

**Asian-African Legal Consultative Organization**



# **Verbatim Record of Discussions**

**Fifty-Second Annual Session**

09 – 12 September 2013  
New Delhi, Republic of India

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

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## **PREFACE**

AALCO is one of the very few regional Intergovernmental Organizations that unite 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 all 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-Second Annual Session of AALCO was successfully held in New Delhi, Republic of India from 09 to 12 September 2013. The Session witnessed participation from Thirty-six Member States, representatives from two Regional Arbitration Centers of AALCO, Observers from two Non-Member States and representatives from Intergovernmental/ Specialized Agencies/ Subsidiary Organs/ Inter-Regional Organizations, totaling approximately 180 participants. The Fifty-Second 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) Challenges in Combating Corruption : Role of the UN Convention against corruption; (iii) Law of the Sea ; and (iv) Environment and Sustainable Development.

A major highlight of the Fifty-Second Annual Session was the convening of the two half-day Special Meetings on previously mandated topics of: (i) "Selected Items on the Agenda of the International Law Commission" & (ii) "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties". 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. the Honorable President of the Republic of India

This Verbatim Record of the Fifty-Second 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-Second 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 Ministry of External Affairs, Government of India for their valuable assistance in 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. Hassan Soleimani, Dr. Yasukata Fukahori & Mr. Feng Qinghu, the Deputy Secretaries-Generals, for their support in making the Session a success. I also wish to express my deep appreciation to Mrs. Anuradha Bakshi, Principal Legal Officer; Mr. S. Pandiaraj , Senior Legal Officer, Ms. Shannu Narayan, Mr. Parthan Vishvanathan & Mr. Mahesh Menon, 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.

15 January 2014

Prof. Dr. Rahmat Mohamad  
Secretary-General

## **I. AGENDA OF THE SESSION**





## **I. AGENDA OF THE SESSION**

### **I. Organizational Matters**

1. Consideration and Adoption of the Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Report of the Secretary-General on the Work of AALCO
5. Proposed Budget for the Year 2014
6. Report on the Work of the AALCO's Regional Arbitration Centres
7. Report of the Sub-Committee on the AALCO Secretariat's Human Resources and Financial Matters
8. Report on the AALCO's Centre for Research and Training (CRT)
9. Venue of the Fifty-Third Session

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

1. Law of the Sea
2. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949 – A Study on the “Statehood of Palestine under International Law” undertaken by the AALCO Secretariat

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

1. Environment and Sustainable Development
2. Challenges in Combating Corruption: Role of the UN Convention against Corruption

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

1. Special Meeting on “Selected Items on the Agenda of the International Law Commission”
2. Special Meeting on “Extra-territorial Application of National Legislation: Sanctions Imposed against Third Parties”

### **V. Any Other Matter**

## **II. BUREAU OF THE SESSION**

## **II. BUREAU OF THE SESSION**

### **PRESIDENT**

**H. E. Dr. Neeru Chadha**

Legal Advisor, Government of India  
Joint Secretary, Legal and Treaties Division,  
Ministry of External Affairs, Government of India

### **VICE-PRESIDENT**

**H. E. Ms. Hema Odhav**

First Secretary (Multilateral)  
The South African High Commission, New Delhi,  
the Republic of South Africa

### **SECRETARY-GENERAL**

**H. E. Prof. Dr. Rahmat Mohamad**

### **DEPUTY SECRETARIES-GENERAL**

**Dr. Hassan Soleimani**  
**Dr. Yasukata Fukahori**  
**Mr. Feng Qinghu**

### **III. VERBATIM RECORD OF THE INAUGURAL SESSION**

**III. VERBATIM RECORD OF THE INAUGURAL SESSION OF THE FIFTY SECOND ANNUAL SESSION HELD ON MONDAY, 9 SEPTEMBER 2013 AT 09.30 AM AT ITC MAURYA SHERATON HOTEL, NEW DELHI, INDIA**

**Master of Ceremony, Mrs. Anuradha Bakshi, Principal Legal Officer, Asian-African Legal Consultative Organization, New Delhi :** Hon'ble President, Hon'ble Ministers, Excellencies, Distinguished Delegates, Ladies and Gentlemen, a very good morning to all of you. I am Mrs. Anuradha Bakshi and I will be the Master of Ceremony on this occasion. It is my pleasure to welcome you all to the Fifty-Second Annual Session of the Asian African Legal Consultative Organization. On Behalf of the Secretary General and the Secretariat I express our heartfelt gratitude to all of you who have travelled long distances to come to grace this occasion. I will not take any more of our valuable time for introductions and we will now move on to our agenda. I invite H. E. Prof. Dr. Rahmat Mohammad, Secretary – General of AALCO for the Welcome Speech.

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

Namaste Main Aap Sab Ka SWAGAT Karta Hoon.

**Hon'ble Mr. E. Ahamed,** Minister of State for External Affairs, Government of India.

**Hon'ble Mr. Mohamad Bello Adoke,** esteemed President of the Fifty-First Annual Session of AALCO and Attorney General and Minister for Justice, Federal Republic of Nigeria;

**Hon'ble Mr. Rauff Hakeem,** President of the Fiftieth Annual Session of AALCO and Minister of Justice, Democratic Socialist Republic of Sri Lanka;

Hon'ble Ministers, Excellencies, Distinguished Participants, Delegates, Ladies and Gentlemen.

On behalf of AALCO and my own behalf, it is indeed a singular pleasure to extend a warm welcome to Hon'ble Mr. E. Ahamed, and this distinguished gathering to the Fifty-Second Annual Session of the Asian-African Legal Consultative Organization.

I am extremely grateful sir, that despite your very busy and hectic schedule you have spared your valuable time to be in our midst today. We profusely thank you Sir, for readily agreeing to inaugurate the Fifty-Second Annual Session of AALCO being convened by the AALCO Secretariat in this beautiful green and majestic city of New Delhi – the seat of AALCO. Sir, your gracious presence once again reassures AALCO of India's prominent role in the establishment, development and continued support, to the Organization since its foundation in 1956.

I would like to inform this august gathering that our Chief Guest today has had a long and illustrious career which he began as a lawyer. Thereafter he was a member of the Kerala Legislative Assembly for 5 terms between 1967 to 1991. From 1982 to 1987 he was a Cabinet Minister in Kerala in charge of the Department of Industry. He was elected to the Lok Sabha in 1991. Mr. Ahmed was a member of several high-level governmental delegations and Parliamentary Committees during this period. He was a member of the Indian delegation to the

UN General Assembly for six consecutive years from 1992 to 1997. From 2004 to 2009, he was Union Minister for State for External Affairs. Presently H. E. Mr. Ahamed is the Minister of State for External Affairs. He is associated with several educational, cultural and social institutions and is the author of three books in English and Malayalam.

Excellencies, Distinguished Ladies and Gentlemen, the Government of India is indeed a very generous host of AALCO. In addition to providing it with its Permanent Headquarters in the prestigious Diplomatic Enclave in Chanakyapuri, whenever the occasion has arisen they have kindly rendered financial assistance as well. This is the fourth headquarters Annual Session being held in New Delhi, the earlier three were convened in 2001, 2006 and 2008 respectively. I would like to place on record that besides financial assistance the Government of India has assisted the Organization in all possible ways to ensure that the Sessions went on smoothly. I would like to inform this august gathering that the Government of India has made a contribution of Rupees One million for this session. Therefore, we owe special thanks once again to the Government of India.

The presence of a large number of Ministers and Attorney Generals heading their delegations is also a matter of immense satisfaction for us, this signifies that AALCO is important to them. I am profoundly grateful to each one of you for having spared your valuable time to be with us for this Annual Session. I am sure we would immensely benefit from your wisdom and experience.

Excellencies, Distinguished Ladies and gentlemen, I would like to mention here, that the AALCO Statutes have envisioned hosting of a Headquarters Session, in the event that no Member State is forthcoming. However, this option must be exercised as the last resort as it is a huge financial burden on the Organization, in addition to a strain on its limited logistic and manpower resources.

The year 2013 marks the completion of 57 years of the establishment of AALCO, at this juncture I take this opportunity to chart out the journey that our Organization has traversed since its origin. However, before I encapsulate the main achievements of AALCO, I would like to briefly touch upon the current unfortunate situation being faced by some of our Member States.

Excellencies, Distinguished Delegates and Ladies and Gentlemen, we are all aware that some of our Member States are going through internal turmoil and conflict. Without following the due process of law, they are being threatened with impending attack by the powerful nations. This brings us to the basic question “how far do nation states adhere to the “rule of law” or the principles enshrined in international law”? Is it only a soft law? If the answer is yes, then what is it that we can do? It is for this reason that we need to briefly surf through this Organization’s past and see the vital role it could continue to perform in the future as well.

I would like to recall that the First Asian-African Conference that took place in Bandung in 1955 was a milestone simply because it was the first meeting of newly independent States from the Asian-African region. Bandung gave a unique message to the world – it proclaimed that, whatever may be the differences in our political, economic, or legal systems, the States of this region are inextricably linked together with a common identity. AALCO, established in 1956, was the concrete institutional outcome of the Bandung spirit of Asian-African solidarity.

At the time of its establishment in 1956, AALCO had seven members and was intended to be a non-permanent committee for a term of five years. Its five-year term was extended on four occasions until the Organization which it had developed, was made permanent in 1981. The membership of AALCO has today grown to include 47 States from Asia and Africa. It now occupies an important position in the international legal community, both as an advisory body to its Member States and as an essential mechanism for interregional cooperation and the exchange of information and views on matters with an international legal dimension. For long AALCO has served as a forum, through which the Member States have understood the debates, and opinions of the Third World, which is critical to the future of international law. It is my earnest desire that in the near future we could raise the membership of AALCO to at least 50.

Excellencies, Distinguished Delegates, Ladies and Gentlemen, in the earlier years, AALCO's activities as envisaged in its Statutes, primarily concentrated on the progressive development and codification of international law, consideration of legal problems referred to it by Member States and follow-up of the work of the International Law Commission and other bodies of the United Nations system related to international law. It gradually also reoriented itself towards assisting Asian-African Countries to prepare themselves for Plenipotentiaries Conferences convened to codify and develop international law, both conventional and customary, by the United Nations.

In that process, AALCO, participating through its Member States has contributed immensely to a number of international legal regimes with which the Asian-African States were most concerned. Some of the recommendations that AALCO had made, for instance, in the context of law of diplomatic relations, law of the treaties, law of the sea, had found its way into the international legal instruments adopted on the subjects, namely the Vienna Convention on Diplomatic Relations 1961, Vienna Convention on the Law of Treaties 1969 and the United Nations Convention on the Law of the Sea 1982. AALCO has had a long and storied history with "The Law of the Sea" in general and UNCLOS in particular. In the negotiations of United Nations Convention on the Law of the Sea (UNCLOS), 1982, particularly, the areas relating to the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States, the AALCO's contribution is well known at the international level.

To further strengthen our Asian-African solidarity, my predecessor had the privilege to convene meetings of AALCO Member States, during the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome, Italy, from 15 June to 17 July 1998. Thereafter, during my tenure, a very meaningful relationship has been established with the ICC and many seminars and legal expert meetings have been convened which have tried to raise and discuss issues relating to the functioning of the ICC.

Excellencies, Distinguished Delegates, Ladies and Gentlemen, the AALCO in its journey of fifty-seven years has been persistently 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 important studies on various branches of international law and conducting researches on issues having contemporary relevance for the Afro-Asian region. In the contemporary world, taking into account the current practice of



international law making, the role and range of activities required to be undertaken by the AALCO has multiplied many fold. Hence, it is essential that the Organization remains on a strong ideological foundation and enjoys firm financial support from its Member States.

Your Excellencies, over the course of the coming three days, the Member States would be deliberating upon several important international legal issues that are of serious 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 share 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, following the past practice we would have Two Half-Day Special Meetings devoted to exploring in detail two important issues; Firstly, the Special Meeting on "Selected Items on the Agenda of the International Law Commission", where we would be addressing three of the most important items found on the agenda of the ILC, namely 'Immunity of Foreign Officials from Foreign Criminal Jurisdictions', 'Protection of Persons in the Event of Disasters' and "Formation and Evidence of Customary International Law". The second Special Meeting would be on the topic "Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties". To make these meetings successful a number of legal experts would lead the panel discussions.

The Annual Session is also expected to address the following topics that are on the work programme of AALCO: The Law of the Sea; 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; Environment and Sustainable Development and Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption. Apart from these issues, the Heads of Delegations would also be reviewing the Organizational matters, including the financial situation of AALCO.

Excellencies, Distinguished Delegates and Ladies and Gentlemen, I request the Delegates to avail of 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.

The Secretariat of AALCO has left no stone unturned in putting together the necessary arrangements for the convening of the Fifty-Second Session, free from any flaws. However if there are any shortcomings, please pardon us for the same.

Excellencies, Distinguished Delegates and Ladies and Gentlemen, to conclude, I once again welcome you all to the Fifty-Second Session of AALCO being held in this historic and beautiful metropolitan city of New Delhi. I sincerely hope that your intellectual inputs would ensure focused deliberations, paving the way for this Session to be a huge success.

Thank You Mr President.

**Master of Ceremony:** Thank you Dr. Mohammad for that hearty welcome. I now invite H.E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice of the

Federal Republic of Nigeria and the President of our Fifty First Annual Session to address this august gathering.

**(ii) Statement of H. E. Mohammed Bello Adoke SAN, Attorney General and Minister of Justice, Federal Republic of Nigeria and the President of the Fifty-First Annual Session of AALCO**

**His Excellency, Shri. E. Ahmad**, Honourable Minister of State for External Affairs, Government of India,

**Her Excellency Mrs. Neeru Chadha**, Joint Secretary, Ministry of External Affairs (Legal and Treaties Division), Government of India

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

**His Excellency, Mr. Rauff Hakeem**, President of the Fiftieth Annual Session of AALCO,

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

I am delighted to have been invited to deliver a statement at the Inaugural Session of the Fifty-Second Annual Session of AALCO being hosted by the Secretariat of AALCO in the historic city of New Delhi, India. Let me take this opportunity on behalf of my delegation to express our profound gratitude to His Excellency, Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO and the AALCO Secretariat for the very warm welcome and hospitality extended to us since our arrival and the excellent arrangements that have been made to ensure a successful Session. I want to particularly commend the Secretary General and the Secretariat for preparing all the documents relating to this Annual Session in good time, I am sure this would contribute immensely towards facilitating our deliberations at this Session.

Let me also extend my gratitude to all the, Honourable Ministers, Heads of Delegations, Distinguished Delegates and Observers and the Panellists for the two Half-Day's Special Meeting for honouring us with their presence and for sparing time to participate in the Fifty Second Annual Session which promises to be very interesting and successful.

Your Excellencies, Distinguished Delegates, Ladies and Gentlemen, over the next four days during the course of this Fifty-Second Annual Session of AALCO, we would be deliberating upon a number of topics that are of immense significance for the Member States of AALCO and developing countries in general. These include: Environment and Sustainable Development, Law of the Sea, Challenges in Combating Corruption, International Law Commission, Statehood of Palestine and Extra-territorial Sanctions. It is my belief that these would go a long way in enabling the Member States of AALCO to forge common positions on various critical issues of international law, so as to reflect the aspirations of the Asian-African States and their people in the progressive development and codification of international law.

It will be recalled that since its inception in 1956, following the convening of the Bandung Conference that brought together the newly independent states of Asia and Africa for the first time ever on a common footing, AALCO has come a long way. With a Membership of 47 States from Asia and Africa, AALCO now occupies an important position in the international legal

community; both as an advisory body to its Member States and as an essential mechanism for inter-regional cooperation and the exchange of information and views on matters pertaining to international legal issues. For long AALCO has served as an ‘insightful prism’ through which one could understand the positions and opinions of developing Countries on any given legal issue. In its role as a body that brings together the viewpoints of Asia and Africa, it is well known that AALCO has contributed significantly to the progressive development and codification of international law over the years.

During my tenure as the President of the Fifty-First Annual Session of AALCO, I had the privilege of observing the work of the AALCO Secretariat from close quarters. It is beyond doubt that the Secretary-General and his Deputies, and their able team of Legal Staffs work assiduously to prepare documents not only in relation to the Annual Sessions of AALCO, but also for various inter-sessional meetings that are hosted by the Secretariat of AALCO from time-to-time. In my capacity as the President of AALCO, I have witnessed that under the dynamic leadership of its Secretary-General, AALCO has been making its presence felt in various international legal fora by ensuring that the viewpoints of Asian-African Countries on a number of legal issues are given due expression and attention. I am sure you will all agree that both Asia and Africa have a lot to contribute to the development of international law and its underlying values for a better understanding and peaceful coexistence among nation States.

As a member of the International Law Commission (ILC), the pre-eminent body charged with the codification and progressive developing international law, I can attest to the work of the ILC and immense contributions it has made in this regard. During the half-a-century of its existence, ILC has produced over twenty sets of draft articles that have been transformed into major global Conventions establishing rules of international law in key areas of international law such as Law of Treaties, Law of Diplomatic Immunities and Privileges, Law of Succession, Law of the Sea among others.

The ILC holds a lot of significance for Asian and African States. It is one of the forums where these States could articulate their views and concerns in relation to the topics on the agenda of the ILC and, in turn could influence the work of ILC in its law-making processes. The Special Rapporteurs of the ILC who are key to the Commission’s work programme, play a vital role in channelling the views of Asian-African States and puts to use, those views in preparing their Reports and draft articles. In this regard, Members of the ILC and the Special Rapporteurs from the Asian-African region could be utilized very effectively in bringing the voice of Asia and Africa to bear on the work of ILC. I have from a privileged position of serving as a Member of ILC, the abiding belief that the work and deliberations of experts in international law could serve as an important source of inspiration to the Commission in its work. Indeed, one of the functions assigned to AALCO under its Statutes is to study the subjects, which are under the consideration of the ILC and thereafter forward the views of its Member States to the Commission.

My Presidency, although quite memorable also witnessed some hiccups. As you are well aware, it is customary for the President of AALCO during his tenure, to pay a visit to the Headquarters of AALCO in New Delhi. However, despite my best efforts to come to New Delhi and to interact with the Secretary-General of AALCO and his Staffs, due to some unforeseen circumstances I could not make it. Similarly, every year we also hold an Annual Meeting of the Legal Advisors

of the Member States of AALCO at the UN Headquarters at New York. Last year too the meeting was convened on 5<sup>th</sup> November 2012 in New York. The Permanent Observer of AALCO to the United Nations, Dr. Roy Lee had made all the arrangements for the successful convening of the meeting.

The Secretary-General and myself had made all the arrangements to take part in this Meeting. Regrettably, both of us could not reach the venue on time due to hurricane Sandy that had swept through New York at the time of the meeting. Although, we could not participate in the meeting, I am pleased to report that due to determination and shared commitment of our Member States, nearly 60 Delegates from AALCO Member States and other States took part in the meeting.

However, I met with the Secretary General at the 11<sup>th</sup> Session of the Assembly of States Parties to the International Criminal Court that took place on 15<sup>th</sup> November 2012 at The Hague, Netherlands. I recall on this occasion, that the Secretary-General delivered an important Statement that clearly highlighted the concerns of the Asian-African states in relation to the work of the international Criminal Court.

I also thank AALCO for the opportunity given to my country the Federal Republic of Nigeria to host the Fifty-First Annual Session of AALCO at Abuja. During this Session I had the fortune of sharing some of my thoughts on not only the contributions of AALCO to the cause of the developing world, but also the commitments of my country to AALCO since it joined the Organization.

I am delighted to report that in recent years, AALCO has increased its inter-sessional activities to a considerable extent. It has held Seminars/Training programmes on a number of areas of critical concern to its Member States. In this regard, the untiring efforts and commitment of our Secretary-General in conceptualizing and executing these programmes despite the financial difficulties that AALCO has been facing in recent times deserves commendation. In the year 2013 alone, we have had two high-profile programmes: one, Seminar on Climate Change and the other one was held to commemorate the 30<sup>th</sup> Anniversary of UNCLOS.

