countries continues to unfold in various and new forms. That matter was more important since an alarming trend seemed to be emerging by certain powers to defy all international norms concerning the immunity of State and its properties in furtherance of their policy of pressurizing developing countries through economic embargoes. Such trend was consequential not only for the economic and overall human development of the countries but also disruptive of norms and principles of international law and international human rights law.
- 6.52 He said that extraterritorial imposition of national legislations on other States contravened international law by violating the fundamental principles enshrined in the Charter of the United Nations, particularly the principle of sovereign equality of States and non-intervention in domestic affairs of other States. It also defied the recognized principle of State immunity, especially in cases where the functional agencies of a sovereign State, like Central Banks, were subjected to sanctions. The States imposing the sanctions disregarded the very basic notion of State sovereignty by forcing other States to abide by the restrictive measures against a third party. That was tantamount to the presumption of a super sovereign power which has supremacy over all other sovereign States. Moreover, the very basic human rights were at stake; the ongoing unilateral economic sanctions were in fact developed only to bite the ordinary citizen by depriving them of their basic necessities which was a shameful hypocrisy that aimed to cover up the human costs of unilateral sanctions. Furthermore, imposition of domestic laws and regulations on other States with the aim of pressurizing a third party prejudiced the right to development.

- 6.53 The position of international law was quite clear with regard to unilateral sanctions and in that regard reference was made to the Declaration on Principle of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which, among others, urged all states to respect the principle of sovereign equality and territorial integrity as well as non-intervention in domestic affairs of other States. He said that the Declaration was invoked by the International Court of Justice in its judgments, including in the Nicaragua Case in 1986 and quoted one of the major provisions of the Declaration regarding confirmation of Article 2 paragraph 7 of the Charter of the UN that prohibits any form of intervention.
- 6.54 He underlined the annual resolutions adopted for the past 20 years by the General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo against Cuba". The General Assembly renewed, in its most recently adopted resolution its call for an end to the economic, commercial and financial embargo imposed by the United States against Cuba and urged all States that applied extraterritorial measures to repeal them at the earliest. His delegation believed that the most unjustifiable and deplorable form of sanctions was the imposition of unilateral embargo and extraterritorial application of domestic laws by one State against others that affected not only the population under sanction but also the interests of the third parties.
- 6.55 The delegate stated that Islamic Republic of Iran had been under unjustified and unjustifiable economic restrictions for the past 3 decades following the popular Islamic Revolution in 1979. Very recently the Islamic Republic of Iran came under a most unprecedented economic coercive measure by the United States by blocking of the property of Central Bank of Iran and imposing other restriction on it. Such unilateral act should be very alarming to all States, particularly for developing States in Asia and Africa, as it contravened all norms and principles of international law concerning the immunity of State and its properties as manifested also in the 2004 UN Convention on Jurisdictional Immunities and their Property. It was underlined therein, under Article 21 and the preamble of that Convention that the jurisdictional immunities of States and their properties including property of central bank or other monetary authority of the State are generally accepted as a principle of customary international law.
- 6.56 The delegate reiterated that Islamic Republic of Iran strongly rejected and remained opposed to the application of unilateral economic and trade measures by one State against another as well as to the extraterritorial application of national legislations on other sovereign States. The delegation opposed and condemned those legislative measures and urged other States to do likewise by refraining from recognizing and implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on other countries, threatening their sovereignty and independence, and their freedom of trade and investment and prevent them from exercising their sovereign right, by their own free will.
- 6.57 He appreciated AALCO for considering the agenda item at the annual sessions of AALCO from 1997, indicating the high importance the Member States of the Organization attached to the issue. He said that the politically narrow and ethically unfair and legally rejected approach defied all the norms and principles of international law and the Charter of the United Nations and signified a very alarming domineering policy which certain powers insist to dictate to the whole international community. The

delegation called on the Secretary-General to conduct a thorough study on the matter to discern different aspects of that unlawful action.

- 6.58 **The Delegate of Democratic People's Republic of Korea** observed that imposition of unilateral sanctions against third states by invoking domestic legislation of an individual state was a flagrant violation of the Charter of the United Nations and general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development. The international community including Asian and African countries was deeply concerned about the issue as it retarded the socio-economic development of the target state and impeded the establishment of an equitable, multilateral, non-discriminatory trading regime. He said that presently such illegal and inhumane move for unilateral sanctions was being spearheaded by the United States of America against anti-American independent countries.
- 6.59 The delegate said that his country together with Cuba, Iran, Syria and Myanmar had been subjected to the US sanctions for the longest period. That country had imposed sanctions against his country for many decades by applying tens of its domestic laws, including "Trading with the Enemy Act", "Export Administration Act", "Foreign Assistance Act", "Export and Import Bank Act", "Arms Export Control Act", "North Korea Nonproliferation Act", "North Korea Human Rights Act", "International Religious Freedom Act", "Trafficking Victims Protection Act" and many others, all of which were unilaterally fabricated in wanton violation of general principles of international law and the losses suffered in that regard during those years were beyond imagination.
- 6.60 It was stated that if the arbitrary act of imposing unilateral sanctions against third states by individual states like the US by invoking its domestic laws goes unpunished, it would be obvious that more and more countries, especially Asian and African countries were bound to fall victims of the unilateral sanctions. Besides that what could not be overlooked was that individual states like the US were trying to check the exercise of sovereign rights of the other states by abusing the position and role of the international organizations including the UN. The US infringed upon the sovereign rights of other states and imposed its demands upon other countries by pursuing double standards in interpretation and application of international law in an undisguised manner. The delegate cited the example when recently the US had taken an issue with the satellite launch for peaceful purposes by the delegate's country, naming it "a long-range missile launch" by wire-pulling the UN Security Council. The US also abused UN Security Council and the International Atomic Energy Agency to justify its moves to take an issue with the Iran's nuclear activities for peaceful purposes and to interfere in internal affairs of Syria.
- 6.61 In that regard, it was an urgent task for the progressive peoples all over the world, desiring for independence and peace, to establish international legal regime to criminalize and punish the act of extraterritorially applying the domestic laws, particularly imposing unilateral sanctions against third states and the act of abusing international law. He appreciated AALCO for considering deliberating upon the agenda item.
- 6.62 **The Delegate of Ghana** stated that the Charter of the United Nations called upon all States to promote friendly relations and cooperation and to respect international law, the sovereign equality of States, the self-determination of peoples and the peaceful settlement of disputes. Adherence to those principles would contribute to the elimination of tension

- and confrontation between States. He noted that under Article 41 of the United Nations Charter, economic sanctions had been one of the primary enforcement mechanisms of the united collective security machinery. Unfortunately, economic sanctions in national legislations had been applied much more often unilaterally as instruments of foreign policy by some states contrary to international law. The tentacles of such national legislation reached third parties who had economic relations with the target nations. The delegate said that it does not encourage extraterritorial application of national legislations and its ramification on third parties and in that regard Ghana had voted in favour of the draft resolution on the Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States against Cuba (documents A/66/L.4) on 25 October 2011 at the Sixty-Sixth General Assembly Plenary. He noted that by the text, the Assembly expressed concern at the continued application of the 1996 "Helm's-Burton Act" which extended the embargo's reach to countries trading with Cuba - and whose extra territorial effect impacted both state sovereignty and the legitimate interests of entities or persons under their jurisdiction. The text reiterated the call on states to refrain from applying such measures in line with their obligation under the United Nations Charter, urging those that had applied such laws to repeal and invalidate them. The Government of Ghana was of the view that United States and Cuba were two countries whose destinies were linked by history and geography and it should follow that the embargo and coercive measures should be replaced by dialogue and cooperation. Hence, it strongly believed that unilateralism was not the way to solve international problems no matter how appealing it might appear.
- 6.63 Ghana strongly believes in a better international community where all nations, big or small would work together to respect international law and obligations in the conduct of international relations. The delegate reminded members of AALCO of their collective determination captured in the preamble of the United Nations Charter to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained.
- 6.64 **The Delegate of Malaysia** appreciated AALCO secretariat for a well-researched document on the legal aspects of unilateral sanctions especially with regard to impermissibility of unilateral sanctions. The delegate said that Malaysia was of the view that continued application of the unilateral sanctions violated the principles of sovereign equality and in the governance of rule of law. Because the UNGA through its resolutions enshrined in Chapter VII of the Charter of the United Nations refer to impermissibility of unilateral sanctions. Such sanctions affected the right to trade as per the WTO trading system. In that regard, the innocent civilians were deprived of their right to development because there would be lack of economic stability. Collective security mechanism under Article 41 of the Charter of the United Nations does not discuss unilateral sanctions and the extraterritorial application of national legislation on the foreign financial institutions like Central Bank, imposed by the US was violative of the right to transact. In that regard, the delegate noted that US on 11 June 2012 gave out a determination of sanctions on Central bank of Malaysia for next 180 days.
- 6.65 Unilateral sanctions should be limited to peace and security only and under the UN system it was quite alarming that such extraterritorial applications of national legislations happen and are violative of international law, sovereign equality and principle of non-intervention. For example, sanctions on the petroleum industries would severely affect the developing state's citizen's well-being.

- 6.66 **The Delegate of Japan** expressed his delegation's appreciation to the AALCO Secretariat for preparing a very detailed study on the topic of Extraterritorial Application of National Legislation and Sanctions Imposed against third parties. The delegate said that Japan shared the concern of the AALCO member states that sometimes the unilateral sanctions imposed against third parties include extraterritorial application of domestic legislation that were not compatible with the established general rules of international law. Japan agreed that extraterritorial application of domestic legislation must be in conformity with the basic principles of international law such as respect for state sovereignty and non-intervention in the domestic affairs of another state. However, on the question whether or not a certain economic measures by states, including those which could involve extraterritorial application of domestic legislation, could be justified under international law must be dealt with on a case-by-case basis taking into account various facts and circumstances pertaining to the case concerned.
- 6.67 **The Delegate Republic of Korea** briefly mentioned about the DPRK case stating that following its nuclear tests and missile launches in 2006, 2009 and again this year, DPRK was surely under the mandatory sanctions by the several resolutions of the UN Security Council which had invoked the Chapter VII of the UN Charter. The delegate also said that whether the US imposes and was implementing unilateral sanctions against DPRK separately from relevant UN sanctions was not certain since US Government had lifted sanctions against DPRK some years ago after it removed DPRK from the list of states sponsoring terrorism. Further, the delegate said that in that case, it was incumbent upon DPRK to submit detailed information on the alleged unilateral sanctions by the US and for the Secretariat to do fact-finding based on that information. It was also emphasized that sanctions imposed by the UN Security Council under the Chapter VII were binding to all Member States of the UN in accordance with the UN Charter.

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

**“ADDITIONAL STATEMENT OF THE DELEGATION OF THE DPR
KOREA**

(Submitted to the President of the 51st Annual Session of the AALCO, the Secretary-General of AALCO and the Secretariat of AALCO)

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

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

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

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

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

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

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

Thank you Mr. President.

I would like to comment on the DPRK case briefly.

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

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

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

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

Thank you for your attention.”

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

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

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

- 7.5 The report prepared by the AALCO Secretariat contained in AALCO/51/ABUJA/2012/SD/S 1, briefly discussed the matters relating the work of ILC at its Sixty-Third Session. The agenda items dealt during the Sixty-Third session of the ILC were: Reservations to treaties, Responsibility of International Organizations, Effects of armed conflicts on treaties, Immunity of State officials from foreign criminal jurisdiction, Expulsion of aliens, Protection of persons in the event of disasters, the obligation to extradite or prosecute (*aut dedere aut judicare*), Treaties over time, and Most-Favoured-Nation clause.
- 7.6 The Secretary-General informed that the first part of the Sixty-Fourth session of the Commission was convened from 7 May to 1 June 2012 in UN European Headquarters in Geneva and the agenda item that was taken up during its first part was “Expulsion of Aliens” by the Special Rapporteur Mr. Maurice Kamto wherein he presented the Eighth Report on the topic which included (i) comments by Member States, (ii) European Union, (iii) specific comments on draft articles, and (iv) specific comments on several methodological issues. The text of the draft articles from 1 to 32 were provisionally adopted at the first reading by the drafting committee at the Sixty-Fourth session.
- 7.7 While giving a summary of the proceedings at the Sixty-Third session of the ILC held in 2011 as reported in the Secretariat document, the Secretary-General pointed out the following progress made.
- 7.8 On three important topics, namely, Reservations to Treaties, Responsibility of International Organizations, and Effects of Armed Conflict on Treaties, considerable work had been completed. On “*Reservation to Treaties*”, the Commission adopted the Guide to Practice on Reservations to Treaties which comprised an introduction, the text of the guidelines with commentaries thereto, as well as an annex on the reservations dialogue. On the topic “*Responsibility of International Organizations*”, the Commission adopted, on second reading, a set of 67 draft articles, together with Commentaries. With regard to the topic “*Effects of Armed Conflicts on Treaties*”, the Commission adopted, on second reading, a set of 18 draft articles and an annex (containing an indicative list of treaties the subject matter of which involved an implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries. On those three topics, the substantial progress made was appreciated. Further, in accordance with article 23 of the Statute of ILC, the adopted Draft Articles and Guidelines were recommended to the UN General Assembly to take note of the draft articles in a resolution and to annex them to the resolution. Further to consider, at a later stage, the elaboration of a convention on the basis of those draft articles.
- 7.9 On the topic “*Immunity of State Officials from Foreign Criminal Jurisdiction*”, the Secretary-General informed that the Commission considered the second and third reports of the Special Rapporteur. The second report reviewed and presented the substantive issues concerning and implicated by the scope of immunity of a State official from foreign criminal jurisdiction, while the third report addressed the procedural aspects, focusing, in particular on questions concerning the timing of consideration of immunity, its invocation and waiver. The debate revolved around, *inter alia*, issues relating to methodology, possible exceptions to immunity and questions of procedure. The Commission deliberated upon the addendum 2 to the sixth report and the seventh report of the Special Rapporteur on the topic “*Expulsion of Aliens*”. Addendum 2 to the sixth report completed the consideration of the expulsion proceedings (including the implementation of the expulsion decision, appeals against the expulsion decision, the

- determination of the State of destination and the protection of human rights in the transit State) and also considered the legal consequences of expulsion (notably the protection of the property rights and similar interests of aliens subject to expulsion, the question of the existence of a right of return in the case of unlawful expulsion, and the responsibility of the expelling State as a result of an unlawful expulsion, including the question of diplomatic protection). Following a debate in plenary, the Commission referred seven draft articles on these issues to the Drafting Committee, as well as a draft article on “Expulsion in connection with extradition” as revised by the Special Rapporteur during the sixty-second session held in 2010. The seventh report provided an account of recent developments in relation to the topic and also proposed a restructured summary of the draft articles.
- 7.10 The Secretary-General while discussing the topic “*Protection of Persons in the Event of Disasters*”, said that the Commission had before it the fourth report of the Special Rapporteur that dealt with the (i) responsibility of the affected State to seek assistance where its national response capacity is exceeded, (ii) duty of the affected State not to arbitrarily withhold its consent to external assistance, and (iii) right to offer assistance in the international community. Following a debate in plenary, the Commission decided to refer draft articles 10 to 12, as proposed by the Special Rapporteur, to the Drafting Committee. Concerning the topic “*The Obligation to Extradite or Prosecute (aut dedere aut judicare)*”, the Commission considered the fourth report of the Special Rapporteur addressing the question of sources of the obligation to extradite or prosecute, focusing on treaties and custom, and concerning which three draft articles were proposed.
- 7.11 On the topic “*Treaties over Time*”, the Commission reconstituted the Study Group on Treaties over time, which continued its work on the aspects of the topic relating to subsequent agreements and practice. The Study Group first completed its consideration of the introductory report by its Chairman on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction, by examining the section of the report which addressed the question of possible modifications of a treaty by subsequent agreements and practice as well as the relation of subsequent agreements and practice to formal amendment procedures. The Study Group then began its consideration of the second report by its Chairman on the jurisprudence under special regimes relating to subsequent agreements and practice, by focusing on certain conclusions contained therein. In the light of the discussions, the Chairman of the Study Group reformulated the text of nine preliminary conclusions relating to a number of issues such as reliance by adjudicatory bodies on the general rule of treaty interpretation, different approaches to treaty interpretation, and various aspects concerning subsequent agreements and practice as a means of treaty interpretation.
- 7.12 Regarding the topic “*The Most-favoured-nation clause*”, the Commission reconstituted the Study Group on the Most-Favoured-Nation clause. The Study Group held a wide-ranging discussion, on the basis of the working paper on the Interpretation and Application of MFN Clauses in Investment Agreements and a framework of questions prepared to provide an overview of issues that may need to be considered in the context of the overall work of the Study Group, while also taking into account other developments, including recent arbitral decisions. The Study Group also set out a programme of work for the future.
- 7.13 Pursuant to the mandate received by the Fiftieth Annual Session of AALCO held in Colombo, Sri Lanka, in 2011, an Inter-Sessional Meeting of Legal Experts to Discuss

- Matters relating to the ILC was held in April this year at AALCO Headquarters, New Delhi. The report of the Inter-Sessional Meeting had been annexed to the Secretariat report on the agenda item from page no. 62 to 106. The Lead Discussants for the Inter-Sessional Meeting were Dr. A. Rohan Perera, former Member of ILC from Sri Lanka and Prof. Shinya Murase, Member of the ILC from Japan. He said that it was an honour for him to deliver welcome remarks on behalf of AALCO and to give a detailed presentation on “Appraisal of the Present and Future work of the ILC”.
- 7.14 Dr. A. Rohan Perera, was the Lead Discussant on two important Agenda Items of the ILC; (i) Protection of Persons in the Event of Disasters; and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction. Prof. Shinya Murase, Member of the ILC from Japan made presentations on Proposed New Topics of the ILC which were on (i) Protection of the Atmosphere, (ii) The Fair and Equitable Treatment Standard in International Investment Law; and (iii) Other New Topics on the Long-Term programme of work of the ILC. He thanked Amb. Dr. Kriangsak Kittichaisaree, Member of ILC from Thailand, for his valuable comments on the topics discussed during the Inter-Sessional Meeting. 17 Member States of AALCO participated at the Meeting.
- 7.15 He then stated that few major suggestions that evolved out of the Legal Experts Meeting with regard to the proposed new topics were to focus on whether there was a need for the Commission to work on those proposed topics. Also, if there was any topic which a Member State considers as contemporary and relevant, it should put it forward during this meeting and the Secretariat would forward such comments to the Commission at its second part of the Sixty-fourth session which would begin next month.
- 7.16 The Vice-President then asked Dr. A. Rohan Perera, former member of ILC from Sri Lanka to make presentations on the two important topic of deliberation for the Special Meeting.
- 7.17 **Dr. A. Rohan Perera, former Member of the ILC from the Democratic Socialist Republic of Sri Lanka** presented a paper on the topic “Protection of Persons in the Event of Disasters”. The Panellist said that it was indeed a timely decision to discuss upon these agenda items of the ILC as these topics were entering a decisive phase. He said that in introducing the Fourth Report on the topic, “Protection of persons in the event of disasters”, the Special Rapporteur recalled that the broad concept of protection proposed since the First report, called for the recognition of “the tensions underlying the link between protection and the principle of respect for territorial sovereignty and the non-interference in the internal affairs of the affected State.” The “poles of tension” as referred to by the Special Rapporteur between sovereignty and protection, became manifest and sharply underlined the debate, on the cluster of Draft Articles 10, 11 and 12, both within the Commission and in the Sixth Committee, during the annual consideration of the ILC Report.
- 7.18 Draft articles 10 and 11 dealt with the “duties” of the affected State, while Draft Article 12 referred a “right” of third parties, including States, International Organizations or Non-Governmental Organizations to offer assistance in disaster situations.
- 7.19 Commenting on *Draft Article 10*, Dr. Rohan Perera mentioned that it addressed the particular situation in which a disaster exceeds a State’s national response capacity. The Article stipulates that in such circumstances, the affected State has the duty to seek assistance, from among others, States, the United Nations, other competent inter-

governmental organizations, and relevant non-governmental organizations. The Special Rapporteur explained that the Draft Article “affirms the central position of obligations owed by States towards persons within their borders”.

- 7.20 Dr. Rohan Perera said that, referring to the relationship between Draft Article 10 to Draft Articles 5 and 9 the Special Rapporteur pointed out that the duty expounded in Draft Article 10, was a specification of the content of Draft Article 5 and 9. It was also recalled that Draft Article 9 (1) stipulated that an affected State by virtue of its sovereignty had the duty to ensure the protection of persons and the provision of disaster relief and assistance on its territory. Draft Article 5 affirmed that the duty to cooperate was incumbent upon not only potentially assisting States, but also the affected State, where such cooperation was appropriate.
- 7.21 Accordingly, the Special Rapporteur considered that such cooperation was both appropriate and required to the extent that an affected State’s national capacity had exceeded. In those circumstances it was pointed out that seeking assistance was additionally an element of the fulfilment of an affected State’s primary responsibility under International Human Rights Instruments and Customary International law.
- 7.22 The cluster of Articles 10-12, given the underlying tensions between the principles of State sovereignty and protection, was the subject of sharp divergence of views among the members of the Commission. Some members were opposed to the idea that affected States are under or should be placed under a legal duty to seek external assistance in cases of disasters. Their opposition was premised on the basis that, as it currently stood, international law did not place any such binding duty upon affected States. Those supporting that view took up the position that the Draft Article should be re-formulated in exhortatory terms to the effect that an affected State **should** seek external assistance, in cases where a disaster affects its national response capacity rather than in mandatory terms that a States **shall** seek such assistance, as currently drafted.
- 7.23 On the other hand, those who supported the Draft Article as currently drafted, emphasized that recourse to international support may be a necessary element in the fulfilment of a State’s international obligations towards individuals, where an affected State considers its own resources inadequate to meet protection needs. They emphasized that rules of Human Rights were implicated in the context of a disaster, including the right to life, right to food, the right to health and medical services, the right to supply of water, adequate housing, clothing and sanitation and the right to be free from discrimination.
- 7.24 A middle ground that seemed to emerge during the debate pointed towards the notion of international cooperation in rendering external assistance in disaster situations, where a State’s national capacity had exceeded. The guiding principles attached to landmark GA resolution 46/182 had stipulated: “The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with International Law and National Laws.”
- 7.25 The notion of international cooperation and solidarity, in contrast to a “rights and duties” approach in seeking and providing assistance, appeared to point the way towards an ultimate consensus.

- 7.26 The current formulation of Draft Article 10 also proceeded on the basis of an affected State “seeking” assistance, rather than making a “request” for assistance carried an implication that the consent of an affected State was automatically granted, upon acceptance of that request by a Third State”. In contrast, it was pointed out that a duty to “seek assistance” implies a broader negotiated approach to the provision of international assistance. “The term ‘seek’ entailed the proactive initiation by an affected State, of a process through which agreement may be reached.”
- 7.27 The Draft Article as currently drafted, places a duty upon an affected State, to take positive steps, and to seek assistance to when a disaster exceeds its national response capacity.
- 7.28 The Commission recognized that the Government of an affected State would be in the best position to determine the severity of a disaster situation and the limits of its national response capacity. It was emphasized in that connection that such an assessment must be made in good faith. While re-iterating the importance of the Principle of Good Faith as recognized in the UN Charter and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States, the Special Rapporteur stated: “A good faith assessment of the severity of a disaster was an element of an affected State’s duty, by virtue of its sovereignty, to ensure the protection of persons and the provision of disaster relief and assistance on its territory”.
- 7.29 Another issue which gave rise to some concerns within the Commission was the reference to “States, the United Nations, other competent Intergovernmental Organization, and relevant Non-Governmental Organizations as appropriate”. The Special Rapporteur sought to allay such concerns by pointing to the use of the phrase, “as appropriate”, which the Special Rapporteur explained was adopted to emphasize the discretionary powers of an affected State, to choose from among States and various other entities involved, the assistance that was most appropriate to its specific needs. It was further clarified that the term “as appropriate”, also reflected the fact that the duty to seek assistance does not imply that a State was obliged to seek assistance from every source listed in Draft Article 10.
- 7.30 Notwithstanding these clarifications, however, concerns remained among some members on the desirability of treating on par, States, Inter-Governmental Organizations and Non-Governmental organizations, in a provision which sought to cast a legal duty on affected States to seek external assistance.
- 7.31 On *Draft Article 11*, dealing with the consent of an affected State to external assistance, also raised a number of issues which were the subject of intensive discussion within the Commission.
- 7.32 As a whole, the Draft Article created for affected States a “qualified consent regime” in the field of disaster relief operations. Paragraph (i) reflected the core principle that implementation of international relief assistance was contingent upon the consent of the affected State. Paragraph (ii), however, stipulates that consent to external assistance shall not be withheld arbitrarily. Paragraph (iii) places a duty on the affected State to make its decision regarding an offer of assistance known, wherever possible.

- 7.33 There was a broad degree of support for Paragraph (i), on the basis that the principles that the provision of external assistance requires the consent of the affected State, was fundamental to International Law. The consent requirement was highlighted in the Guiding Principles attached to the GA Resolution 46/182. The consent requirement was also viewed as being comported with the primary role of the affected State in the direction, control, coordination and supervision of disaster relief assistance in its territory, as envisaged in Draft Article 9.
- 7.34 However, the stipulation that an affected State's right to refuse an offer of assistance was not unlimited and the assertion in Article 11 (ii) that "consent shall not be withheld arbitrarily", was the subject of a sharp divergence of views. The Special Rapporteur sought to explain its rationale in the basis of the "dual nature of sovereignty as entailing both rights and obligations". However, there was some disagreement on that approach and those expressing such reservations also pointed out that the provision should not be drafted in mandatory terms using the term "shall", but rather in non-mandatory terms, such as to indicate that "consent to external assistance should not be withheld arbitrarily".
- 7.35 On the other hand, those supporting the Special Rapporteur's approach emphasized that the duty of an affected State to ensure protection and assistance to those within its territory, in the event of disasters was aimed at preserving the life and dignity of victims of disasters and guaranteeing the access of persons in need of humanitarian assistance.
- 7.36 The need to develop a criteria to determine the arbitrariness or otherwise of a decision to refuse the consent also engaged the attention of the Commission. The range of views expressed on that difficult question was reflected in the commentary to the Draft Article so as to provide some degree of clarity. It, states, *inter alia*, that the determination whether consent was withheld arbitrarily or otherwise, must be determined on a case by case basis. However, it was pointed out that as a general rule, several principles could be adduced:-
1. The withholding of consent to external assistance would not be arbitrary, where a State was capable of providing and willing to provide an adequate an effective response to a disaster, on the basis of its own resources;
 2. Withholding of consent to assistance from external sources was not arbitrary if, an affected State has accepted appropriate and sufficient assistance from elsewhere;
 3. Withholding of consent was not arbitrary, if the relevant offer was not extended in accordance with the present Draft Articles; Humanitarian assistance must take place in accordance with Principles of Humanity Neutrality and Impartiality and on the basis of non-discrimination.
- 7.37 Conversely, where an offer of assistance was made in accordance with the Draft Articles and no alternate sources of assistance were available there would be a strong inference that decision to withhold consent was arbitrary.
- 7.38 *Draft Article 12*, on a "Right to offer assistance" was also the subject of a sharply divided debate within the Commission. While introducing the Draft Article, the Special Rapporteur stated: "It served to acknowledge the legitimate interest of the international community to protect persons in the event of disasters."

- 7.39 The Special Rapporteur explained that the Draft Article 12 sought to reflect the general proposition that offers of assistance should not be viewed as interference in the internal affairs of the affected State, subject to the condition that the assistance offered did not affect the sovereignty of the affected State as well as its primary role in the direction, control, coordination and supervision of such relief and assistance.
- 7.40 However, some members were strongly of the view that the provision avoids a reference to 'legal rights' since such offers of assistance from the international community were typically extended as part of international co-operation and solidarity as opposed to the assertion of 'rights'. It was recalled in this context that in many instances, the mere expression of solidarity was equally important as offers of assistance. In that regard, reference was made to Article 2 (7) of the UN Charter, which in the view of those members limited the ability of the international community to offer assistance.
- 7.41 In terms of a contrary view however, the contemporary understanding of Article 2 (7) of the Charter allowed for limitations and exceptions, especially in the context of protection of Human Rights. It was also pointed out that Article 12 should not be interpreted to imply permission to interfere in the internal affairs of an affected State. It merely reflected a right to offer assistance, which the affected State may refuse.
- 7.42 Those opposed to a 'right' to offer assistance approach, also highlighted the particular problems that would arise where external assistance was offered by NGOs. Such an approach would imply that NGOs enjoyed same rights as a State. It was accordingly suggested that the provision merely indicate that, "third actors may offer assistance", thereby providing an authorization and not a right.
- 7.43 Given those concerns, Dr. Rohan Perera said that suggestions were also made on the need to clearly differentiate between assistance by non-affected States and Inter-Governmental Organizations and that provided by Non-Governmental Organizations, working with strictly humanitarian motives."
- 7.44 A further view that emerged was that the provision be recast as a positive duty to offer assistance, cast on the international community. However, the contrary view was also expressed that it might be going too far to recognize a specific legal obligation on States and Organizations, to provide assistance.
- 7.45 The middle ground which seemed to surface from these range of views was that the 'right' of an affected State to seek international assistance was complimented by the duty on third States and Organization to 'consider' such requests, and not necessarily a duty to accede to them. It was further emphasized that, the right to the international community to offer assistance could be combined with an encouragement to the international community to make such offers of assistance on the basis of the Principle of International Cooperation and Solidarity.
- 7.46 The Drafting Committee was unable to conclude consideration of Draft Article 12 due to lack of time. The discussion on these vital issues pertaining to the balancing of sovereignty and protection would therefore resume at the forthcoming session. It was important, therefore, that the Member States of Asia and Africa made their views known in a timely manner, in order to ensure an acceptable outcome.

7.47 Elaborating upon the 6th Committee Debate on this topic, Dr. Rohan Perera said that the cluster of Draft Articles 10-12, during the consideration of the ILC Report, reflected very much the range of diverse views, which characterized the discussion of these Articles in the Commission. It was also noteworthy, that on certain aspects there was a broad convergence of views across the geographical and political divide.

7.48 Thus, for instance, the United Kingdom, in expressing their position on the overall approach to the Draft Articles, emphasized that;

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

7.49 Commenting on the specific Draft Articles, the UK was of the view that the duty to seek assistance, set out in Draft Article 10, was ‘clearly progressive development’ and that the argument in the Commentary that such a duty could be spelled out from existing international obligations in the two Human Rights Covenants, “was questionable”. On the requirement in Draft Article 11 that consent shall not be arbitrarily withheld, the UK delegation expressed the view that “this represents progressive development rather than a reflection of the law as it stands.”

7.50 On the ‘right’ to offer assistance set out in Draft Article 12, the UK was of the view that, the idea is essentially superfluous in that, as a matter of sovereignty, “States could always offer whatever they want”. The interventions made by the delegations of Ireland and Austria were also in similar vein, and militated against a notion of either a duty to seek assistance or a right to provide assistance.

7.51 From the Asian region, similar sentiments were expressed by the delegations of Japan, Sri Lanka, Indonesia and Islamic Republic of Iran, stressing, *inter alia*, that it was the Government of an affected State that would be best placed to determine whether a disaster had exceeded its national response capacity. Japan in particular requested the Commission to deepen the discussion on the ‘rights and duties’ dimension and stressed the importance of international solidarity in the event of disasters.

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

7.52 Similarly, the delegation of Sri Lanka stated:

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

flexible operational framework that facilitates the providing of international disaster relief under a broad umbrella of international co-operation and solidarity.”

7.53 These statements encapsulate the growing support, both within the Commission as well as within the Sixth Committee, of the importance of an approach based on the Principle of International Cooperation and solidarity rather than a ‘rights and duties’ based approach.

7.54 On the question of treating NGOs on par with States and Intergovernmental Organizations in providing external assistance, several countries from the Asian region voiced concern. Thus the delegation for Islamic Republic of Iran, for instance stated:

“Certainly there is little doubt as to the obligation of the State affected by natural disasters to co-operate with other States and competent Inter-Governmental Organizations. Such an obligation to cooperate is however limited only to the subjects of International Law, excluding NGOs.”

7.55 A further dimension of the practical aspects of disaster relief assistance and the problems posed by what was referred to as “inappropriate assistance” was highlighted in the IFRC intervention during the Sixth Committee debate.

“There have been significant problems in some major disaster operations with the involvement of foreign actors that lack the requisite skills and ability to contribute to a well-co-ordinated, appropriate and a high quality response. As such, States can and should be selective about the foreign assistance they seek, and accept in the wake of natural disasters. They may wish to target requests to specific types of assistance or to particular actors in order to fill identified gaps in national capacity. This approach should also help to minimize the significant problems that inappropriate assistance can create.”

7.56 Dr. Rohan Perera highlighted that those words of caution of the leading International Agency, active in the field of disaster relief operations and which had made a distinct contribution to the development of practical Guiding Principles in rendering international disaster relief assistance, which had been taken on board by the Special Rapporteur, merits the close attention of Asian and African States, as the work on that challenging and complex topic resumes at the forthcoming session of the ILC.

7.57 **Dr. A. Rohan Perera, Former Member of ILC from Sri Lanka** who was the Lead Discussant on that topic explained the nuances of the Agenda Item. He discussed about the Second Report of the Special Rapporteur. The debate in the International Law Commission (ILC) on the topic of Immunity of State Officials from Foreign Criminal Jurisdiction centered around three principal issues: (i) general orientation of the topic; (ii) scope of immunity; and (iii) question whether or not there were exceptions to immunity with regard to grave crimes under international law.

7.58 Regarding the “**General Orientation of the Topic**” he said that the Special Rapporteur in his introduction to the Second Report emphasized the importance of looking at the actual state of affairs as a starting point for the Commission’s consideration of the topic and explained that it was from the perspective of the *lex lata* that he had proceeded to prepare his report. From that perspective the Special Rapporteur was of the view that

immunity of a state official from foreign criminal jurisdiction was the norm and any exception thereto would need to be proven.

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

are thought through with rigour and vigour that has informed the work to date” (UK Statement of 31/10/2011).

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

- (a) A very high degree of involvement of the State Officials in the conduct of foreign affairs on behalf of the State must be established in asserting immunity; and
 - (b) To consider in defining eligible categories, only those persons who exercise powers intrinsic to the State, thereby excluding the vast majority of State Officials whose work could be performed equally by the private sector as well or who did not have the instruments of State power at their disposal.
- 7.71 The rationale underlining the approach pursued by some members on that issue was that the effective conduct of a State's foreign relations were an integral factor in the preservation of its sovereignty. Together they constituted an integral whole, which should be considered as such, when establishing the criteria for granting jurisdictional immunities to different categories of State Officials.
- 7.72 A debate within the Commission indeed reflects the readiness of the ILC to adopt a flexible and pragmatic approach in an attempt to strike the requisite balance between the need to preserve the sovereign function of the States on the one hand and the need to avoid an overly broad expansion of jurisdictional immunities and thereby create a fertile terrain for impunity.
- 7.73 During the 6th Committee Debate on the ILC Report several delegations underscored the need to take into account in addressing the Scope of Immunity of State Officials, the current realities in the conduct of international relations and the fact that the nature of representations in international relations had undergone fundamental change. Consequently it was recognized that there was a need to examine possible "other categories of State Officials" beyond the "troika" who by virtue of their functions may be entitled to immunity 'rationae personae' (see Statement of Sri Lanka 1/11/2011).
- 7.74 In general, delegations who adverted to this aspect emphasized the need to reflect the reality of how foreign policy was conducted today amongst States involving high officials other than the Minister of Foreign Affairs. At the same time they underlined the need for caution in that regard and that any expansion of the list of high officials beyond the "troika" must be contingent on the specific functions entrusted to such high officials by the State (See statement of Singapore 2/11/2011).
- 7.75 On the **"Question of Exceptions to Immunity"** of a State Official from Foreign Criminal Jurisdiction, the Special Rapporteur observed that in the case of immunity "rationae personae" the predominant view seemed to be that such immunity was absolute and covered acts performed both in an official capacity or personal capacity and committed both while in office and prior thereto and that no exceptions thereto could be considered. In the opinion of the Special Rapporteur, the question of exceptions could only be pertinent with regard to immunity "ratione materiae" concerning acts performed in an official capacity, in the context of crimes under international law. At the same time, the Special Rapporteur acknowledged the widely held opinion that the issue of exceptions to immunity fell within the sphere of progressive development of international law. In his view however the issue raised serious concerns including in relation to politically motivated prosecutions, trials in absentia and evidentiary problems as a result of lack of cooperation of the State concerned. He cautioned the Commission against drafting provisions *de lege ferenda* and recommended that it should restrict itself to codifying existing law.

- 7.76 The question of possible exceptions to immunity gave rise to diverse views within the Commission. While some members agreed with the conclusions of the Special Rapporteur, some other members expressed the view that the Commission could not limit itself to the status quo and had to take into account the relevant trends that had an impact on the concept of immunity, in particular developments in human rights law and international criminal law. According to the view the assertion that immunity constituted the norm to which no exceptions existed was thus unsustainable. In that context it was pointed out that the question of how to situate the rule on immunity in the overall legal context was central to the debate.
- 7.77 Such line of argument sought to emphasize that a superior interest of the international community as a whole had evolved in relation to certain grave crimes under international law which resulted in an absence of immunity in such cases. It was therefore contended that instead of addressing that issue in terms of “rule” and “exception”, with immunity being the rule, it seemed more accurate to examine the issue from the perspective of responsibility of the State and its representatives in those limited situations - which shock the conscience of mankind - and consider whether any exceptions thereto in the form of immunity may exist (Para 121 to 124 Report of the ILC Commission 63rd Session).
- 7.78 The rationale for the exceptions to immunity was also sought to be explained on the basis that in the case of conflict between the rules of immunity and those established in international crimes, the latter being rules of *jus cogens*, had to prevail. That approach sought to examine the issue of immunity and exceptions from the perspective of a hierarchy of norms and sought to draw strength from the minority opinion of dissenting judges in the case of *Al-Adsani Vs. United Kingdom* in the European Court of Human Rights (ECHR) which stated:
- “Due to the interplay of ‘jus cogens’ rule on prohibition of torture and the rules on State immunity, the procedural bar on State immunity is automatically lifted because those rules, as they conflict with the hierarchically higher rule, do not produce any legal effect.”
- 7.79 However, the majority of the judges in the European Court held that the court was unable to discern in the international instruments, judicial authorities or other materials before it, any firm basis for concluding that as a matter of international law, the State no longer enjoyed immunity from civil suit in the courts of another state, where acts of torture were alleged.
- 7.80 The Special Rapporteur in his concluding remarks contextualized the issues by recalling that there were many truisms in international law including that the development of human rights had not resulted in the disappearance of sovereignty or the elimination of the principles of sovereign equality of States and non-interference in the internal affairs despite having a serious influence on their content. The Special Rapporteur pointed out that the central issue for consideration in the present topic was not so much the extent to which changes occurring in the world and in international law had an influence on sovereignty as a whole, but rather how more specifically there was an influence on the immunity of State officials, based on the sovereignty of a State; the essential question being how had the immunity of State officials in general and immunity from the national criminal jurisdiction of other States in particular, been affected.

- 7.81 The Special Rapporteur emphasized that to juxtapose immunity and combating impunity was incorrect. Combating impunity had a wider context involving a variety of interventions in international law including the establishment of international criminal jurisdiction. Moreover, it was pointed out that immunity from criminal jurisdiction and individual criminal responsibility, were separate concepts. Immunity and foreign criminal jurisdiction was the issue to be grappled with and not immunity and responsibility.
- 7.82 In response to the contention of the hierarchy of norms whereby *jus cogens* prevailed over immunities, the Special Rapporteur contended that *jus cogens* rules which prohibit or criminalize certain acts were substantive in nature and could not overturn a procedural rule such as the one concerning immunity.
- 7.83 The Special Rapporteur also pointed out that the question of international criminal jurisdiction was one that was to be separated and distinguished from foreign criminal jurisdiction. In his view the Rome Statute on the ICC was unlikely to be relevant in respect of foreign criminal jurisdiction (Para 187 to 189 Report of the ILC 63rd Session).
- 7.84 Dr. Rohan Perera then highlighted the debate in the 6th Committee which also mirrored the range of diverse views that were expressed in the Commission on possible exceptions to immunity. The need to strike an appropriate balance between several fundamental principles was emphasized by several delegations. For instance, it was pointed out that the topic revolves around two major values protected by international law, namely immunity of State officials and the obligation of avoiding impunity, and that to serve the interests of the International Community would require a balance being struck between State sovereignty, the rights of individuals and the need to avoid impunity for serious crimes under international law (Statement of Portugal).
- 7.85 In addressing the issue of possible exceptions to the immunity of State officials some delegations also underlined the need to bear in mind the fact that the risk of politically motivated criminal prosecutions before foreign courts could very well lead to serious frictions in inter-State relations. Hence, there was a clear need to strike a careful balance between the respective policy considerations involved, namely preserving the well established principle of immunity of State officials and that of addressing the issue of possible exceptions to this rule (Statement of Sri Lanka dated 1/11/2011 and also New Zealand dated 2/11/2011).
- 7.86 Some States also emphasized the fact that immunity of States was not a courtesy by one State to another, but rather an important principle of international law that was based on fundamental legal principles, namely sovereign equality resting on the maxim '*par in parem non habet imperium*'. It was thus contended that if the above fundamental legal principles were placed in a position where they may be superseded by other rules at any time, the very foundation of modern international relations would be seriously eroded and lead to disastrous consequences. (Statement of People's Republic of China 2/11/2011).
- 7.87 The distinction drawn by the Special Rapporteur between international criminal jurisdiction and assertion of jurisdiction by foreign courts also found support within the 6th Committee. Thus it was pointed out that the scope of immunity of State officials from criminal jurisdiction needs to be examined in different ways, depending on whether the proceedings concerned were taken by a national court or whether the alleged offence falls within the competence of an international court.

- 7.88 It was pointed out where the ICC was concerned the Rome Statute expressly set limits on the possibility of invoking immunities deriving from other sources of international law. However, this limitation on immunities does not apply where the competence of a national court was concerned. The latter involved situations where the principle of sovereign equality between States and the stability of international relations must be guaranteed. (Statement of Switzerland 31/10/2011).
- 7.89 The sharp divergence of views that have characterized the discussion of possible exceptions to immunity both within the Commission and in the 6th Committee is likely to dominate the Working Group to be established at the 64th Session of the ILC. The outcome was likely to be guided and determined by the availability of cogent evidence of State practice, judicial decisions and other material. That was a matter that required the highest priority of States of the Asian-African region.
- 7.90 Dr. Rohan Perera then cited the recent judgment of the International Court of Justice (ICJ) in the “**Jurisdictional Immunities of States case**” (**Germany and Italy - 3rd February 2012**). He said that the recent Judgment of the ICJ in the case of *Germany Vs. Italy*, although involving civil proceedings as distinct from criminal proceedings, nevertheless had clear implications for the ongoing work on the question of immunity of State officials from foreign criminal jurisdiction. The case arose out of proceedings before the Italian Courts against Germany in respect of what were termed as serious violations of the laws of armed conflict which amounted to crimes under international law committed during the Third Reich. The arguments made by Italy were based upon the proposition that international law does not accord immunity to a State or at least restrict its immunity where it has committed serious violations of the laws of armed conflict. The court made it clear that the actions of the German armed forces and other organs of the German Reich, which were the subject matter of proceedings before the Italian Courts, were serious violations of the laws of armed conflict. The question for determination before the court was whether that fact operated to deprive Germany of an entitlement to immunity.
- 7.91 On the question whether Customary International Law (CIL) had developed to a point where a State was not entitled to immunity in the case of serious violations of human rights law or the law of armed conflict, the court came to the conclusion that apart from the decisions of the Italian courts which were the subject of the present proceedings, there was almost no State practice which might be considered to support the proposition that a State was deprived of its entitlement to immunity in such case. The court pointed out that there was a substantial body of State practice from other countries which demonstrated the fact that CIL does not treat a State's entitlement to immunity as dependent upon the gravity of the act of which it was accused or the peremptory nature of the rule which it was alleged to have violated (Paras 81-83, 84 and 85 of the ICJ judgment).
- 7.92 In the course of the argument before the court, the question of the *jus cogens* limitations which figured prominently in the ILC discussion on immunity of State officials was also raised. The court having gone into the history of the negotiation of the 2004 U.N. Convention on Immunities of States and their property (2004) observed that during the debates in the 6th Committee, no State had suggested that a *jus cogens* limitation to immunity should be included in the draft convention. The court therefore concluded that that history indicated that at the time of adoption of the U.N. Convention in 2004, States did not consider that CIL limited immunity in the manner which was now being suggested by Italy.

- 7.93 Referring to the argument of hierarchy of norms, the court observed that the argument depended upon the existence of a conflict between a rule or rules of *jus cogens* and the rules of customary law which required one State to accord immunity to another. In the opinion of the court, however, no such conflict existed. Assuming for that purpose that the rules of the law of armed conflict which prohibit the murder of civilians in occupied territories, the deportation of civilian inhabitants to slave labour and the deportation of prisoners of war to slave labour, are rules of *jus cogens*, there was no conflict between these rules and the rules on State immunity. The two sets of rules address different matters on the rules of State immunity were procedural in character and were confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State. They do not bear upon the question whether or not the conduct in respect of which the proceedings were brought was lawful or unlawful.
- 7.94 The Separate Opinion of Judge Abdul Koroma, places the central issue before the Court in perspective, when he states;
- “The case before the Court however, is not about the legality of the conduct of Germany’s armed forces, during the Second World War, or Germany’s international responsibility for such conduct. The question in this case is limited to whether Germany is entitled to immunity before the Italian domestic courts, with respect to the conduct of its armed forces in the course of the conflict. The Court did not need to address the substantive matter of the legality of Germany’s conduct, to resolve the issue of sovereign immunity. Indeed the Court’s jurisdiction in this case is limited to addressing only the issue of jurisdictional immunity” (para 3).
- 7.95 Judge Bennouna, in his Separate Opinion, also elaborated on the dichotomy between immunity and responsibility, and emphasized on the fact that immunity before foreign courts did not mean complete exoneration from responsibility. In other words, the granting of immunity by these courts can in no sense mean that the State concerned is exonerated from responsibility. It merely defers consideration of that responsibility to other diplomatic and judicial bodies (para 8.).
- 7.96 That line of reasoning was consistent with the reasoning of the Special Rapporteur on the Immunity/responsibility dichotomy, wherein he stated that combating impunity had a wider context involving a variety of interventions in International Law, including the establishment of International Criminal Jurisdiction.
- 7.97 The above reasoning stands in stark contrast to the views of some of the dissenting judges, such as Judge Trindade whose dissenting opinion tends to blur the immunity/responsibility distinction, viz,”. The central principles at issue here were, in my perception, the principle of humanity and the principle of human dignity. State Immunity could not in his view be unduly placed above state responsibility for international crimes... The above reasoning falls into that unfortunate error of juxtaposing immunity/responsibility and combating impunity, which the Special Rapporteur cautioned against.
- 7.98 The conclusion reached by the majority Judges in the Immunity of States Case was supported by a series of Judgments of domestic Courts from different jurisdictions (such as UK, Canada, Poland, Slovenia, New Zealand and Greece) where the argument of *jus*

cogens displacing the law of State immunity had been rejected. In that respect the ICJ judgment in *Germany Vs. Italy* fully supported the majority view of the European Court in the *Al Adsani Case*. In reaching the conclusion that under Customary International Law as it presently stands, a State was not deprived of immunity by reason of the fact that it was accused of serious violations of international human rights law or the international law of armed conflict, the court sought to emphasize that it was addressing only the immunity of the State itself from the jurisdiction of the courts of other States and therefore that the question of whether and if so to what extent immunity might apply in criminal proceedings against an official of the State, was not an issue in the present case (Para 91 of the Judgment). It would be interesting to examine the impact of that statement in relation to *ratione materiae* immunity of State officials which were considered acts of the State.