The Secretary-General and the Deputy Secretaries-General of AALCO have also been actively participating and presenting Papers on various issues of international law both in India and abroad with a view to disseminate the viewpoints of AALCO. I hope that this healthy trend continues in future as well. However, as the President, I respectfully urge the Member States of AALCO who are in arrears to pay their assessed contributions within a reasonable period so that we all can collectively put AALCO on a sound financial footing. The need to fulfill the financial obligations of AALCO, so that it carries out its mandate unhindered by any financial hiccups, remains compelling.

Once more, I thank you for the opportunity to serve as President of this important Organization and wish all the distinguished participating Delegates and Observers, very fruitful discussions.

**Master of Ceremony:** Thank you Your Excellency for that very comprehensive speech that has dealt with the activities of AALCO and the role that it can play in the future. With these words I now welcome Hon. Mr. E. Ahamed, Minister of State for External affairs, Government of India to deliver the inaugural address.

**(iii) Statement of Hon'ble Shri. E. Ahamed, Minister of State for External Affairs, Government of Republic of India**

**Prof. Dr. Rahmat Mohamad**, Secretary-General, AALCO;

**H.E. Mohammed Bello Adoke**, Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria and President of the Fifty-First Annual Session;

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

Heads of Delegations;

Excellencies, Ladies and Gentlemen; It is indeed my honour this morning to be amongst Ministers, Attorney Generals and high-ranking officials of the Member States of Asian-African Legal Consultative Organization attending the Fifty-Second Annual Session. I warmly welcome you all on behalf of the Government of India and on my own behalf to India, the world's largest democracy.

Excellencies, Ladies and Gentlemen; International Law is no longer a branch of law which governs only inter-State relations. With the rapid pace of globalization, the scope of international law has also expanded to include newer areas, which were once considered to be in the exclusive domain of domestic law. There is virtually no area of international interest, which is not, in one way or another, governed by international law.

International law has witnessed a tremendous evolution in both substantive and institutional terms. It has now developed into an intense web of rules and institutions that address and govern non-State actors, such as international organizations and even the individual. Institutions have been established that provide for important mechanisms to facilitate international cooperation and compliance with international law. Today it touches the lives of millions by addressing trade and business, transnational crime and human trafficking, terrorism, intellectual property rights, child custody, piracy and a host of other issues.

International law is still in development and remains, as of today, the only viable means to ensure a common denominator to regulate the conduct of States and other actors. International law and the institutions it has created, continue to be the best tool to maintain international peace and security.

These developments, I believe, afford AALCO an excellent opportunity to enhance the scope of its activities and lead to an expansion of their work and thereby contribute to a more focused study of international law, with emphasis on problems of the Asian-African region.

Excellencies, Ladies and Gentlemen;

AALCO has its foundation firmly built on Asian-African solidarity. As we all are aware, AALCO is the only inter-governmental organization which brings together two continents of

Asia and Africa in the progressive development of international law. Since its inception in 1956, AALCO has served countries of the Asian-African region as a consultative inter-governmental Organization fostering deliberations of common concerns and playing an active role in developing Asian-African perspectives of international law.

India has been always in the forefront in facilitating the fulfilment of noble objectives of AALCO. As a Founding Member of AALCO and as a member State which hosts its Headquarters, India is committed in contributing to the work of AALCO. Government of India attaches the highest importance to the Organization and its work and has always played a very significant role in the activities of AALCO.

I take this opportunity to commend AALCO's role in establishing Regional Arbitration Centres under its auspices to settle commercial disputes. Centre for Research and Training of AALCO also deserves appreciation for undertaking training activities and bringing out publications on international law issues.

Please accept my best wishes for the Fifty-Second Annual Session of AALCO, which I'm sure, will deliberate upon a number of international law issues of contemporary importance to our region. I am impressed by the range of topics on the agenda set for deliberations for the next four days. Important topics such as Environment and Sustainable Development; Law of the Sea; Challenges in Combating Corruption; Statehood of Palestine under International Law; Extra-territorial Application of National Legislation: Sanctions Imposed against Third Parties; and Selected Items on the Agenda of the International Law Commission are on the agenda. These topics are of great significance for the international community, in general, and Asian-African Countries, in particular. I hope the in-depth exchange of views on these issues will contribute to the development of law in these areas and promotion of the interests of Asian-African States.

I wish the Conference all success.

Thank you.

**Master of Ceremony:** Thank you Hon'ble Minister for your presence and your kind words. We will now move to the vote of thanks. I request Hon. Rauff Hakeem, Minister of Justice for the Democratic Socialist Republic of Sri Lanka and the President of the fiftieth Annual Session to propose the vote of thanks.

**(iv) Vote of Thanks by H.E. Mr. Rauff Hakeem, Minister of Justice, Democratic Socialist Republic of Sri Lanka and the President of the Fiftieth Annual Session of AALCO**

**His Excellency Mr. E. Ahamed,** Minister of State for External Affairs, Government of India;

**His 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;

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

**Hon'ble Dr. A. Rohan Perera**, distinguished Chairman of the Eminent Persons Group (EPG) of AALCO;

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

In my capacity as the President of the Fiftieth Annual Session of AALCO, it gives me immense pleasure to propose a vote of thanks at this inaugural session. I am proud for having served as President of the AALCO at its historic Fiftieth Annual Session, which was held in 2011. 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 and international law is remarkable.

Allow me to express my sincere gratitude, on behalf of the Member States of AALCO, to the AALCO and the Government of India for hosting the Fifty-Second Annual Session of AALCO. I would like to extend our whole-hearted support and cooperation to the incoming President for conducting the Fifty-Second Annual Session of AALCO.

I would like to thank His 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 successfully conducting the previous session. I congratulate him for ably conducting and presiding over the session.

My deep appreciation goes to the significant role played by our Secretary-General His Excellency Professor Dr. Rahmat Mohamad during his term. His contribution is highly significant 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 to be at financially sound footing in order for the Secretariat to effectively function in conducting its activities unhindered.

As the President of the Fiftieth Annual Session of AALCO, I wish to take this opportunity to register on behalf of the Government and President of the Democratic Socialist Republic of Sri Lanka and its people, our gratitude to this Organization for having given us an opportunity to hold this prestigious position in the year 2011.

I would like to thank in advance the Honorable Ministers, distinguished delegates and observers for their active participation and hope that this four-day session would assist us in producing tangible outcomes.

Thank you.

**Master of Ceremony:** Thank You your Excellency for that vote of thanks. With that we come to the end of the inaugural session. On behalf of the Secretary- General and the Secretariat, once again I express our gratitude to all the dignitaries on and off the dais for your kind presence.

We will now take a short coffee break and meet once again at 11:30 for our meeting on Organizational, Administrative and Financial Matters. However before you all break for coffee, I request all of you to assemble at the lawns outside for a group photograph with our honorable chief guest to mark our memory of this occasion.

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,  
09 SEPTEMBER 2013 AT 12.00 PM**

**His Excellency Mr. Mohamad Bello Adoke, Attorney General and Minister for Justice, Federal Republic of Nigeria President of the Fifty-First Annual Session of AALCO in the Chair.**

**Master of Ceremony:** Good Morning once again. Now we begin with the Organizational Administrative and Financial Matters and this is also the first meeting of the Heads of Member States. I invite the President to begin with the proceedings.

**President :** Once again Good Morning. I believe that the agenda of the meeting has been circulated. May I know whether there is any amendment or any proposals to the contrary? In the absence of any amendments I take it as that the agenda has been adopted. Thank You.

We will proceed to the item “Admission of New Members”. Are there any new members to be admitted? I am told that there are no new members to be admitted.

I have been informed that Fiji and Afghanistan have applied to be observers. Are there any objections to that? In the absence of any objections both the countries are admitted as observers. Thank you.

With respect to international organizations, we have the ICRC, the UNODC, the UNHCR as well as AARDO. Are there any objections? In the absence of any objections they are admitted. Thank You.

We will now go to the most important agenda for today, the election of the President. May I call for nominations please? The Leader of Delegation of Japan.

**The Leader of Delegation of Japan:** Thank You Mr President. For the High Office of the President of the Fifty-Second Annual Session of AALCO, I have the pleasure and great honour to propose Dr. Neeru Chadha, Legal Advisor, Ministry of External Affairs, Government of India. Dr. Neeru Chadha assumed charge of the head of the Legal and Treaties Division of the Ministry of External Affairs, Government of India on 1<sup>st</sup> June 2012. Dr. Neeru Chadha as the head of the division is the highest ranking legal advisor to the government of India on International Law. Dr. Chadha’s appointment is a big achievement as India got its first woman legal advisor on International Law. Legal and Treaties Division is responsible for advising the government of India on international legal matters. The input of this division is critical for all international transactions of the government of India, whether bi-lateral or multi-lateral. She joined the division in 1992 and worked as legal advisor in the Permanent Mission of India to the United Nations from 2006 to 2009. She has a Masters in Law from both the University of Michigan and University of Delhi. She holds a doctorate in law from the University of Delhi. She is one among the selected group of High Ranking Women in the foreign ministry. Thank you, Mr President.

**President:** Who is seconding the Nomination? Egypt, you have the floor please.

**The Leader of the Delegation of Arab Republic of Egypt:** Thank You, Mr President. On Behalf of my delegation, that is the delegation of Egypt. We would like to welcome and endorse the candidature of India and personally I wish to acknowledge Dr. Neeru Chadha's expertise and I wish to state that at this critical time when we face challenges at the international level she would be an asset. So we welcome her.

**President:** In the absence of any opposition to the candidature of India, I take it that India has been appointed the president of the Fifty-Second Annual Session. Congratulations.

May I now call for nominations for the Vice-President? I call on China please.

**The Leader of Delegation of People's Republic of China:** Thank You Mr President. It is my honour and privilege to propose Mrs Hema Odhav, Representative from South Africa to be the Vice-President of the Fifty-Second Annual Session of AALCO. Mrs Odhav is currently the First Secretary, Multilateral, at the South Africa High Commission in New Delhi, where she has been in the department of international relations for the past 15 years. Mrs Odhav was previously posted at Washington D.C. as political secretary. In view of her vast knowledge and experience in various areas, China considers it to be most appropriate to propose Mrs. Hema Odhav to be the Vice-President of this session. Thank You.

**President:** May I call upon Kenya to second the nomination.

**The Leader of Delegation of Kenya :** Thank your very much Mr President.

Distinguished delegates,

On behalf of the Kenyan Delegation it is my pleasure to second the nomination of Mrs Odhav, representative of the Republic of South Africa as the Vice-President of the Fifty- Second Session of AALCO and to serve in this capacity for the next one year.

Thank You.

**President:** In the absence of any objections, the Vice-President is hereby elected from South Africa.

Thank You.

May I now call upon the President and the Vice-President to take up their Chairs at the podium.

**Dr. (Mrs.) Neeru Chadha, President of the Fifty-Second Annual Session of the AALCO in the Chair.**

**President:** Your Excellency Mr. Mohammed Bello Adoke, Attorney General and the Minister of Justice, Federal Republic of Nigeria and the President of the 51<sup>st</sup> Annual Session ; Your Excellency Prof. Rahmat Mohamad, Secretary-General of AALCO, Hon'ble Ministers of Member States of AALCO, Attorney-Generals, Excellencies, Distinguished Delegates, Special Invitees, Ladies and Gentlemen,

First of all, I take this opportunity to thank His Excellency Mr. Mohammed Bello Adoke for handing over the Presidency to me and giving me this opportunity to preside over the work of the Fifty-Second Annual Session. I would also like to thank him for showing exemplary leadership on the work of AALCO and for guiding the activities of AALCO for the last one year. Through his dedication and vision, AALCO had enjoyed a successful year, in achieving cooperation between Asian and African States. I also keenly look forward to working with the Secretary-General Prof. Rahmat Mohamad and the Staff of the Secretariat of AALCO.

Excellencies, Ladies and Gentlemen, our Organization is perhaps the only inter-governmental Organization that spans two most populous continents of the world, Asia and Africa. The dynamism of this region and the growing economic clout of the most populous countries of this region give us a lot of leverage and should be an impetus to engage as a Group in the UN General Assembly, International Law Commission and in other multilateral fora.

Excellencies, Ladies and Gentlemen, in the forthcoming days, we will be deliberating on a variety of current and relevant matters of topical interest on international law. I am sure we would learn from each other views and be able to arrive at common understandings and position on several identified topics of international law.

Excellencies, Ladies and Gentlemen, with these few words, I wish the Session every success and will try to the best of my abilities to ensure that the Session is a fruitful one and during India's Presidency of the Organization, I would do all that is in my capacity to promote the work, ideals, objectives and interests of the Organization. Thank you.

**The Meeting was thereafter adjourned.**

## **V. VERBATIM RECORD OF THE FIRST GENERAL MEETING**

**V. VERBATIM RECORD OF THE FIRST GENERAL MEETING  
HELD ON MONDAY, 09 SEPTEMBER 2013 AT 12.30 PM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair**

**President:** We start on the next agenda which is the general statements. I give the floor to the Hon'ble Attorney-General of Malaysia to give his General Statement. You have the floor sir.

**The Leader of Delegation of Malaysia:** Her Excellency Madam President, the Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

On behalf of my delegation, I thank Her Excellency the President of the Fifty-Second Session of AALCO, the Secretary-General of AALCO, the host country, India and the AALCO Secretariat for the arrangements made for this AALCO Session.

Malaysia wishes to share its initial reactions to some of the important topics. Based on the agenda of the meeting, issues relating to environment and sustainable development, challenges in combating corruption and the Special Study on the Statehood of Palestine under International Law are worthy of mention. Malaysia noted too that the Special Meeting on Wednesday will focus on three important ILC topics: (i) Protection of Persons in the Event of Disaster; (ii) Immunity of State Officials from Foreign Criminal Jurisdiction and (iii) Formation and Evidence of Customary International Law.

Madam President and Distinguished Delegates, AALCO's continued dedication on the topic of the Environment and Sustainable development as a matter of common concern having legal implications. In this regard, Malaysia notes and follows with keen interest the discussions in the AALCO forum focusing on current developments in the United Nations Conference on Sustainable Development and other related fora such as the United Nations Framework Convention on Climate Change (UNFCCC) negotiations.

Notwithstanding the need for a sustained discussion on the wider scope of the "Environment and Sustainable development", Malaysia seeks to digress from this general focus, and steer discussions to the fundamentals of Environmental Protection from the legal perspective. In this regard, it is our ardent hope that AALCO's debate on the environmental issues may also address practical approaches toward the enhancement of legal frameworks and law enforcement measures on the environment.

Recently, the Attorney General's Chambers of Malaysia has embarked on a study focusing on the domestic enforcement of environmental crimes, primarily against wildlife. Malaysia has since established a dedicated team within Chambers to handle the prosecution of all protected wildlife under the Malaysian Wildlife Conservation Act of 2010 and forestry matters. The team, working closely with the Legal Advisors at the Ministerial and State levels are studying the adequacy of penalties and the effectiveness of the provision provided in environmental laws and will make proposals on any required legislative amendments. An online database system on environmental crimes will also be developed to capture the statistics of all environmental crimes

in Malaysia. Reports on the breaches of environmental laws will be fed into the system by Federal and State level Legal Advisors and law enforcement agencies.

Madam President and Distinguished Delegates, Malaysia looks forward to deliberations by AALCO Member States on the topic “Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption (UNCAC) and in that connection, welcomes the conclusion of the Fourth Session of the UNCAC Implementation Review Group on 31 May 2013.

Malaysia’s Review Process was conducted in February 2013 and Malaysia has had positive feedback from the reviewing experts from Kenya and the Philippines who concluded their review on Malaysia in February 2013. The positive feedback received relates to, among others, Malaysia’s initiative in establishing various supervisory committees to oversee the implementation of the Malaysian Anti-Corruption Commission (MACC) Act of 2009 as a means to foster the involvement of all stakeholders in the prevention and fight against corruption. Malaysia has established the Anti-Corruption Advisory Board, the Special Committee on Corruption, the Complaints Committee, the Operations Review Panel and the Consultation and Corruption Prevention Panel aimed at ensuring the Malaysian Anti-Corruption Commission’s transparency and integrity in the carrying out of its duties.

Malaysia is happy to report that the United Nations Office on Drug and Crimes (UNODC) has commended Malaysia’s efforts in implementing UNCAC and the Report highlighted certain best practices that could be shared with other countries.

Malaysia looks forward to sharing further information with AALCO Member States on Malaysia’s efforts in implementing its enhanced domestic anti-corruption legal framework in line with the UNCAC during the course of the discussions on this important agenda item.

Madam President, Distinguished Delegates and Your Excellencies, Malaysia continues to dedicate its efforts towards a tangible outcome of discussions on the Palestine issue. I would like to reiterate my statement during the Fifty-First Annual Session that if we wish to retain this topic in the agenda of our Annual Sessions, it is suggested that we stop making rhetorical statements and come up with concrete plans to move the discussion forward; otherwise it will be a waste of time.

Malaysia continues to call upon the Security Council to act decisively under Chapter VII of the Charter of the United Nations to enforce its numerous decisions over the past six decades. In November 2012, yet another military attack, “Operation Pillar of Defense”, was launched by Israel. Again, no tangible action was taken against these continued grave violations and severe breaches of international humanitarian law by Israel against the Palestinian people.

In manifesting its unwavering support for the Palestinian people and condemning the brutal and aggressive attack by Israel through Operation Pillar of Defense, the Malaysian Parliament had unanimously passed a motion on 20 November 2012 to urge the Security Council to compel Israel to immediately cease its military attacks on the Palestinian Territory of Gaza through a ceasefire and to decide to deploy a United Nations peacekeeping force to enforce the ceasefire.

The Malaysian Parliament also called for the full withdrawal of Israel from the Palestinian Territory of Gaza and West Bank.

Malaysia has consistently urged AALCO Member States to reconsider their approach on the Palestine issue. Malaysia cannot emphasize enough the importance of a legislative outlook in the debate, particular one that would focus on the elements of determination of the State of Palestine under the Montevideo Convention and the question as to who or which body can determine Palestine's statehood.

Malaysia welcomes the Special Study on "The Statehood of Palestine under International Law" conducted by the Secretariat pursuant to the mandate which was initiated by Malaysia at the Fifty-First Annual Session. We look forward to the release of the publication by the Secretary-General in the next agenda of this meeting. This important study can form the basis for a more thorough legal research on the Palestine issue, the outcome of which will be able to facilitate Member States' deliberations during the forthcoming AALCO Sessions. Any conclusions or findings from such comprehensive legal research and deliberations can then be advanced as AALCO's view for purposes of the ongoing discussions on Palestine at the United Nations or intra-regional level.

Madam President and Distinguished delegates, in the most recent development, the ILC at its 64<sup>th</sup> session, in 2012, decided to include the topic of "Formation and Evidence of Customary International Law" in its programme of work, on the basis of the recommendation of the Working Group on the long-term programme of work.

Malaysia is of the view that progress and elaboration on new draft articles on this topic is perhaps long overdue, given the importance of customary international law and the need for it to be accorded the same recognition by the whole of the international community. Views as to what constitutes customary international law are manifestly disseminated and deeply deliberated upon, although customary international law has long been recognized as a source of law. Malaysia therefore agrees with the Secretariat that an in-depth study should be conducted in relation to determining the formation and evidence of customary international law by taking into consideration views from different States.

With regard to the topic "Immunity of State Officials from Foreign Criminal Jurisdiction", Malaysia maintains the view that the topic should focus on the immunities accorded under international law, in particular customary international law and not under domestic law. There is also no necessity to re-examine previously codified areas such as the immunities of diplomatic agents, consular officials, members of special missions and representatives of States to international organizations, these categories of persons should be excluded from any definition of "State Officials" for the purpose of the ILC's study.