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

“Immunity from jurisdiction is immunity not merely from being subjected to an adverse judgement but from being subjected to the trial process. It is therefore, necessarily preliminary in nature. Consequently a national court is required to determine whether or not a foreign state is entitled to immunity as a matter of international law, before it can hear the merits of the case brought before it and before the facts have been established. If immunity were to be dependent upon the State actually having committed a serious violation of international human

rights law or the law of armed conflict, then it would become necessary for the national court to hold an inquiry into the merits in order to determine whether it had jurisdiction. If on the other hand, the mere allegation that the State had committed such wrongful acts were to be sufficient to deprive the State of its entitlement to immunity, immunity could in effect be negated simply by skillful construction of the claim.” (para 82).

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

- 7.110 As regards the response within the Commission to the Special Rapporteur's Third Report was that the analysis contained in the report was convincing and logical. However, two aspects arising from the Third Report attracted particular comment within the Commission. These were:
- (a) question of substantiation of immunity; and
 - (b) implied waiver through subscribing to an international treaty
- 7.111 (a) Substantiation of Immunity
- 7.112 Dr. Rohan Perera said that at the Commission, commenting on the substantiation of immunity, in respect of immunity *rationae materiae*, several members adverted to the Special Rapporteur's observation that it was the prerogative of the State of the official to characterize the conduct of the official as being "official conduct of the State", and at the same time that the State exercising criminal jurisdiction did not have to "blindly accept" such a characterization and took the view that such a conclusion seemed "rather broad and unclear." These members stressed that it was necessary to find the balance. Each case had to be assessed on its merits. It was pointed out that the use of terms such as "prerogative" and suggesting that there was a "presumption" arising out of the mere appointment of an official, may be going too far.
- 7.113 In that regard reference was also made to the ICJ Advisory opinion on the *Immunity of Special Rapporteur of the Commission on Human Rights case*, which was used as confirmation of the general proposition that if the official capacity of the official and the official nature of his acts was manifest in a specific situation, the burden to demonstrate that he was acting in an official capacity "was significantly alleviated".
- 7.114 (b) Implied Waiver Through Subscribing To An International Treaty
- 7.115 Dr. Rohan Perera said that the Special Rapporteur's assertion that a State's consent to be bound by an international agreement establishing universal jurisdiction for grave international crimes, does not imply consent to the exercise of international criminal jurisdiction in respect of its officials and therefore did not constitute an implied waiver of immunity, also generated some discussion within the Commission. While some members supported the view that there was a general reluctance to accept an implied waiver, based on the acceptance of an agreement unless there was a manifest expression of a clear intent to waive immunity, some others took a contrary view.
- 7.116 According to the latter view the conclusion of an agreement establishing universal jurisdiction, with *aut dedere aut judicare* provisions and establishing criminal jurisdiction for grave international crimes, without any distinction based on official capacity of the perpetrators, pointed to a construction that the State parties intended to waive immunity. However, it was also pointed out by other members, that unless there was express provision on waiver of immunity, such a broad inference, based on mere silence in the treaty should not be lightly drawn on implied waiver.
- 7.117 The 6th Committee debate on the topic "Immunity of State Officials" concentrated on the Second Report of the Special Rapporteur and substantive issues contained therein such as the general orientation of the topic, scope of immunity and possible exceptions for grave crimes. The lack of attention to the procedural issues raised in the Third Report which was less contentious in nature, was perhaps for the reason, (which was also apparent in

- the debate within the Commission), that it would be more proper to consider such procedural issues after the Commission had reached definitive conclusions with regard to the key substantive issues in the Second Report - these constituted the basic issues that needed to be resolved bearing on the general direction of the topic as a whole.
- 7.118 Dr. Rohan Perera said nevertheless, as the work of the ILC on that topic resumes at the 64th Session, the issues raised in the Third Report must also engage the close attention of the Asian-African States.
- 7.119 The Vice-President thanked Dr. Rohan Perera for his presentations and invited Prof. Djamchid Momtaz, former member of the ILC from Islamic Republic of Iran to make his comments on those two topics.
- 7.120 **Prof. Djamchid Momtaz, former member of the ILC from Islamic Republic of Iran** thanked the Secretary-General for asking him to make his observations on those two important topics of ILC. He said that he regretted not having any sitting member of ILC representing at the Fifty-First Session of AALCO which would have given more insight into first part of the Sixty-fourth session of the ILC. He recalled that as referred in the Statutes of AALCO, progressive development and codification of international law were very significant. In that regard, it was essential that Member States of AALCO had to respond effectively to the ILC's queries as and when raised by the Special Rapporteur. He gave an example with regard to the topic of obligation to extradite or prosecute (*aut dedere aut judicare*), wherein one important question raised by the Special Rapporteur was "if the practice of State regarding the question of obligation to extradite or prosecute was based on treaty obligation or customary international law".
- 7.121 He raised two important issues. Firstly, on "Protection of Persons in the Event of Disasters" he said that one could not question the real nature of sovereignty of States which has rights and obligations. It was without doubt that States had absolute sovereignty; however the question remained as to whether it was not the right to offer assistance but does the States has the duty to offer assistance (not the affected states). The scope of the obligation imposed in the territory where disaster had taken was restrictive. Such an obligation was, however, limited only to the subjects of international law, excluding non-governmental organizations.
- 7.122 On immunity of State officials from foreign criminal jurisdiction, there was a need to make important distinction between *lex lata* and *lex ferenda*. Also, it was required to codify the existing customary practice of States in use. The dispute between Germany and Italy in the ICJ, it was insisted that decision on immunity of States before national tribunals referred only to acts committed by armed forces of a state which was outside its territorial jurisdiction. The decision of the court of all actions imperium of States and does not make distinction between armed forces. That decision of the ICJ insisted on the jurisdictional immunity of state before national tribunals.
- 7.123 In the ensuing deliberations the delegations from **People's Republic of China, Indonesia, Japan, Islamic Republic of Iran, Malaysia, Republic of Korea, Kingdom of Saudi Arabia, State of Kuwait, and India** made their statements.

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

- 8.1 A Half-Day Special Meeting on “**Law of the Sea - Responses to Piracy: International Legal Challenges**” in conjunction with the Fifty-First Annual Session of AALCO was jointly organized by the Government of the Federal Republic of Nigeria and the AALCO. The meeting deliberated upon a wide range of issues pertaining to piracy, its root causes, its impacts on the development of States, the response of the international community and the avenues for regional and international cooperation in the fight against piracy.
- 8.2 **Dr. Xu Jie, Deputy Secretary-General of AALCO** made the introductory remarks. While drawing attention to the 30th Anniversary of the UN Convention on the Law of the Sea (UNCLOS, 1982) that is being celebrated this year, he highlighted the contribution of AALCO towards the creation of the international law of the sea as embodied in UNCLOS 1982. In his view, the contribution of AALCO consisted of the following three things;
- Providing data on economic, oceanographic, mineralogical, and engineering aspects of the various uses and resources of the sea;
 - Informing Member States of the developments in international negotiations on a continual basis; and
 - Most importantly, helping the developing nations to forge a united position on the diverse facets of law-making diplomacy.
- 8.3 In this regard, he also pointed out that the new concepts such as the Exclusive Economic Zone, which are an integral part of UNCLOS, was born in the cradle of AALCO during its deliberations held on this issue in the 1970's. He added that once the Fifty-First Annual Session adopted a Resolution commemorating the 30th Anniversary of the UNCLOS, the same would officially be sent to the UN General Assembly which is planning to adopt a Resolution on the 30th Anniversary of UNCLOS. This Resolution, which would make an explicit reference to the contribution of AALCO to the UNCLOS in it, would provide an opportunity for the General Assembly to officially recognize AALCO's contributions to the creation of UNCLOS, he opined.
- 8.4 Drawing attention to the international law of maritime piracy as embodied in UNCLOS, he stated that the definition of piracy contained in it had four components: (1) an act of violence, detention or theft; (2) on the high seas ; (3) committed for private ends; and, (4) by one private vessel against another vessel. This definition reflected customary international law, and hence, applied to all the States irrespective of treaty membership, he added. Pointing out the flaws obtaining in the UNCLOS law, he noted that though UNCLOS confirmed the duty of all States to cooperate to *suppress* piracy, made the actual *prosecution* of pirates discretionary and that it included no express provisions on transferring suspects to other jurisdictions, nor any requirement that States have adequate national laws for prosecuting pirates, he explained.
- 8.5 Elaborating the possible solutions to the menace of piracy, he remarked that there are three main areas that needed to be strengthened substantively in the fight against piracy. First, States should, among other measures, consider enacting adequate national legislation to criminalize all acts of piracy and armed robbery at sea as well as providing for effective and modern procedural laws that are indispensable for the suppression of piracy. Second, at the international level, States should try to reinforce the international

- legal framework by removing any flaws that are found in it. They should also work towards strengthening international cooperation so that the numerous complexities involved in different national systems could be overcome. Thirdly, the root causes of piracy such as political instability, lack of economic development needed to be addressed adequately, he clarified.
- 8.6 The Vice-President then invited the Panellists to make their presentations on their respective topics.
- 8.7 The first presentation was made by **Judge Albert J. Hoffmann, Vice-President of the International Tribunal for the Law of the Sea (ITLOS)** who at the outset recalled the important contributions that AALCO had made, first, in the negotiations leading up to the adoption of UNCLOS 1982 and thereafter in the setting up of institutional arrangements envisaged in the Convention as well as promoting the Convention amongst its Member States towards achieving universal acceptance and participation. He held the view that it was therefore fitting that we paid tribute to AALCO and its Member States this year on the occasion of the 30th Anniversary of the adoption of UNCLOS.
- 8.8 While noting that though the problem of maritime piracy was a centuries - old practice with its heydays in the seventeenth and eighteenth centuries, there has been resurgence in the activities of pirates in recent years. According to the figures published by the International Maritime Organization (IMO) and the International Maritime Bureau (IMB) the number of acts of piracy and armed robbery at sea has reached alarming levels not only seriously affecting international trade and maritime navigation but also resulting in loss of life and livelihood of seafarers, he added. He held the view that from these statistics it could be understood that many attacks occur in areas under national jurisdiction viz. near coasts (territorial waters) in straits and even in ports, outer harbour works and at the quayside (what is known as internal waters). When such attacks are carried out in these areas they are subject to the jurisdiction of the coastal State and no other State would be able to exercise jurisdiction even if the latter's ship or nationals are involved. State jurisdiction over ships, whether in terms of policing or enforcement or in terms of prosecution does not as a rule apply to the territorial waters of another state except as provided for in article 27 of UNCLOS, he clarified. Furthermore, he added that these acts or attacks are not regarded as 'piracy' under International Law and they are classified as "armed robbery at sea", a crime over which only the coastal State has jurisdiction and the right to prosecute. Such acts also did not fit the definition of piracy and could therefore not be considered a crime under international law over which any state may exercise jurisdiction (known as universal jurisdiction), he reasoned.
- 8.9 In this regard, he pointed out that universal jurisdiction applied only in the case of crimes under customary international law, in respect of which all states have the right to prosecute. Such crimes are limited to piracy, slave trading, war crimes, crimes against humanity, genocide, and torture. There are many international crimes that have been created by multilateral treaties, which confer wide jurisdictional powers upon States parties. Piracy is therefore recognized as an international law crime and subject to universal jurisdiction, he observed. Although already established as crime under customary international law, the first comprehensive definition of piracy was codified in the 1958 Geneva Convention on the High Seas (article 14 to 21) and later adopted without amendment in the UNCLOS (articles 100 to 107) which might now be regarded as representing the current law of piracy both as conventional and general international law, he clarified.

- 8.10 In his view, the existing rules for the suppression of piracy have proven to be inadequate to respond to modern-day attacks on shipping and threats to maritime navigation and security. Elaborating this, he pointed out that one of the major deficiencies is that the definition of piracy is too narrow in its scope and lacked clarity and that according to Article 101 of UNCLOS, only illegal acts of violence and detention, or acts of depredation, committed "for private ends" counted as piracy. Another restriction was that the act of piracy must be committed by the crew or passengers of a private ship against another ship (the so called "two ships" requirement). The seizure of a ship by its crew or passengers is excluded from the definition of piracy. This means if a ship is taken over by its crew or passengers that results in violence or killing of those on board or the depredation of cargo and property, a foreign State would lack jurisdiction to intervene since such attacks do not constitute acts of piracy according to the definition and the matter would have to be dealt with under the jurisdiction of the flag state, he explained further.
- 8.11 Drawing attention to the third limitation, he observed that, only acts committed on the High Seas might qualify as piracy thereby limiting piracy to the High Seas enabled a State to exercise jurisdiction over pirates without interfering in the sovereignty of any other state. Although Article 101 of UNCLOS refers to the High Seas only, it also included the Exclusive Economic Zone (EEZ) through the application of Article 58 of the Convention. The EEZ also encompasses the contiguous zone by reason of the spatial extend of the zone as defined in article 55, he clarified.
- 8.12 This narrow definition of piracy and its requirements as outlined above in all its complications, in his view, have led to the creation of new rules by international agreements to specifically deal with these situations. He was of the view that the inadequacies of the piracy regime had been clearly demonstrated in instances of hijacking at sea where no other ship was involved and the motive of the attack was for political purposes thus not meeting the 'two ship' and 'for private ends' requirements in the definition of piracy. He gave two examples to substantiate his case. In his view, it was only in response to *Achille Lauro* incident of 1985 that the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA) Convention was adopted. As a second example, he stated that it was only in direct response to the September 11, 2001 terrorist attacks when aircrafts were used as weapons, that the 2005 Protocol to the SUA Convention was adopted with the objective of expanding the scope of the Convention and to define more broadly the offences covered therein.
- 8.13 However he went on to add that though the SUA Convention and the 2005 Protocol filled the gaps left by the narrow definition of piracy occurring in UNCLOS, he was of the opinion that the SUA Convention and its Protocols are only binding between those States that are party to these legal instruments and their provisions therefore have no general application. Furthermore, the SUA Convention and Protocol also provided limited sanction against parties who failed to fulfil their obligations and who declined to act against alleged offenders by neither extraditing nor prosecuting them.
- 8.14 Drawing attention to another important gap left by UNCLOS, he pointed out that UNCLOS does not require that States enact domestic anti-piracy laws, nor does it provide model laws that States can use should they wish to enact legislation for combating piracy. In his view, what this meant was that relatively few states have anti-

- piracy laws in place and where such laws existed there appears to be a lack of harmonization between these laws. He was of the view that since UNCLOS gave so much of discretion to States to enact domestic legislation; this created a lack of uniformity in the laws and their application in various jurisdictions.
- 8.15 As regards the need to have international and regional cooperation in the fight against piracy, he stated that it is essential for states, organizations and enforcement agencies to work together and to coordinate their efforts towards achieving their goals and that cooperation between States organizations and enforcement agencies were crucial to resolving piracy problems. This was more so in the areas of information-sharing, enforcement crime investigation, prosecution and punishment, he added. In this regard, he also made reference to Article 100 of the UNCLOS under which States Parties are under an obligation to cooperate to the fullest possible extent in the repression of piracy on the high seas.
- 8.16 Notwithstanding all the impediments and shortcomings found in the piracy regime, serious efforts have been made by a number of institutions and bodies to combat piracy. The United Nations and the International Maritime Organization (IMO) are among the organizations active in this endeavour, he pointed out. Among other bodies/institutions that are engaged in combatting piracy, he made reference to the Contact Group on Piracy off the Coast of Somalia; the United Nations Office on Drugs and Crime (UNODC); the IMO; the International Maritime Bureau of the International Chamber of Commerce; the Djibouti Code of Conduct and others.
- 8.17 As regards the role that the United Nations Security Council has been playing, he stated that it has adopted a number of resolutions to tackle piracy and to ensure an effective response by the international community towards ensuring maritime safety and security. While making a specific reference to the UNSC Resolution 1918 adopted in 2010, he pointed out that it had requested the UN Secretary General to prepare a report on possible options to further the aim of prosecuting and imprisoning persons responsible for piracy and armed robbery at sea off the coast of Somalia including in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements. Though this Report proposed a number of options including the enhancement of UN assistance to States in the region, establishment of a special chamber, establishment of a Somali Court, establishment of a Regional Tribunal, establishment of an international tribunal and the establishment of an international tribunal by a Security Council Resolution under Chapter VII, he pointed out that except for the last option, all the other options only relate to the problem of piracy occurring in the coast of Somalia and did not take into account that piracy does occur in other regions such as West Africa, South and Southeast Asia and the Caribbean.
- 8.18 While dwelling on the possible solutions that could be found to combat piracy, he made reference to a number of short-term measures that needed to be taken. This included, regional cooperation, enactment of domestic legislation and criminalizing acts of piracy, armed robbery and related crimes at sea, an effective criminal justice system and as regards Somalia, real and meaningful efforts have to be taken towards state-building and reconstruction.
- 8.19 **Ms. Mariam Sissoko**, the Country Representative of the United Nations Office on Drugs and Crimes (UNODC) made the next presentation that focussed on the role of her

- Organization in combating piracy. She stated that the mandates of UNODC are embodied in several Conventions, particularly, the three international drug control conventions (1961, 1971 and 1988); the UN Convention against Corruption; the UN Convention against transnational Organized Crime and the UN Global Counter-Terrorism strategy. Several Security Council resolutions also provide a basis for its interventions, she added.
- 8.20 While noting that acts of piracy continue to be a serious issue of concern in East Africa, she pointed out that pirates might often be linked to other forms of organized crime and that a parallel economy has been created, leading to a growing dependency of coastal communities on funds obtained from piracy. Drawing attention to the role of UN Security Council in the fight against piracy, she stated that the UNSC Resolution 1816 of 2008 provided a key international response to piracy off the coast of Somalia and allowed foreign ships to take action within the territorial waters of Somalia to repress piracy and armed robbery against ships in the same way that international law did in respect of high seas, she added. While drawing attention to the Contact Group on Piracy off the Coast of Somalia, which was established pursuant to Resolution 1851 of the UNSC to suppress piracy off the coast of Somalia, she stated that his Organization is an active participant in the contact group and that successive SC Resolutions on the issue acknowledged the role of UNODC in providing technical assistance to States fighting piracy. This specifically pertained to the development of the necessary legal frameworks and judicial and law enforcement capacities that would enable States to prosecute and imprison pirates, she added. Through its Counter-Piracy programme launched in 2009, UNODC provided substantial support to Countries of the region in their efforts to bring suspected pirates captured off the coast of Somalia to justice, she added. UNODC also has started implementing the Piracy Prisoner Transfer Programme that was endorsed by the UNSC in its Resolution 2012 adopted in 2011.
- 8.21 Drawing attention to the problem of piracy in the West African Coast region, she made a reference to the 2010 Annual report of the International Maritime organization (IMO) which had listed the West African Coast among the top six piracy hotspots in the world. On the need for cooperation in tackling the problem of piracy, she observed that a Regional Summit of Gulf of Guinea Heads of States called for by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), and the Gulf of Guinea Commission should be convened in 2012 with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea.
- 8.22 As regards the potential role that UNODC could play in this regard, she stated that his Organization stood ready to assist the countries of the Gulf of Guinea both at the national and regional level. The Organization would also be ready to assist other countries upon their request, to develop maritime security strategies and enhance national legal frameworks.
- 8.23 **Commodore Austin Owhkhor-Chuku of the Federal Republic of Nigeria**, who made the next presentation, discussed a number of issues on the theme: ‘Piracy within the West African Coast of the Gulf of Guinea’. At the outset he pointed out that the aim of his presentation was to examine acts of piracy within the Gulf of Guinea. Towards this end, he had divided his presentation into four areas.
- 8.24 While explaining the first part of his presentation which was on the ‘Location and Strategic Importance of the Gulf of Guinea’, he mentioned that, strategically speaking,

- the Gulf has both global and regional importance particularly as a major trade and shipping route linking the North and South Atlantic in one hand and to some extent, the continents of South America and Africa (East to West Coasts respectively). Furthermore, in his view the Gulf provided an ample sea area for military exercises, researches and rich ecosystems and that the region has come to be regarded as one of the world's top oil and gas exploration hotspots, he added.
- 8.25 While noting that the full potentials of this great region could not be fully achieved due to the pervasive criminality by pirates operating in this area, he observed that to partly solve the problems of the region, the Gulf of Guinea Commission had been established on 3 July 2011 whose membership was limited to sovereign states bordering the Gulf of Guinea. These included: Nigeria, Cameroon, Equatorial Guinea, Gabon, Republic of Congo, Democratic Republic of Congo, Sao Tome and Principe and Angola. In his view, the Commission would: create mutual confidence and trust among members; Create an atmosphere of mutually beneficial economic activities pursued peacefully by their citizens; Harmonise the exploration of national resources (fishing, oil and gas) in overlapping areas of Exclusive Economic Zones; Provide framework for monitoring and controlling environmental degradation; Articulate and coordinate common positions on issues of interest to enhance peace and stability in the region.
- 8.26 As regards the second part of his presentation which was on 'Piracy within the Gulf of Guinea', he stated that piracy in the Gulf of Guinea affected a number of countries in West Africa and was fast becoming an issue of international concern. While trying to substantiate this, he referred to the Report of the UN International Maritime Organization and stated that the year 2010 witnessed forty five incidents and 2011 had witnessed sixty four incidents.
- 8.27 While referring to the concern expressed by the international community over the rising spate of piracy attacks in the Gulf of Guinea, he pointed out that in November 2011, the UN Secretary General Ban Ki-Moon had assembled a team to examine the situation of piracy in the region. As a result, recommendation was made to convene a regional summit to form a united front by affected African countries to tackle piracy he added. He held the view that the increasing incidents of piracy in the Gulf had triggered the Nigerian President Dr. Goodluck Jonathan and his Beninois counterpart, Thomas Boni Yani to launch joint naval operations.
- 8.28 On the third part of his presentation that was on 'Other Atrocities Committed in the Gulf', he noted that apart from piracy, a number of other atrocities also are committed in the region that included; Illegal oil bunkering, Hostage-taking, Drug trafficking, Human trafficking, Terrorism and militancy, Poaching, Smuggling in contrabands, Gun running and environmental degradation. In this regard, he also stated that the most unfortunate part in this episode was the encouragement and/or sponsorship that some unscrupulous Western and Asian business piracy and militancy within the region extend to boost their stakes in the "Monkey Business" in oil and other issues. Hence, tackling piracy and other atrocities committed within the region would require the concerted effort and assistance of the UN, US and EU, acting sincerely, faithfully and committedly, he added.
- 8.29 As regards the way forward that formed the last part of his presentation, he had a number of recommendations to offer. These included, a comprehensive and united action by the states within the region against pirates, terrorists, militants and their sponsors or patrons; the establishment of a Maritime Development Bank which would ensure the availability

of capital to undertake innovative research programmes, technology and logistics acquisition; Development of maritime awareness curriculum in schools, employment generation strategy by the respective regional governments and others.