Malaysia notes that the Special Rapporteur proposes to devote her third report, which will be submitted to the Commission at its 66<sup>th</sup> session, to a study of the normative elements of immunity *ratione materiae*, focusing primarily on two complex issues, namely the terms "official" and "official act". Malaysia looks forward to this report, particularly the draft articles on these issues and consequently the issue of exceptions to immunity. Due to the complexity of



the matter, Malaysia welcomes any further guidance from AALCO Member States to enable Malaysia to study the topic in greater detail.

Malaysia takes note of the latest developments relating to the topic of “Protection of Persons in the Event of Disasters”, whereby the ILC at its 65<sup>th</sup> Session in 2013 has now provisionally adopted draft Articles 5 *ter* and 16 as coming out of the work of the Commission’s Drafting Committee. Malaysia further notes the observations made by the AALCO Secretariat on this topic, with particular reference to paragraph 132 of the Secretary-General’s Report on Matters Relating to the Work of the International Law Commission at its Sixty-Fourth and Sixty-Fifth Session. Malaysia is of the view that the AALCO Secretariat should not only focus its observations and report on the previous sessions of the International Law Commission, but more importantly, AALCO should be focusing its report on the latest developments in the work of the Commission and in this case, the proposed Draft Articles 16 and 5 *ter*.

Madam President and Distinguished Delegates, during the Fifty-First Session Malaysia had highlighted the significance of a Treaty on Mutual Legal Assistance as a tool for combating transnational crimes, including terrorism. Within the context of Southeast Asia, Malaysia and its ASEAN counterparts benefit from the cooperative framework of the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (ASEAN MLAT). Malaysia would like to reiterate its view that an intra-regional Asian-African legal instrument on the same matter would be beneficial as among others, such an instrument can facilitate the implementation of a harmonized mutual assistance in criminal matters regime among AALCO Member States from both the common law and civil law systems. I propose that AALCO takes lead on this most urgent matter as determined.

Recalling the decision of the Forty-Ninth AALCO Annual Session vide Resolution AALCO/RES/49/S8, Malaysia looks forward to the establishment of an open-ended Committee of Experts to conduct a study on ways and means to enhance mutual legal assistance in criminal matters among AALCO Member States in the near future. For purposes of this study, Malaysia is prepared to share its knowledge and experience on the elaboration and conclusion of an AALCO MLAT.

Madam President and Distinguished delegates, Malaysia thanks the Honourable Secretary-General and the Secretariat in their efforts in preparing the Report of the Secretary-General on the Work of the Asian-African Legal Consultative Organization (ORG 1) and the AALCO’s Financial Report and Proposed Budget for the year 2014 (ORG 2).

On behalf of the Government of Malaysia and on a personal note, I would like to place on record our most sincere condolence to the family of the late Ambassador Professor Chusei Yamada. The late Ambassador Professor Chusei Yamada has inspired me and my delegation to contribute effectively towards AALCO agenda and deliberations. The late Ambassador Professor Chusei Yamada had also emphasized the much needed force of AALCO as a legal consultative Organization.

During his long and distinguished career, the late Ambassador Professor Chusei Yamada served in various diplomatic posts, including as Japan’s Ambassador to Egypt (1989-92), India and

Bhutan (1993-95). He also served as an arbitrator and conciliator under the UN Convention on the Law of the Sea (UNCLOS) 1982, and most recently, as Special Assistant to the Minister of Foreign Affairs of Japan. Among the eminent and critical roles, his work towards bridging the water divide between riparian aquifer nations may be his most significant legacy.

The late Ambassador Professor Chusei Yamada had been selected as the ILC's Special Rapporteur on the topic of Shared Natural Resources and had undertaken the arduous task in drafting the principles of law that would apply to transboundary aquifers.

I know for a fact that in carrying out his works as the Special Rapporteur, the late Ambassador Professor Chusei Yamada poured his heart and soul into this singular challenge.

It has come to my knowledge the late Ambassador Professor Chusei Yamada had no formal background in ground water resources. However, his sheer hard work and commitments during his tenure as a Special Rapporteur had turned him into an expert who is very well versed in hydrogeology and related water issues. This is evidenced in the recognition conferred by the International Association of Hydrogeologists to him "for outstanding contribution to the understanding, development, management and protection of groundwater resources internationally" and awarded him their Distinguished Associate Award for 2008.

The late Ambassador Professor Chusei Yamada was also one of the founding members of the Executive Council of International Centre for Law and Legal Studies (I-CeLLS) of Malaysia since 2011. Until his final days, he has relentlessly contributed and dedicated his intellectual resources to the works and initiatives undertaken by I-CeLLS. His immense contributions to international law will be remembered forever.

On this note I wish to propose that AALCO places on its official record our deepest condolence and tribute to the family of the late Ambassador Professor Chusei Yamada and transmit the record to the Government of Japan and the family of the late Ambassador Professor Chusei Yamada.

Thank you Madam President.

**President:** I thank Malaysia for their statement and very valuable proposals. I am sure the Secretariat would take them up. I have been asked to be conveyed by the Secretariat that all the general statements have to be finished today due to constraints of time. So I would request Member States to restrict their oral statements to about five to seven minutes and you can circulate the written statements which would appear as verbatim record of the Session. The next delegation on my list is Saudi Arabia. You have the floor sir.

**The Leader of the Delegation of Kingdom of Saudi Arabia<sup>1</sup>:** Madam President, the agenda items of this session are of considerable importance and it is our hope that we would have good discussions on all of them that will contribute to achieving a positive stand from the meeting. In

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

this Session, the Kingdom of Saudi Arabia is participating with a big delegation which represents the importance that we attach to this very important Organization.

The agenda item which is most important to us is the item of “Deportation of Palestinians and other Israeli Practices”. As regards this the Kingdom of Saudi Arabia stands with the truth and calls for ending violation and mass killing which is being practiced against isolated Palestinian people and that is a clear violation of human rights and all international treaties, international law and UN resolutions relating to this issue. We call this agenda item should be deliberated every year.

As for as the agenda item on the “Law of the Sea” , we are aware of its importance and we endorse the existing laws and regional and international treaties related to this topic, and we also want this agenda item to be deliberated every year at our Session.

Regarding the topic “Environment and Sustainable Development” we note that my country is following the developments occurring in this field, and support the execution of international treaties including the Rio Convention that is related to climate change, biodiversity and combating desertification. I also note that the Kingdom of Saudi Arabia is following with due concern the desert encroachments especially in Africa and the attempt to stop and assistance of effected States form desertification. The Kingdom of Saudi Arabia has signed and ratified around 40 regional and international agreements and treaties and protocols in this regard. An independent body is protecting environment and other one for protection of wildlife. We want the continued deliberation of this agenda item in every session.

As regards combating corruption and the role of UN Convention against Corruption, my Country tries within and outside to contribute to the efforts made for combating corruption and considers it the problem that eats away the nation and world. In this regard my Country demands for efforts to combat it in all its forms and we have adopted national strategies to combat corruption as well as formed specialized national body directly linked to the King and is headed by the President of the Minister Rank.

We thank you for the opportunity.

**President:** Thank You Sir. I now give the floor to the delegation of Japan and my apologies for inadvertently reversing the order Japan was number two in the list. I call on Japan to make their statement.

**The Leader of Delegation of Japan:** H.E. Mr. E. Ahamed, Minister of State for External Affairs, Government of India, H.E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria and President of the Fifty-First Annual Session, H.E. Mr. Rauff Hakeem, Minister of Justice of the Democratic Socialist Republic of Sri Lanka and President of the Fiftieth Annual Session of AALCO, H.E. Professor Dr. Rahmat Mohamad, Secretary-General of AALCO, Honourable Ministers and Attorney Generals, Distinguished guests, ladies and gentlemen,

It gives me great pleasure to address this august body once again, and to make my general statement before the honourable ministers and distinguished colleagues of AALCO Member States. I would like to begin by expressing my appreciation to the Government of India for

hosting this year's Annual Session and to extend my sincere congratulations to Dr. Neeru Chadha for her election as President of the Fifty-Second Annual Session. I would also like to congratulate Ms. Hema Odhav for her election as Vice President. I must also thank Secretary-General, Professor Rahmat Mohamad and his staff for their dedicated work to prepare for this Annual Session.

Madam President, AALCO has provided an important forum for dialogue among its Member States for more than half of a century to uphold and promote the rule of law in the two great regions of Asia and Africa. The rule of law is a wisdom that the mankind has acquired to maintain peace and stability in human societies, domestic and international. In this regard, Japan welcomes the resolution adopted by the UN General Assembly in September last year at the first ever high-level meeting on the rule of law, in which the Member States agreed that the rule of law was "the foundation of friendly and equitable relations between States and the basis on which just and fair societies are built".<sup>2</sup>

Japan supports the spirit and the principle behind the resolution. Respect for the rule of law, and its establishment and promotion in the international community lies at the heart of Japanese government's policy. That is why Japan is committed to always resolving disputes through peaceful means in accordance with international law, and that is also why we have been extending support to enable other nations to build their domestic legal systems.

Madam President, Please allow me to take this opportunity to share a few highlights in Japan's activities in the past year since the last Annual Session, in the area of promoting and strengthening the international rule of law.

First is in the area of international law-making. Japan has been and will continue to play an active role in the development of multilateral treaties. One of the highlights in this area is the signing of the Arms Trade Treaty in June this year. Japan was one of the co-authors of the UN General Assembly Resolutions on the Treaty, and played an active and constructive role in the negotiations. The very fact that the Treaty opened to signature in June 2013 was an extremely important milestone. It is vital that the Treaty comes into force as soon as possible and is effectively implemented. It is only then that the international community will have an effective tool to address the unregulated and illicit conventional arms trade that causes unspeakable human suffering throughout the world and undermines peace, security, stability and human rights. Japan will continue to take a leading role in promoting international efforts in this area. I also wish to add that in October this year Japan is going to take further initiative in law-making to host the Diplomatic Conference for the adoption and signing of the "Minamata Convention" regarding international management of mercury to prevent damage to health and environmental destruction, based on its own experience of mercury pollution in Kumamoto, Japan.

Another area to highlight is Japan's effort to accede to the existing treaties to which it is not yet a party. In May and June this year, the two houses of the Japanese legislature endorsed, unanimously, to accede to the Hague Convention on the Civil Aspects of International Child Abduction, and approved domestic legislation which stipulates implementation procedures for

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<sup>2</sup> "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels", A/RES/67/1, <[http://www.unrol.org/files/Declaration%20HLM\\_A%20RES%2067%201.pdf](http://www.unrol.org/files/Declaration%20HLM_A%20RES%2067%201.pdf)> accessed 19 August 2013.

the Convention. This was not an easy process, and it was only possible after serious discussions concerning consistency with the existing Japanese domestic legal framework. As the world becomes increasingly inter-dependent, there is of course a rapid growth in the number of cases of Japanese men and women engaged in international marriages. It is quite important, therefore, that Japan becomes a party to the Hague Convention which establishes international rules to address the issue of international child abduction. The Japanese government intends to complete necessary domestic procedures in order to implement the convention.

I would also like to take this opportunity to share Japan's experience in peaceful settlement of disputes through international judicial process. This year became an important year for Japan as it completed the oral proceedings of the first ICJ case in Japan's history, concerning the legality of Japan's special permit whaling in the Antarctic. As Japan's Agent stated in his concluding remarks,<sup>3</sup> the oral procedures spread over three weeks gave Japan the opportunity to thoroughly present our case about Japanese research whaling to the Court and, by extension, to the entire world. In essence, Japan demonstrated, based on law and facts, that its special permit whaling was in full accordance with the International Convention for the Regulation of Whaling.

It is now for the Court to decide, but we trust that Japan presented its arguments clearly.

Recourse by States to international adjudication for the peaceful settlement of disputes is an important feature of the rule of law. Japan is committed to settling disputes through peaceful means, and in fact, Japan accepted the compulsory jurisdiction of the ICJ soon after it adhered to the Court's Statute, and has consistently maintained its acceptance. Allow me to take this opportunity to call upon all States that have not yet done so to accept the compulsory jurisdiction of the International Court of Justice.

Madam President, There is no doubt that AALCO has served as an important forum for strengthening and promoting the rule of law in Asia and Africa, the two growth centers of the world. As maintenance of and respect for the rule of law are essential for ensuring sustainable development and prosperity of States and regions, AALCO can and should continue to play an important role for the future of Asia and Africa. To achieve that goal, however, it is imperative that the Organization should be placed on a sound and sustainable financial basis. To that end, I have great respect for the efforts made by the Secretary-General and his staff to raise the awareness among the Member States of the importance of fulfilling their financial obligations, which culminated in the adoption of the "Putrajaya Declaration" in 2009. The declaration aims at recovery of arrears through flexible consultation and arrangements with the Member States that have long-standing arrears as well as streamlining expenditure as much as possible.

This year, the Secretariat has made a proposal to increase AALCO's budget by 14.19% from the last year's budget, which would require increased contribution from the Member States. As I understand, from the Secretariat's point of view, this is proposed as the measure of last resort. Indeed, the Secretariat has been making its utmost effort in recovering arrears and it has perhaps cut its expenditure in all areas possible.

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<sup>3</sup> CR 2013/23 (translation), p. 17, para. 4 (Tsuruoka), <<http://www.icj-cij.org/docket/files/148/17516.pdf>> accessed 20 August 2013.

I wonder, however, that when so many Member States are not fulfilling their financial obligations under the current scale of contributions, how are we to expect that the situation should improve with an increased scale? It seems to me that the proposal to increase the budget would only lead to a situation in which those Member States that have been fulfilling their financial obligations have to pay more, simply to cover those unfulfilled. That, in my view, is not a “sound” financial basis.

Madam President, We have been discussing the same issue for too long now. As I have stated previously, the future of AALCO depends on the will of the Member States. Do we want AALCO to be revitalized and to fully play its expected role in promoting the rule of law and developing international law in Asia and Africa, or are we happy with just barely maintaining the Secretariat on a current scale? Frankly speaking, I am not happy with the current level of attention given to the issue by the Member States. If we were really serious about future of AALCO, why did we see only a very limited number of States express their views at the Liaison Officers’ meetings during the past year, despite the Secretariat’s repeated request for the Member States’ reactions?

In any case, there is no use in talking about the past. I humbly ask thorough deliberations to be held on the subject during this Annual Session, all Member States to take this issue very seriously and to express their opinions. I shall refrain from stating our position in detail now. Japan cannot agree to a budgetary framework of any international organization whose financial base rests on an assumption that it should be supported by contributions from a limited group of Member States.

Madam President, There are so many international legal issues in the world right now that we can most productively discuss here. I am grateful to the Government of India for their hospitality, and thankful especially to the Secretary-General and the Secretariat for preparing the extensive materials on topics so important for the Member States despite the limited resource. I very much look forward to engaging in discussions with the distinguished delegates, both in and out of this conference room.

Thank you.

**President:** Thank You Japan. I would just like to put the record straight that the session is being hosted by the Secretariat not the Government of India. So I think all the praise goes to the Secretariat. The next delegation on my list is Palestine. You have the floor sir.

**The Leader of Delegation of State of Palestine<sup>4</sup>:** In the name of the God The Most Compassionate The Most Merciful,

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Allow me to repeat my thanks and appreciation to the efforts of AALCO regarding its work on the issue, in particular, its important publications on the Palestine issue, on the siege on Gaza or status of Palestine in International Law. We deeply appreciate these efforts which are invaluable. We reiterate the importance of this publication on the status of the Statehood of Palestine which

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<sup>4</sup> Statement delivered in Arabic. Unofficial translation from interpreter’s version.

should be a legal reference point not just for Palestine, but at the global level as well. In our appreciation for this role and effort we also reiterate the continuing role of AALCO in this regard. We shall endeavour after we return to our countries to issue necessary resolutions for the translation and reprint of this publication and its circulation to all institutions and organizations and friendly countries in the world and we should not. We wish to AALCO, the President, The Secretary General, The Secretariat and the Members the appreciation of all Palestinians for the significant publication brought out by AALCO with regard to the refugees issue or settlement of Jews in the Occupied Territory of Palestine and other issues.

Ladies and Gentlemen, We realize that the UN resolution that was issued in 2012 has positive impact and implications for the Palestinian issue. One of the important implications of this is that this resolution has decided the legal situation of Palestinian lands and has recognized it as a disputed and occupied territory and recognized the right of Palestine to join all organizations of UN and its right to join/ratify all international conventions. We in Palestine fully realise that our efforts in this regard should not be unstudied and it should be carefully prepared keeping in mind the economic and political implications for Palestinian people. Therefore the Palestinian leadership has formed national commissions supported by a number of international legal experts to study each resolution separately. Palestinian leadership has reiterated its support for the resolutions of the ICC. I am in touch with the attorney general in the ICC and work is progressing to define the Palestinian position with regard to this.

Ladies and Gentlemen, Israeli Occupation of Palestine is neglect of the international position and the international stand and it is increasing its oppression of Palestinian people. One of the latest practices of Israel is its activities on Jerusalem which informs us that there is a plan on the part of Israel to divide the Al Aqsa mosque and prevent the Muslims from offering their prayers in the mosque. We caution them in this respect that such acts at this level will perpetuate violence in the region and Israel will be fully responsible for this.

Allow me also to use this opportunity to call on the Member States of AALCO and through them the members of the international community to take a critical position on the Palestine issue and support the Resolution of the European Union which refuses to recognize the Israeli settlements and boycott all its products. I believe that a resolution at this level will make Israel feel that settlement is illegal and unlawful and I believe that AALCO can as a legal consultative organization, contribute to the legal framework for such type of resolution. I repeat my earlier request to study the relation of the UN resolution about the Palestinian issue.

We recognize that the financial condition of this Organization is not good. We wish to point out here that the economic condition of Palestine is also not good. I request the Secretary General of AALCO and the Secretariat and all the colleagues participating here to take a resolution to cancel the accumulated arrears of Palestine. We will also take measures to clear of the accumulated arrears in the coming years.

Thank you very much for your efforts and wish you success in achieving justice for the weaker people and achieving their human rights.

Thank you very much.

**President:** Thank You Palestine. The Delegation on my list is Mauritius. You have the floor Sir.

**The Leader of Delegation of Mauritius:** Thank you. Madam President, Madame Vice-President, the Secretary-General, Honourable Ministers, Excellencies, Ladies and Gentlemen.

It is an honour and privilege to address this assembly today on the occasion of the Fifty-Second Annual Session of AALCO. On behalf of my delegation I would like to congratulate you Madam, Dr. Neeru Chadha, the President on the assumption of the Presidency of this Session. I wish to extend to you all the support of my delegation. Let me also express our appreciation to Prof. Rahmat Mohamad, Secretary-General of AALCO for his leadership and steering of the Organization and the excellent preparations and arrangements made for this Annual Session in New Delhi. The achievements of AALCO are indeed praiseworthy, despite its limited resources. AALCO is now a recognized platform of serious discussions, engaging in a wide spectrum of international law issues ranging from the law of the sea to human rights.

Madam President, As a Small Island Developing State, Mauritius is greatly concerned on the threat of piracy to regional and international security. Piracy in the Indian Ocean has adversely affected economies of countries of the region and disrupted international trade. Mauritius has taken a number of measures to fight the scourge. These measures include signature of CTBT Code of conduct, setting up of a national steering committee on piracy and increased surveillance of our Exclusive Economic Zone. Mauritius, which is a party to UNCLOS has further strengthened its anti-piracy capabilities by adopting the Piracy and Maritime Violence Act, 2011, premised on the transitional dimensions of modern day piracy and principles of universal jurisdiction. We believe that an important aspect in the fight against piracy is the effective prosecution of suspected pirates captured in the course of operations. Last January, the Mauritian authorities accepted the transfer to Mauritius of twelve suspected pirates for trial. The suspected pirates are being prosecuted by the courts of Mauritius. Thanks to concerted international action, the number of successful attacks has dropped. This issue must not be perceived as resolved and calls for further enforced regional and multilateral corporation more than ever. Mauritius will continue to work closely with international community and countries of the region to combat piracy.

Madam President,

Mauritius is also making significant progress as a centre for international commercial conciliation and arbitration, in particular as a centre of reference for the arbitration of disputes. Mauritius has signed a host country agreement with the Permanent Court of Arbitration at the Hague, which has for the first time in its history appointed a permanent representative outside the Hague to a different country, that is Mauritius. The Mauritian International Arbitration Centre was now fully operational having published its Rules of Arbitration and Conciliation. They have since been developments which clearly shows that the leading institutions in the field have recognized the importance of an increasingly regional approach to the settlement of international disputes and the role which Mauritius can play in the region. The International Arbitration Project of Mauritius aims at ensuring that the region has its say in the process and that international arbitration progressively becomes a part of the legal culture. The goal of Mauritius is to create a platform run for the benefit of the region as a whole and to build capacity in the field of international dispute resolution.



Madam President, Let me also reiterate our unending support to the inalienable rights of the Palestinian people. Moreover, Mauritius is strongly committed to the values and ideals of the United Nations and we strongly condemn the violations of human rights and the use of chemical weapons. We firmly believe that disputes must be resolved through all inclusive, democratic and peaceful processes.

I conclude by reiterating that AALCO plays a crucial role in the progressive development of international law and its dissemination. Our Organization has grown into become an invaluable platform for cooperation and exchange and for building consensus in the field of international law. Mauritius reaffirms its continued support and commitment to AALCO.

Thank You

**President:** Thank You Mauritius. The next delegation is the delegation of Qatar. You have the floor sir.

The **Leader of Delegation of the State of Qatar**<sup>5</sup>: In the name of God, the Chairperson of this Session, Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO, Excellencies, Ministers and Distinguished Delegates.

Allow me in the beginning to congratulate the President and Vice President of the current Session wishing them to conduct this session successfully. We need to begin by expressing on behalf of the Minister of Justice of the State of Qatar, my sincere appreciation to the friendly Republic of India and the people of India for hosting the Fifty-Second Annual Session of AALCO, and for the warm welcome extended to all of us. I also take this opportunity to reiterate that since the establishment of AALCO in 1956 after the Bandung Conference AALCO has played a very important role in providing legal advice to the Member States. With this the Organization has become a leader in the field of international law enjoying the appreciation of all the Member Countries. It is a very important forum to discuss important legal issues and we look forward to getting benefitted in the next few days. In this context I would like to reiterate the conviction of the Ministry of Justice about the role of the Organization in creating a continuous dialogue between our countries.

Excellencies, our session is taking place at a very difficult time for the international community. It is because of the escalation of tension and instability in a large number of countries in the region, and the continued suffering of the Palestinian people. The increasing rate of poverty and marginalization, unemployment and political instability and worsening economic and social conditions and desertification, resource scarcity and climate change, are other serious problems, facing many countries of the world especially Asian and African continents. My delegation would like to state with regard to the Arab-Israeli conflict, that the Palestinian issue is a serious problem in terms of stability and peace in the Middle East and at the global level. This makes it important to quickly find an effective solution to the Palestinian issue, based on achieving comprehensive and just peace, and to stop the illegal construction of Israeli settlements, and respect of all legal rights of Palestinian people struggling for establishment of an independent state with West Jerusalem as its capital.

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

Excellencies, I would also like to stress on the importance of international and national work regarding effective enforcement of all provisions of international conventions and treaties related to human rights, in addition to the obligation to application of international standards of human rights. In this respect I would like to mention the initiative taken by the State of Qatar for the support of development of human rights system on Arab level, and the establishment of the Arab Court of Human Rights. Qatar also hosted, in July 2013, a conference under the title of the development of human rights system of the League of Arab States.

The State of Qatar also notes that the spread of corruption in all its forms is the main reason for the elimination of democracy and the squandering of rule of law, as well as the loss of opportunities for development which are basic obstacles in the way of progress and stability. It is therefore important to form effective international and national mechanisms to fight it. The State of Qatar has initiated the establishment of the Arab Forum for recovery of looted money, which is an institution to support efforts to recover the looted funds and assets owned by the countries of the Arab Spring.

Excellencies, the State of Qatar also hosted the Doha conference on Interfaith Dialogue during the month of April 2013. The Ministry of Justice presented to the league of Arab States the draft Model Arabic Law to prevent the defamation of religions.

In conclusion, I also wish to emphasize that the successful exploitation of natural resources and human potential as well as management, is the ultimate objective of sustainable development and towards this end the State of Qatar hosted, in 2012, the 18<sup>th</sup> Conference of Parties on climate change to solve the environmental problems and provide effective solutions for sustainable development.

Thank you, Madam President.

**President:** Thank you sir for your Statement. Next country on my list is Sri Lanka, but with Sri Lanka's permission may I give the floor to Myanmar because they have been listed for the afternoon, but they have another meeting in the afternoon. If Sri Lanka permits I would like to give the floor to Myanmar. Thank you, Sri Lanka. Myanmar you have the floor.

**The Leader of Delegation of the Republic of Union of Myanmar:** Excellencies, Distinguished Delegates, Distinguished Guests, Ladies and Gentlemen, first of all, I would like to express my sincere appreciation to the Government of the India for hosting Fifty-Second Annual Session of AALCO and for extending a warm welcome and hospitality to our delegations. I also thank His Excellency Prof. Dr. Rahmat Mohamad, the Secretary General of AALCO, and the AALCO Secretariat for their hard work and commitment towards the work of AALCO. I also congratulate Her Excellency Mrs. Neeru Chadha on her election as the President and Ms. Hema Odhav on her election as the Vice President of the Fifty-Second Annual Session of AALCO.

I would like to reaffirm Myanmar government's commitment towards AALCO and its Member States. Myanmar strongly recognizes the important role of the AALCO in providing fruitful knowledge and updated experience of international law which will be useful to the setting up of new Myanmar regime. Here, allow me to explain briefly today of Myanmar. Myanmar is now being transformed step by step in order to achieve the democratization system with the positive

will of new government. Myanmar is engaged with political reforms. Political reform has also led to legal reform. Legal reform too must be compatible with the new democracy system and economic reform.

Excellencies, Distinguished Delegates, Distinguished Guests, Ladies and Gentlemen, indeed, this political, economic and legal reform has created new challenges for Myanmar. Myanmar needs to carry out her existing functions and new areas of work consistently with democratic principles and the rule of law. Existing laws have been reviewed whether those should be amended, revised or those should be withdrawn. Some new laws should be enacted to meet with the international standard as required of the provisions of multilateral treaties in international law. Thus, international legal assistance provided by the work of AALCO is invaluable contribution to establish the rule of law including the justice sector development in Myanmar.

I have observed that we have got a number of important agenda items to discuss at this Fifty-Second Annual Session of AALCO. Regarding the agenda of Law of the Sea in this session, the current practice of the States world over exercising their rights and duties under UNCLOS and its Tribunal (ITLOS) would be contributed among the Member States of AALCO. This contribution would be very applicable to reiterate the importance of peaceful settlement of disputes among States. Myanmar has cooperated with ASEAN partners in the common endeavor to fight that ancient scourge of the seas and recognizes piracy as the challenge on the high seas faced by all the maritime countries of the world. Since Myanmar and Bangladesh had consented to institute proceedings under Part XV of the UNCLOS, before the International Tribunal for Law of the Sea (ITLOS), it was the good practice of Myanmar and Bangladesh to have peaceful Settlement of disputes.

Excellencies, Distinguished Delegates, Distinguished Guests, Ladies and Gentlemen, in addition, I applauded the work of AALCO in the area of 'Environment and Sustainable Development' and 'Challenges in Combating Corruption' which were not an unfamiliar problem for Myanmar. The three Rio Conventions of Environment and Sustainable Development, namely, United Nations Framework Convention on Climate Change, 1992 (UNFCCC); Convention on Biological Diversity, 1992 (CBD), and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and / or Desertification on, Particularly in Africa, 1994 (UNCCD) have been ratified by Myanmar.

Myanmar has ratified the United Nations Framework Convention on Climate Change, 1992 (UNFCCC) on 16.2.2005, Convention on Biological Diversity, 1992 (CBD) on 25.11.1994, and Myanmar has acceded the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification on, Particularly in Africa, 1994 (UNCCD) on 2.1.1997. Myanmar needs the legal development and latest information of the implementation of those three Rio Conventions in order to arrange the perseverance of natural resources, environment and for sustainable development in Myanmar.

Myanmar has also ratified the UN Convention against Corruption on 20.12.2012. Legislative drafting process of Myanmar Corruption Law is now underway. I do hope that the knowledge in Combating Corruption resulted from this Fifty- Second session would be very useful to draw the Myanmar Corruption Law to be made in line with the international standards found in the UN Convention.

In conclusion, on behalf of the Myanmar Government, I fully welcome the reappointment of Prof. Dr. Rahmat Mohamad's as the Secretary-General for one more term and I would say that Myanmar Government would support all the endeavors of AALCO to promote Asian-African solidarity, cooperation towards progressive development and codification of International Law.

Thank you.

**President:** Thank you Myanmar. I now give the floor to the Sri Lankan delegation. You have the floor sir.

**The Leader of Delegation of Democratic Socialist Republic of Sri Lanka:** President elect Madam Dr. Neera Chadha, Joint Secretary, Ministry of External Affairs of India, Professor Rahmat Mohamed, Secretary-General of the AALCO, Vice President elect Ms. Hema Udhav, First Secretary, Ministry of Republic of South Africa, Honourable Ministers, Heads of Delegation, Distinguished Delegates, Observers, Ladies and Gentlemen.

As Minister in charge the subject of Justice in Sri Lanka I have had the honour of leading the delegation of my country at three annual conferences of AALCO. I was also elected as the President of AALCO at the Fiftieth Annual Session held in Colombo in 2011.

At the outset, on behalf of the delegation of Sri Lanka, I wish to express our profound appreciation to Professor Rahmat Mohamed, Secretary-General of the AALCO and all those at the AALCO Secretariat for the warm welcome and hospitalities extended to us from the time we arrived in New Delhi and also for making arrangements to make the current Session a memorable one.

Please permit me to express my appreciation and gratitude to the Honourable Ministers, Heads of Delegations, Distinguished Delegates and Observers, Panelists and others who have come here to participate at this Session.

Excellencies, Distinguished Delegates, Ladies and Gentlemen, fifty six years ago, Sri Lanka joined Burma, India, Indonesia, Iraq and Syria to launch the Asian Legal Consultative Committee (ALCC) in this same historic city of New Delhi. It is with justifiable pride that we review the progress made by this organization that was launched 56 years ago with only seven members. It has steadily grown into a respected multilateral institution that makes credible contributions in the development of international law and relations reflecting the views of the two great continents of Asia and Africa which will shape the trajectory of world affairs in the 21<sup>st</sup> century. Today AALCO consists of 47 nations in the Asia –Africa region making its collective voice heard on a vast array of subjects that are vital for peace and progress of our planet.

It is necessary to note that the recent Annual Sessions of AALCO devoted a significant part of its time and resources to deliberate on topics that had serious bearing on world peace, sustainable development, environment, and prevention of crime and the rule of law. I congratulate all the Member States and the AALCO Secretariat led by the Secretary General for placing great emphasis on these vital and challenging issues that require solutions and observations through

our collective wisdom while remaining consistent to our shared objectives and individual interests.

At this stage I would like to echo the words of His Excellency President Mahinda Rajapaksa who at the 50<sup>th</sup> Annual Session in Colombo said “It is vital to ensure greater effectiveness with regard to regulatory mechanisms at the international level, in respect of issues which are of immediate concern to many of our countries in Asia and Africa. Money laundering, gun running, human and drug trafficking, are linked to international terrorism, continue to pose serious challenges, which call for a prompt and vigorous response by the international community.”

We have no time to lose. We must all move forward with renewed vigour and commitment to initiate meaningful actions to combat crime and uphold the rule of law. Therefore, I propose that all Member States take the lead and urge the Secretary General of AALCO to identify specific additional issues that need to be included in the agenda for the next sessions.

The Agenda Items for the current sessions include Environment and Sustainable Development, Law of the Sea, Challenges in Combating Corruption: Role of the UN Convention on Corruption, Special Study on the Statehood of Palestine under International Law, Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties.

My understanding is that most of Member States of AALCO have different and at times contentious views on these items in the agenda. Therefore I believe that AALCO is an appropriate forum to deliberate on these issues to reach common grounds, consensus and pragmatic solutions.

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. Sri Lanka has always appreciated the work of the International Law Commission and closely followed their progress. Currents topics deliberated at the Commission such as extradition and prosecution, protection of persons in the event of disasters and immunity of state officials from foreign criminal jurisdiction are of importance to all States. I would like to emphasize that Sri Lanka is well aware of the sensitivity and complexity involved in such issues and would endeavour to strike a balance between international relations, justice and human rights and as well as state sovereignty when articulating our positions.

International Trade Law is always an important subject to be included in fora such as this due to many reasons. There are vast developments in international trade and international trade practices that requires the law to be updated at the same speed of such developments. This is a subject vital to our governments in shaping international trade and relations. I am of the firm opinion that AALCO is an eminently suitable forum to deliberate on current issues of international trade law.

The United Nations Convention on the Law of the Sea was ratified by Sri Lanka in 1994. Sri Lanka made its submission in May 2009 to the Commission based on the Statement of Understanding. Sri Lanka has been informed that due to the work load of the Commission it might take years to consider our submissions. 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.

I seek the indulgence of distinguished delegates present here today to announce that Sri Lanka is gearing up to launch an International Arbitration Centre in Colombo in early 2014. Developing Sri Lanka as a regional hub in relation to allied services was identified in 2010 national budget on a proposal submitted by me considering the potentials in the legal sector and professional standards prevalent in the legal services.

The International Arbitration Centre will be an independent and a professionally managed entity which will provide facilities to enable international companies to resolve any commercial-related disputes. I call upon Member States of AALCO to encourage the respective Chambers of Commerce and Industry and entrepreneurs to consider Colombo as their next destination for arbitration.

Permit me to take this opportunity to announce to this distinguished forum that that in two months' time, Sri Lanka would be hosting the Commonwealth Heads of Government Meeting in Colombo. This would be a historic occasion for our nation as this would be the first major prestigious event Sri Lanka is hosting after defeating terrorism that ravaged our country for more than three decades. Therefore I request the participation and cooperation of all Commonwealth States represented in AALCO to make this event a grand success.

In conclusion, Madam President, I wish to implore all Member States of AALCO to take all measures required to ensure the vigour and viability of AALCO. It is of utmost importance that Member States of AALCO are successful in enhancing the cooperative spirit of this institution and speak with one voice to promote and safeguard the interest of our nations. Thank you.

**President:** Thank You Sir for your statement. The next Delegation is Kuwait.

**The Leader of Delegation of State of Kuwait<sup>6</sup>:** Madam President; Excellencies; Ladies and Gentlemen.

On behalf of the State of Kuwait I would like to congratulate the President on her election by AALCO Member States. I would also like to appreciate the Secretary-General for the hard work done by him and his organization in the working of AALCO as well as in organizing this Annual Session.

The State of Kuwait confirms its support for the Asian-African Legal Consultative Organization since joining in 1970, in terms of regional and international action and increasing of its activities through presenting legal topics of common international concern in a time the world is witnessing serious challenges which require concerted international efforts and joint action to strengthen peace and security. The State of Kuwait believes in the vital role of this Organization as well as affiliated organizations under the umbrella of the UN which reflect the unprecedented global support to the fair cause of Kuwait during the Iraqi invasion in 1990 and the pivotal role played by the United Nations Organization for the liberation of Kuwait.

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<sup>6 6</sup> Statement delivered in Arabic. Unofficial translation from interpreter's version.

The State of Kuwait stresses its interest in these topics through active participation by acceding to the Convention on the seas and oceans, which it joined in 1986, in addition to the support of the State of Kuwait to the international efforts aimed at enabling developing countries and least developed countries to achieve sustainable development. Great efforts have been made by Kuwait in this regard, including the initiatives of His Highness the Amir Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah took in proposing the Fund of Decent Life that was launched in the Arab Summit for the Economic, Social and Development, which was held in Kuwait in 2009, in addition to the contribution by Kuwait of US\$ 9 million to support development projects in member countries in forum of Asia Cooperation Dialogue which conducted its first summit in Kuwait in 2011, as well as the contributions to the Kuwaiti fund for Arab economic development since its establishment in 1961 which has given loans to around 102 countries of US\$ 17 billion, as well as the joining of State of Kuwait in membership of the Economic and Social Council for period of 2013-2015.

Madam President, there are increasingly urgent issues requiring legal treatment because they represent flagrant violations of international laws. These issues include: deportation of Palestinian people and Israeli practices in all occupied land that violate international law, the challenges in combating corruption and the role of the UN Convention against corruption, and maritime piracy and the fight against terrorism in all its forms. The State of Kuwait would like to draw the attention of AALCO to these topics in addition to its role at the continental level in Asia and Africa through providing legal advice and conducting seminars and workshops and organizing training programmes and preparing researches and studies.

Madam President, I would also like to extend my sincere thanks on the outstanding role of organization since its establishment in 1956 till date, and its keeping up its pace with international events and different topics of common concern between members of Organization. In this respect the State of Kuwait urges the Member States for cooperation and joint assistance in order to benefit from topics of international interest presented by the Organization.

**President:** Ladies and Gentlemen it is about 1:30 and I think we will break for lunch. After the lunch we will re-assemble at 2:30 and Thailand would be the first delegation to take the floor after lunch. So we will disperse for lunch now. Thank you.

**The Meeting was thereafter adjourned.**

**VERBATIM RECORD OF THE FIRST GENERAL MEETING  
HELD ON MONDAY, 09 SEPTEMBER 2013 AT 2.35 PM (Cond.)**

**Her Excellency Mrs. Hema Odhav, Vice- President of the Fifty-Second Annual Session of AALCO in the Chair**

**Vice - President:** We will now continue with the General Statements. I give the floor to Thailand.

**The Leader of Delegation of the Kingdom of Thailand:** Madam Chairperson, Excellencies, Distinguished Delegates,

At the outset, my delegation wishes to congratulate the President on her election as the President of the Fifty-Second Session of the Asian-African Legal Consultative Organization (AALCO). Our congratulation also goes to the Vice- President of this Session. Under your able leadership, I am sure that the Meeting will come to a fruitful conclusion. I would like to assure you of my delegation's full cooperation.

We also would like to express our sincere appreciation to the Secretary-General of AALCO and the AALCO Secretariat for the excellent preparation and arrangements for this Fifty-Second Annual Session.

Madam President, Thailand always attaches great importance to the AALCO and its works. We have actively participated in the deliberations and activities of the Organization since we joined the Organization more than 50 years ago.

One of the key foreign policy of Thailand is to forge cooperation between Asia and Africa. We believe that AALCO serves well as a forum for Asia-Africa partnership. Through our cooperation and sharing of knowledge and experiences, Member Countries can benefit from learning from one another experiences, both successes and shortcomings. In this connection, I am pleased to inform you that the Royal Thai Government has recently launched the Thai-African Initiative in order to strengthen partnership between Thailand and African countries. We believe there are more opportunities and potentials to be tapped between the two continents in order to foster trade and investment, as well as forge political and people-to-people ties. As a first step towards this goal, Thailand plans to host a High-Level Dialogue between Thai and African leaders in Thailand in February next year. The forum is aimed to share experiences and exchange views on the way forward between Asian and African countries.

Madam President, regarding law of the sea, Thailand has always played an active and productive role since the time of negotiation process of the 1982 Convention. Having been one of its original creators, Thailand signed the UNCLOS in the same year of its adoption in Montego Bay, Jamaica, and has now become a Party to the Convention. Thailand is currently working closely to accelerate the implementation process of the UNCLOS and to ensure that its implementation is undertaken in a coordinated and comprehensive manner.