- 8.30 **H.E. Amb. Y. Ishigaki, the Leader of Delegation of Japan** at the outset stated that piracy has in recent times, had re-emerged as one of major issues facing the world and that despite the efforts of the international community to address this issue, it remained to be a real and grave threat to the safe navigation of ships. He said that Japan's economy to a great extent depended on import of energy resources and raw materials and export of manufactured goods, all of which hinged on security of sea lanes. For this reason, for many years, Japan had been tackling with the question of piracy in Malacca Strait in cooperation with the countries of Southeast Asia and upon the surge of piracy along the coast off Somalia; Japan had been actively participating in the international efforts to combat piracy, he stated.
- 8.31 Amb. Ishigaki's presentation was divided into the following four parts: (i) a brief overview of the current situations of piracy, (ii) the international legal regime regarding piracy as well as some major international and regional frameworks aimed at coordinating the work of the international community in addressing the issue of piracy, (iii) the challenges, both legal and practical, and identify the major issues that need to be addressed in order to ensure effective anti-piracy responses of the international community and (iv) Japan's anti-piracy efforts and experiences.
- 8.32 While giving an overview of the current situation of piracy, he mentioned that according to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), in 2011, there were 439 incidents of piracy and armed robbery at sea worldwide, down by 1% from 2010. Geographically, of these, 237 incidents occurred in the Gulf of Aden and surrounding areas off the coast of Somalia, which was about 54% of the incidents worldwide.
- 8.33 In comparison, there were 80 incidents in South East Asia, including the Straits of Malacca and Singapore, which was about 18% of those, occurred worldwide. As for the statistics in 2012, according to the IMB, there had been 157 attacks and 18 hijacks worldwide as of 13 June 2012. 62 attacks and 12 hijacks occurred in the waters off the coast of Somalia, involving 219 hostages.
- 8.34 He said that as the special meeting on this subject was taking place in Africa, and given the overwhelming number of incidents occurring in waters off the coast of Somalia, in his presentation he focused on piracy in this region.
- 8.35 In the second part of his presentation Amb. Iskgaki outlined the international anti-piracy laws and the efforts by the international community. Drawing attention to the definition of piracy contained in UNCLOS, he said that this definition contained three important conditions regarding the legality of the acts of violence. This included; committed for *private ends*; committed by the crew or the passengers of a *private ship* or a *private aircraft*; and directed on the high seas, *against another ship or aircraft*, or against persons or property on board such ship or aircraft. On the issue of universal jurisdiction, he pointed out that Article 105 of the UNCLOS provided for universal jurisdiction in that, it stipulated that every State may seize a pirate ship or aircraft and arrest the persons and seize the property on board. It further stipulated that the courts of the State which

seized pirates may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, he added.

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

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

this end Japan was planning to take-up the issue of piracy as one of the agenda items for TICAD V to be held next year in June, he added.

- 8.46 **Mr. Mathew Egbadon, Secretary/Legal Adviser at the Nigerian Maritime Administration & Safety Agency (NMTSA), Federal Republic of Nigeria** spoke on behalf of its Director General Mr. Zikade Patrick Akpobolokemi. His presentation focussed on the topic, 'Piracy in the West African Coast'. He stated that maritime piracy, which has emerged today as a major threat to shipping and related activities globally, assumed renewed global focus during the period 2008 to 2009 since this period witnessed a surge in Piracy that had not been seen in generations, with the rumblings in the Horn of Africa. Piracy and Armed robbery at Sea has threatened vital sea lanes of communication, disrupted commerce, encouraged political aggression and insurgency and in the process constricted socio-economic development. He said that those worrisome consequences had led to the current global efforts aimed at assuaging the threats posed by the menace to the barest minimum, he added.
- 8.47 While giving a brief overview on the problem of piracy in the West African sub-region, he noted that the activism in the definition of the concept particularly in the context of incidents in West Africa. Maritime zones would be considered and discussed in the report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea with the attendant recommendations in marching a way forward to bid to rid the West African region of those "enemies of the Maritime domain".
- 8.48 He stated that Article 101 of UNCLOS 1982 defined piracy on the High Seas. In his view, there were essentially five maritime zones in International law that are relevant to our discourse which included; Internal waters (including the ports); The territorial seas; The Archipelagic waters, The contiguous zones; The Exclusive Economic Zone; and The High Seas. He mentioned that the characteristics of each maritime zone and possible maritime offences, in internal waters, was the narrow belt of water running along the coast, lying landward of the baselines from which the breadth of the territorial sea was measured. The Coastal States exercised full sovereignty over that area and was regarded in International law, as equivalent to land. The Territorial seas was also an area where the coastal state exercises sovereignty, but subject however, to the right of innocent passage of foreign ships, he added. He was of the view that in archipelagic waters, the coastal state had sovereignty subject to the right of innocent passage of foreign ships and that the Exclusive Economic Zone was a product of compromise by those who negotiated the 1982 UNCLOS treaty. The EEZ was the body of waters beyond the territorial sea, up to a maximum of 200 nautical miles from the baselines from which the breadth of the territorial sea was measured. The High Seas were those parts of the seas that were not included in the EEZ, in the territorial sea or internal waters of a state, or in archipelagic waters of an archipelagic state, he clarified.
- 8.49 With regard to "Piracy in West Africa (Gulf of Guinea)", he reiterated that piracy was an age-old scourge and the incidents had risen significantly and have become diverse in form in the West African Region since 2010. In his view, this has made the region the second most acute Piracy prone region on the African continent and among the top six piracy hotspots in the world. He also explained this in terms of numbers by pointing out the fact that the IMO had confirmed that 58 attacks had been reported in the region during the first ten months of 2011 as opposed to 45 in 2010. Twenty one of the reported attacks in 2011 occurred off the coast of Benin, 14 off the coast of Nigeria, 7 off the Coast of Togo, 4 off the coasts of the Democratic Republic of Congo, the Republic of

- Congo and Guinea, 2 off the coast of Ghana and 1 off the coast of Angola and Cote D'Ivoire, he detailed.
- 8.50 Explaining why there was strategic importance attached to the Gulf of Guinea, the Panellist mentioned that those incidents of piracy unlike those off the coast of Somali should be viewed against the background of the Gulf of Guinea as a region with abundant energy resources typified by the proximity of large oil producers such as Nigeria and Angola, and other oil producers such as Congo Brazzaville, Cameroon, Gabon, Equatorial Guinea and lately Ghana. Africa provided a substantial percentage of the United States oil requirement and that trend was expected to be sustained as the western world latches on to fuel sources other than the Middle East. It was also pertinent to observe that countries in the Gulf of Guinea such as Angola were relatively close to most European and US Refineries located on the East Coast, a fact which significantly reduces shipping costs. Apart from Hydrocarbon, there are other natural resources, fisheries and agricultural commodities located in the region with significant economic importance to the increasing food security challenge globally.
- 8.51 He held the view that the countries in the Gulf of Guinea with a coastline of about 5,500 km provided a significant market for imported goods which made the sea lanes ever busy. All of these strategic features made the region a critical piece in the global Economic and Political jigsaw puzzle. He briefly said about the UN Assessment Mission of Piracy in the Gulf of Guinea. On July 2011, President Boni Yayi of the Republic of Benin appealed to the International Community for help to fight Piracy in his country and throughout the Gulf of Guinea. That request was contained in a letter to the Secretary-General of the United Nations. Subsequently on October 19 during an open debate in the Security Council on the matter of "Peace and Security in Africa: Piracy in the gulf of Guinea" convened by Nigeria in its capacity as President of the Security Council, the Secretary General confirmed his intention to dispatch an assessment mission to the region and appealed to ECOWAS and ECCAS (Economic Community of Central African States) to work together to develop a comprehensive and integrated regional anti-piracy strategy for the Gulf of Guinea. The Committee report considered the scope of the threat noting that more than 5 million barrels of oil was produced per day in the region. That was in addition to the fact that the region supplied more than three quarters of the World supply of Cocoa, aside the abundant riches in minerals. These "riches" and other political considerations had unfortunately accounted for the surge in those incidents which no country in the region could singularly confront. The report in that regard took cognizance of the efforts of the Nigerian government to assist neighbouring Benin Republic. He pointed out certain recommendations amongst others to combat Piracy in the Region.
- 8.52 While portraying the measures adopted by Nigeria to combat this menace, he stated that they included; the Support of the Regional Maritime Rescue Coordinating Centre (RMRCC); Maritime Domain Awareness Initiatives; Implementation of Long Range Identification and Tracking of Ships (LRIT), Establishing a Legal Framework that define *offence/Criminalization*, explain jurisdiction, nature and extent of punishment; Collaboration with Private Sector to Procure Boats (PPP); Collaboration of Relevant Sub-Regional Bodies; Funding, and Information Exchange and so on.
- 8.53 The Panelist concluded his presentation by expressing deep concern on the challenges posed by piracy and armed robbery at sea in the West African coast as in other parts of the globe. There was a compelling need to take urgent and pragmatic steps towards addressing this problem. It was his conviction that firstly there was the need for a strong

- government buy-in, supported by relevant private sector interests in the project to rid our waters of Piracy and armed robbery. The problems of poverty, food insecurity, political manipulations and rising insurgencies, as well as inequitable distribution of National resources must also be addressed in a bid to eliminate the root causes of the penchant for criminality in our waters, he elaborated. Finally, there was a need for the collaboration of Security Agencies and forces in the West African Coast and it was also necessary to collaborate for ensuring access to intelligence and relevant data. He expressed optimism that the totality of those efforts would no doubt go a long way in addressing the problem and significantly reduce the present persistence of the crime in West African waters.
- 8.54 After the presentations by the Panellists, the Delegations from **Indonesia, Kenya, Thailand, Tanzania, Malaysia , Sri Lanka, Saudi Arabia, Ghana, People's Republic of China, India, and Republic of Korea** and made their statements. **The Leader of Delegation of Uganda** also made a general statement.
- 8.55 **The Leader of Delegation of Uganda** stated that though he had a lot of things to say, he would confine himself to issues relating to International Criminal Court (ICC). While narrating the problems that Uganda has been facing in recent years, he stated that the rebellion movement against his Government operating by the name Lord's Resistance Army (LRA) had committed innumerable atrocities against civilians. In this regard, he recalled that the ICC had issued an arrest warrant for the leader of the LRA Joseph Kony and four of its leaders for war crimes and crimes against humanity committed in Northern Uganda. However, two of them had died during the proceedings and hence, charges against them were withdrawn, he noted.
- 8.56 As regards Uganda's position in relation to ICC, he pointed out that Uganda is a Signatory to the Rome Statute and had adopted an International Criminal Court Act of 2010 that is consistent with the Rome Statute. He added that this law, which has provisions for arrest and surrender of persons, also allowed Uganda to try many other crimes as well. However, he observed that Uganda had challenges in the application of ICC's jurisdiction. In this regard, he also drew the attention of the delegates to the efforts of African Union to have a regional court without supplanting the ICC. Finally he mentioned that he would be making a detailed presentation on this issue later.

Third Half-Day Special Meeting on "International Terrorism"

- 9.1 **Dr. Hassan Soleimani, Deputy Secretary-General** in his introductory statement highlighted the issues to be discussed in this Special Meeting are: (i) Challenges before the Ad Hoc Committee on International terrorism; (ii) International legal cooperation in criminal matters against terrorism; and (iii) countering financing of international terrorism. The Government of India while referring this topic to AALCO maintained that consideration of this item at AALCO would turn out to be relevant in the context of the ongoing negotiations in the AD Hoc Committee on elaboration of the Comprehensive Convention on International Terrorism.
- 9.2 The Ad Hoc Committee at its 48th meeting on the 15th of April 2011 focused on the definition of terrorism, without which certain areas of law seem to be lacking and have not resulted in effective implementation to combat terror. The definition must include under its ambit the various rules and principles of international law that safeguards human rights and dignity as well as fundamental freedoms. The framing of such a

- definition would only be possible with the experts of both the field as well as the Member states. Realizing that terrorism was a multi challenging phenomenon, the need for a comprehensive counter terrorism strategies, was also proposed. The UN Secretary-General H.E. Ban Ki Moon on the 3rd of June 2012 highlighted 4 key areas that the nations need to work on for tackling terror i.e., a) Tackling conditions favorable to the spread of terrorism, b) prevention of terrorism, c) strengthening up the States capacity to counter terrorism and d) promotion of inter community engagements.
- 9.3 The DSG further added that a special meeting of the Counter Terrorism Committee (CTC) took place on 18th September 2011 at New York which noted the compatible relation between terrorism and transnational organized crime including trafficking of illegal drugs, money laundering, illegal arms trafficking and resolved to monitor and assist to ensure the full implementation of Resolution 1373 (2001), with the support of CTED and to continue to focus on means to address the identified gaps and loopholes in the implementation of the resolution in cooperation with international, regional and sub-regional organizations by strengthening its role in providing technical assistance aimed at providing full implementation of the resolution. At the 66th session of the General Assembly of the UN, resolutions that would impact the formation of a legal regime to combat terrorism were adopted. At this session, the General Assembly had also considered the report of the Secretary General on measures to eliminate international terrorism.
- 9.4 **Dr. Rohan Perera, the Chairman of the UN Ad-Hoc Committee on Measures to Eliminate International Terrorism**, at the outset gave a brief introduction as to how the issue of terrorism was dealt with, first by the League of Nations and then, by the United Nations. He was of the view that the current initiatives undertaken under the aegis of the United Nations had been at two levels; firstly, the norm-creating role of the General Assembly, Specialized Agencies and its Ad-Hoc bodies, such as the Ad-hoc Committee on Measures to Eliminate International Terrorism, through which specific Conventions are adopted and secondly, the measures adopted by way of enforcement action by the Security Council under Chapter VII of the UN Charter. He stated that the primary thrust of his presentation would be on the first aspect, namely the norm-creating process in the UN Ad-Hoc Committee on Terrorism. This was because of his close association with this process as the Chairperson of the Committee, he clarified.
- 9.5 Explaining the definitional problems that have been plaguing the efforts to find a definition for terrorism, he remarked that at the core of this problem was the demarcation between ‘terrorists’ and freedom ‘fighters’. In his view, the dilemma confronting the UN initiatives could be summarized in the slogan: *‘one man’s freedom fighter is another man’s terrorist’*. He held the view that due to this problem, the UN has adopted what is known as the ‘Sectoral Approach’ that involved criminalizing specific criminal acts. He also added that a number of Conventions had been adopted based on this ‘Sectoral Approach’ on various subjects such as unlawful acts against aircraft, safety of maritime navigation, hostage staking, terroristic financing and others. He was of the opinion that these Conventions had a common architecture in that they obliged State Parties to criminalize under their domestic laws, the specific acts covered under the Convention; to establish their jurisdiction over these acts and the fundamental obligation to ‘Extradite or Prosecute’.
- 9.6 While narrating the rationale for a Comprehensive Convention on Terrorism, he mentioned that it was mandated by the UNGA as a means of developing a comprehensive

legal framework of Conventions dealing with international terrorism. The objective of the Convention, in his view, was to provide comprehensive coverage to terrorist crimes not covered under the existing Conventions and to adopt enhanced measures of cooperation and assistance between States. As regards the definition of terrorism contained in the draft text, he pointed out that the draft text proposed by the sponsor State India contained an operational definition of the term and that it covered specific criminal acts such as unlawful and intentional causing of death or serious bodily injury to any person, serious damage to public or private property when these acts are committed with a terrorist intent.

- 9.7 The Delegations of the Organization of the Islamic Conference (OIC) on the other hand, opted for a generic definition of the term and sought to have a clear distinction between acts of terrorism, and those acts committed in the course of exercising the right of self-determination. This was opposed by European States who favored an operational definition, he added. In the light of these divergent approaches to the Comprehensive Convention, the challenge before the Committee was to take the focus away from the definitional issues and to address the specific concerns that have arisen in the context of the scope of application of the Convention. In view of these problems, the Committee had decided to follow a practical approach and that the negotiations are now proceeding on the basis of a compromise package known as a ‘Choice of Law’ provision that carves out the scope of application of the Convention rather than going down the politically sensitive path of attempting to draw distinction between acts of terrorism and an armed struggle for national liberation, he clarified. In his view, the key elements of the comprehensive package were as follows;

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

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

- 9.9 **Mr. Peter Terkaa Akper, SAN, Senior Special Assistant to the Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria** made a succinct presentation on the topic **Legal Response to Terrorism in Nigeria: Issues and Challenges** in his introductory remarks said that the subject matter is relatively novel

- to us in Nigeria and that our legal response can reasonably be adjudged to be at its infant stage, when compared to other jurisdictions like South Africa and the United Kingdom.
- 9.10 He mentioned that until, recently terrorism or the threat of terrorism was a negligible phenomenon in Nigeria. President Goodluck Ebele Jonathan, GCFR recently reiterated this position in his Democracy Day Address where he stated that “... *terrorism, a new menace, is totally alien to our way of life and culture; it has reared its head and is posing serious challenge*”⁶ Thereafter, he enumerated some instances of acts of terrorism that had occurred in Nigeria. The spate of bombings in the country however started on 1st October 2010 when terrorist struck near the eagle square where the independence activities were taking place in Abuja. Since then, other bombing incidents were recorded in Jos, Bayelsa and Lagos.
- 9.11 He added that the Boko Haram sect had also added another dimension to the bombings as they routinely attacked Police stations, churches and Schools. But, the most profound of their terrorist activities was the UN House bombings in Abuja which attracted international condemnation. This, coupled with the Mutallab’s attempted bombing of Delta Airline in December 2009, brought Nigeria to the global discourse on international terrorism. Although, acts of terrorism had been on the increase in the country, Nigeria did not have a comprehensive legislation on terrorism before June, 2011. This was despite the fact that Nigeria had ratified more than ten out of the 16 United Nations Terrorism Conventions.
- 9.12 He highlighted that the Nigerian Government’s counter terrorism strategy was to confront all those threatening the nation’s collective peace and security and bring the perpetrators to Justice. To give effect to that strategy, government responded to the menace of terrorism by taking steps to enact the Anti-terrorism legislation which had been in the works for about 5 years. The collective resolve of the government came to fruition with the enactment by the National Assembly of the Terrorism (Prevention) Act, 2011. In his presentation, Mr. Akper examined the legal regime that had been put in place to combat terrorism in Nigeria, the extent to which it complied with global standards and offered suitable recommendations where necessary to address growing terrorism threats in Nigeria.
- 9.13 In a brief overview he outlined the objectives of the Terrorism (Prevention) Act 2011 (TPA 2011) as “to provide for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of terrorism and the Convention on the Suppression of the Financing or Terrorism”.⁷ TPA was divided into eight major parts, which included namely: (i) provision of acts of terrorism and related offences; (ii) prohibition of terrorist funding and seizure of terrorist property; (iii) provision of cooperation to other countries through mutual legal assistance and seizure of terrorist assets; (iv) provision of cooperation to other countries through extradition of suspects linked to terrorism; (v) investigative powers; (vi) prosecution; (vii) power to register or refuse registration of charities, and (viii) miscellaneous powers. Thereafter, he gave the salient features of the pertinent provisions enlisted in the Act.

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

⁷ See Explanatory Memorandum to TPA 2011

- 9.14 One of the important features of the TPA was that in recognition of the effect of international terrorism, the TPA had empowered the President on the recommendation of the National Security Adviser or the Inspector General of Police to declare a person to be a suspected international terrorist. The person so declared must be involved or has been involved in the commission, preparation or instigation of acts of international terrorism, is a member of, or belongs to or has links to an international terrorist group, or recognised as such under the Act or listed as a person involved in terrorist acts in any resolution of the United Nation's Security Council, or any instrument of the African Union and the Economic Community of West African States (ECOWAS).⁸
- 9.15 He highlighted that In view of the transnational nature and dimension that terrorism had assumed, Part III of the TPA 2011 contained provisions relating to mutual assistance and extradition as part of Nigeria's international obligations and to further international cooperation with other countries in the investigation and prosecution of criminal matters.
- 9.16 In his appraisal of the Terrorism (Prevention) Act, 2011, **Mr. Akper** alluded to the relative infancy of the TPA and the counter terrorism measures contained in it. He said that it may be unrealistic to objectively assess its efficacy in combating the menace of terrorism in Nigeria, as the Act was barely one year in existence and many of the accompanying regulations to give effect to the Act were just being gazetted. The Attorney General had recently issued the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2011 in relation to freezing and forfeiture measures as well as proscription measures for terrorist groups provided under Section 9 on international terrorists in accordance with FATF Special Recommendation 3 and the United Nations Security Council Resolutions 1269 (1999) and Resolution 1373 (2001).⁹
- 9.17 He was also aware that a lot of work needs to be done in terms of providing the requisite policy and regulatory frameworks and advice to support various measures in the law and to assist the implementing institutions and the financial and non-financial institutions that are required to submit suspicious transaction reports to the Nigerian Financial Intelligence Unit. There was also the need for financial regulatory institutions to understand the TPA and to develop further guidance for its sector.
- 9.18 Towards this end, he said that the office of the Attorney General of the Federation was working on additional regulations that would underpin the various aspects of the TPA related to Charities, Immigration, Aviation, prosecution guidelines, investigation guidelines and the development of proscription list which would be forwarded to the banks on a monthly basis. The effective implementation of this law called for a pragmatic and proactive approach and the development of a national strategy to ensure that each agency, financial sector regulators, reporting entities, prosecution and investigation officials understood their remits and were able to secure convictions in a manner that respects and guarantees constitutional rights.

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

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

- 9.19 Further, a proactive strategy that responds to the need for community based organizations (CBOs) to be actors in the prevention of terrorist activities in their communities, towns and cities needed to be developed to make the terrorism prevention efforts effective. Also central to the terrorism prevention efforts was the need for a comprehensive witness protection programme that would encourage voluntary provision of intelligence and information needed to combat terrorism.
- 9.20 Equally important was the need for proper coordination of their counter terrorism efforts. The TPA appeared to have placed heavy responsibilities on the NSA, IGP and the Attorney General of the Federation with respect to the administration of the Act. This meant that these state officials must work closely and cooperatively to prevent duplication of efforts that may militate against effective implementation of the Act. Given the large number of institutions (financial and non- financial) whose inputs were required for the proper implementation of the Act, the need for a properly coordinated counter-terrorism strategy could not be overemphasized. It was important for all relevant institutions to understand the strategy and collectively align their efforts to ensure success.
- 9.21 He also observed that despite the commendable efforts made to adopt internationally recommended standards and practices in the TPA 2011, the TPA still fell short of FAFT standards and the United Nations Convention on the Suppression of Terrorism in some critical areas. This called for a comprehensive review of the TPA to bring it in conformity with international standards set by FATF and the UN Convention on the Suppression of Terrorism. For instance, the provisions of the TPA had been adjudged to be grossly inadequate to combat terrorism in line with international best practices. Furthermore, some of the provisions of the TPA did not align with or were in direct conflict with provisions of earlier legislations such as the Economic and Financial crimes Commission (Establishment) Act, 2004 and the National security Agencies Act, 2004.
- 9.22 To cure these defects, the Federal Ministry of Justice embarked on the drafting of a new Bill known as “A Bill for an Act to Repeal the Terrorism (Prevention) Act, 2011 and Re-enact the Terrorism (Prohibition) Act, 2012. During the review period, comments were received from relevant Nigerian Agencies involved in the implementation of TPA 2011 and other international agencies such as the United Nations Office of drugs and Crime (UNODC), the United States Department of Justice and the United Kingdom High Commission, the UK Home Office and FATF Secretariat.
- 9.23 The new Bill, he added, took on board most of the provisions of TPA 2011 and further improved on some of the provisions on the TPA. The highlights of the new Bill included: (i)the empowering of the ONSA and State Security Service to serve as the lead agency and central coordinating agency in the investigation and intelligence gathering on terrorism; (ii)the prescription of life imprisonment for all acts of terrorism; (iii)the number of terrorist offences have been increased from 13 in TPA 2011 to 26 under the new Bill to include all offences prescribed by international conventions; (iv)the obligation on the part of airlines, commercial carriers and tour operators and travel agents not to aid and abet, facilitate and promote terrorist activities and obligation to notify its clients accordingly; (v)re-affirmation of the Attorney General’s power to institute and undertake criminal proceedings against any person in respect of the offences committed under the Act or any law relating to acts of terrorism; (vi)the re-affirmation of the Jurisdiction of the Federal High Court to try terrorism offences and power to refuse any application for stay of proceedings in respect of any criminal matter brought under the Act until

judgment is delivered, and (v) the provision for the establishment of Victims Trust Fund to be managed by a Trust Fund Board.