In the field of environment and sustainable developments, Thailand has been actively participating in the works of this field in different fora. The Millennium Development Goals or MDGs have been an important device for better livelihoods for millions of people. With 2015 approaching, we should exert all effort to make the final push in realizing these goals. Simultaneously, it is important that we prepare for the post-2015. Successes and lessons learnt on MDGs implementation should be taken into account as we formulate the post-2015 development agenda or the Sustainable Development Goals.

The process towards this end should be as inclusive as possible to ensure that the agenda enjoy widest possible support and ownership of international community. Further, Thailand views that the development agenda beyond 2015 should continue to place people at its core. As a matter of fact, the heart of His Majesty the King of Thailand's Philosophy of "Sufficiency Economy" is



human development. While poverty alleviation should remain an overarching goal of the post-2015 agenda, it perhaps should aim to achieve people-centred development with the key elements of addressing inequality, disaster reduction and preparedness, universal health coverage, and adherence to rule of law and good governance.

Madam President, As an active member of the International Law Commission, Ambassador Kriangsak Kittichaisaree, the ILC Member from Thailand, has chaired the ILC Working Group on the Obligation to Extradite or Prosecute (*Aut Dedere Aut Judicare*). Also, we are of the view that the work of the ILC should take into consideration both interests of developed and developing countries. In the ILC process of codification and progressive development of international law, my delegation views that the deliberation we will have in this Forum will help shape the development of international law in the direction that is in line with the interests of Asian and African members.

Madam President, Combating corruption is a priority agenda for Thailand. In an effort to deal with corruption, a national strategy and necessary laws and measures as well as effective legal implementation are required at the national level, and collective efforts and effective cooperation at the regional and international levels. In this regard, Thailand has signed the UN Convention against Corruption on 9 December 2003 and successfully submitted a ratification instrument on 1 March 2011, in which it becomes effective to Thailand on 31 March 2011. At the domestic level, the Royal Thai Government also established Thailand Anti-Corruption Coordination Centre (TACC) to serve as a focal point for cooperation in corruption cases. At the regional level, Thailand together with Brunei, Indonesia, Malaysia and Singapore signed the Memorandum of Understanding on Cooperation for Preventing and Combating Corruption to strengthening cooperation in the matter within the ASEAN frameworks.

On the rule of law and criminal justice, Thailand has established Thailand Institute of Justice or TIJ to undertake research, technical assistance, and other forms of knowledge management in the areas of justice to build strong foundation for the communities of justice in Thailand, ASEAN and beyond. The Institute also aims to promote the culture of justice and the rule of law in accordance with the United Nations standards and norms on criminal justice. It collaborates closely with the United Nations institutes such as UNODC, UNAFEI (UN Asia and Far East Institute for the Prevention of Crimes and Treatment of Offenders), KIC (Korean Institute of Criminology) and several others. At the end of this year, the TIJ and the Ministry of Justice of Thailand will host a conference on “Bangkok Dialogue on the Rule of Law”.

Madam President, in closing, I reassure you all that Thailand will continue to be a strong partner of AALCO and stands ready to collaborate with AALCO member countries to achieve common objectives and aspiration of AALCO.

I thank you, Madam President.

**Vice- President:** Thank You Thailand. I call on The Democratic People’s Republic of Korea to deliver their general statement.

**The Leader of Delegation of Democratic People’s Republic of Korea:** Your Excellency, Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO, Your Excellency, Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO and Distinguished delegates.

Allow me first of all, on behalf of the DPRK delegation, to extend my sincere congratulations to Your Excellency Dr. Neeru Chadha on your election as the President of the Fifty-Second Annual Session of AALCO. I expect this session will surely proceed with great success under your able and seasoned chairwoman ship.

My special thanks to the AALCO Secretary-General and his Secretariat for caring and rendering efforts for the activities of AALCO and making every possible effort to make this session a success.

I also wish to take this opportunity to express my gratitude to the Indian Government for providing with warm hospitality and conveniences to the delegates of this conference.

The Asian-African Legal Consultative Organization (AALCO), as the only intergovernmental forum where Member States exchange ideas and views on major international legal issues, has been making a remarkable contribution to the codification of the international law.

It has to be noted that AALCO in conformity with its noble mission has played a positive role in strengthening exchange and cooperation among Member States and in helping Member States understand and coordinate their stands on important global and regional issues.

Particularly, AALCO has successfully represented and defended the stands and interests of its Member States in major international bodies like UN and lifted the Afro-Asian influence and voice on the discussion of international legal issues by establishing close cooperative relationship with relevant international organizations.

The DPRK Government highly appreciates the activities and successes of AALCO achieved for the progressive development of international law.

Madam President, I would like to take this opportunity to state the principled stands of the DPRK Government on some issues to be raised at this session. Firstly, our Organization and Member States should pay due attention to the present day reality that the principles of international law are ignored and sovereign rights and interests of the developing countries are trampled down due to the unilateral acts of high-handedness and arbitrariness of some countries.

The United States in pursuit of its political objectives is making interventions in internal affairs of 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.

Politically motivated military invasions and mass-killings of civilians in Iraq, Afghanistan and Pakistan committed by the US are examples of state terrorism and extension of high-handedness and domination which causes the vicious circle of terrorism.

The recent interventionist attempts, waging out of the UN system and against the rule of international law, on the internal affairs of Syria are clearly illegal and unlawful acts that cannot be justified whatsoever.

In today's world the Jungle Law cannot be accepted, and the developing countries should never tolerate their sovereign rights and interests are infringed upon.

Secondly, a legal regime should be established as soon as possible to terminate the acts of imposing unilateral and unfair sanctions and blockade on third parties, by the US and some other countries applying their national laws.

Currently, several Member States including DPRK have been receiving negative effects directly or indirectly in all areas of national development due to the United States unilateral acts of unfair sanctions and blockade.

The government of DPRK strongly opposes and rejects the act of imposing unfair sanctions and blockade on the third state by invoking 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.

Next to say, the Israeli inhuman practices including massive deportation of Palestinians and the establishment of Jewish settlements in the 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.

The DPRK Government insists that Israel should immediately stop its acts of terror against Palestinians, withdraw from all occupied Arab territories and the cherished desire of the Palestinian people for their own independent statehood should be realized at an earliest date.

Regarding the issues raised as the agenda items, my delegation will deliberate its position in detail at the time of separate discussions during the session.

Madam President, Distinguished delegates, in the DPRK today, the man-centred Juche Idea has been thoroughly introduced in all fields of social life and the rule of law highly observed, thus the social stability and harmony are fully and legally guaranteed under the dynamic guidance of respected leader Kim Jong Un who brilliantly carries on the cause of president Kim Il Sung and general Kim Jong Il.

The DPRK people are currently exerting vigorous efforts to ensure peaceful atmosphere on and around the Korean peninsula and the region and to open the hay-days for building a strong thriving state and for the welfare of the people by accelerating economic construction.

It is an unshakable will of our people to get a final victory by smashing any hostile forces anti-DPRK moves to isolation and pressure and the people of the DPRK are quite certain that the historic cause of building a thriving socialist nation and realizing national reunification will surely be accomplished.

The DPRK, in future too, will make strenuous efforts to ensure the recognized principles of international law are strictly observed and to establish an equal and fair international order, and 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.

In conclusion, I express my hope that the Fifty-Second Annual Session of AALCO would achieve desired successful results in its deliberations. Thank you for your attention.

**Vice- President:** Thank You Democratic People's Republic of Korea. I now give the floor to Tanzania.

**The Leader of Delegation of United Republic of Tanzania:** Madame President, Mr. Secretary General, Honourable Ministers for Justice and Attorney Generals, Heads of Delegations, Excellencies, and Ladies and Gentlemen. At the outset I congratulate you, Madame President on your very well deserved election as the President of the Fifty-Second Annual Session of Asian–African Legal Consultative Organization. My delegation has full confidence in you and assures you of our full support and cooperation. I thank and congratulate your predecessor His Excellency Mohammed Bello Adoke for very ably steering the work of the 51<sup>st</sup> Session. A lot has been achieved which I have no doubt will be consolidated and advanced. It would be a remiss on my part, if I do not acknowledge and commend the Secretary-General and the entire Secretariat for their service to the Organization.

Madam President, AALCO has always been dynamic in addressing current and pressing matters of international law, and the selected items under consideration during the Fifty First Annual Session are reflective of this. In this regard, we are looking forward to have continued discussions and deliberations during this Fifty -Second Session on the current topical areas of concern in the global arena.

Madam President, the last AALCO Extraordinary Session was held in India on the 1<sup>st</sup> of December 2008, indeed, it was a critical period for our Organization as we were determined to find ways to overcome the budgetary deficit that was facing AALCO. It is encouraging that during those troubled times, we all came together and adopted resolutions on overcoming the financial crisis faced by AALCO. It was this same stern commitment by AALCO Member States that weathered the storm, revitalized the Organization and enabled the Annual Session of the Organization to be held since 2008.

As we are witnessing the end of the critical effects of the Global Financial crisis, I urge Member States to fulfil their financial obligations towards AALCO particularly those with arrears. AALCO is our organization which has done a lot in strengthening the Asia–Africa cooperation at the international fora and I therefore call upon financially capable members to consider

increasing their voluntary contributions of the Member States that will bring about effective and efficient implementation of the mandates of AALCO.

Madam President, my delegation notes with appreciation that issues concerning the law of the sea continue to occupy a place of significance in the work programme of AALCO. The escalation of Piracy continues to pose major threats to regional peace and stability as well as to international shipping and trade. We have all witnessed the extent to which Piracy continues to affect trade between Africa and Asia particularly in the Eastern African region where the scourge has developed in recent years. It is clear that piracy cannot be solved through regional cooperation, my delegation believes that AALCO should continue to address this problem from both global and regional perspectives and further deepen discussions on the topic among African and Asian Countries. It is important for AALCO to further strengthen coordination and cooperation and continue to make unremitting effort to deal with piracy.

Tanzania remains committed in fighting against Piracy on the Indian Ocean, which separates Africa and Asia. As we join hands with members of the International community in fighting against Piracy on the Indian Ocean, we call upon other AALCO members to join hands in restoring security on the Indian Ocean.

Madam President, for decades now, “Environment and Sustainable Development” has been an important agenda in our annual conferences. Not only AALCO, we have also witnessed other international organizations discussing this agenda too, because we all share the common threats caused by global warming and climate change. We are therefore responsible in ensuring that the economic development initiatives of our nations do not threaten the ability of our future generations to bring about their own economic development. Tanzania supports both, the Kyoto Protocol and Agenda 21 of the United Nations and is firmly committed in educating the public on environmental conservation. Environmental matters have been prioritized and placed in the Vice President’s Office which is mandated to deal with all environmental issues including policy making, enacting legislations and establishing mechanisms for sustainable development.

Madam President, corruption has been among the major causes of poverty in the developing countries. Without taking bold steps against corruption, none of the economic growth or poverty reduction initiatives will succeed. In view of the above, Tanzania welcomes the deliberations on “Challenges in Combating Corruption” as addressing the conundrum that are corruption, through a challenge orientated paradigm may be the more realistic approach to combating this problem.

Madam President, in pursuit of the rule of law and good governance, the United Republic of Tanzania is currently reviewing its constitution of fifty years to broaden the rule of law, democracy and good governance. A committee for overseeing the review process was formed and national system approved by the parliament is in place to guide the participation of all Tanzanians. The first draft constitution was unveiled in June this year and all inclusive Constitutional forums have been established countrywide to discuss the content of the draft.

The new constitution focuses upon building good governance by revisiting the legal and institutional frameworks in the country. The new constitution will therefore cut across issues that have been discussed in AALCO meetings including Corruption, Environment and Sustainable Development, Piracy and Fostering Regional and International Cooperation among others.

Madam President, on behalf of my delegation and my Government, I would like to conclude by affirming that the United Republic of Tanzania remains aligned to the agenda of AALCO. This has been a unique platform for African and Asian region over past years, and has contributed significantly to diverse topics of contemporary international law. The forum has enabled to bring together experiences and expertise from Africa and Asia and address substantial matters of international law and ultimately enhancing cooperation on board range of legal issues among Member States, including highlighting views of the Asian – African States to the international fora. We look forward to participate constructively in this Session and partake in the tradition of robust and prolific deliberations, learn and share experiences from our African and Asian counterparts. I thank you all for your kind attention.

**Vice- President:** Thank you. Now I call upon Nepal to make their statement. You have the floor.

**The Leader of Delegation of the Kingdom of Nepal:** Madam President, Your Excellencies, Honourable Ministers and Ambassadors, Prof. Dr. Rahmat Mohamad, Secretary-General, Distinguished Delegates, Participants and Observers.

On behalf of the Nepalese delegation, and on my own, I would like to extend my sincere thanks to the Secretary-General of the Asian-African Legal Consultative Organization (AALCO) for organizing this Fifty-Second Annual Session in the Headquarters, New Delhi.

I would like to extend my sincere thanks to the outgoing President, Mohammed Bello Adoke, Attorney-General of the Federation and Minister of Justice of the Federal Republic of Nigeria for his valuable contribution to the Organization.

I would also like to convey my warm felicitations and congratulations to Her Excellency Madam Neeru Chadha and Ms. Hema Udhav on their unanimous election as President and Vice-President of the Fifty-Second Annual Session.

Madam President, I appreciate the inspiring address by Mr. E. Ahamed, Minister for State for External Affairs of the Government of India. His inspiring words symbolize the historic importance attached by the Government of India to this Organization.

Madam President, this Session is to be considered as a Session to assess and evaluate the works of the Organizations, revisit the commitments made during last Fifty-One session and envisage future course of action of the Organization. AALCO is the only legal Organization that consists of Member States from both Asian and Africa region. We must say that AALCO had made a significant contribution to the codification and progressive development of international law, through submitting its views to the General Assembly and its Sixth Committee. It has played a vital role in creating suitable environment for setting norms and standards in various fields of international law. In order to ensure that its members have proper laws and regulations in new and emerging areas, it has developed and disseminated model laws and agreements. Nepal has always attached great importance to the works of AALCO and appreciates its achievements made so far.

Madam President, Nepal appreciates agenda selected for this session which are very timely and pertinent especially the topic on Challenges in Combating Corruption: the Role of United Nations Convention against Corruption. Corruption is a big challenge for us.

Corruption has transnational dimension requiring international cooperation through the means of extradition, mutual legal assistance, transfer of sentenced persons, asset recovery, confiscation, return and disposal of assets and exchange of information.

Nepal was actively involved in the framing of the Convention against Corruption and ratified it in 2011. In order to fulfil the obligations of the Convention, the Government of Nepal has adopted and implemented a comprehensive Strategy and Action Plan on the Convention against Corruption in a systematic and coordinated manner.

Madam President, Environmental and Sustainable Development has been one of the most critical issues of our time. Devastating floods, the rapidly melting snow in the mountains, the barren lands in the hills and the rapidly depleting source of drinking water in the plains and raising sea levels symbolizes the seriousness of this problem. Poverty, climate change, food and energy crisis are interlinked with the issues of environment and sustainable development. Nepal being a least developed, land locked and mountainous country, it is trapped with triple burden.

Therefore, we draw the attention of the international community of their commitments made to the full implementation of the Programme of Action for the Least Developed Countries for the Decade 2011-2020 (Istanbul Programme of Action), the Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries in sustainable development and addressing new and emerging challenges.

Other agenda items including subject matters under consideration of the International Law Commission are important to be discussed during the Session.

Madam President, finally I would like to express my sincere thanks to you for giving new the floor and wish every success for the Session. Thank you.

**Vice- President:** Thank You Nepal. I call on the delegation from the People's Republic of China.

**The Leader of Delegation People's Republic of China:** Madam Vice-President, first of all, on behalf of the Chinese Delegation, I would like to congratulate you on your election as the Vice-President of the Fifty-Second Annual Session of the Asian-African Legal Consultative Organization. My congratulation also goes to Her Excellency Dr. Chadha for her election as the President of this Session. I also wish to take this opportunity to extend my appreciation to Dr. Rahmat Mohamad, the Secretary-General of the AALCO and his colleagues at the Secretariat for their outstanding work during the past year.

Madam Vice-President, the Chinese government has always attached great importance to and supported the work of the AALCO, and highly appreciated the achievements the AALCO has made since its establishment. As the only intergovernmental organization in the field of legal

consultation, cooperation and exchange among the Asian-African countries, the AALCO has devoted itself to studying the international law issues of common concerns and provided legal assistance to its Member States. It has made important contribution to facilitating the Asian - African countries' participation in the international law practices and promoting the development and codification of international law.

The world today is experiencing major development, transformation and readjustments, and international system is undergoing wide, complex and profound changes. The interests of countries are never so interconnected, interdependent and inter-converged before. Problems calling for common response are increasing, aspirations to seek win-win progress through cooperation are rising, to promote peace, development and cooperation has become the irreversible trend of the times. During this process, the international law is playing an increasingly important role. Issues with legal aspects in international relations are further increasing while the international law is undergoing a constant adjustment and evolution. Under such circumstances the AALCO is confronted with not only more opportunities but also more challenges.

We take notice with appreciation that under the leadership of Dr. Rahmat Mohamad, the AALCO has started to carry out a lot of work to meet the challenges. For example in 2011, based on a wide consultation with Member States, a comprehensive plan for the future of the AALCO was developed by the Secretariat, and many suggestions, including the establishment of the AALCO Fund, the improvement of Eminent Persons Group mechanism, the establishment of database on legal experts, were put forward. We hope that with the implementation of the above suggestions, and the expansion of its activities in various fields, the AALCO will play a more active and substantial role on the stage of international law and international affairs.

Madam Vice-President, bearing in mind the challenges faced by the AALCO and the need to meet them better, I would like to take the opportunity to make the following suggestions: First, we hope that the AALCO will continue to strengthen its capacity-building and contribute further in the development of both the practice and theory of international law. On the one hand, the AALCO could follow closely major international issues and events, make in-depth analyses of the international law issues involved, and facilitate exchange of views among Member States with the aim to reach consensus. On the other hand, the AALCO could conduct in-depth studies on new issues, new trends and new developments in international law and conclude reports as appropriate, so as to promote its academic contribution.

Second, in order to increase its influence, AALCO could continue to strengthen its close cooperation with the UN legal organs, by expanding forms of cooperation, improving the effectiveness thereof, and raising awareness of the views and voices of the AALCO on issues of most concern to its Member States and having the widest consensus.

Finally, we hope that the AALCO will continue to improve its capacity for providing legal assistance to Member States, organize seminars and training programs for them, and could serve as a cradle of talents on international law for Asian and African countries.

Madam Vice-President, China will, as always, support and participate in the work of the AALCO, and is ready to work with the other Asian -African countries, through this important platform of the AALCO, to make international law to better reflect the interests and positions of



the developing countries, to make joint efforts to uphold international fairness and justice by promoting international rule of law, the value of equality, mutual trust, inclusiveness, mutual learning, and mutually beneficial cooperation.

Thank you. Madam Vice-President.

**Vice- President:** Thank You China. I call on India now.

**The Leader of Delegation of the Republic of India:** Thank you Madam President, Excellencies, Distinguished delegates, Ladies and Gentlemen.

First of all allow me to join other Delegations in congratulating you Madam President on your election as the President of the Fifty-Second Annual Session of AALCO. We are sure that with your wisdom, experience and expertise you will steer our deliberations to a successful conclusion.

I also take this opportunity to congratulate Ms. Hema Odhav on her election as Vice-President of the session.

I also wish to thank the Secretariat of AALCO for hosting our Annual Session. I also express my appreciation to the Secretary-General and his staff for the excellent preparations they have made for our current Session, including the preparation of documents to help out the consideration of the various items on our agenda.

I also thank the President of the Fifty-First Annual Session H.E. Mohammed Bello Adoke, Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria for guiding the work of the Organization during the past year.

Madam President, I would like to recall that India was one of the seven founding members of AALCO. We continue to attach highest importance to AALCO, and we are proud to be the host country of AALCO, since it was established. In order to help the Organization to function effectively, we have provided AALCO with the Headquarters premises in the prestigious diplomatic area of Chanakyapuri, in New Delhi.