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

Fourth General Meeting

Agenda Item: International Criminal Court: Recent Developments

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

- 10.4 He mentioned that far from being an obstacle to peace, the ICC creates conditions conducive to reconciliation and negotiation processes by focusing international attention towards these horrific crimes so as to help bring the belligerents to the negotiating table and help to marginalize those who bear the greatest responsibility for serious crimes and exclude them from the negotiating frame.
- 10.5 The SG stated that merely ratifying the Rome Statute was not enough and genuine commitment to the Court required the adoption of necessary implementing legislation. He also mentioned that the principle of complementarity needs to be further strengthened. He stated that the ICC has regrettably evoked lesser participation from Asian states.
- 10.6 The SG finally, went on to discuss the issues concerning the relationship between non-party States and the Rome Statute, broadly divided into questions of jurisdiction of the Court and cooperation with the Court. Some concerns raised by non-State parties were regarding the immunities of Heads of States particularly if it is a Monarch as well as the cost entailing membership to the ICC. The SG said that the other major challenges before the ICC are mainly universality, sustainability and complementarity. He concluded by stating that in order to achieve universality, sustainable efforts should be taken to iron out the misconceptions surrounding the Rome Statute and thereby accommodate the non-States parties in to the system.
- 10.7 **The Delegate of the Republic of Indonesia** reiterated support to the global efforts to end any form of impunity for crimes against humanity, war crimes and the crime of aggression and supported the International Criminal Court since its inception. In her view, the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. The establishment of the Court was the reflection of global cooperation of all nations regardless of their political, economic, social and cultural differences. Therefore, universal participation of all States should become the spear point of the Court.
- 10.8 She also maintained that the International Criminal Court as the first and only permanent tribunal dealing with the most serious crimes was expected to deliberate equal justice and promote impartiality. For this reason, Indonesia supported the adoption of the Rome Statute and the establishment of the International Criminal Court. In light of this, accession of the Rome Statute remained a priority in Indonesia's National Plan of Action on Human Rights for 2011-2014. With a view, the Government of the Republic of Indonesia had also taken several important steps to build and develop both normative and institutional infrastructures. It had also enacted law concerning Human Rights and Human Rights Law.
- 10.9 Towards this end, the Delegate said that several principles of the Rome Statute had been recognized within Indonesia's national legislations related to human rights. Reflecting a firm stand against impunity, the national human rights court had the authorization to prosecute criminals of genocide and crimes against humanity, along with the recognition of non-retroactive principle.
- 10.10 Furthermore, she also highlighted the two important principles contained in Article 1 and Article 11 of the Rome Statute regarding the principle of non-retroactive effect and the principle of complementary. In relation to the principle of complementary, Indonesia re-

- emphasized the importance of Paragraph 10 of the Preamble and Article 17 of the Statute. The concept of “inability” and “unwillingness” should not serve easily as pretext to provide continuous preference to ICC intervention. The principle was one of the corner stones of the architecture of the Rome Statute.
- 10.11 Therefore, she believed that the effective implementation of the principle of non-retroactive and complementary was the key to the success of the ICC in further promoting criminal prosecution related to human rights violations and would increase the universality of the Rome Statute. In this respect, the prosecution of human rights violations should be the primary role of the national court.
- 10.12 The Delegate also stressed upon the importance of Article 17 on the principle of inadmissibility and believed that the effective implementation of this principle would increase the universality of the Rome Statute. Bearing in mind also that those principles were closely related to a country’s sovereignty, it was important to see how the principles could be sustained and further strengthened, notably in honouring the supremacy and integrity of a sovereign country.
- 10.13 **The Delegate of Japan** said that 2012 marked the tenth anniversary of the International Criminal Court since the entry into force of the Rome Statute on 1 July 2002. It was surprising for many that such an important treaty as the Rome Statute entered into force with the ratification by more than 60 States only four years after it had been adopted in July 1998 and till date 121 States were parties to the Rome Statute, including 33 States from Africa and 18 States from the Asia-Pacific. Last year three States from the Asia-Pacific, namely, the Philippines, the Maldives and Vanuatu, and two States from Africa, namely, Tunisia and Cape Verde, joined the Rome Statute. Japan welcomed those five new members which had joined their serious efforts towards the fight against impunity and the establishment of the rule of law in the international community.
- 10.14 Besides that above facts 2012 also marked a turning point for some other reasons as well. The first reason being, that the major actors inside the Court and the Assembly of States Parties had changed. First, the former President of the Assembly of States Parties, Ambassador Christian Wenaweser of Lichtenstein, was succeeded by the newly elected President, Ambassador Tiina Intelmann of Estonia. Second, six new judges, including Judge Miriam Defensor-Santiago of the Philippines and Judge Chile Eboe-Osuji of Nigeria, were elected in December last year and took office in March. Third, the composition of the Presidency of the Court also changed in March, with President Sang-Hyun Song of South Korea being re-elected, Judge Sanji Mmasenono Monageng of Botswana elected to the First Vice-President and Judge Cuno Tarfusser of Italy elected to the Second Vice-President. Fourth, the incumbent Prosecutor, Mr. Luis Moreno-Ocampo of Argentina, completed his nine-year term and Ms. Fatou Bensouda of Gambia, who was Deputy Prosecutor so far, took office as the new Prosecutor just last Friday. Being a staunch supporter of the ICC, Japan looked forward to working with the new teams of the Court and the Assembly.
- 10.15 According to the Delegate, the second reason why this year marked a turning point for the ICC was that in March this year, the Trial Chamber of the Court rendered its first judgment on the Thomas Lubanga Dyilo case, convicting the accused of charges on conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities in the context of an internal armed conflict in the Democratic Republic of the Congo. Japan praised the ICC for

- having fulfilled its role in refusing the impunity of the most serious crimes of concern to the international community as a whole and in preventing the recurrence of such crimes. However, it must be borne in mind that the same Trial Chamber of the Court will render its sentence against the accused in due course and then a decision on reparations to the victims of the crimes of which the accused was convicted. After all these procedures were completed, the accused may appeal to the Appeals Chamber. Thus, this case remained to be seen.
- 10.16 He mentioned that presently, the ICC had seven situations and fifteen cases before it. Two new situations in Libya and Cote d'Ivoire had been referred to the ICC and had posed significant challenges for the Court, such as the heavy financial burden on States Parties. Presently the international community was concerned with the situation in Syria, with some countries suggesting possible referral by the Security Council to the ICC. In light of the current situations surrounding the ICC, the future direction of the Court had to be carefully envisioned and defined.
- 10.17 He also highlighted that Japan attached great importance to the activities of the ICC as the only permanent judicial organ for international criminal justice, and expected that the ICC would continue to fulfil its role by prosecuting and punishing the most serious crimes in accordance with the Rome Statute. Securing the future of the ICC depended primarily upon whether universality could be achieved. According to the Delegate, as the number of States Parties increased, there would be fewer safe havens for perpetrators of the most serious crimes, and preventive effects would be enhanced. In conclusion he requested more AALCO members to consider ratifying the Rome Statute with a view to join the common efforts to fight against the most serious crimes of concern to the international community as a whole.
- 10.18 The **Delegate of the People's Republic of China** said that his Government supported an independent, impartial, effective and universally recognized international criminal court, and hoped that it would promote world peace and judicial justice by punishing the most serious international crimes.
- 10.19 He mentioned that 2012 marked the 10th anniversary of entry into force of the Rome Statute and the founding of the International Criminal Court (ICC). During the past 10 years, China had closely followed the Court's activities. It hoped that the ICC would win the trust and support of the international community through its concrete work.
- 10.20 He said that while it was true that the ICC had made some progress since its establishment. It had become an important international judicial organ, and influenced the development of international criminal law. At the same time, some activities of the Court caused controversy in the international community, and even affected process of peace and stability in certain regions. States parties to the Rome Statute, including some from Asia and Africa, were questioning the Court's impartiality and believed that the court had been selective in its exercise of jurisdiction. Furthermore, many Asian countries were not yet parties to the Rome Statute, besides some African countries had been reconsidering their cooperation with the ICC, these facts revealed a lack of trust in the Court among Asian and African countries.
- 10.21 He also noted that the Court was now at a critical stage of its development. Looking back and forward, China, as many others did, have one important question in mind: Where to go, ICC?

- 10.22 In order to come up to the expectations of the international community it was important that the ICC should make extraordinary efforts to abandon prejudice, refrain from being politically interfered, keep in mind the principle of complementarity, impartiality as well, and win confidence, trust and support of state parties of both developed and developing countries. The Delegate was glad to note that as of date in the court, Asian and African judges, claimed a big part of the whole judges of the court. The Delegate expected and believed that with the cultural and legal traditions they represented, they would make further contributions to the work of ICC. He also believed that through communication and cooperation, countries from Asia and Africa, could play a unique role in promoting the positive development of the Court, and contribute to international peace and justice. In conclusion he said that the Chinese delegation was ready to work towards this end.
- 10.23 The **Delegate of Malaysia** expressed appreciation to the AALCO Secretariat for its report which brought Member States up-to-date with the most recent developments of the ICC. She congratulated Ms. Fatou Bensouda on her appointment as the Prosecutor of the ICC by the 10th Assembly of State Parties of the Rome Statute of ICC in New York on 12 December 2011. In the same vein she also expressed sincerest gratitude to the outgoing prosecutor, Mr. Luis Moreno-Ocampo.
- 10.24 The Delegate hoped that Ms. Fatou Bensouda, as the new Prosecutor, would exercise the powers conferred upon her impartially, with due respect to the customary and currently acceptable notions of international law and domestic legal proceedings. As an independent separate organ of the ICC, the Office of the Prosecutor had vast powers. With regard to this, Malaysia highlighted the importance of impartiality and universality by the Prosecutor in dealing with situations or internalizing information that came to the Office of the Prosecutor. Any perception of bias must be avoided, for bias is not only actual, but may also be imputed or apparent.
- 10.25 In light of the situation in Palestine, she noted that on 3 April 2012, the Office of the Prosecutor had announced of its incompetence to decide on the issue of recognising Palestine as a “state” for purposes of Article 12 (3) of the Rome Statute. The Office of the Prosecutor viewed that this issue should be referred to the relevant bodies of the United Nations or the Assembly of State Parties to make that legal determination. This decision indirectly implied that Palestine does not have the power to make such a declaration because it did not fulfil the requirements of statehood. Malaysia was of the view that the OTP should first and foremost took into account the basis of the establishment of the ICC, that is to punish serious crimes of international concern instead of technical requirements. In order for impunity to not go unpunished, the Office of the Prosecutor should have examined whether there existed serious crimes of international concern as claimed by Palestine i.e. a consideration of substantive issues. If there were, then the declaration by the Palestinians should not have been rejected *ab initio*.
- 10.26 On the issue of interpretation and implementation of the principle of Complementarity by the ICC and the Prosecutor, Malaysia reiterated its concern that Member States were required to give effect to the principle by enhancing the capability of national jurisdiction to exercise jurisdiction over serious violations of international law or international crimes committed on their territory. A view that was mooted recently was “positive complementarity” which came with “technical assistance and capacity building” from the Office of the Prosecutor, such as supplying judges and prosecutors to assist national courts. Malaysia was of the perspective that such assistance implied indirect interference

- from the ICC into the domestic courts and may subject Member States to political pressure to comply with the ICC's standards in the name of eliminating impunity gap between national and international courts. This concept clearly differed from the original Complementarity scheme.
- 10.27 The Delegate was further of the view that the principle of Complementarity should be applicable even in situations of Security Council referrals. She recalled that the principle of Complementarity under the Rome Statute recognized that States had the first responsibility and right to prosecute international crimes. Articles 17 and 19 of the Rome Statute did not indicate any exception to such referral. In determining the issue of admissibility vis-a-vis cases originating from a Security Council referral, the ICC needs to be clear in its principles, practice and jurisprudence, and to demonstrate that its decision on the case's admissibility is free from any political influence. According to Malaysia's observation, in some cases, the discretion of the Prosecutor did not adhere to the principle of complementarity as States were not given the priority to take action in addressing atrocities.
- 10.28 The commitment to end the impunity of serious crimes of international concern by becoming a State Party to the Rome Statute could not materialize by the simple act of depositing the instrument of accession or ratification. In light of this, Malaysia wished to emphasize on the need to have a suitable legal framework in place which would adequately address the legal concerns highlighted.
- 10.29 Lastly, Malaysia was firmly committed to ending impunity and will continue to support in principle the ideals and purpose of the ICC towards that end.
- 10.30 The **Delegate of the Republic of Korea** maintained the ICC was established to end the culture of impunity for serious crimes and for the protection of human rights, towards this end the Rome Statute of the ICC was central to international criminal justice and protection of human rights. He was grateful to the AALCO Secretariat for its various initiatives on this topic. He also wished that more Member States of AALCO could accede to the Rome Statute of the ICC. He said that his Government had provided voluntary contribution to the ICC besides this The President of the ICC Judge Song was a Korean national. His country was ready to support the ICC in order to ensure an end to the culture of impunity for the most serious crimes.
- 10.31 The **Delegate of the Kingdom of Saudi Arabia** stated that the activities of the ICC were of interest to them since arrest warrants were issued against the Sudanese President on the other hand Israeli criminals were let off scot free by the ICC. He maintained that this was a clear illustration of political considerations in matters relating to the Court. He posed a question to the Secretary-General whether it was possible for AALCO to reflect the concerns of its Member States to the ICC specially the role of the Security Council.
- 10.32 In response the **Vice-President** said that the AALCO Secretariat would soon circulate a paper on this issue.

Agenda Item: Environment and Sustainable Development

- 11.1 **Dr. Yasukata Fukahori, Deputy Secretary-General (DSG) of AALCO** introduced the agenda item "Environment and Sustainable Development" as contained in the Secretariat document AALCO/51/ABUJA/2012/SD/S 10. The DSG said that the Organization had

- been following the developments on Environment and Sustainable Development since 1975 with the contemporary focus being on the implementation of the three Rio Conventions namely, the: United Nations Framework Convention on Climate Change, 1992; Convention on Biological Diversity, 1992; and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994; and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002. The present Secretariat report contained developments in the area of International regime on climate change, international regime on desertification, and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development.
- 11.2 On the issue of Climate Change issues, the DSG said that it was the most prominent issue that the international community faced today. In the year 2011, at the Seventeenth Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Durban, South Africa, Durban Outcome - a “package deal” was adopted. The focus at the Durban Conference was on post-2012 Kyoto Protocol commitment or second-term commitment period. The hope was that the negotiations would produce more ambitious greenhouse gas emission reduction pledged by developed countries, a second commitment period under the Kyoto Protocol, and a mandate for a new legally-binding agreement. Further, it also wanted the institutions mandated by the 2010 Cancun Agreements to become fully operational and to complete the terms of reference for the review of the long-term global goal for emission reductions.
- 11.3 Referring to the Durban Package, the DSG said that the package seemed to fulfil several objectives of countries that were among the most vulnerable to climate change: the Pacific Island Developing States and the larger Alliance of Small Island States. In fact, the Durban Package comprised decisions under both the UNFCCC and the Kyoto Protocol that accomplished many of the PSIDS and AOSIS goals for adaptation, finance, technology transfer, and capacity building. However, there was a shortcoming in terms of mitigation, and the action taken on the Kyoto Protocol’s second commitment period which was mere proposal to formalize pledges made in Cancun in 2012 by developed country Kyoto Protocol parties and does not include major emitting countries. The Durban Outcome dealt with UNFCCC parties agreeing to establish the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“AWG-DPEA”) which would adopt, a new “protocol, legal instrument or agreed outcome with legal force” by 2015. The new AWG-DPEA has a mandate to develop proposals on the full range of climate change issues, its focus would clearly be on raising the “level of ambition” with respect to mitigation for all parties.
- 11.4 In the field of desertification, he briefly summarized the major decisions adopted at the Tenth Session of the Conference of Parties to the United Nations Convention to Combat Desertification convened in Republic of Korea in 2011 wherein a high-level segment was held. Those discussions centred around three major concepts: (i) food security, (ii) green economy, and (iii) scientific knowledge. To solve development problems, climate change, desertification and food security, efficient use of renewable energy was an important potential tool. Promoting investment, combined with a renewed synergy of Rio Conventions could produce holistic and robust strategies, strategic partnerships and cooperative frameworks.

- 11.5 The DSG mentioned that presently, in June 2012, when the States marked the commemoration of 20 years of the Rio Conference and 10 years of WSSD, it was essential to recall the role and importance of the UNEP. Therefore, 40th Anniversary Year of the UNEP was also historic. Since 1972 Stockholm Conference, the environmental summits had played a crucial role in bringing sustainable development on international political agenda. Many of the countries had changed their national policies favouring green economy which would in future be beneficial for protection of environment and ensuring sustainable development for succeeding generations. It was essential, on those aspects, that countries took adequate efforts for protection of the environment besides safeguarding their national interests with a vision to transform their societies into a green economy which would be less polluting and be environmentally sustainable. The DSG briefly summarized the issues covered by the Secretariat report, that included, the Twelfth Special session of the UNEP Governing Council/Global Ministerial Environment Forum held in Nairobi in February 2012 and the 19th session of the UN Commission on Sustainable Development held in New York in May 2011. The themes for the Rio+20 were (a) a green economy in the context of sustainable development poverty eradication; and (b) the institutional framework for sustainable development. The seven priority areas identified were decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.
- 11.6 The DSG informed that the issues for focused deliberations on the agenda item were:
- (i) Issues for deliberating upon the forthcoming Protocol/legal instrument on second-term commitment of countries in climate change, encompassing the principle of common but differentiated responsibility to be completed by 2015;
 - (ii) Importance of Green economy and preparations for the Rio+20 Conference; and
 - (iii) Challenges facing environmental sustainability.
- 11.7 **The Delegate of Nepal** said that it was a coincidence that we were discussing the topic on ‘Environment and Sustainable Development’ which was being discussed at the Earth Summit, Rio+20 and hoped that all AALCO member states were participating in that Conference. He recalled that at the 50th Session of AALCO Member States expected that United Nations Climate Change Conference that took place at Durban, would come up with the ambitious quantified emission reduction targets set for developed countries for second commitment period under Kyoto Protocol and those developed countries that were not parties to the Kyoto Protocol should also take comparable emission reduction commitments after 2012. Instead it just concluded with the extension of tenure of the two Ad hoc Working Groups. Capitalization of Green Climate Fund and decision on future of Kyoto Protocol after 2012 was still not so clear. Sustainable development emphasized a holistic, equitable and far-sighted approach to decision-making at all levels. It emphasized not just strong economic performance but intra-generational and inter-generational equity. It rested on integration and a balanced consideration of social, economic and environmental goals and objectives. The concept of green economy that countries were going to emphasize in Rio, focused primarily on the intersection between environment and economy.
- 11.8 Being aware of the human-induced multiple impacts of climate change on mountain ecosystems, goods, and services and implications on livelihoods, health and welfare of the mountain people and environment as serious, there was a need to take urgent, collaborative and effective actions at all levels to address climate induced vulnerabilities and impacts on mountains, coastal zones and other areas for enhancing the well-being of

climate vulnerable communities and also strengthening the climate resilience measures by peoples. He said that their delegation wanted AALCO to engage expert-teams in formulating ecological zone-specific strategies that ensured practical solutions to the climate change vulnerability and measures in ensuring sustainable application of such solutions. He recalled the International Conference of Mountain Countries on Climate Change held in Kathmandu from 5-6 April 2012 wherein it was agreed to enhance cooperation among the mountain countries and countries with mountainous regions for addressing the common problems recognizing that the mountains provide solutions for sustainable development using ecosystem services, in particular, water, biodiversity, energy, and for enhancing food security. He held the view that if AALCO could create a dedicated forum within it for better understanding of the challenges posed by the climate change and possible measures for mutual cooperation among the members that would be instrumental in responding to the global problem. Hence, Kathmandu Call for Action 2012 would be a good initiative to protect the high potentials of mountain ecosystem service to promote green growth strategies and strengthen linkages between mountain ecosystem and other ecosystems to reduce poverty and promote sustainable development which was prime concern for Asia and Africa.

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

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

- upon the path of sustainable development and taken positive and vigorous policies and measures, towards contributing to the resolution of environmental issues. It was also mentioned that China's next Five-year Economic and Social Development Plan emphasized to pursue green and low-carbon development, focused on energy conservation and emission reduction, develop a resource-saving and environment-friendly pattern of production and consumption, and enhance capacity for sustainable development.
- 11.17 The delegate premier Wen's observation that China was a staunch supporter of the concept of sustainable development, and an active practitioner of the strategy of sustainable development, and also an energetic promoter for international cooperation in sustainable development. China had been actively engaged in South-South cooperation, earnestly fulfilled the responsibilities commensurate with its capabilities.
- 11.18 **The Delegate of Thailand** said that in order to move forward and to respond to the global challenge, it had many priorities like food security, poverty eradication, and sustainable economic development. Nonetheless, they strongly believed that a paradigm shift toward building low-carbon societies was necessary in addressing climate change. Thailand was committed to lowering greenhouse gas emissions through innovative energy conservation and efficiency policies with the aim of reducing the country's Energy Intensity by 25 percent below the current level within 20 years. Even though 70 percent of electricity generation in Thailand currently comes from natural gas, a low-carbon energy source, they still planned to propose and implement progressive policies to promote increased use of renewable and alternative energy in both the industrial and agricultural sectors. It was their ultimate objective to replace 25 percent of the energy generated by fossil fuels with green energy within the next decade. In that regard, the delegate explained certain national initiatives taken to address the issue and as a result of those plans, Thailand would reduce 206 million tons of greenhouse gas emissions by the year 2030.
- 11.19 Green economy could serve as an effective implementation tool to move a country towards sustainable development, but should not be a substitute for sustainable development itself. In that regard, Thailand was of the view that the discussion on green economy should be based on the agreed 1992 Rio Principles. Given the vast differences in development stages among countries, Thailand believed that there was no "one-size-fits-all" green economy strategy. Countries should be given sufficient policy space and flexibility to develop their own green economy policies aimed at sustainable development. However, Thailand believed that there were common elements that were essential to improving cross-sectoral coordination and coherence in the implementation of the sustainable development agenda.
- 11.20 Referring to Thailand Rio+20 conference, the delegate said that they would work with the international community in its collective actions to advance sustainable development at all levels. On climate change issues, the delegate stressed that it was absolutely essential that Annex I Parties to the Kyoto Protocol committed themselves to the second-term commitment period and ensured the continuity of the legally binding agreement with more ambitious targets. Comparable mitigation efforts were needed in order to measure the emission targets and achievements of the parties effectively. Securing long-term financial commitments from both private and public sources, from developed countries for climate mitigation and adaptation undertaken by developing countries was essential and it was their conviction that, in order to adequately address the need of developing

countries, the scale of the commitments must be the same as that stipulated in the Cancun Agreements – 100 billion US dollars per year. The delegate called for meaningful steps to be taken by developed countries to promote, facilitate, and finance the transfer of or access to, environmentally sound technologies to developing countries, in order to enable them to meet their mitigation and adaptation needs. Reiterating the rights to sustainable economic growth and development of all Parties, the delegate called on all Parties to firmly observe Article 3, paragraph 5 of the Convention, and refrain from adopting any measure, including unilateral ones that constituted a trade barrier or a disguised restriction on international trade.

- 11.21 **The Delegate of Republic of Korea** stated that his government viewed that in order to bring about a genuine transformation in the measures against climate change, “common but differentiated responsibilities” were needed and urged the Member States of AALCO to act together to achieve the goal of sustainable development. Also, in order to take appropriate measures against climate change, the Republic of Korea considered that the difference in positions between developed and developing countries should be narrowed in terms of core issues such as the Second Commitment period for the Kyoto Protocol. The delegation supported the two-track negotiation system, which divided developed countries duties and developing countries actions to reduce greenhouse gas emissions.
- 11.22 The delegate mentioned that his government had been preparing for the transformation of the GGGI into a new international organization in October 2012 and they appreciated the participation in the GGGI by Japan, Cambodia, Ethiopia, Thailand, the Philippines, the United Arab Emirates and Indonesia; and hoped that other AALCO member states would also participate in the GGGI. Against that backdrop, the delegation informed that the Republic of Korea would be hosting the Ministerial-level COP 18 meeting in 2012 and thanked all the member States of AALCO for extending their warm support to them while hosting the COP 18 Meeting.
- 11.23 **The Delegate of United Republic of Tanzania** stated that the Tanzanian Government attached great importance to the environment and its sustainable development. The focus being protection of the environment and human health from all types of pollutants; efforts had started by putting in place mechanisms to mitigate the impact to climate change, environmental degradation and related matters.
- 11.24 In relation to the issue of climate change, the delegate said that Tanzania had already set its priorities including formulation of a National Adaptation Strategy and Action Plan built upon experience in preparing National Adaptation Program of Action (NAPA) as well as putting in place the National Climate change Steering Committee (NCCSC) and National Climate Change Technical Committee (NCCTC) contributing to a greener economic growth.
- 11.25 The delegate said that the world made some progress during the climate change conference in Cancun, particularly by bringing back the hope that multilateralism was needed to address a problem of such a global magnitude. However, much remained to be done after Durban especially ensuring that countries commit to emission reduction levels that were consistent with science; unless that was done poor countries would not avoid facing the envisaged challenges of climate change if global temperatures went beyond 1.5 degrees centigrade. The Cancun agreement offered not only unprecedented opportunities for developing countries to implement their strategies so as to strengthen their national

institutional frameworks and capacities, but also made progress on reducing emissions from deforestation and forest degradation REDD.

- 11.26 The delegate stated that whilst commending various efforts by the international community in address that important issue, Tanzania was of the view that finance and technology to develop cleaner sources of energy were essential. Concerned about the future serious adverse impacts on African and Asian countries, the delegate said many options were available to address these challenges. Some required major investments built upon sound development initiatives which included protecting catchments, promoting diversified livelihoods, expanding water resources and access to water, increasing irrigation, protecting coastal zones and malaria control programmes in highland areas were due to climate change and now rampant with malaria. Integrating climate change in development process and poverty eradication actions would be a continuous and unavoidable undertaking that would require increased financial support to the overall budget of the governments. It was mentioned that road towards a Greener economy was prone to challenges such as difficulties in protecting forests since they were the only source of energy for the majority of developing countries such as Tanzania. Further, there was an urgency to understand the true implications of climate change to the economy and the people and also provide options to move their economy forward while contributing to global climate change mitigation in a low carbon growth economy in order to establish a mechanisms and functional systems to deal with environment sustainability.
- 11.27 **The Delegate of Indonesia** reiterated that the achievement of the UN Conference on the Environment and Development 1992 when for the first time the global community got together, took stock of development and environmental challenges, and charted a common path forward. Since then, among many encouraging developments, economic achievements and the environmental agenda had made significant advances. Environmental regimes itself had grown, for example on biodiversity, on climate change and on forestry. These days more nations were adopting green growth strategies. In that regard, Indonesia had actively pursued a policy of 'growth with equity', with 3 basic components, namely pro-growth, pro-poor and pro-jobs. After successfully hosting the UN Climate Conference in 2007 in Bali, they had become very active in global climate diplomacy and expanded their development strategy from not just pro-growth, pro-poor and pro-jobs, but also to pro-environment. Presently, environmental sustainable was at the heart of their long-term development plans, both at the national and local levels, he added.
- 11.28 He said it was necessary to redefine modernity, development and prosperity, and move from overconsumption and excessive consumerism. Those steps might support the efforts to move from 'greed economy' to 'green economy'. For Indonesia, green economy was viewed as an economic development approach that no longer relied on overexploited natural resources and environment, but aimed to reach an environment friendly economic development. While ensuring that the world economic problems did not detract or distract from sustainability goals and climate change objectives, it was important to focus on our national commitments and global responsibilities. Therefore, to secure climate future, it was also important to stress the 'common but differentiated responsibility and respective capability' and their delegation believed that developed countries must take lead, along with the increasing role of the developing countries too. In that regard, Indonesia in the midst of a deadlock in 2009 had made the voluntary decision to reduce emissions of 26% by 2020, or 41% with international support.

- 11.29 **The Delegate of India** recalled that at the Durban Conference there was an attempt to shift the climate burden on to developing countries and one of the key demands of the developing countries was an agreement on the second commitment period of the Kyoto Protocol along with the operationalization of the arrangements agreed to at Cancun by the developed countries. However, the developed countries were insisting on new legally binding agreements for all the Parties without any differentiation.
- 11.20 The Durban Conference was one of the most significant Conferences on Climate Change since the second commitment period to the Kyoto Protocol was agreed upon for the developed countries (Kyoto Protocol Parties). In addition, the inclusion of Green Climate fund, a key demand for financing the efforts of developing countries in the technology mechanism, etc. had also seen light in the form of an agreed decision by the members. On those notes, she mentioned that upon India's insistence the issue of 'Equity' was brought back to the centre stage of the Climate change debate at Durban. Accordingly, it had been agreed to hold a workshop on the issue of equitable access to sustainable development which would advance the understanding and relevance of the approach in evolving the climate change regime.
- 11.21 The delegate stressed that India as a developing country had huge developmental challenges. Around 55% of India's population still had no access to commercial energy. Despite those developmental challenges, India had declared its commitment to keep its per capita emissions lower than the average per capita emissions of the developed countries and had adopted National Action Plan on Climate Change along with National Missions. Those Missions would go beyond mitigation and adaptation and were anchored to overall national prospective of sustainable development.
- 11.22 It was stated that the challenges related to all the three pillars of sustainable development should be addressed in a balanced manner. Global development path should recognize the fact that human beings were at the centre of sustainable development. Disproportionate weight to the environmental pillar would lead to unbalanced development and further threaten the abilities of the developing countries to achieve the Sustainable Development Goals (SDGs) and progress in the path of sustainable development. Balancing the three pillars of sustainable development i.e. economic development, social development and environmental protection required integration and coordination between them.
- 11.23 Green Economy should be essentially the one which directly related to the overriding priorities of poverty eradication, food security, universal access to modern energy services and employment generation. On that aspect, India believed that Green Economy was a dynamic concept intended to infuse every activity towards poverty eradication with sustainability thereby greening the economy towards developing economically, socially and environmentally. Green Economy could only be in terms of a gradual transition, while remaining firmly anchored within the overarching framework of "sustainable development" and equally important, the sustainability of livelihood. The overriding objective of socio-economic development and poverty eradication in the developing countries could not be diluted by setting new norms for development. However, Green Economy was not a normative concept and hence, a movement in that direction should be more in the nature of evolution than transition. One should promote sustained economic growth for poverty eradication and should not adversely impact the livelihoods of

vulnerable sections of the society like the small and marginal farmers and those employed in small and medium enterprises.

- 11.24 Access to environmentally sound/clean technology at affordable cost was crucial for the countries for sustained economic growth and progress towards a green economy. Developing countries need access to cost effective technologies appropriate to their resource endowments and geographical factors to enable them to accelerate the transition to sustainable development. Any approach to Green Economy should facilitate research and development in environment friendly technologies in public domain so that developing countries could be accessed at affordable prices.
- 11.25 **The Delegate of Republic of Iraq** stated that their government was working towards favourable investment and food for all investors from different countries which would support their country to be rebuilt and would enhance the opportunities for countries in their economy. Such investments would cover up the lack of labour and increase in their per capita income which would enable them to serve human beings. The delegate further stated that Iraq had signed a number of Memorandum of Understandings (MoUs) with countries and supported all efforts of AALCO for improving sustainable investment.
- 11.26 **The Delegate of Malaysia** recalled the Decision 1/CP.17 from COP17 in Durban, South Africa to launch a process to develop a “Protocol”, “another legal instrument” or “an agreed outcome with legal force under the Convention” through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-DP). It was also decided for a work plan to be launched on enhancing mitigation ambition and exploring options for a range of actions that could close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties. In that regard, all participating States were expected to undertake higher Greenhouse Gas emissions cuts, or lower the growth rates of their emissions.
- 11.27 In respect of the AWG-DP negotiations, Malaysia viewed that priority should be given by the negotiating parties to deliberate on the work plan to enhance mitigation ambition rather than on the form of the outcome document. To that, Malaysia’s position was that such work plan should reflect the principle of “common but differentiated responsibilities” (CBDR) and the options and ways to increase the level of mitigation ambition must be understood in the context of promoting sustainable development, with equal and balanced consideration to the economic, social and environmental sectors.
- 11.28 Therefore, in the context of the existing AALCO’s mandate to continue to monitor the progress in the implementation of climate change negotiations, Malaysia proposed for AALCO to establish a mechanism to streamline the AALCO Member States views and positions on that matter and to urge the respective AALCO Member States to bring forth such views and positions in the future UNFCCC negotiations.
- 11.29 On the Rio+20 ongoing conference taking place in Rio de Janeiro, the delegate said that the focus was on green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development. Of that, it was envisaged that the positive outcome of the Conference would result in the finalization of the document “*The Future We Want*”.
- 11.30 The delegate observed that certain commitments in the outcome document relate to international obligations governed by various international legal regimes. In reference to

- the proposed commitment to establish a more effective wastes management and lifecycle regime, the issues might arise when the disposal of the chemical or electronic wastes involves transboundary movements of such substances which were governed under the export control regime.
- 11.31 With regard to the proposed commitments on global marine environment, global program of action for the protection of the marine environment from land-based activities etc., Malaysia was of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).
- 11.32 Malaysia urged the AALCO Member States to actively participate and express their approaches in particular their positions on CBDR at the forthcoming negotiations on environmental issues.

Third Meeting of the Delegation of AALCO Member States

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

- 12.1 **Dr. Xu Jie, Deputy Secretary-General (DSG) of AALCO** introduced the Organizational Agenda item, report of the AALCO's Regional Arbitration Centres as contained in the Secretariat Document AALCO/51/ABUJA/2012/ORG 3 which consisted of the Reports of the Directors of Lagos and Kuala Lumpur Regional Arbitration Centres. Since AALCO Secretariat had received the report of the Director of the Tehran Regional Arbitration Centre very recently, it would be circulated during the meeting.
- 12.2 The DSG said that AALCO's association with the area goes back to 1970's when there were hardly any permanent arbitral institutions in the Asian-African region. AALCO was prompted to realize the need to develop and improve the procedure for international commercial arbitration, the necessity for institutional support, develop necessary expertise and create environment conducive to conduct arbitration in the Asian and African regions. He recalled that AALCO Regional Arbitration Centres were the result of the AALCO's Scheme for the Settlement of Disputes in Economic and Commercial Transactions and the decision to establish Regional Centres for International Commercial Arbitration at the Doha Session in 1978.
- 12.3 In consonance with that scheme, the Regional Centres for Arbitration at Cairo, Arab Republic of Egypt for the African region and at Kuala Lumpur, Malaysia for the Asian region were established in 1978 and 1979 respectively. Later two more such Centres were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. AALCO had also concluded an agreement with the Government of the Republic of Kenya in 2007, to establish its Fifth Regional Arbitration Centre in Nairobi to cater to the needs of the Eastern and Southern parts of the African continent. The DSG said that during the meeting, it was informed that the establishment and functioning of the Nairobi Regional Arbitration Centre was ongoing and the Attorney-General of Kenya had recently appointed a new team of eminent lawyers and arbitrators to oversee the process of establishing the Centre. In that regard, AALCO firmly believed that with the support of the Government of Kenya, the Nairobi regional Arbitration Centre would start functioning at the earliest.

- 12.4 Commenting upon the role of Regional Arbitration Centres that marked a difference in the arbitration culture within the region as highly commendable, the DSG said that their progress and efforts to fulfil their mandate and effectively function had given them reputation across borders. Infact, it was an honour to have these Regional Arbitration Centres under the auspices of AALCO as these Centres were one of the most successful ventures of the Organization. So, AALCO held the view that the Centres successful activities would have been impossible without the active support and cooperation of the Host Governments. The DSG then congratulated the Directors and thanked the Host Governments hosting these Centres and all other Member States for energetically supporting and assisting the Centres. He then welcomed the Directors of Lagos, Kuala Lumpur Regional Arbitration Centres to present their respective reports to the Session
- 12.5 **Mr. Sundra Rajoo, Director, Kuala Lumpur Regional Centre for Arbitration (KLRCA)** thanked the Secretary-General and the host government Federal Republic of Nigeria for having given him the opportunity to present the report of the Centre. He thanked the host Government of the KLRCA – Malaysia, for extending its support to the centre’s activities. He informed that Kuala Lumpur Regional Centre for Arbitration (KLRCA) was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO). KLRCA was the first regional centre established by AALCO in Asia to provide institutional support in a neutral and independent venue for the conduct of domestic and international arbitration proceedings in Asia. The Centre was established after the Government of Malaysia and AALCO signed a host country agreement, whereby the Malaysian Government agreed to support the establishment of a regional centre for commercial arbitration in Kuala Lumpur and to provide the facilities for the establishment and functioning of such a centre. KLRCA was a non-profit, non-governmental arbitral institution and was led by a Director under the supervision of the Secretary-General of AALCO. The Government of Malaysia has accorded KLRCA independence and certain privileges and immunities for the purposes of executing its functions as an international institution.
- 12.6 Mr. Rajoo reported about the Annual Report for the period ended in 2011. He said that 2011 was a very active year for KLRCA and it began with the signing of the Memorandum of Understanding (MoU) with the Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM), an association that represented nearly 30,000 Malaysian Chinese companies, individuals and trade associations in the country. The Centre then went on a nationwide roadshow to educate and promote the adoption of Alternate Dispute Resolution among ACCCIM members. He said KLRCA continued to launch new products in 2011, with the KLRCA Mediation/Conciliation Rules 2011. It also began actively organising international roadshows and participating in international conferences, such as in China and Korea, to promote Malaysia as a venue and seat of arbitration. The highlight of the year was when the Centre was bestowed the honour of hosting the prestigious APRAG Conference in July 2011, and the Director of KLRCA was appointed the President of APRAG for a two-year term with the Centre serving as the Secretariat.
- 12.7 He said that the number of arbitrators and mediators on KLRCA’s panel has now grown to over 700 and the full list, which was continuously updated, was available on KLRCA’s website. Another major recognition for KLRCA was when the Malaysian Government accepted the key recommendations of KLRCA’s Construction Industry Payment and Adjudication (CIPA) Bill, the most noteworthy being KLRCA being named as the

Adjudication Control Authority. That was a highly significant role in implementing legislation that would transform the construction industry in Malaysia.

- 12.8 The Director of the center informed about the New KLRCA Products and Services in 2011, which included (i) the KLRCA Mediation/Conciliation Rules 2011 and (ii) .my DOMAIN REGISTRY & Sensitive Names Dispute Resolution. Capacity building and knowledge transfer to help build capacity and educate the legal fraternity and the public on ADR; KLRCA partnered with accredited institutions of higher learning, governmental and professional bodies in Malaysia to organise arbitration and mediation courses and forums.
- 12.9 **Mrs. Eunice Oddiri, Director, Regional Centre for International Commercial Arbitration-Lagos (RCICAL), Nigeria** thanked the Secretary-General of AALCO for having invited the RCICAL for making their report at the annual session. The Director of the RCICAL stated that in the period under review, six new cases were added to the current disputes/cases registered at the Centre. All the fresh cases newly added to the centre's caseload were still on-going. The cases relate to aviation, banking, maritime, and a newly added sub-division of power supply. An interesting development in one of the cases was the re-evaluation of the domestic arbitration clause of the Centre contained in the contract. She informed that though desperate efforts were made in the course of the proceeding to deny the Centre's jurisdiction in the administration of the case, at the end of the day the Centre was invited to assume jurisdiction when it became apparent that the arbitral panel could not otherwise.
- 12.10 She briefly mentioned about the participation of the RCICAL in Arbitral Events, (i) International Bar Association (IBA) Conference held in Delhi October 2011, (ii) Educational Activities like the ADR Moot Competition, collaborations with other fora dealing with Arbitration, and so on. On Future Activities of the Centre, she said that the RCICAL would be represented at the forthcoming Moot for African Universities ongoing from 2008/2009, Sensitizing Meetings with Commercial Attaches and Trade Officers of Foreign Missions, Business Meetings with Companies who use Arbitration to resolve disputes, and Promotional activities in mediation for new users.

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

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

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

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

“Excellency,

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

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

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

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

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

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

Thank You.”

Adoption of Resolutions of the Session

- 15.1 The following Resolutions were adopted at the Third Meeting of the Delegations of

AALCO Member States on 22 June 2012:

Organizational Matters

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

Substantive Matters

- | | |
|-------------|---|
| RES/51/S 3 | The Status and Treatment of Refugees |
| RES/51/S 4 | The Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949 |
| RES/51/S 5 | The Legal Protection of Migrant Workers |
| RES/51/S 6 | Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties |
| RES/51/S 8 | Establishing Cooperation Against Trafficking in Women and Children |
| RES/51/S 9 | International Criminal Court: Recent Developments |
| RES/51/S 10 | Environment and Sustainable Development |
| RES/51/S 11 | Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption |
| RES/51/S 12 | Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law |
| RES/51/S 13 | WTO as a Framework Agreement and Code of Conduct for |

World Trade

- | | |
|-------------|--|
| RES/51/S 14 | Expressions of Folklore and its International Protection |
| RES/51/SP 1 | Resolution on the Special Meeting on “Selected Items on the Agenda of the International Law Commission” |
| RES/51/SP 2 | Resolution on the Special Meeting on “Law of the Sea: Responses to Piracy: International Legal Challenges” |
| RES/51/SP 3 | Resolution on the Special Meeting on “International Terrorism” |

Consideration of the Summary Report

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

Fifth and Concluding Session

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

The Fifty-First Annual Session was thereafter adjourned.

B. RESOLUTIONS

AALCO/RES/51/ORG 1
22 JUNE 2012

**REPORT OF THE SECRETARY-GENERAL ON ORGANIZATIONAL,
ADMINISTRATIVE AND FINANCIAL MATTERS**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Recalling the functions and purposes of the Organization as stipulated in Article 1 of the Statutes of AALCO;

Having considered the Report of the Secretary-General on Organizational, Administrative and Financial Matters pursuant to Rule 20 (7) of Statutory Rules as contained in Document No. AALCO/51/ABUJA/2012/ORG 1;

Having heard with appreciation the introductory statement of the Secretary-General on the Report of the Secretary-General on Organizational, Administrative and Financial Matters;

Also having heard with keen interest and appreciation the statements of the Heads of Delegations of AALCO Member States on the Report of the Secretary-General;

Appreciating the efforts of the Secretary-General to enhance the activities of the Organization and to implement its work programme as approved at its Fiftieth Annual Session held in Colombo, Democratic Socialist Republic of Sri Lanka, from 27 June – 1 July 2011;

Also appreciating the continued practice towards the rationalization of its work programme, including consideration of the agenda items during its annual sessions;

Taking note of the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization; and the Action Plan as explained in Document No. AALCO/ES (NEW DELHI)/2008/ORG.1 adopted by the Extraordinary Session of AALCO Member States held on 1 December 2008, in New Delhi (Headquarters), India;

Welcoming the efforts by the Secretary-General for Revitalizing and Strengthening the AALCO;

Appreciating the Report of the Chairman on the Second Meeting of the AALCO EPG Eminent Persons Group (EPG) held on 9th April 2012, at the AALCO Headquarters in New Delhi, and also taking note of the proposals made by Member States during that Meeting;

Taking note of the Report of the Chairman of the Sub-Committee of Liaison Officers of AALCO Member States on the AALCO Secretariat's Human Resources and Financial Matters;

Noting with satisfaction the increased co-operation between the Organization and the United Nations and its Specialized Agencies, other international organizations and academic institutions:

1. **Approves** the work programme of the Organization as set out in the Report of the Secretary-General and urges Member States to extend their full support to the implementation of that programme;
2. **Requests** the Secretary-General to continue his efforts and explore the ways and means to enlarge the Membership of the Organization in Asia and Africa, in particular, to increase the representation from the African States and Central Asian States;
3. **Endorses** the continuation of the AALCO-EPG and urges it to initiate the necessary follow-up action according to the proposals made at the above mentioned meeting held at the AALCO Headquarters in April 2012;
4. **Further** extends the mandate of the Sub-Committee of Liaison Officers of Member States on the AALCO Secretariat's Human Resources and Financial Matters;
5. **Encourages** the Member States to actively participate in the Sub-Committee of Liaison Officers of Member States on the AALCO Secretariat's Human Resources and Financial Matters so as to enable it to place its Report at the Fifty-Second Session of the Organization;
6. **Encourages** Member States to make voluntary contributions to support the capacity building activities under the approved work programme of the Organization; and
7. **Further requests** the Secretary-General to report on the activities of the Organization at its Fifty-Second Annual Session.

AALCO/RES/51/ORG 1 A
22 JUNE 2012

**REVISION OF AALCO'S GRATUITY SCHEME FOR THE LOCALLY
RECRUITED STAFF**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Mindful of the Administrative, Financial and Staff Regulations of the Organization adopted in 1990;

Having considered the views of the Secretary-General on the rationale for the welfare of the Staff and upward revision of the amount of terminal gratuity payable to the locally recruited staff;

Noting that the salary structure and other staff amenities applicable to the locally recruited staff closely follows that of the Host Government of AALCO, that is, the Government of India;

Recalling its previous resolutions on this subject matter RES/43/ORG 10 (adopted on 25 June 2004, Bali, Indonesia) and RES/49/ORG 1 (8 August 2010, Dar es Salaam, United Republic of Tanzania), with a view to build upon them and simplify them;

Welcoming the initiative of the Secretary-General to revise the gratuity scheme for the locally recruited staff;

Revising Rule 10.3 of Chapter X on "Retiral Benefits" under the Administrative, Financial and Staff Regulations of the Organization, 1990 which shall be implemented retrospectively in the AALCO Secretariat from 1st January 2006;

1. **Approves** the proposal of the Secretary-General to revise the gratuity scheme and the formula for computation of gratuity applied to the locally recruited AALCO Secretariat Staff to be adopted, as follows;

"10.3: Gratuity Scheme

- (i) *There shall be a Terminal Gratuity Scheme for the locally recruited staff members of the Secretariat.*
- (ii) *The criteria for eligibility of the terminal gratuity benefits shall be as follows:*
 - (a) *An employee shall be eligible for a terminal gratuity award subject to a minimum qualifying period of five years continuous service with the Organization, and*

- (b) *The terminal gratuity award shall be payable on retirement at the stipulated age; or on health grounds; or redundancy or other justified grounds; or in the event of death during employment.*
- (iii) *The terminal gratuity award shall be payable at the following rates:*
 - (a) *For services of 20 years or above with the Organization, a full month's salary for each completed year of service upto a maximum period of 16 ½ years or alternatively, a monetary ceiling of Rs. 10,00,000/- (Rs. Ten lakhs), whichever is less, and*
 - (b) *For services under 20 years with the Organization, 85% of the monthly salary for each completed year of service upto a maximum period of 16 ½ years, or alternatively, a monetary ceiling of Rs. 10,00,000/- (Rs. Ten lakhs) whichever is less.*

For the purposes of calculation, 'monthly salary' shall mean the Basic Pay plus the Dearness Allowance (Basic Pay + DA) which a staff member shall be receiving immediately before his/her retirement or cessation of service. Any 'period' above six months shall be rounded off to a year and any period of less than six months, shall be ignored.