Madam President, apart from the organizational matters, and two half-day special meetings on important themes, namely, selected items on the agenda of the International Law Commission; and Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties, We have at this Session many important items on our agenda such as:

- (i) Law of the Sea;
- (ii) Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied territories in Violation of International Law, particularly the Fourth Geneva Convention of 1949;
- (iii) Environment and Sustainable Development; and
- (iv) Challenges in combating Corruption: Role of the UN Convention against corruption.

We appreciate the AALCO Secretariat for selecting new and relatively challenging topics of ILC for deliberations at this Session. While my delegation will make detailed statements on each agenda item, I take this opportunity to dwell upon them rather briefly.

While ILC has just begun the work on the topic, “Formation and Evidence of Customary International Law”, the work on “Immunity of State Officials from Foreign Criminal Jurisdiction” is progressing at a satisfactory pace and the work on “Protection of Persons in the event of Disasters” is relatively at advance stage.

We appreciate and complement Sir Michael Wood for the swiftness with which he moved on to the world by submitting a Note on customary international law at the same very session last year when he was appointed as Special Rapporteur. His Note identified the issues and laid down a very ambitious schedule of work. His first report considered by the ILC at its Session ending last month, is very comprehensive identifying and exploring the issues and explaining the inherent intricacies of the topic. We agree in principle, with the scope and approach to the topic as well as the methods/methodologies proposed by him.

We complement Ms. Concepcion Escobar Hernandez, the Special Rapporteur on the topic, “State Officials from Foreign Criminal Jurisdiction”. We agree in principle with the substance of the draft articles proposed in her Second Report, though we may prefer the scope of it to be expanded a bit, without keeping it open ended. My Government’s views and suggestions would be provided during the course of discussion of the topic.

Madam President, We complement the AALCO Secretariat for a comprehensive summary on the Special Study on the Statehood of Palestine under International Law. We subscribe to that study. Palestine is an unfinished and long pending task of the international community. We wish to see Palestine as a full-fledged sovereign and independent State at the UN and other fora as per various UN Resolutions, especially the UN General Assembly Resolution 281/1948; and its borders are well defined and demarked and recognized as they were before the 1967 war. The Palestine people have the right to return to their territory and their continued displacement from their place of abode with expanding settlements is illegal and immoral.

Madam President, Corruption is a serious threat and menace to the society at large. Its manifestation frustrates the effort to bring equity to all its citizens. India has taken several steps to reaffirm our commitment for bringing more transparency in governance. Some of the steps taken include the ratification of the United Nations Convention against Corruption in 2011; introduction of the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill, 2011, and initiation of a proposal to make bribery in private sector a criminal offence by bringing an amendment in the Indian Penal code.

Madam President, India, given its geography as a country with a vast coastline and numerous islands, has a traditional and abiding interest in the maritime and ocean affairs. India is a party to the Law of the Sea Convention, the Implementing Agreement, and the Fish Stocks Agreement. It takes keen interest in all matters pertaining to the oceans affairs. In this context, it may be recalled that AALCO Secretariat in collaboration with the Legal and Treaties Division of Ministry of External Affairs, Government of India, organized a Legal Experts Meeting to commemorate the 30<sup>th</sup> Anniversary of the United Nations Convention on the Law of the Sea on

5<sup>th</sup> March 2013 in New Delhi. This meeting was successful in highlighting the achievements of UNCLOS and also identifying the challenges ahead.

On the topic environment and Sustainable Development, Madam President, India shares the common responsibility of doing things in a fair and equitable manner but the massive inequitable consumption of resources by some has created a deficit when there is hardly enough for those whose needs are yet to be met. Imperative for equity has to be respected. Despite our increasingly proactive engagement on climate issues, India has not wavered from its position that equity concerns must underlie the International Climate Negotiations. We insist that despite a common goal of global climate stabilization, each country has to have a different responsibility to address the problem.

Madam President, to conclude, my delegation wishes to take this opportunity to once again reaffirm that the Government of India stands ready to support and collaborate with AALCO to achieve the common objectives and aspiration of AALCO.

Thank You Madam President.

**Vice- President:** Thank you India. I now call Republic of Korea.

**The Leader of Delegation of the Republic of Korea:** Madam Vice-President, Secretary-General of AALCO, Excellencies and Distinguished Delegates and guests.

I am much honoured to be in India the host country of this Session in the year of the establishment of diplomatic ties between the two countries in 1973. In this sense I would like to start my statement by quoting Mahatma Gandhi the world renowned leader of peace and non-violence who said that “We must be the change we want to see in the world”. I wish all of us including my delegation could participate in this session with these words in our minds.

Now I will briefly touch upon three agenda items of discussion. First, let me start with the Law of the Sea. Last year marked the 30<sup>th</sup> anniversary of the opening of signature of the UNCLOS. On that occasion Korea had the honour to hold an international conference in the port city of Yeosu to commemorate the event with the attendance of the UN Secretary-General. At the conference participants said that the UNCLOS had proved that it was the constitution of the seas, as was envisaged from its inception. However, they also expressed their feeling that we will have substantial changes lied ahead of us. Those challenges include threat to navigational safety; degradation of the marine environment; over-exploitation of resources; to name a few. In order to successfully address them each country and the international community should establish certain practices to make the changes we wish to see. For example, in order to end piracy we have to establish practices that hold good internally and internationally, prosecute and punish those engaged in piracy.

Secondly, as for climate change we are in the transition from the Kyoto Protocol to an unknown quantity that is still under discussion. In 2011 in Durban, countries decided to develop a new climate change regime for the year 2020 and onwards. Once again we have to be the change we want to be. I believe we can be that change by willing to take steps to curb the ever rising temperature. We have seen cases of too many international agreements that ended up as mere

words without action. The new climate change system should be effective and achieve the goal of addressing climate change and in securing every countries implementation.

Thirdly, I would like to thank the Secretariat for bringing the anti-corruption issue to this discussion. It was a great achievement that the countries have concluded and adopted the “UN Convention against Corruption” the issue of corruption is not an issue pertaining to one country alone but one which must be dealt with at the international level. In this sense bringing the anti-corruption issue to the front we can become the change that we want to see. We will continue to be the change in implementing the Convention in a sincere manner.

Excellencies and distinguished delegates, personally I am requesting this august gathering to consider a new suggestion which has not captured the due attention of AALCO, after the demise of the cold war the most pressing issue by far especially for the developing countries has been economic development, I wonder if AALCO can play a more active role in this field, especially in developing some soft law in the field of Overseas Development Assistance (ODA), for example AALCO may like to discuss in the future sessions the way to empower the developing countries and the General Assembly to have a bigger voice in the implementation of ODA.

In conclusion I hope we will have an enjoyable and memorable time by attending this session and exchanging views on how we can bring about real change we all wish to see.

Thank you very much.,

**Vice- President:** Thank You Republic of Korea. I now call on Indonesia.

**The Leader of Delegation of Republic of Indonesia:** Madam President, Distinguished delegates.

The Indonesian delegation would like to, at the very outset, congratulate the Honorable Dr. Neeru Chadha for having been elected as the President and Madam Hema Odhav as the Vice-President of the Fifty- Second Annual Session. I am highly confident that under your chairmanship, along with the joint efforts of the delegations from Member States, this session shall succeed in enhancing AALCO’s role the ultimate forum for our legal consultation. The Indonesian Delegation will do its utmost to contribute for this meeting’s productive discussions.

Allow me also like to convey our sincere appreciation to the Government and the people of the Republic of India for its warm welcome and generous hospitality. We would further like to thank the AALCO Secretariat, under the reliable leadership of the honourable Secretary General, Professor Rahmat Mohammad, for the excellent arrangements of the Fifty- Second Annual Meeting of AALCO here in New Delhi.

Madam President, distinguished delegates, allow me also to use this opportunity to thank Member States of AALCO for the support to the Government of the Republic of Indonesia for the membership of the UN Commissions and International Trade Law (UNCITRAL) for the period Of 2013-2019 at the election held on the 67<sup>th</sup> Session of the United Nations General Assembly in New York, November 2012, as Indonesia is determined to maintain the focus of UNCITRAL on addressing international trade law and to ensure that the works of UNCITRAL in the future would be beneficial to all countries.

Madam President, Distinguished delegates, one of the pressing issues for our discussion is the budget of AALCO. Indonesia appreciates the AALCO Secretariat for submitting the draft of the budget of AALCO for the year 2014. We believe that the budget is necessary to support the work of AALCO. By the same token, however, it is also our view that budget efficiency measures are still able to be taken by the AALCO Secretariat. We remain confident that our deliberations would be able to come up with a solution in addressing this particular issue. While giving our reassurance of our annual contribution to be settled within the time frame of this year, we sincerely hope that our deliberations during this session would find the solution for the budget issue within the framework of the financial abilities and limitations of member countries

Madam President, Distinguished delegates, Allow me to inform this meeting that The Government of the Republic of Indonesia held the *Consultative Meeting of Like Minded Countries and Other Interested Countries on the Future Work of the Intergovernmental Committee on the Protection of Genetic Resources, Traditional Knowledge and Folklore (the IGC)* on 2-4 September 2013 in Bali, Indonesia. We believe the Consultative Meeting could able to build the confidence and to create the common perception between the Like Minded and Other interested countries on the Future Work of the IGC.

Madam President, Distinguished delegates, I would like to use this forum to convey Indonesia's heartiest congratulations to Palestine for its admission to the United Nations General Assembly as non-member observer in the United Nations General Assembly. Indonesia also would like to compliment all AALCO's members for the efforts and support in the acceptance of Palestine as a non-member observer in the United Nations General Assembly.

Madam President, Distinguished delegates, I would like to further reaffirm Indonesia's intention to actively engage in discussions on most of the deliberated items that concern us, namely "Law of the Sea", "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", "Environment and Sustainable Development", and "Challenges in Combating Corruption: Role of the UN Convention against Corruption.

Madam President, Distinguished delegates, please allow us also to express our comments on two agenda items to be raised on the Special Half-Day Meetings. First, we 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. We put special attention to ILC as it is one of the most important bodies in the development of international law. To that effect, we succeeded in having one of our best diplomats, Ambassador Nugroho Wisnumurti to be elected as ILC member in 2011. We believe the topic of Immunity of State Officials from Foreign Criminal Jurisdiction, Protection of Persons in the Event of Disasters, and Formation and Evidence of Customary International Law are important for AALCO members and we hope the discussion in the current meeting could influence the work of ILC.

Second will be on the agenda item of "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties". Indonesia would like to emphasize its position where it is unable to agree on the extraterritorial application of national legislation. Indonesia is of the view that enforcement of the above has the potential to contradict the sovereignty of other states.

Madam 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 our two great continents grow more dynamic 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.

**Vide- President:** Thank you Indonesia. I call on Bangladesh

**The Leader of the Delegation of Bangladesh:** Madam Chairperson, Mr. Secretary General, Excellencies, Distinguished participants,

We thank the AALCO Secretariat for making excellent arrangements for this meeting. We also take this opportunity to congratulate you, Madam Chair, on your election and would like to assure you of this delegation's full support in discharging your responsibilities.

We would also thank the Secretary General for his concise yet comprehensive report on the work of the organisation since the Fifty-first session last year. We particularly take note of the Secretary General's presentation of some promising and relevant areas of work for the next three year period. We feel that the challenges facing the organisation that he has highlighted in his report merit our due consideration.

Bangladesh would be happy to extend its advocacy support in favour of enlarging the membership of the Organisation. As a strong proponent of South-South cooperation as complementary to North-South cooperation, Bangladesh values the work of the Organisation in creating a platform for Asian and African countries to deepen their insights on the evolving dynamics of international law and to share their individual perspectives on these developments.

Bangladesh appreciates the current session's focus on certain critical issues of interest for the developing countries in Asia and Africa.

The present Government in Bangladesh assumed Office with a firm commitment to reduce corruption through a series of far-reaching legal and institutional reforms. The Anti-Corruption Commission (ACC) is being progressively empowered to turn it into an independent and effective watchdog mechanism. The Commission has enhanced its credibility by setting a precedent of summoning incumbent Ministers, Members of Parliament and high officials for investigation.

As a State Party to the UN Convention against Corruption (UNCAC), Bangladesh voluntarily underwent the peer review process and has worked in cooperation with UNODC to conduct the peer review of two other countries. Our Government is presently in consultations with UNODC to explore the possibility of replicating its useful work in India in relation to combating corruption in the corporate sector.

The Government has also adopted a National Integrity Strategy which aims at promoting a culture of ethical conduct, integrity, transparency and accountability in all spheres of society. The ACC has also formed Integrity Alliances in educational institutions across the country.

Bangladesh subscribes to the view that the ongoing international discourse on environment and sustainable development needs to be contextualized within a sound legal regime that must be underlined by the principles of equity and ‘common but differentiated responsibilities’. As a country on the front-line of the adverse impacts of climate change, Bangladesh has consistently remained on the forefront of international negotiations and deliberations on environmental protection, climate change and sustainable development. We believe that sustainable development must be informed by a sound and robust interface between its three fundamental pillars: economic, environmental and social.

Bangladesh’s achievements with social and human development, despite its genuine economic constraints and structural challenges, have been widely recognised by the international community. We have been encouraging practical work on ‘green economy’ as a lifestyle choice that can inform and alter the way we engage with our people and planet in our pursuit of economic prosperity. As we stand poised to realize our national aspiration to become a middle-income, knowledge-driven economy by 2021, we would particularly underscore the need for a balanced and equitable approach to an international legal regime on sustainable development that takes into account the specific and differentiated needs and aspirations of countries at different stages of development.

Bangladesh supports AALCO’s sustained focus on the Law of the Sea and thanks the Secretariat for observing the 30<sup>th</sup> anniversary of UNCLOS. Bangladesh has demonstrated its adherence to international law by taking the initiative to settle its outstanding maritime delimitation issues with Myanmar and India through international arbitration. We believe that the ITLOS verdict that settled the case between Bangladesh and Myanmar would further enrich the body of International Law of the Sea.

In this context, Bangladesh would like to reiterate its concern over the growing trend of irregular movements at sea in the Asia Pacific region, mostly with the support transnational trafficking and people’s smuggling networks operating in the area. These criminal networks fast adapt to new tactics to ply their trade in response to the evolving surveillance, interception and immigration measures put in place by Governments. This calls for enhanced capacity for States to comply with the international maritime laws and ensuring better synergy between international maritime law on the one hand, and international human rights and humanitarian laws on the other. This is perhaps a potential area of work that AALCO could consider looking at within the broader corpus of its work on the Law of the Sea.

Madam Chair, Bangladesh maintains a zero-tolerance approach to terrorism in all forms and manifestations. The present Government in Bangladesh has undertaken a series of legal and administrative measures to match its resolve to combat terrorism and extremism. The enactment of the Anti-Terrorism Act, 2009 and its subsequent amendments in 2012 and 2013; the Anti-Money Laundering Act, 2012; and the Mutual Legal Assistance Act, 2012 has considerably strengthened our national legislation to combat terrorism and financing of terrorism. The

Government has also put in place well-defined modalities to comply with relevant UN Security Council Resolutions on combating terrorism and financing of terrorism.

Bangladesh would encourage AALCO to further expand its work in relation to cyber-space legislation in order to allow Member States maximize the benefits and opportunities accruing from utilization of the cyber domain. This should also aim at effectively countering the emerging challenges of cyber security without undermining the fundamental rights of our peoples. It is indeed a delicate balancing act for most countries that needs to be guided by their own specific context, whilst a robust body of international law could help set the overarching norms and standards for ensuring both security and fair play.

A significant development in Bangladesh with regard to establishing the Rule of Law has been the establishment of the International Crimes Tribunals, Bangladesh (ICT-BD) to bring the perpetrators of genocide, war crimes, crimes against humanity and other international crimes committed during our Liberation War of 1971 to justice. This has been a long cherished aspiration of the citizens of Bangladesh, especially the victims who had witnessed a culture of impunity taking shape over decades due to absence of justice. It is notable that one of the most heinous genocides and crimes against humanity of the 20<sup>th</sup> century is being tried in a domestic tribunal with a mandate to try internationally defined crimes pursuant to the provisions of Rome Statute on the International Criminal Court. The International Crimes Tribunal Act, 1973 ensures that the trials are being conducted in independent, open tribunals, witnessed by media and independent observers, to ensure the requirements of fair trial in compliance with international standards and following due process. The tribunals have delivered six verdicts so far.

Bangladesh appreciates the Secretariat's study on "The Statehood of Palestine under International Law" that we consider it to be a useful contribution to addressing this critical question for our entire membership. We believe that this Study would help Member States to base their arguments on sound legal footing and respond to any misleading interpretation of the existing international law on the question of independent statehood of Palestine.

Madam Chair, Bangladesh believes that the issue of respect for international law would continue to take centre stage as we witness evolving debates around the fundamental questions of national sovereignty, independence, territorial unity and integrity. This will be more so as civil wars, people's uprisings, religious intolerance, transnational crimes, terrorism, piracy, climate change impacts, financial and energy crises continue to pose threat to international peace and stability. We would like to echo a number of other delegations to call upon Member States to make use of the services available through AALCO to build common grounds on issues that often tend to divide the international community. Bangladesh would like to see AALCO's role being strengthened as a potential bridge builder in the domain of international law towards creating a just global order.

I thank you.

**Vice- President:** Thank You Bangladesh. I call on Arab Republic of Egypt.



**The Leader of Delegation of the Arab Republic of Egypt:** Madame Chairperson, Allow me at the outset to extend, on behalf of my delegation, our congratulations on your election as Chairperson to the Fifty-Second Session of AALCO and to pledge out full support to you in your mission.

I wish also to express our appreciation to the outgoing chairman of the Fifty-first Session, Mr. Mohamed Belo Adoke, The Attorney General and Minister of Justice for Nigeria.

Madame Chairperson, Since the inception of the work of AALCO as one of the off springs of the Bandung Conference and we are seeing growing interest in the Organization and its work in support of the Member States to meet their increasing challenges in realizing their political rights and achieve their developmental goals.

The Agenda of the Fifty- Second Session as adopted has very important items with different political as well as developmental dimensions. And we commend the Secretary General, Professor Rahmat as well as his team for the excellent work done in the preparation for this meeting.

Egypt considers all issues on the Agenda of utmost importance. We appreciate ongoing efforts to follow up the work on the Law of the Sea and wish to see what the Organization can provide of proposals and studies to be shared among Member States on efforts to combat piracy, the Jurisdiction and extradition, territorial disputes in the International waters and Economic Zones and beyond.

Egypt supports the statement of the Palestinian delegation this morning and wishes to see that the study prepared by the Organization is being used by Member States and beyond for better understanding of the legal dimension of the Palestinian issue. We have expressed our support to the ongoing talks between the Palestinians and Israelis to achieve the ultimate goal of ending the Israeli Occupation and the establishment of an Independent Palestinian state with east Jerusalem as its capital. We denounce the building of settlements by Israel on the occupied Palestinian territories which erodes the possibilities of a two-state solution. We denounce the most recent events of encroachment on the Aqsa Mosque by the Israelis and the underground excavations that threatens the safety of the same Mosque which is considered to be one of the holy Islamic places. We also denounce the attempts by the Israeli authorities to bring changes to the demographic and topographic nature of the Palestinian Occupied territories which will affect negatively on the final settlement agreements between the two sides.

In this regard, I wish also to refer to the statement made this morning by the Attorney General of Malaysia that we should go beyond rhetoric and extend our appreciation and gratitude to AALCO members who have supported Palestine's request to attain its Non-State Membership in the United Nations to the UNESCO and to call upon other AALCO members to do so, especially in future requests of Palestine to join other UN bodies. We appeal on the legal experts of AALCO to talk to their politicians and explain the Legal dimensions of the problem in order to be part of the peace making process and put an end to the suffering of the Palestinian People and bring an end to the continued violation of their basic Human Rights.

Madame Chairperson, as for Sustainable Development, Egypt wishes to underline the following: The developing world has been dealing with Environment as one of the Three Pillars of

Sustainable development and not in isolation from it. The Rio declaration has clearly indicated that the three pillars are; Economic Development, Social Development and Environmental Protection. We in Egypt, as well as other developing countries have been advocating for the Principle of “Common but Differentiated Responsibilities” and we need to see more work by AALCO to support our efforts for the ongoing preparations in the United Nations for Millennium Development Goals post 2015.

A special attention and consideration has to be given to Africa with its growing challenges, especially on combating Desertification that is eroding resources and driving huge numbers of its nationals to migrate and relocate internally putting more pressure on its resources.

We also request AALCO to provide legal support to the developing countries’ Geneva based missions in areas related to development where new challenges are arising in the genetic resources utilization and Intellectual Property Rights in basic medicines for the poor and other areas of the like.

Finally, developing countries, Egypt among them, have been among the signatories on the establishment of the United Nations and its bodies, voting in confidence that these bodies work to foster international cooperation and help to find ways and means for a better world through its different fora. We reject all forms of unilateral actions outside the United Nations so as to realize a world of Peace and understanding among Nations.

Thank You.

**Vice- President:** Thank You Egypt. I call on Kenya.

**The Leader of Delegation of Kenya:** Excellencies, Distinguished Delegates, Ladies and Gentlemen.

On behalf of the delegation from the Republic of Kenya, allow me to express our pleasure at being present at the Fifty-Second Session of the Asian-African Legal Consultative Organization (AALCO). We wish to congratulate Her Excellency, Dr Neeru Chadha on her election as the President of the Fifty- Second Session of AALCO and Ms. Hema Odhav, representative of the Republic of South Africa, as Vice President.

We also to extend our appreciation to the President of the Fifty-First Session, Mr Mohammed Bello Adoke, the Attorney General and Minister for Justice of the Federal Republic of Nigeria, for his successful year as President. We join all those who have expressed gratitude to the AALCO Secretariat and in particular H.E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO, for work well done to enhance the activities of the Organization and to implement its work programme, notwithstanding limited human and financial resources.

Distinguished Delegates, since joining the organization in 1970, Kenya continues to actively participate at Annual Sessions and meetings of AALCO. As you may recall, Kenya hosted the 28th Session in February 1989 and the Forty-Fourth Session in 2005 respectively in Nairobi. One of the earlier Secretary Generals, Dr. F X Njenga, was a Kenyan.

AALCO provides a unique forum to analyse the impact of various contemporary legal issues, from the standpoint of our respective countries and regions, formulate common positions on these areas, and in so doing contribute to the development of international law. We note AALCO's vital role in serving as an advisory body to its Member States in the field of international law, and we commend the efforts undertaken by AALCO to ensure that the interests of the two regions are well articulated at various forums such as the United Nations General Assembly, the International Law Commission and other International Organizations.

Distinguished delegates, while we look forward to making our substantive contributions to the agenda items on environment and sustainable development, the Law of the Sea, and Challenges in Combating Corruption, we wish to make the following preliminary comments on Kenya's progress with regard to our efforts in Combating Corruption. Kenya retains the distinction of having been the first country in the world, to sign and ratify the United Nations Convention against Corruption (UNCAC) in Merida, Mexico, on 9<sup>th</sup> December, 2003. Kenya is set to undergo a review of its implementation of the United Nations Convention against Corruption (UNCAC) in 2013/2014, as per the UNCAC Implementation Review Mechanism adopted by the UNCAC Conference of States Parties in Doha, Qatar in 2009 and the calendar of country reviews adopted during the first Meeting of the Implementation Review Group of UNCAC held in Vienna, Austria, June 2010.

Kenya has already put in place the necessary laws and institutions that are required under the Convention, and we shall share our experiences in this regard substantially during the Session. We are therefore ready to submit ourselves to the review. We are familiar with the review mechanism, having participated in the review of Mongolia (2010-2011) and Malaysia (2012-2013).

The outcome of the UNCAC review will go a long way towards examining the strengths and weaknesses of our anti-corruption laws, systems and institutions, with a view to adopting measures to address these. Further, the review will provide us with an opportunity to benchmark our anti-corruption legal and institutional regime with international standards and best practices. More importantly, Kenya will also be fulfilling her international obligations in terms of Article 2(6), and 132(5) of our Constitution and in accordance with the obligations of States Parties to UNCAC.

Distinguished delegates, at the Fifty-First Session, Kenya reported that the establishment of a Regional Arbitration Centre was on course. We are happy to report that in January 2013, the President of the Republic of Kenya assented into law the Nairobi Centre for International Arbitration Act, No. 26 of 2013. The Act establishes the Nairobi Centre for International Arbitration, whose objectives are in line with AALCO's objectives of setting up regional centre of arbitration as a viable alternative to existing arbitration institutions. To highlight some of the functions of the Centre, the Centre will:

- (a) *Promote, facilitate and encourage the conduct of international commercial arbitration in accordance with this Act;*
- (b) *Administer domestic and international arbitrations as well as alternative dispute resolution techniques under its auspices;*

- (c) Ensure that arbitration is reserved as the dispute resolution process of choice;
- (d) Develop rules encompassing conciliation and mediation processes;
- (e) Organize international conferences, seminars and training programs for arbitrators and scholars;
- (f) Coordinate and facilitate, in collaboration with other lead agencies and non-State actors, the formulation of national policies, laws and plans of action on alternative dispute resolution and facilitate their implementation, enforcement, continuous review, monitoring and evaluation;
- (g) Maintain proactive co-operation with other regional and international institutions in areas relevant to achieving the Centre's objectives;
- (h) In collaboration with other public and private agencies, facilitate, conduct, promote and coordinate research and dissemination of findings on data on arbitration and serve as repository of such data;
- (i) Establish a comprehensive library specializing in arbitration and alternative dispute resolution;
- (j) Provide ad hoc arbitration by facilitating the parties with necessary technical and administrative assistance at the behest of the parties;
- (k) Provide advice and assistance for the enforcement and translation of arbitral awards;
- (l) Provide procedural and technical advice to disputants;
- (m) Provide training and accreditation for mediators and arbitrators;
- (n) Educate the public on arbitration as well as other alternative dispute resolution mechanisms;
- (o) Enter into strategic agreements with other regional and international bodies for purposes of securing technical assistance to enable the Centre achieve its objectives;
- (p) Provide facilities for hearing, transcription and other technological services;
- (q) Hold, manage and apply the Fund in accordance with the provisions of this Act; and
- (r) Perform such other functions as may be conferred on it by this Act or any other written law.

*The Act further establishes an Arbitral Court which shall be governed by the UNCITRAL rules.*

The Centre will be administered by a Board of Directors, who were appointed on the 6<sup>th</sup> June 2013. The Directors are eminent legal practitioners and arbitrators from the East African Region, and have been nominated by their respective domestic arbitration bodies, that are the Chartered

Institute of Arbitrators for Kenya, Uganda and Rwanda. In moving ahead with the process of establishing the Nairobi Centre for International Arbitration, the immediate focus is to ensure adequate budgetary allocations, facilitate the identification of suitable premises for the Centre and the recruitment of the staff. A key function of the Centre will be to *enter into strategic agreements with other regional and international bodies for purposes of securing technical assistance to enable the Centre achieve its objectives*:

The Government of Kenya wishes to reassure AALCO Member States that we are on course in realizing our undertaking to establish the Nairobi Centre for International Arbitration as a regional centre for arbitration.

Madam Vice President, with those foregoing comments, we anticipate further fruitful discussions on the items to be deliberated during the Fifty- Second Session.

Thank you.

**Vice- President:** Thank You Kenya. Nigeria, you have the floor.

**The Leader of Delegation of Federal Republic of Nigeria:** Your Excellencies, The Nigerian Delegation hereby congratulates the President of the Fifty- Second Session for her election. We also congratulate the Vice-President for her election. We thank the Secretary-General, Prof. Dr. Rahmat Mohamad and his entire staff for organizing and hosting the Fifty- Second Session of AALCO.

The Nigerian Delegation appreciates the work of the Secretary-General and his staff towards realizing the objectives of the Organization. The Federal Republic of Nigeria pledges to continue its cooperation with AALCO.

Madam President, the Federal Republic of Nigeria reiterates and supports the United Nations in the maintenances of world peace and security. It also supports the AALCO for identifying the maintenance of world peace as one of its primary objectives along the principles and standards of the United Nations. Nigeria notes all the work of this great organization in the activities of the international law commission and welcomes the contributions of AALCO towards uplifting the participation and development of Member States by giving Member States quality guidance.

Madam President, Nigeria supports the work of AALCO in Environment and Sustainable Development, the fight against corruption, Law of the Sea, and Terrorism. It will be recalled that during the 51<sup>st</sup> Annual Session hosted by Nigeria, the subject of international terrorism was discussed with particular reference to the experiences of the country. It should be appreciated that times have been challenging to the government and people of Nigeria. Within the period, the Federal Republic enacted, in 2011, the Anti-Terrorism Act in accordance with the United Nations Standards, to tackle the challenges of terrorism. Member States may appreciate that the serious problems facing the country are not religious. They are issues which can be ascribed to criminal activities to disorganize the Government and cause economic damage.

Madam President, the Federal Republic of Nigeria has enacted various legislations to establish the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices

Commission (ICPC) to fight corruptions to its barest minimum. These efforts accord with the standards promoted by this organization and the United Nations. I wish to inform that Nigeria is presently being reviewed in accordance with the guidelines under UNCAC. It is hereby informed that Nigeria has submitted its 2<sup>nd</sup> Periodic Review Report in 2013 to the Geneva-based Human Rights Council.

Nigeria has also enacted the Law and established the Agency for the Fight against Human Trafficking and the Child Rights to protect the child from child labour and abuse. The Law against human trafficking is presently being reviewed by the National Assembly to expand the scope of application of the law instead of women and children only.

On Environment and Sustainable Development, Nigeria subscribes and supports the efforts of AALCO in contributing to protect the atmosphere.

Nigeria reiterates its commitment to AACLO and calls on the Organization to continue to provide expert knowledge and guidance to Member States.

Thank you.

**Vice-President:** Thank you. I now invite Iran to make their general statement.

**The Leader of Delegation of Islamic Republic of Iran:** Madam President, Your Excellencies, Honourable Ministers and Ambassadors, Prof. Dr. Rahmat Mohamad, Secretary-General, Distinguished Delegates, Ladies and Gentlemen,

I am very pleased to address this august gathering on behalf of the Islamic Republic of Iran. At the outset, I would like to congratulate you, Madam President, on your election as the President of the Fifty-Second Annual Session of the Asian-African Legal Consultative Organization (AALCO). My delegation would also like to thank the AALCO Secretariat for hosting the Session. We would very much appreciate if necessary measures could be taken by the India's relevant authorities with regard to timely issuance of entry visas for AALCO Member States delegation.

The Islamic Republic of Iran continues to attach high importance to the AALCO and stands ready to make every effort to further utilize its potentials in strengthening the rule of international law. My delegation praises the AALCO Secretariat for important jobs it has managed to do in the face of very limited resources. The role of the Secretary-General, Mr. Rahmat Mohamad, in capably handling the affairs of the Secretariat has been very crucial and outstanding. The Secretary-General could play a very important role in raising awareness about the works and functions of the Organization as well as on its contribution to development of international law.

We have always been supportive of this role. Based on this vision, the Government of the Islamic Republic of Iran hosted H. E. Mr. Rahmat Mohamad who travelled to Iran at the initiative of the Ministry of Foreign Affairs in April 2013. During his visit to Iran, the Secretary-General met with high-ranking officials, including the Minister of Foreign Affairs and the Minister of Justice. He also visited the Tehran Arbitration Centre and was briefed on the activities of the Centre and the challenges it faced. The Secretary-General visited Iranian

academia as well, where the made presentations on the works of the AALCO and had ample opportunity to interact and exchange views with Iranian students and professor in one of the top-ranking universities, namely Shahid Beheshti Univeristy, and in the School of International Relations of the Ministry of Foreign Affairs. We thank the Secretary-General for travelling to Iran and believe that his presence in Iran provided a good opportunity for Iranian University students and teachers in the fields of law and international relations, to better appreciate the important role of the AALCO in development of international law from the perspective of Asian and African countries and encourage the Member States to facilitate such visits.

Madam President, While fully supporting the Secretariat in exerting its mandate, we would like to underline the framework within which the Secretariat, including the secretary-General and the Observer representative of AALCCO in the United Nations in New York, is expected to function. The AALCO is an Inter-governmental body and as such no Member States have been very active in merging substantial position can be expressed or made without the express agreement of its Member States. Unfortunately the AALCO Member States have not been very active in merging substantial common positions on many legal issues of international concern. This, however, does not mean that the Secretariat should fill this lacuna by amusing itself with substantial exercises which fall exclusively with the Member States.

My delegation would like to point out the importance of keeping long tradition of the AALCO's Secretary-General's attendance in one of the meetings of the International Law Commission. This organ, which is in charge of the codification and progressive development of international law, has always been interested to know more about how AALCO's Member States have reached a consensus on topics on its agenda.

Madam President, my delegation does not deem it possible for the AALCO to merge common position in complicated topics of international law. After all, this is not the Organization's mission. What we can possibly do, is to make the best use of this forum for promoting active participation of the Asian and African countries in progressive development of international law, including through exchange of views and sensitizing the Member States on issues of common concern.

Madam President, my delegation stresses the importance of AALCO meetings during the annual session of the General Assembly's 6<sup>th</sup> Committee in New York. My delegation would like to take opportunity to call on the Secretary-General to ensure that the long tradition of holding AALCO meetings at the UN is well respected. We do not approve of certain personal initiatives which, in effect, could turn the AALCO into an NGO by holding official AALCO meetings open to all, members and non-members.

Madam President, the unrelenting waves of terrorism in our region pose unprecedented threat to life and security of the people. It is very alarming that resort to acts of terrorism against civilian targets has now become so pandemic in a number of countries and innocent civilians have become the main instrument for political pressure against governments. It is a matter of fact that these atrocities are mainly the consequences of unlawful military or other interventions by outside powers.

The Islamic Republic of Iran as a longstanding victim of terrorism has always condemned acts of terrorism in all its forms and manifestations, including State terrorism which fortunately continues to spread systematic terror and violence against the targeted nations and quite recently was manifested when Iranian researchers fell victim to terrorist bombing and explosion. The Islamic Republic of Iran is convinced that eliminating terrorism would hardly be achievable in the absence of sincere cooperation between and among States. Such sincerely requires that States should avoid double standards vis-à-vis different acts of terrorism and preferential treatment to favourite terrorist groups.

Madam President, civilians are not only targeted by terrorist groups in their vicious campaign to generate terror and horror. They are also indiscriminately attacked by State military under the pretext of counter-terrorism. Civilian populations in Afghanistan, Yemen and elsewhere are routinely bombed by drones and the attackers simply justify these numerous civilian casualties as ‘collateral damage’! as the Scottish linguist Deborah Cameron has rightly pointed out, “it {collateral damage} is a euphemism; abstract, agentless and affectless, so that even if people succeed in associating it with a real act or event they will be insulated from any feeling of repulsion and moral outrage”. In other words, this kind of inhuman justification for massacring the civilians has only paved way for the most serious atrocities committed by State armies under the name of combating terrorism.

Madam President, we were shocked at the alleged use of chemical weapons in Syria. As the main victim of chemical weapons in the post WW II era, the Islamic Republic of Iran deeply sympathizes with the victims of such inhuman weapons which have long been banned under international law. It reminds us of indescribable suffering of the Iranian soldiers and civilians who were atrociously attacked by Saddam regime’s chemical weapons. It also reminds us of the unjustified indifference of Western powers which preferred to turn a blind eye to the inhuman act of Saddam Hossein. It is heart-breaking that those powers which enjoyed permanent seat at the Security Council did not let the Council make even a soft statement of the fact, and yet when it did after a few months in the resolution 620, it chose not to make any explicit or implicit reference to who used such weapons against Iranian soldiers as if the drafters did not want to upset the culprit, i.e., Saddam’s regime. The Iranian nation cannot afford to forget either the appalling use of chemical weapons by Saddam Hossein or the late and loose reaction of the world powers and that of the Security Council.

That is why we do not hesitate to implore the use of chemical weapons as a means of warfare. It is all the more troubling to note the fact that such weapons have allegedly been used by non-State actors active in the Syrian conflict, namely terrorist groups. This indicates how dangerous terrorism has become in our region and how urgent it is for all parties to tackle this menace. I thank you.

**Vice-President:** Thank You Iran. We have now come to the end of General Statements by the Member States.

I now invite the Observer Delegations to make statements. The first on the list is the ICRC. ICRC you have the floor.



**The Leader of Delegation of the International Committee of the Red-Cross:** Madam President, Secretary General of the Asian-African Legal Consultative Organisation, Your Excellencies, Distinguished Delegates, Ladies and Gentlemen.

It is with profound gratitude that the International Committee of the Red Cross (ICRC) seizes this opportunity to address the Fifty-Second Annual Session of the Asian-African Legal Consultative Organisation (AALCO).

We wish to place on record our appreciation to the AALCO Secretariat and Government of India for the opportunity to share perspectives on the promotion, ratification and implementation of International Humanitarian Law (IHL). The ICRC considers the diplomatic and multilateral dimension as vital components to undertaking effective humanitarian diplomacy.

The ICRC was founded 150 years ago in recognition of the reality that even in armed conflict, there must be limits – which are enshrined under IHL. Since Henry Dunant's account of the Battle of Solferino, the theatre of war continues to evolve. What remains constant, however, is the ICRC's neutral, independent and impartial humanitarian approach in providing protection and assistance to victims of armed conflict and other situations of violence – as we see in contexts such as Afghanistan, Colombia, Somalia and Syria, to name a few.

The ICRC received a strong and clear mandate from States – as enshrined in the Geneva Conventions of 1949, the most widely ratified international instruments - to contribute towards the development, implementation and promotion of IHL. All AALCO Member States, as you are aware, are party to the Geneva Conventions and have therefore undertaken to respect and ensure respect for IHL.

The Geneva Conventions, their Additional Protocols and other IHL related instruments aim to protect civilians, who are the most affected in today's armed conflicts. In particular, special protection must be afforded to women, children and displaced persons. Under IHL, the parties to a conflict must allow unimpeded humanitarian access to civilians in need. They must also respect the right of all persons who are wounded or sick - whether or not they participate in hostilities - to receive medical attention, with the least possible delay.

To prevent violations of IHL norms, States are invited to contribute to the universal ratification of all IHL treaties and to secure their full and extensive implementation at the national level, through the adoption of relevant legislation and other administrative and practical measures, as well as dissemination to the Armed Forces.

The ICRC therefore renews its obligation to support AALCO Member States throughout this process. In this regard, we recall the entry into force of the Arms Trade Treaty on 3 June 2013 - an instrument which represents an historic advance and a worthy response to widespread human suffering resulting from the poorly regulated availability of weapons. The ICRC encourages AALCO Member States to ratify this instrument.

Madam President,

We take this opportunity to share some developments, which are high on the ICRC's agenda for humanitarian diplomacy. These relate to:

1. The ICRC project on *Strengthening Legal Protection for Victims of Armed Conflict*;
2. The *Healthcare in Danger* Campaign of the Red Cross/ Red Crescent Movement; and
3. Sexual Violence and Armed Conflict.

#### 1. Strengthening Legal Protection for Victims of Armed Conflict

Prior to the 31st International Conference of the Red Cross and Red Crescent, the ICRC conducted an internal study to determine whether IHL continues to provide an appropriate response to the humanitarian problems arising in contemporary armed conflicts. As a result, the Conference adopted Resolution I on *Strengthening Legal Protection for Victims of Armed Conflicts*, which provides a basis for strengthening IHL in two areas: i) The protection of people deprived of their freedom; and ii) Mechanisms to ensure compliance with IHL.