- (iv) *In the event of an employee's death during employment, the benefits shall be payable to the mandated heir(s) or dependents of the employee.*
 - (v) *Gratuity shall not be awarded in case of dismissal for gross misconduct, misdemeanor, or behavior likely to bring the Organization into disrepute."*
2. **Gratuity Ceiling:** The ceiling limit of the terminal gratuity award shall be in consonance with the then prevailing ceiling limit as and when adopted by the Government of India;
 3. **Requests** the Secretary-General to amend the existing gratuity scheme and implement the same in accordance with the new scheme enumerated above.

AALCO/51/RES/ORG 2
22 JUNE 2012

AALCO'S BUDGET FOR THE YEAR 2013

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having heard with appreciation the introductory statement of the Secretary-General on the Proposed Budget for the Year 2013 as contained in Secretariat Document No. AALCO/51/ABUJA/2012/ORG 2;

Taking note of the comments of the Member States on the Proposed Budget;

Noting further the Proposed Budget for the year 2013 was placed before the 314th and Resumed 314th Meetings of the Liaison Officers held on 16 December 2011 and 24 January 2012 respectively, at the Headquarters, New Delhi; and adopted at the 315th Meeting of the Liaison Officers held on 7 March 2012, and submitted to the Fifty-First Annual Session for final approval;

Considering that the Proposed Budget for the year 2013 is a realistic budget depending on the actual contributions received as urged by some Member States during the Forty-Ninth Annual Session of AALCO held in United Republic of Tanzania in 2010;

Noting with appreciation the part arrears paid by the Government of Iraq on the basis of Memorandum of Understanding (MoU) and requesting other Member States in large arrears to follow suit;

Expressing deep concern over the financial difficulties faced by AALCO and the need to take appropriate measures to overcome the financial crisis including the collection of arrears;

Acknowledging the immediate need to replenish the Reserve Fund of the Organization, with the objective of ensuring that it always has a six-month operational fund for the functioning of the Organization;

Considering all the above-mentioned reasons to place the Organization on a firm financial footing:

1. **Approves** the Budget for the year 2013 as proposed.
2. **Requests** Member States who have not paid their annual contribution for the year 2012, to do so at the earliest in order to ensure the effective functioning of the Organization.

3. **Encourages** Member States to make voluntary financial contribution in order to improve the financial situation of AALCO and to ensure that it has always a six-month operational fund.
4. **Strongly urges** Member States who are in arrears to fulfill their financial obligation and to expeditiously clear the same in accordance with the Statutes and Statutory Rules of AALCO.
5. **Mandates** the Secretary-General to explore ways and means of raising funds by additional sources in accordance with the Statutes and Statutory Rules of AALCO, and
6. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/ 51 /ORG 2 A
22 JUNE 2012

**THE SUB-COMMITTEE ON AALCO SECRETARIAT'S HUMAN
RESOURCES AND FINANCIAL MATTERS**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having noted and considered the Secretariat Document **AALCO/Sub-Committee/HRFM/1 and 2/29.5.2012**, the Report of the Sub-Committee on Human Resources and Financial Matters,

Noting with appreciation the introductory remarks of the Deputy Secretary-General;

Recalling and reiterating the decisions taken at the consecutive Annual Sessions of the Asian-African Legal Consultative Organization, in particular the resolutions adopted on the Human Resources and Financial Matters and ,

Having followed with great interest the comments on the item reflecting the views of Member States contained in the report;

Noting that the report also stressed that a few legal officers need to be employed to conduct sufficient professional work to meet the expectation and mandate received from Member States,

Noting that the recent high inflation rate in India and certain other factors which had been brought to the attention of member States in 2008 Extraordinary Session, has adversely affected the financial balance of AALCO,

Noting the fact stated in the Report that other international organizations in Delhi also face the same problem and identified their own means to address the issue and receive support from member states,

- 1. Request** that the Secretariat further explore ways and means to cut unnecessary office expenses,
- 2. Also request** that the Secretariat further negotiate with countries having arrears to pay their due amount, and
- 3. Mandates** the AALCO Secretariat to look into all possibilities while framing the 2014 budget to achieve sustainable, balanced and stringent budget which will enable and satisfy the needs of Member States.

AALCO/RES/51/ORG 3
22 JUNE 2012

REPORT ON AALCO'S REGIONAL CENTRES FOR ARBITRATION

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Report on AALCO's Regional Centres for Arbitration contained in Document No. AALCO/51/ABUJA/2012/ORG 3;

Noting with appreciation the introductory remarks of the Deputy Secretary-General and the report of the Directors of the Regional Arbitration Centres;

Reaffirming the commitment by the Governments of Member States towards enhancing the role of the Regional Arbitration Centres;

Recalling decision relating to the Integrated Scheme for the Settlement of Disputes in Economic and Commercial Transactions adopted at its Doha Session in 1978;

Expressing satisfaction over the increasing use of the facilities and the opportunities offered for both domestic and international arbitrations under the auspices of its Regional Arbitration Centres;

Appreciating the efforts and contributions of the Governments of the Malaysia, Arab Republic of Egypt, Federal Republic of Nigeria, the Islamic Republic of Iran, and Republic of Kenya for hosting the respective Regional Arbitration Centres;

Further appreciating the promotional activities undertaken by the Directors of the Centres, including organization of seminars and training programmes, to promote international commercial arbitration in the Asian and African regions;

Reiterating the earlier decision of the AALCO on the necessity for the Governments of Member States to promote and support the use of the Regional Arbitration Centres;

Further reiterating its proposal that after consultation with the Directors of the respective Regional Arbitration Centres, for the holding of International Arbitration Conference biennially, by rotation in each of the Centres, with the support of Member States:

1. **Requests** that, based on the above mentioned commitments for promoting and supporting the use of Regional Arbitration Centres, the Member States to urge their esteemed Governments and private sector to use the AALCO's Regional Arbitration Centres for their disputes and in particular to consider in their contracts, the inclusion of the Arbitration Clause of AALCO's Regional Arbitration Centres.

2. **Consider** the formation of a common system both administratively and financially between the Centres and common standard for the qualification of arbitrators.
3. **Directs** the Arbitration Centres to meet at every AALCO Annual Sessions to enable an exchange of ideas and to report the outcome to the Organization.
4. **Requests** the Secretary-General to take initiative to promote the Arbitration Centres among Member States and to work toward establishing another Arbitration Centre in the South Asian region.
5. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/ORG 4
22 JUNE 2012

**REPORT ON THE CENTRE FOR RESEARCH AND TRAINING OF THE
AALCO**

The Asian-African Legal Consultative Organization at its Fifty-first Session,

Having considered the Secretariat Report on the Centre for Research and Training (CRT) of the AALCO, contained in Document No. AALCO/51/ABUJA / 2012/ORG 4,

Having heard with appreciation the introductory remarks of the Deputy Secretary-General,

Recognizing the need and importance of the exchange of information among AALCO, its Member States, the United Nations and its Specialized Agencies, and other International Organizations for improved capacity-building and enhancement of legal expertise in areas of international law,

Bearing in mind the effective role of research and training in promoting the objectives of the Organization,

Also bearing in mind a more proactive role the CRT could play in furthering the mandate of the Organization in making the best use of the Headquarters which is equipped with modern technology and infrastructure facilities,

Appreciating the efforts of the Secretariat in preparing special studies on matters of common concern and its plan to hold training programmes in cooperation with International Organizations and to ensure financial support to these programmes,

1. **Requests** the Secretariat to maintain, update and improve the technical efficiency of the website for facilitating dissemination of information to the Member States, the United Nations and its Specialized Agencies, and other International Organizations;
2. **Also requests** the Secretary-General to foster capacity-building of the Centre to carry out further research projects on international law and to organize training programmes for the benefit of the officials of Member States handling international law issues;
3. **Urges** Member States to furnish information and other relevant materials, including the name and address of the focal point with e-mail and the website of the Ministry concerned and officials in charge of AALCO, in order to enhance the activities of the Centre for Research and Training (CRT);

4. **Also Urges** Member States to make voluntary contributions to the “Research and Training Fund” established vide RES/45/ORG 4 to promote and strengthen Research and Training under the CRT, and to provide a sustainable financial base to the Centre to undertake its mandated activities;
5. **Directs** the Secretariat to take necessary measures to spread the awareness about the Centre so that the services available in the Centre would be made use of by the public and private sectors in the Member States;
6. **Also directs** the Secretariat to work towards the realization of its proposal for the training of officials of AALCO Member States;
7. **Requests** the Member States to provide the Secretariat with specific topics for conducting in-depth research studies; and
8. **Decides** to place this item on the provisional agenda of its Fifty-Second Session.

AALCO/RES/51/ORG 5
22 JUNE 2012

REAPPOINTMENT OF THE SECRETARY-GENERAL
The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having heard the statement of H.E. Mr. Rauff Hakeem, the President of the Fiftieth Annual Session of AALCO,

Recalling Rule 20 (1) of AALCO's Statutory Rules,

Recalling also that the Member States had, at its Forty-Seventh Annual Session held in New Delhi (HQ) (2008), unanimously appointed Prof. Dr. Rahmat Mohamad, of Malaysia, as the Secretary-General of AALCO, for a term of four years on 30 June 2008. For some pressing official reasons he commenced his duties on 15 August 2008,

Also taking note of the decision of the Government of Malaysia extending its full support for the re-appointment of the current Secretary-General and its request for support from Member States for his re-appointment, vide its Note dated 26 March 2012,

Considering that, in accordance with Rule 20 (1) of its Statutory Rules the current Secretary-General is eligible for re-appointment for only one further term of four years (2012-2016),

Also considering that many Member States officially supported the re-appointment of Prof. Dr. Rahmat Mohamad for another term of four years,

Taking note of the unanimous response of the Member States to the request of the President of the Fifty-First Annual Session inviting them to endorse the reappointment of Prof. Dr. Rahmat Mohamad by acclamation,

1. **Acknowledges** with appreciation the significant contribution made by the current Secretary-General in enhancing the image, role and activities of the Organization, and in rationalizing its work programme, as well as his prudent management of its budget; and
2. **Decides** to reappoint Prof. Dr. Rahmat Mohamad as Secretary-General of AALCO with effect from 22 June 2012, for a second and final term of four years.

AALCO/RES/51/S 3
22 JUNE 2012

THE STATUS AND TREATMENT OF REFUGEES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No. AALCO/51/ABUJA/2012/S 3;

Reaffirming the importance of the 1951 Convention relating to the Status of Refugees (the 1951 Convention) together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention of 1969, as the cornerstone of the international system for the protection of refugees;

Commending the Office of the United Nations High Commissioner for Refugees (UNHCR) for the important contribution which it has made towards the protection of refugees and internally displaced persons, since the establishment of the UNHCR:

Deploring the widespread violations of the principle of non-refoulement and of the rights of refugees in many parts of the world.

1. **Acknowledges** the **desirability** of comprehensive approaches by the international community to the problems of refugees and displaced persons, including addressing root causes, strengthening emergency preparedness and response, providing effective protection and achieving durable solutions;
2. **Calls upon** all States that have not yet done so to ratify/accede to and to implement fully the 1951 Convention relating to the Status of refugees and the 1967 Protocol thereto and other relevant regional instrument as the case may be;
3. **Directs** the Secretariat to explore the possibility to jointly organize a seminar/workshop in collaboration with the UNHCR towards studying the feasibility of drafting a Model Law on Refugees and Internally Displaced Persons in the Asian-African region; and
4. **Decides** to place this item on the provisional agenda at its Fifty-Second Annual Session.

**AALCO/RES/51/S 4
22 JUNE 2012**

**THE DEPORTATION OF PALESTINIANS AND OTHER ISRAELI PRACTICES
AMONG THEM THE MASSIVE IMMIGRATION AND SETTLEMENT OF
JEWS IN ALL OCCUPIED TERRITORIES IN VIOLATION OF
INTERNATIONAL LAW PARTICULARLY THE FOURTH GENEVA
CONVENTION OF 1949
(Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No. AALCO/51/ABUJA/2012/S 4,

Noting with appreciation the introductory remarks of the Deputy Secretary-General;

Recalling and reiterating the decisions taken at the consecutive Annual Sessions of the Asian-African Legal Consultative Organization since 1988, when the topic was first introduced on the agenda of the Organization, in particular the decisions adopted on 22 April 1998 and 23 April 1999,

Also recalling and reiterating the resolutions adopted on 23 February 2000; RES/40/4 of 24 June 2001; RES/41/4 of 19 July 2002; RES/42/3 of 20 June 2003; RES/43/S 4 of 25 June 2004; RES/44/S 4 of 1 July 2005; RES/45/S 4 of 8 April 2006; RESW/46/S 4 of 6 July 2007; RES/47/S 4 of 4 July 2008; RES/48/S 4 of 20 August 2009; RES/49/S 4 of 8 August 2010 and RES/50/S 4 of 1 July 2011,

Having followed with great interest the deliberations on the item reflecting the views of Member States;

Being concerned with the serious obstacles created by the occupying power, which hinder the achievement of a just and lasting peace in the region;

Recognizing that the massive Israeli military operation in the Occupied Palestinian Territories, particularly in the occupied Gaza strip, has caused grave violations of the human rights of the Palestinian civilians therein and international humanitarian law, and exacerbated the severe humanitarian crisis in the Occupied Palestinian Territories;

Also recognizing that the Israeli siege imposed on the occupied Gaza strip, including the closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences;

Welcoming the international and regional initiatives for peace in the Middle East;

Condemning Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of human rights and the Fourth Geneva Convention of 1949;

Stressing the need to compliance with existing Israeli – Palestinian agreements concluded in order to reach a final settlement;

Being concerned about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power, including that arising from the excessive use of force, the use of collective punishment, the occupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territories, the destruction of property and infrastructure, use of prohibited weapons and all other actions designed to change the legal status, geographic composition of the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, and about war crimes and crimes against humanity committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people;

Recalling the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and related General Assembly Resolution (A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006), as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall;

Being deeply concerned about the tenacity of Israel in proceeding with the construction of wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, which is contrary to international law;

Acknowledging with deep concern that the Security Council is still unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall;

Expressing its support to the Arab Peace Initiative for resolving the issue of Palestine and the Middle East, adopted by the 14th Arab Summit held in Beirut (Lebanon) on 28 March 2002 and reaffirmed in the 19th Summit Conference of the League of Arab States, Riyadh, 28-29 March 2007 as well as other peace initiatives, including the Quartet Road Map;

Taking note of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine;

Affirming that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, existing agreement between the parties and the relevant Security Council and General Assembly resolutions, which will allow all the countries of the region to live in peace, security and harmony:

1. **Urges** its Member States to take part in the peace process/efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of relevant Security Council resolutions, including 242 (1967), 338 (1973), 425 (1978), 1397 (2002) and 1860 (2009); and relevant General Assembly Resolutions, including 194 (1949) on the formula of “land for peace” and the legitimate rights of the Palestinian people, and expressing solidarity with the Palestinian people and their elected leadership.
2. **Takes note** of the United Nations Secretary General’s Board of Enquiry as transmitted on 4 May 2009 to the Security Council as well as the findings of the recent report of the Special Rapporteur of the Human Rights Council and other regional organizations.
3. **Also takes note** of the report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States on 30 April 2009.
4. **Strongly condemns** the shocking developments that have continued to occur in the Occupied Palestinian Territory, including East Jerusalem, including the deportation of Palestinians from their homeland, the large number of deaths and injuries, mostly among Palestinian civilians, the acts of violence and brutality against Palestinian civilians, the widespread destruction of public and private Palestinian property and infrastructure, the internal displacement of civilians and the serious deterioration of the socio-economic and humanitarian conditions of the Palestinian people.
5. **Demands** that Israel, the Occupying Power, comply fully with the provisions and principles of the Charter of the United Nations, Universal Declaration of Human Rights, the Regulations annexed to the Hague Convention of 1907 and the Geneva Conventions in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in order to protect the rights of Palestinians.
6. **Also demands** that Israel positively respond to the 2009 Report of Mr. Richard Falk the Special Rapporteur for the Palestinian Territories Occupied Since 1967 and 2010 Report and Recommendations of Justice Goldstone, United Nations Fact Finding Mission on the Gaza Conflict in order to protect the rights of Palestinians.

7. **Further Demands** that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution (A/RES/ES-10/15 of 20th July 2004).
8. **Strongly demands** that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory.
9. **Strongly deplores** the Israeli blockade of the Gaza strip and its consequent human rights and humanitarian law violation and the Israeli attack against the humanitarian aid Flotilla.
10. **Further demands** for an immediate cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction of property and calls for the immediate and full withdrawal of Israeli (occupying) forces from Palestinians territories in implementation of Security Council Resolutions, including 1402 (2002), 1403 (2002), 1515 (2003), and 1544 (2004) as a first step for ending the Israeli occupation of Palestinian territories occupied since 1967.
11. **Calls upon** Israel to ensure the return of refugees and displaced Palestinians to their homes and the restoration to them of their properties, in compliance with the relevant UN resolutions.
12. **Directs** the Secretariat to closely follow the developments in occupied territories from the view point of relevant legal aspects.
- 12**bis** Requests the Secretary-General and the Secretariat to conduct a study to examine and establish the legal requirements and principles that would determine the status of Palestine as a State. This study shall take into consideration the requirements of international law and existing international norms and standards particularly the provisions of the Montevideo Convention on the Rights and Duties of States. The Secretary-General shall submit the outcome of the study for Member States further consideration.
13. **Decides** to place the item on the provisional agenda of the Fifty-second Annual Session.

AALCO/RES//51/S 5

22 JUNE 2012

LEGAL PROTECTION OF MIGRANT WORKERS

(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No. AALCO/51/ABUJA/ 2012 /S 5;

Acknowledging the important contribution provided by migrants and migration to development, as well as the complex interrelationship between migration and development,

1. **Requests** all Member States, in conformity with their respective constitutional systems, to effectively promote and protect the human rights of all migrants, in conformity with the international legal instruments to which they are party;
2. **Encourages** Governments of countries of origin, countries of transit and countries of destination to increase cooperation on issues related to migration;
3. **Also encourages** Member States that have not yet done so to consider ratifying/acceding to the relevant international legal instruments on the situation of migrant workers, particularly the ICMW 1990; and
4. **Decides** to place this item on the provisional agenda of its Fifty-Second Annual Session.

AALCO/RES/51/S 6
22 JUNE 2012

**EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION:
SANCTIONS IMPOSED AGAINST THIRD PARTIES**
(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/SD/S 6;

Noting with appreciation the introductory statement of the Deputy Secretary-General;

Recalling its Resolutions RES/36/6 of 7 May 1997, RES/37/5 of 18 April 1998, RES/38/6 of 23 April 1999, RES/39/5 of 23 February 2000, RES/40/5 of 24 June 2001, RES/41/6 of 19 July 2002, RES/42/6 of 20 June 2003, RES/43/6 of 25 June 2004, RES/44/6 of 1 July 2005, RES/45/S 6 of 8 April 2006, RES/46/S 7 of 6 July 2007, RES/47/S 6 of 4 July 2008, RES/48/S 6 of 20 August 2009, RES/49/S 6 of 8 August 2010 and RES/50/S 6 of 1 July 2011 on the subject;

Recognizing the significance and implications of the above subject;

Expressing its profound concern that the imposition of unilateral sanctions on third parties is violation of the United Nations Charter and in contradiction with the general principles of international law, particularly state immunity, non- interference in internal affairs, sovereign equality, the right to development, and freedom of trade and peaceful settlement of disputes;

Condemning the imposition of restrictions against AALCO Members States, Syrian Arab Republic and Islamic Republic of Iran by the Government of the United States of America;

Condemning also the adoption of restrictive measures against states, especially in cases where the functional organs of a sovereign State, like Central Banks, are subjected to sanctions which violate immunity of State and its properties;

Being aware that extraterritorial application of national legislation in an increasingly interdependent world retards the progress of the Sanctioned State and impedes the establishment of an equitable, multilateral, non-discriminatory rule-based trading regime;

Reaffirming the importance of adherence to the rules of international law in international relations:

1. **Requests** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions

Imposed against Third Parties and the executive orders imposing sanctions against target States.

2. **Also requests** the Secretariat to undertake a special study on this topic dealing with the legal implications of application of unilateral sanctions on third parties;
3. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject, and
4. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

**AALCO/RES/51/S 8
22 JUNE 2012**

**ESTABLISHING COOPERATION AGAINST
TRAFFICKING IN WOMEN AND CHILDREN
(Non-Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/S 8;

Being Mindful of the increasing number of individuals being exploited through trafficking in persons especially women and children and smuggling of migrants, including from the Asian-African region;

Convinced of the need to eliminate all forms of trafficking in persons and smuggling of migrants and bearing in mind the overlapping nature between trafficking in persons and smugglings of migrants, which are flagrant violations of human rights;

Noting the continuing efforts of Member States in combating trafficking in persons and smuggling of migrants, and encouraging them to inform and update the AALCO Secretariat of pertinent developments in their respective States, in order to share experience amongst Member States;

Also noting the significance of gender equality as a necessary factor towards women empowerment and appreciating every effort taken by AALCO Member States to address this issue;

Acknowledging with appreciation that some Member States have submitted to the AALCO Secretariat their national legislations and other relevant information related to the topic,

1. **Encourages** the Member States which are not yet party to consider ratifying/acceding to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000;
2. **Invites** Member States who have not yet done so to submit to the Secretariat their national legislations and other information related to the topic;
3. **Directs** the Secretariat to follow and report on the developments in this regard, including the work undertaken by other fora;
4. **Mandates** the Secretary-General to constitute an open-ended Committee of Experts to conduct study on ways and means on how to enhance mutual legal assistance in criminal matters among Member States for their further consideration;
5. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/S 9
22 JUNE 2012

INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS
(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/S 9;

Taking note of the deliberations and decisions of the Review Conference of the Rome Statute of the International Criminal Court, and noting the progress in cases before the International Criminal Court (ICC);

Also taking note of the deliberations and decisions of the Tenth Session of the Assembly of States Parties to the Rome Statute of the ICC;

Being aware of the importance of the universal acceptance of the Rome Statute of the ICC and in particular, the principle of complementarity;

Taking note of the outcome of the Review Conference of the Rome Statute of the International Criminal Court held at Kampala, Uganda;

Also Taking Note with appreciation the convening and outcome of the “Meeting of Legal Experts on the Rome Statute of the International Criminal Court: Issues and Challenges” held on 19 and 20 July 2011, in Putrajaya, Malaysia,

1. **Encourages** Member States which are not yet party to consider ratifying/acceding to the Rome Statute and upon ratification/accession consider adopting necessary implementing legislation.
2. **Further encourages** Member States that have ratified the Rome Statute to consider becoming party to the Agreement on the Privileges and Immunities of the ICC.
3. **Directs** the Secretariat to follow up the deliberations in the forthcoming Eleventh Session of the Assembly of States Parties and its meetings, and follow the developments regarding cases taken up by the ICC, and present a report at the Fifty-Second Annual Session,
4. **Requests** the Secretary-General to explore the possibility of convening a workshop in collaboration with the ICC, in a Member State of AALCO, for Prosecutors and Judges from AALCO Member States, aimed at capacity building and familiarizing them with the working of the ICC, and
5. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/S 10
22 JUNE 2012

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT
(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Annual Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/SD/S 10;

Noting with appreciation the introductory statement of the Deputy Secretary-General;

Having followed with great interest the deliberations on the item reflecting the views of the Member States on the agenda item “Environment and Sustainable Development”;

Deeply concerned with the deteriorating state of the global environment through various human activities, and unforeseen natural disasters;

Reaffirming that environmental protection constitutes an integral part of sustainable development;

Recalling the Nairobi Resolution on Environmental Law and Sustainable Development adopted by the Forty-Fourth Session of AALCO in 2005;

Underlying that climate change is one of the greatest challenges of our time;

Emphasizing that strong political will to combat climate change in accordance with the principles of the United Nations Framework Convention on Climate Change, especially the principle of common but differentiated responsibilities and respective capabilities is essential;

Recognizing the importance of the on-going Bali Road-Map negotiations for stronger international cooperation on climate change for the period beyond 2012;

Considering the Durban Outcome adopted at the United Nations Climate Change Conference held at Durban, South Africa in December 2011 that established the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“AWG-DPEA”) which would adopt, a new “protocol, another legal instrument or an agreed outcome with legal force” by 2015;

Conscious of the importance of the conservation of biological diversity for evolution and maintaining life-sustaining systems of the biosphere;

Affirming the importance of the United Nations Convention to Combat Desertification:

1. **Urges** Member States to actively participate in the on-going Bali Road-Map negotiations.
2. **Directs** the Secretariat to follow the on-going Bali Road-Map negotiations and Durban Outcome processes for enhancing international regime under the Convention to combat climate change.
3. **Further directs** the Secretariat to continue to follow up the progress in the implementation of the outcome of the Johannesburg Summit as well as follow up the progress in the implementation of the United Nations Framework Convention on Climate Change, Convention on Biological Diversity, and the United Nations Convention to Combat Desertification, and
4. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/S 11
22 JUNE 2012

**CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED
NATIONS CONVENTION AGAINST CORRUPTION**
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat document contained in No. AALCO /51/
ABHUJA /2012/ S 11;

Deeply concerned about the impact of corruption on the political, social and
economic stability and development of societies;

Bearing in mind that the prevention and combating of corruption is a common
and shared responsibility of the international community, necessitating cooperation at the
bilateral and multilateral levels;

Noting with appreciation the commitment of States Parties to the country review
process in their capacities both as States parties under review and as reviewing States
parties;

Recalling resolution 3/1 adopted by the Conference of State Parties to the United
Nations Convention Against Corruption [UNCAC] at its third meeting held in November
2009 at Doha, by which the Conference had established the Mechanism for the Review of
Implementation of the United Nations Convention against Corruption and charged the
Implementation Review Group with having an overview of the review process,

- 1. Welcomes** the work undertaken by the Implementation Review Group;
- 2. Encourages** Member States of AALCO who have not done so to consider
ratifying/acceding to the United Nations Convention against Corruption so
as to strengthen the fight against corruption;
- 3. Calls on** Member States of AALCO, who are parties to the Convention, to
conduct and provide legal assistance in investigation, prosecution and
judicial proceedings in relation to the offences covered at the request of
other parties.
- 4. Decides** to place this item on the provisional agenda at its Fifty-Second
Annual Session.

AALCO/RES/51/SD 12
22 JUNE 2012

**REPORT ON THE WORK OF THE UNCITRAL AND OTHER
INTERNATIONAL ORGANIZATIONS IN THE FIELD OF
INTERNATIONAL TRADE LAW
(Non-Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/SD 12,

Being aware of the Finalized version of the UNCITRAL Model Law on Public Procurement and UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspectives, at its forty-fourth session;

Welcoming the decision of the UNCITRAL to follow topics in the areas of settlement of commercial disputes, security interests and insolvency law and undertaking the work in the area of online dispute resolution;

Taking note of the adoption of UNIDROIT Principles on International Commercial Contracts and also the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets, 2012;

Also Welcoming the adoption of the “Hague Principles in Choice of Law in International Contracts”;

1. **Expresses** its satisfaction for AALCO’s continued cooperation with the various international organizations competent in the field of international trade law and hopes that this cooperation will be further enhanced in the future;
2. **Encourages** Member States to consider adopting, ratifying or acceding to the instruments prepared by the UNCITRAL and other International Organizations; and
3. **Decides** to place this item on the provisional agenda of the Fifty-Second Session.

AALCO/ RES/ 51/ S 13
22 JUNE 2012

**WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR
WORLD TRADE
(Non-Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No. AALCO/51/ABHUJA /2012/S
13;

Recognizing the importance and complexities of issues involved in the WTO
Doha Development Agenda;

Hoping that the Doha Round of Negotiations would conclude successfully in the
near future;

1. **Encourages** Member States to successfully complete negotiations mandated under the Doha Development Agenda, taking fully into consideration the special concerns of developing and least-developed country Members of WTO;
2. **Directs** the Secretariat to continue to follow and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding;
3. **Appreciates** the effort of the Centre for Research and Training (CRT) of AALCO in successfully organizing a Training Programme on ‘Trade and Development Issues’ from 21-25 May 2012, at AALCO Headquarters, New Delhi;
4. **Requests** the Secretary-General in consultation with Member States, subject to the availability of necessary resources, to organize seminars or workshops to facilitate the exchange of views by Member States on issues currently under negotiation within the WTO and capacity building programs; and
5. **Decides** to place this item on the provisional agenda of its Fifty-Second Annual Session.

AALCO/RES/51/S 14
22 JUNE 2011

EXPRESSIONS OF FOLKLORE AND ITS INTERNATIONAL PROTECTION

(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/S 14;

Recognizing the importance of protection of the ‘Expressions of Folklore’ for the Asian-African countries;

Welcoming the World Intellectual Property Organization (WIPO) General Assembly initiative in establishing an Intergovernmental Committee (IGC) with the objective of reaching agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of Expressions of Folklore (EoF);

Also welcoming the work done by the Intersessional Working Group 1 in developing a legal instrument to protect the EoF:

1. **Expresses** the hope that the WIPO IGC would be able to reach agreement on a text of an international legal instrument (or instruments) which will ensure the effective protection of EoF.
2. **Requests** the Secretary-General to organize an Expert Meeting in cooperation with WIPO or with any other Member State(s), to facilitate the exchange of views by Member States on the issues relevant to the protection of EoF.
3. **Encourages** Member States of AALCO to actively participate in the future work of the agenda item at all the WIPO meetings.
4. **Directs** the Secretariat to follow up the developments within the WIPO IGC on ‘Expressions of Folklore’, and to present the views of the AALCO Member States to the IGC, and
5. **Decides** to place the item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/SP 1
22 JUNE 2012

**RESOLUTION ON HALF-DAY SPECIAL MEETING ON “SELECTED ITEMS
ON THE AGENDA OF THE INTERNATIONAL LAW COMMISSION”
(Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No.AALCO/51/ABUJA/2012/S 1;

Having heard with appreciation the introductory statement of the Secretary-General and the views expressed by the Chairperson and the Panelists and the statements of the Member States during the Special Half-Day Meeting on “Selected Items on the Agenda of the International Law Commission” jointly organized by the Government of Federal Republic of Nigeria, International Law Commission (ILC) and AALCO held on 20 June 2012 at Abuja, Nigeria;

Having followed with great interest the deliberations on the item reflecting the views of Member States on the work of the International Law Commission (ILC);

Expressing its appreciation for the statement made by the Representative of the ILC on its work;

Recognizing the significant contribution of the ILC to the codification and progressive development of international law;

Also Recognizing the outstanding contribution of the Special Rapporteurs in preparation of Guide to Practice on Reservation of Treaties, Draft Articles on the Responsibility of International Organizations, and Draft Articles on Effects of Armed Conflicts on Treaties;

Commending the initiative of the Secretary-General in convening the Inter-Sessional Meeting of Legal Experts to discuss Matters relating to the ILC on 10 April 2012 at AALCO Headquarters, New Delhi, India and the fruitful exchange of views on the items deliberated during that meeting:

1. **Recommends** Member States to contribute to the work of ILC, in particular by communicating their comments and observations regarding issues identified by the ILC on various topics currently on its agenda to the Commission.
2. **Requests** the Secretary-General to continue convening AALCO-ILC meetings in future.

3. **Also requests** the Secretary-General to bring to the attention of the ILC the views expressed by Member States during the Annual Sessions of AALCO on the items on its agenda during its Fifty-First Annual Session, and
4. **Decides** to place the item on the provisional agenda of the Fifty-Second Annual Session.

**AALCO/RES/51/SP 2
22 JUNE 2012**

**RESOLUTION ON HALF-DAY SPECIAL MEETING ON
“THE LAW OF THE SEA
RESPONSES TO PIRACY: INTERNATIONAL LEGAL CHALLENGES”**

(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/ 2012/S 2;

Noting with appreciation the introductory remarks of the Deputy Secretary-General and the views expressed by the Chairperson and the Panelists and the statements of the Member States during the Special Meeting on “The Law of the Sea – Responses to Piracy: International Legal Challenges” jointly organized by the Government of the Federal Republic of Nigeria, AALCO and the **United Nations Division of Ocean Affairs and the Law of the Sea** held on 20th June 2012 at Abuja, Nigeria

Recognizing the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and its legal framework governing the issues relating to the management of the oceans;

Mindful of the historical contribution made by the Asian-African Legal Consultative Organization in the elaboration of the UNCLOS;

Conscious that the AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements;

Hopeful that in view of the importance of the law of the sea issues, AALCO would maintain its consideration on the agenda item and continue to perform its historical role on the law of the sea matters;

Taking note of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

Welcoming the pre-eminent contribution and active role being played by the institutions established under the UNCLOS in relation to the peaceful settlement of disputes with regard to ocean related matters, the establishment of the outer limits of the Continental Shelf and the administration of the “Area”;

Noting with satisfaction the upcoming commemoration of the 30th Anniversary of the opening for signature of UNCLOS on 10 December 2012;

Being aware of the challenges faced by the international community on account of piracy:

Condemning the increasing incidents of all acts of piracy and armed robbery against vessels;

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind.
2. **Encourages** the full and effective participation of its Member States in the work of the International Seabed Authority, and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process and also through effective contribution to the work of the Commission on the Limits of Continental Shelf, so as to ensure and safeguard their legitimate interests.
3. **Calls upon** the Member States that have not yet done so to ratify or accede to and implement fully the 1982 United Nations Convention on the Law of the Sea.
4. **Requests** the Secretary-General to forward this resolution to the Secretariat of UNCLOS in commemoration of the 30th Anniversary of the UNCLOS.
5. **Also Requests** the Secretary-General to explore the possibility of bringing out a comprehensive study on anti-piracy legislations in order to assist the Member States on the subject matter.
6. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.

AALCO/RES/51/SP 3
22 JUNE 2012

**RESOLUTION ON HALF-DAY SPECIAL MEETING ON
“INTERNATIONAL TERRORISM”
(Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Having considered the Secretariat Document No. AALCO/51/ABUJA/2012/S 7;

Noting with appreciation the introductory remarks of the Deputy Secretary-General and the views expressed by the Chairperson and the Panelists and the statements of the Member States during the Special Meeting on “International Terrorism” jointly organized by the Government of the Federal Republic of Nigeria and AALCO and held on 21st June 2012 at Abuja, Nigeria;

Recalling the relevant international instruments, where applicable, and resolutions of the United Nations General Assembly and the Security Council relating to measures to eliminate international terrorism and the efforts to prevent, combat and eliminate terrorism;

Taking note of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly of the United Nations by its resolution 51/210 of 17 December 1996 to elaborate a Comprehensive Convention on International Terrorism based on the proposal made by the Republic of India;

Expressing grave concern about the worldwide increase in acts of terrorism, which threaten the life and security of innocent people and impede the economic development and scientific activities of the concerned States;

Recognizing the need for the international community to collectively combat terrorism in all its forms and manifestations;

Reaffirming that international effort to eliminate terrorism must be strengthened in accordance with the Charter of the United Nations and taking into account international human rights law, international humanitarian law, and refugee law;

Calling for an early conclusion and the adoption of a comprehensive convention on international terrorism by expediting the elaboration of a universally acceptable definition of terrorism:

1. **Encourages** Member States to consider ratifying/acceding to the relevant conventions on terrorism.

2. **Also encourages** Member States to participate in the work of the above mentioned Ad Hoc Committee on International Terrorism.
3. **Directs** the Secretariat to follow and report on the progress of work in the Ad Hoc Committee on International Terrorism.
4. **Also directs** the Secretariat to obtain national legislation or information on national legislation, as the case may be, on combating terrorism to facilitate exchange of information among Member States.
5. **Requests** the Secretary-General to hold seminars and joint programmes in cooperation with other international organizations, especially United Nations Office on Drugs and Crime, on dealing with the legal aspects of combating terrorism,
- 5bis Further requests the Secretariat to study the feasibility of an Asian-African legal instrument on mutual legal assistance in criminal matters and subsequently consider drafting an Asian-African Treaty on Mutual Legal Assistance in Criminal Matters draft for Member States further consideration, and
6. **Decides** to place the item on the provisional agenda of its Fifty-Second Annual Session.

XVI. LIST OF PARTICIPANTS

**LIST OF PARTICIPANTS AT THE 51ST ANNUAL SESSION OF AALCO
HELD FROM 18-22 JUNE 2012 AT
ABUJA, FEDERAL REPUBLIC OF NIGERIA**

- | | |
|-------------------------------|---|
| 1. Arab Republic of Egypt | H.E. Mr. Yousef Shawky
Ambassador of Egypt to Nigeria
Head of Delegation

Mr. Abdelmohsen Shafey
Third Secretary
Delegate |
| 2. People's Republic of China | Ms. Chen Peijie
Head of Delegation
Foreign Ministry of People's Republic of China

Mr. Li Yongsheng
Adviser
Foreign Ministry of People's Republic of China

Mr. Wang Lixin
Adviser
Foreign Ministry of People's Republic of China

Mr. Jianue Lan
Deputy Head Political Section
Chinese Embassy in India, Adviser |
| 3. Ghana | Mr. Benjamin Kunbuor
Attorney General
Ministry of Justice and Attorney General's
Department, Ghana

Mr. Lartey Patience Adumua
Senior State Attorney, Ghana |
| 4. India | H.E. Mr. Mahesh Sachdev
High Commissioner of India to Nigeria

Mrs. Uma Sekhar
Director (Legal & Treaties)
Ministry of External Affairs
New Delhi.
Umasekhr5@hotmail.com |

5. Indonesia

Mr. Raudin Anwar
Head of Delegation
Secretary of the Directorate General of Law and
International Treaties, Ministry of Foreign Affairs

H.E. Mr. Sudirman Haseng
Delegate

Mrs. Chairijah,
Delegate

Mr. Catur Hadiano
Delegate

Ms. Siti Fatimah
Delegate

Ms. Ave Maria Sihombing
Delegate

6. Islamic Republic of Iran

Mr. Seyed Hossein Enayat
Head of Delegation
Deputy Director General of Legal Department
Islamic Republic of Iran

Prof. Djamshid Momtaz
Delegate

Mr. Sattar Ahmadi
Delegate

7. Iraq

H.E. Mr. Hassan Halbose Al-Shammri
Minister of Justice
Iraq

Ms. Zena Dera Dhahir
Official
Ministry of Foreign Affairs

Mr. Sadeq Abood Abood Ooi
Delegate

Mr. Abdul Kareem Al-Maini Ahmed
Director General

- Mr. Jasim Mohamed Farman
Delegate
- Mr. Yaseen Taha Waies Al-Doori
Delegate
8. Japan
- Amb. Yasuji Ishigaki
Special Assistant to the Minister for Foreign Affairs
Head of Delegation
- Mr. Ken Sakaguchi
Delegate
Ministry of Foreign Affairs
- Mr. Shunsake Nagano
Delegate
Embassy of Japan, India
9. Republic of Kenya
- Ms. Dorca Auma Achapa
Head of delegation
Deputy Solicitor General
Kenya
- Ms. Njeri Mwangi Wachira
Senior Deputy Chief State Counsel.
Delegate
- Mr. Anthony Btetsa Masinde
Second Secretary
Delegate
10. Democratic People's Republic
of Korea
- Mr. Jong Hak Se
Head of Delegation
Ambassador of DPR Korea to Nigeria
- Mr. Kim Myong Chol
Delegate, Section Chief, Ministry of Foreign Affairs
- Mr. Choe Yong Chol
Delegate, Desk Officer, Ministry of Foreign Affairs
11. Republic of Korea
- Mr. Soonchun Lee
Head of Delegation
- Mr. Sanghee Seok

Delegate

Mr. Jong Kwon Youn
Delegate

12. State of Kuwait

Dr. Muhammad Abdullah Al-Ansari
Under Secretary-Information Technology and
Statistics Affairs, Ministry of Justice & Head of the
Delegation

H.E. Saadi Al Asousi
Ambassador of State of Kuwait to Abuja

Mr. Khalid Alfarhan
Third Secretary, Embassy of Kuwait to Abuja.

Mr. Eisa Ali Al-Basher
Secretary, Minister Office
Ministry of Justice

13. Malaysia

Hon. Tan Sri Abdul Gani Patail
(Head of Delegation)
Attorney General of Malaysia

Hon. Datuk Azailiza Mohd Ahad
Deputy Secretary General 1
Attorney General's Chambers, Malaysia

Mr. Mohd Radzi Harun
Head of the International Affairs Division
International Affairs Division
Attorney General's Chambers, Malaysia

Ms. Farhani Ahmad Tajuddin
Senior Federal Counsel
International Affairs Division
Attorney General's Chambers, Malaysia

14. Union of Myanmar

Daw (Ms) Hla Myo Nwe
Deputy Director General
Ministry of Foreign Affairs
Head of Delegation

U (Mr.) Thiha Han
Director

Ministry of Foreign Affairs
Delegate

U (Mr.) Kyaw Kyaw Naing
Deputy Director, AG's Office
Delegate

15. Nepal

Mr. Bhesh Raj Sharma
Secretary
Ministry of Law, Justice,
Constituent Assembly and Parliamentary Affairs
Government of Nepal

Mr. Narendra Man Shrestha
Joint Secretary

Mr. Arun Prasad Dhital
Ambassador of Nepal to South Africa

16. Federal Republic of Nigeria

H.E. Mr. Mohammed Bello Adoke (SAN) CFR
Head of Delegation

Mrs. I.R. Njokanma
Delegate

Mrs. M.U. Agbamuche
Delegate

Mr. R.K. Moses
Delegate

Mr. M.U. Williams
Delegate

Mrs. L.A. Amego
Delegate

17. Pakistan

Mr. Ahmed Ali Sirohey
Head of Delegation

Mr. Nasir Mehmood
Delegate

18. Palestine

Mr. Abu Zaid D. Montase
Ambassador of Palestine to Abuja

19. Kingdom of Saudi Arabia
- Dr. Sheikh Issa bin Abdullah Al-Ghaith, Advisor
Hon'ble Minister of Justice office
- Dr. Mohammad bin Abdul Rahman Al-Shammari,
Director, Legal Department, Ministry of Foreign
Affairs
- Mr. Ahmed bin Ibrahim Al-Yousef,
Director
General Department of International Cooperation,
Ministry of Justice
- Dr. Ali bin Fayez Al-Shahri
Counsellor
General Department of International Cooperation,
Ministry of Justice
- Mr. Saa'd bin Saleh Al-Harbi, Department of Public
Relations, Ministry of Justice
- Mr. Hassan bin zaki Jallu
Department of Information and Publications
Ministry of Justice.
20. Republic of South Africa
- Mrs. Sonwabise Mzinyathi
Head of South African Delegation
- Mr. Mothusi Choeunyane
Delegate
21. Sri Lanka
- Hon. Rauff Hakeem
Minister of Justice
(Leader of Delegation)
- Mrs. Kamalini de Silva
Secretary, Ministry of Justice
Delegate
- Mr. Palitha Fernando, PC
Solicitor General, Attorney General's Department
Delegate
- Mrs. Nelum Mayadunne
Deputy Legal Advisor, Ministry of External Affairs.
Sri Lanka.

- Mr. M.H.M. Salman
Attorney-At-Law
Co-ordinating Secretary to Hon. Minister of Justice
22. Syrian Arab Republic
- Mr. Salih Khalid
Head of Delegation
Embassy of Syria in Abuja.
23. Republic of Tanzania
- Mr. Winfrida B. Korosso
Assistant Director of Prosecution
Head of Delegation
- Mr. Nixon Ndege Ntimbwa
Principal State Attorney
Delegate
- Mr. Eveyln Godfrey Makala
Principal State Attorney
Delegate
- Mr. Karim Rashid Kambaga
State Attorney
Delegate
- Mr. Richard F. Mbaruku
Assistant Director, Legislative Draftsman
Delegate
24. Thailand
- H.E. Mr. Somchai Powcharoen
Ambassador of Thailand to Abuja
- Ms. Ek-on Khunacharoen
First Secretary
Delegate
- Mr. Benjamin Sukanjanajtee
First Secretary
Delegate
25. Uganda
- Hon'ble Mr. Fredrick Ruttindi
Deputy Attorney General/
Minister of State for Justice
- Mr. Farouq Lubega
Senior State Attorney
Ministry of Justice and Constitutional Affairs

26. Republic of Yemen

Dr. Mohammed Ahmed Ali Al-Mekhlafi
Minister of Legal Affairs
Ministry of Legal Affairs
Alwaly56@gmail.com

Sultan Mohamed Saif Al-Jaradi
The Counsel of the Ministry of Legal Affairs
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Non-members

1. Morocco

2. Russian Federation

Ms. Diana Eloeva
Head of Delegation

Special Meetings

1. Dr. Rohen Perara (Former member ILC)-
Chairman, UN Ad-Hoc Committee on Measures to
Eliminate International Terrorism

2. UNODC

Ms. Mariam Sissoko,
UNODC Representative in Nigeria

Ms. Ukamaka Osigwe,
Consultant in Project Administrative Support.

3. ITLOS

Judge Albertus Hoffmann, Vice President,
22609 Hamburg, Germany
Email: vorbeck@itlos.org fax: 49 40 35607275

3. Commodore Austin
Owhor-Chuku

Federal Republic of Nigeria (Navy)

4.

Mr. Mathew Egbadon Representative of the
Director General of NIMASA, Nigeria

International Organizations:

1. ICRC

Mr. Umesh Kadam Veersen
Regional Legal Advisor, Nairobi

Ms. Osuman Lye Judith
Multilateral Liaison Officer, ICRC Abuja

Arbitration Centres

- 1. Mrs. Eunice R. Oddiri**
Director
Regional Centre for International Commercial Arbitration
Lagos
- 2. Mr. Sundra Rajoo**
Director
Kuala Lumpur Regional Centre for Arbitration, Kuala Lumpur

AALCO Secretariat

Secretary General
H.E. Prof. Dr. Rahmat Mohamad

Dr. Xu Jie
Deputy Secretary General

Dr. Hassan Soleimani
Deputy Secretary General

Dr. Yasukata Fukahori
Deputy Secretary General

Ms. Anuradha Bakshi
Assistant Principal Legal Officer

Ms. Shannu Narayan
Legal Officer

Mr. S. Pandiaraj
Legal Officer

Ms. Manju Gupta
Documents Officer