Since November 2012, the ICRC coordinated four regional consultations with government experts, aimed at exploring and strengthening the application of IHL to **detention** in non-international armed conflict. These zonal meetings, held in **South Africa, Costa Rica, Switzerland** and **Malaysia**, resulted in constructive dialogue and consultation with approximately **98 States**. The ICRC is currently finalizing Reports, with a view to sharing and engaging in further dialogue with States.

A similar initiative was undertaken on the strengthening of IHL **compliance** – in collaboration with the Government of Switzerland - which resulted in the decision to devise proposals and options on: i) A **periodic reporting system** on IHL national compliance; ii) **Thematic discussions** on IHL issues; and iii) **Modalities for fact-finding**, (and possible ways to make use of the International Humanitarian Fact Finding Commission), among other matters. In preparation for the Meeting of States in 2014, we look forward to the continued dialogue on strengthening IHL compliance.

#### 2. Healthcare in Danger

Deliberate attacks on health-care facilities, personnel, patients and medical vehicles violate IHL. The Geneva Conventions and their Additional Protocols assert the right of the wounded and the sick – combatants and civilians alike – to be protected during armed conflict and to receive assistance. These laws, binding on all, are not always respected. Based on Resolution 5 of the International Conference, the Healthcare in Danger campaign was therefore established.

To assess the magnitude of the violence affecting health care, the ICRC collected data in 23 countries. During the period from January 2012 to May 2013, the ICRC recorded more than 1,200 incidents affecting the delivery of and access to health care. In particular, 112 medical staff were killed and approximately 250 incidents involving attacks on ambulances were recorded. This underscores the need to respect the special status of health facilities, transport and personnel.

The Red Cross/ Red Crescent Movement strives to find ways to access and assist the wounded and sick during armed conflict and internal strife, and to protect health-care facilities. Some

initiatives are purely legal, while others are practical. Some, also, must be innovative. The primary responsibility for protecting health care, however, lies with States and Non-State groups, both of which have an obligation to respect IHL.

To this end, the ICRC will coordinate a Healthcare in Danger Universal Expert Workshop on Legal Frameworks, which shall take place in Brussels during the first quarter of 2014. We look forward to your State's continued support to and participation in this process.

### 3. Sexual Violence and Armed Conflict

Armed conflict increases the risk of sexual violence against persons protected under IHL, which - when used to systematically torture, injure, degrade, threaten, intimidate or punish - can amount to an unlawful method of warfare.

A number of factors increase the vulnerability of men, women and children to acts of sexual violence during armed conflict. In particular, women and children - often unaccompanied for longer periods when male relatives are detained, missing or engaged in hostilities - are more exposed to such violations. The ICRC recognises such realities and the need for greater protection – through **law** and **action**.

Madam President,

States may rightly claim that competing priorities and few resources create a challenge for IHL implementation. However, IHL violations and other international crimes affect humanity, and must therefore be addressed by the global community. This is our responsibility to **Humanity**.

AALCO Member States, like all other States, must meet their humanitarian obligations, contribute to the development processes of such norms and implement the treaties they have ratified. This involves law-making, defining procedures, setting up mechanisms, developing educational programs and amending military doctrines, as appropriate. One avenue through which such implementation may be realised is via the deliberations and decision-making of a National IHL Committee, the establishment of which the ICRC would be delighted to support.

In this regard, and in the spirit of the **Cooperation Agreement (2003)** between the ICRC and AALCO Secretariat, the ICRC shall continue to provide all legal and technical support necessary to the AALCO Secretariat and its Member States.

We wish you every success in your deliberations and thank you, once again, for the opportunity to address this esteemed gathering.

**Vice President :** Thank You ICRC. Thank you Member States, Observers and Distinguished delegates for the General Statements. Before we break this session there is just one quick housekeeping announcement.

**Master of Ceremony:** Member States and Distinguished Delegates. This is to remind you that today at 07:30, H.E. Mr. Pinak Chakravathy, Secretary (ER), Ministry of External Affairs India,

would be hosting a dinner at this same venue. I request your attendance for the same. Thank You.

**Vice President:** Thank You Delegates. This was a very fruitful day of deliberations. We will break now for the day and reconvene here tomorrow again at 09: 00 in the Morning.

Thank You Very Much.

**The meeting was thereafter adjourned.**

**VI. VERBATIM RECORD OF THE  
SECOND GENERAL MEETING**

**VI. VERBATIM RECORD OF THE SECOND GENERAL MEETING  
HELD ON TUESDAY, 10<sup>th</sup> SEPTEMBER 2013 AT 09.00 AM**

**Her Excellency Mrs. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair**

**President:** I hereby call the meeting to order. The first item on our agenda today is the release of AALCO Publications. I now request the Secretary-General to release the publications of AALCO.

**Secretary-General:** Madame President, Excellencies, Ladies and Gentlemen, the first publication is the Yearbook of AALCO. The Yearbook of the AALCO, which was previously known as the '*Report and Selected Documents*', has been published since 2003. The Tenth Volume (2012) of the Yearbook has been prepared by the AALCO Secretariat and is being released at the Fifty-Second Annual Session of AALCO. A copy of AALCO Yearbook 2012 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 ten 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. May I now have the honour to request Madame President to release the Yearbook.

Madame, President, Excellencies, Ladies and Gentlemen, the second publication is the release of the AALCO Journal of International Law, Vol.2, Issue 1, 2013. 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 2012, the name of the Bulletin was 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 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. In this respect, it is requested that the Member States support this publication by way of encouraging their international law scholars, law faculty, research scholars to contribute articles for this publication, especially reflecting the international law issues in the Asian and African regions. May I now request Madame President to unwrap this publication.

Madame President, the third publication is the Study on the Statehood of Palestine". The 'Study on the Statehood of Palestine under International Law' was carried out pursuant to the mandate given to us in the last year annual session. The topic of Palestine has been an important topic on the work programme of AALCO. Last year the international community witnessed an immense support to the cause of statehood for Palestine. Hence, our publication is a timely one. The Book contains a brief history of the conflict, the Israeli practices in this regard and its violation of international law. May I now invite Madame President to unwrap this publication.

Madame President, the final publication is the 'Verbatim Report of the Legal Experts Meeting Commemorating the Thirtieth Anniversary of UNCLOS'. As everyone has been informed AALCO has played an important role in drafting and adopting UNCLOS and now I request Madam President to unwrap this publication.

I have one more announcement to make. This is relating to the Abstract on 'Unilateral and Secondary Sanctions: An International Law Perspective'. The book which would be published and released later comprises of 5 core Chapters namely Sanctions and International Law, Sanctions and Financial Institutions, Sanctions and International Trade, Sanctions as a Human Rights Violations, and the international community. The AALCO Secretariat has prepared the study pursuant to the mandate received from the last annual session.

**President:** After the release of AALCO publications, does any Country want to make a statement? Palestine you have the floor.

**The Leader of Delegation of State of Palestine<sup>1</sup>:** Thank you very much Madame President for the opportunity. On behalf of the people of Palestine and the Palestinian delegation allow me to congratulate the Secretariat of AALCO for this important study which defines the legal situation of Palestine under international law. This work is an important contribution in that direction. For the Palestinian people to regain its rights and to resolve our dispute in a just manner we wish this work would contribute. I take this opportunity to thank the Secretary-General of AALCO and the President of this Conference and I also wish to address all the governments of the world that there should be a clear international stand about the settlement and on the resolution of the European Union that was taken recently in which the European union has decided to back out all the settlements considering that the settlement is against all the international conventions. This is

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

going to look at the root of this settlement to reach a political solution and stability with a view that the settlement is illegal. We value and appreciate this work and also wish that we will be able to hold a Conference next year. I thank you for the opportunity.

**President:** With that we come to the end of this meeting. Now we move on to the next agenda item.

**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, 10<sup>TH</sup> SEPTEMBER 2013 AT 9.30 AM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair.**

**President:** We will now proceed to the next agenda item “**Report of the Secretary-General on the Work of the Organization and Financial Matters of AALCO**”. As this meeting is exclusively for the Member States I request the Observers to kindly leave the hall till we take up the next agenda items in the afternoon. I now request the Secretary-General to take the floor.

**Prof. Dr. Rahmat Mohamad, Secretary-General:** Thank you, Madam President. Honorable Madam President, Hon’ble 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-Second Annual Session on their elections and look forward to working with you and standing 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 unanimously re-appointing me as the Secretary-General for a second and final term of four years, in Abuja, Nigeria, in June last year. I assure you that as in the past, I would continue with my efforts in promoting the noble aims and ambitions of our Organization for the benefit of the Member States.

I once again thank the Member States of AALCO, through their officials in the capitals and Their Excellencies the Ambassadors/Heads of Missions in New Delhi, as well as the Liaison Officers for their constant support and cooperation extended to me in discharging my duties. A special thanks is due to His Excellency Mr. Mohammed Bello Adoke, Attorney-General and Minister of the Federal Republic of Nigeria; the President of the Fifty-First Annual Session of AALCO for his guidance in steering the work of the Organization over the past one year. I would like to express my gratitude to Mr. Mohammed Bello Adoke, 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 have 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.

Madam President, Excellencies, Ladies and Gentlemen, this statement is divided into five parts namely: (i) activities and mandate undertaken since the Fifty-First Annual Session; (ii) Steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization; (iii) financial matters of AALCO; (iv) future plan of action; and (v) concluding observations.

## **1. Activities undertaken since the Fiftieth Annual Session of AALCO**

Excellencies, Distinguished Delegates, Ladies and Gentlemen, now, I would like to briefly place before you the activities that we have undertaken since the Fifty-First Annual Session of AALCO, until July 2013. I would like to emphasize that all these activities have been accomplished on account of the very hard work exerted by the legal staff in addition to the fact that the Secretariat optimally uses the modest resources, available to it.

Immediately after the Fifty-First Annual Session, the three Deputy Secretaries-General and myself visited the Headquarters of the *African Union* at Addis Ababa on 24 June 2012. The meeting with the Legal Counsel aimed at possible future cooperation between the two Organizations.

On behalf of the Organization I addressed the *Sixty-Fourth Session of the International Law Commission* in Geneva on 26 July 2012. The Verbatim Record of the Special half-day Meeting and the deliberations on “Selected Items on the Agenda of the International Law Commission” held on 20 June 2012 during the Fifty-First Annual Session of AALCO which was held in Abuja, Nigeria from 18 to 22 June 2012, was also circulated for discussion. I also presented an overview of the issues raised by the Lead panelist Dr. A. Rohan Perera from Sri Lanka, and discussant Prof. Djamchid Momtaz from the Islamic Republic of Iran on the two important topics (i) Protection of Persons in the Event of Disasters and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction. Following the address an in-depth deliberation and question and answer session was initiated.

I am pleased to inform this gathering that Deputy Secretary-General, Dr. Soleimani and myself participated in the Special Commission meeting on the Choice of Law in International Contracts organized by the *Hague Conference on Private International Law*, in Hague from 12-16 November 2012. Thereafter, we had discussions with the Secretary-General of the Hague Conference about future cooperation and close working relationship with the two organizations and suggestions to conduct joint seminars/workshops/inter-sessional meetings.

Over the years AALCO has worked very closely with the International Criminal Court. It is an honour for me to report that on behalf of the Organization I addressed the *11<sup>th</sup> Session of the Assembly of States Parties to the International Criminal Court*, in Hague on 15 November 2012, a day that synchronizes with the Constitution Day of AALCO, this gave us an opportunity to share some of the concerns of the Asian-African States on the International Criminal Court. As last year the ICC celebrated its tenth anniversary, it was important to acknowledge that the Court was slowly but surely moving towards dispensing justice and ending impunity.

The *Annual AALCO Meeting convened on the sidelines of the 67<sup>th</sup> Annual Session of the United Nations General Assembly* took place at the UN Headquarters in New York on 5<sup>th</sup> November 2012. Both myself and the President of AALCO were to attend that meeting, however due to hurricane Sandy we had to cancel our trip. The opening remarks were made by Dr. Roy Lee, the Permanent Observer of AALCO at the United Nations. The Meeting dealt with “Achievements of the UNCLOS on its 30th Anniversary”, “Current Issues facing the ICC Prosecution”, “Some Thoughts on the Prevention of Genocide”, “The Contribution of the ICJ to the Law of the Sea” and the “Work of the International Criminal Court”. Around 60 delegates attended that meeting.

A Seminar on “***Climate Change: Post Kyoto International Climate Policy***” was held on 16<sup>th</sup> January 2013 at AALCO Headquarters, New Delhi. The Chief Guest for the seminar was Prof. Chia-Jui Cheng, Secretary-General, Xiamen Academy of International Law & Professor, School of Law, Soochow University, Taipei, China who enlightened the gathering on “International Trade Implications and Climate Change”. The seminar was inaugurated by Prof. Bharat H. Desai, Professor of International Environmental Law, Centre for International Legal Studies, JNU. There were two important sessions namely; (i) Science and Economics of Climate Change, and (ii) Legal and Policy Response of Climate Change. The programme received a good response with representatives of 14 Member States of AALCO, academic and student community’s participation and interaction.

To commemorate the 30<sup>th</sup> Anniversary of the United Nations Convention on the Law of the Sea (UNCLOS), a ***Legal Experts Meeting was jointly organized by the Legal and Treaties Division, Ministry of External Affairs, Government of India and the AALCO on Tuesday, 5<sup>th</sup> March 2013*** at AALCO Headquarters, New Delhi. The Chief Guest for the meeting was Mr. Pinak Ranjan Chakravarty, Secretary (ER) Ministry of External Affairs. In his address Mr. Chakravarty narrated the rationale of celebrating the 30<sup>th</sup> Anniversary of the UNCLOS, which he described as a seminal law making event of the United Nations that codified and provided a universal legal framework for all human activities relating to the oceans. With 164 States Parties the Convention is reaching near universality, a testament to the significance of the Convention as an important contribution to the maintenance of peace, justice and progress for the humankind who inhabit this planet. He also outlined the current challenges confronting the UNCLOS.

The keynote address was delivered by Mr. B. Sen, the founding and former Secretary-General of AALCO who enlightened the participants about the key role played by AALCC during the negotiations leading up to the adoption of the UNCLOS. He stated that concepts such as EEZ and Archipelagic states were introduced in UNCLOS upon the inputs received from the Member States of AALCO. Further, the inaugural address given by Mr. Stephen Mathias, the Assistant Secretary-General of the Legal Affairs, United Nations came to the AALCO HQ outlined the contributions made by UNCLOS and the challenges that lay ahead.

The Meeting was divided into four sessions namely: (i) Dispute Settlement under UNCLOS; (ii) Preservation and Protection of Marine Environment: Current Challenges; (iii) Issues relating to Piracy and Maritime Security; and (iv) UNCLOS and AALCO. The meeting was very successful. Representatives from 23 Member States, 1 Non-member State, 4 International Organizations and several academics and students from universities participated in the programme.

The ***United Nations University (UNU)*** organized an international symposium on “***Building ASEAN Identity on a Transnational Dimension***”, which was held at UNU Headquarters, Tokyo from 7 to 8 March 2013. Upon invitation from the University I presented a paper on the topic “Building ASEAN Identity on a Transnational Dimension”.

In yet another initiative of building cooperation with the Indian Universities based in New Delhi, upon invitation from the ***Jawaharlal Nehru University***, 15 March 2013 I made a presentation on

“The International Criminal Court: Some Reflections” during a symposium on “Role of Courts and Tribunals in the Changing Global Order”.

On 2 May 2013 I delivered a public lecture at the *South Asian University* on the topic “Transformation of ASEAN from a Non-Rule based to Rule based Charter and its implications”. A very interesting and informative Q and A session followed the lecture.

On 9 May 2013, the *Foreign Service Institute (FSI), Ministry of External Affairs*, invited me to deliver a lecture on “International Criminal Law” for junior diplomats, as I was preoccupied I deputed Mr. Feng Qinghu, the Deputy-Secretary General of AALCO to deliver the lecture on my behalf.

In the endeavor to increase cooperation with international organizations, on 13 May 2013 I met the Secretary-General of the *Economic Cooperation Organization (ECO)*, in Tehran. At that meeting both the Secretaries-General appraised each other of the work done by their respective Organizations, and we also chalked out areas of mutual concern around which a meaningful work programme could be weaved. The possibility of ECO Member States joining AALCO was also pondered over. Dr. Soleimani, Deputy Secretary-General accompanied me to that meeting.

I am also pleased to inform that on 9<sup>th</sup> July 2013 I addressed the *65<sup>th</sup> session of the International Law Commission*. I briefed the Members of the Commission on the following three agenda items (i) immunity of state officials from foreign criminal jurisdiction; (ii) protection of persons in the event of disasters and (iii) formation and evidence of customary international law. These topics are of great concern to Member States of AALCO. An exchange of views followed my presentation. Mr. Feng Qinghu, DSG accompanied me to the ILC.

The Hague Centre for Law and Arbitration and Doshisha University Graduate School of Global Studies, Japan jointly organized a *Symposium on “Unilateral Sanctions and International Law in the Hague on 11 July 2013*. I was invited to that event and made a presentation on the topic “Unilateral Sanctions and International Law”. Many distinguished academics made presentations during the event. Mr. Feng, Deputy Secretary-General accompanied me to this event.

Since the beginning *AALCO, has regularly been bringing out publications*. The serials brought out by the Secretariat since its Fifty-First 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.

In pursuance of the mandate received from the Fifty-First Annual Session, the AALCO Secretariat has brought out two Special Studies on topics of contemporary relevance namely: (i) A Study on the Statehood of Palestine under International Law; and (ii) Unilateral and Secondary Sanctions: An International Law Perspective. I hope the Member States find these publications useful and would very much appreciate any feed backs on their part.

I would like to make a special mention regarding the upgrading of the AALCO website [www.aalco.int](http://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.

## **2. Steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization**

Pursuant to the adoption of the Putrajaya Declaration in 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 2013-2014. 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 talents 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.

## **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.

I would like to inform you that despite the fact that the Organization is financially in a better situation today, than it was in 2008, in order that we do not face financial difficulties in future a detailed “Comprehensive Study” was prepared before the Budget for 2014 was drafted”. It should be reiterated that the proposed increase derived from the identified facts and needs contained in the Comprehensive Report that, inter alia, the high inflation rate in India in recent years adversely affected the AALCO budget and that there was an urgent need to increase the staff by recruiting a few legal professional staff members. In view of the above, the Member States at the Fifty-First Annual Session in Abuja mandated the AALCO Secretariat to look into all possibilities during framing the 2014 budget which would enable and satisfy the needs of the Member States. A detailed report on this aspect shall be given to you, in a short while from now, by my colleague Dr. Fukahori, Deputy Secretary-General.

It is with gratitude that I report that until 17 July 2013 annual contributions, from 37 Member States have been received for the years 2012 and 2013; 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.

Here I would like to mention, that while on one hand some of the Member States having started paying up their arrears, The Republic of Yemen and Lebanon have asked for a reduction in their arrears and the State of Palestine has asked for a waiver of its arrears. As this issue is of vital importance, I request the Heads of delegations to consider it and let us know their decision in this regard.

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 11 as of 15 July 2013. Last year I promoted Mrs. Anuradha Bakshi to the rank of Principal Legal Officer, she has judiciously worked in AALCO for the last over 20 years. This year Mr. Pandiaraj, has been promoted to the rank of Senior Legal Officer, he has sincerely worked in the Organization for over 7 years. I have also recruited Mr. Parthan Vishvanathan, as a Legal Officer on a contractual basis.

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.

#### **Plan of Action for the coming year 2013- 2014**

Mr. President, Excellencies, Ladies and Gentlemen, on completion of my first year 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. It is relevant to reiterate here that as mandated by the Putrajaya Declaration on Revitalization of the Organization, the Secretariat is required to present its blueprint on how to strengthen AALCO's organizational and substantive matters. In line with that Declaration, during the Colombo Session in 2011 I presented the long, medium and short term projects that would be undertaken by AALCO. Meanwhile during the Abuja Session vide resolution AALCO/RES/51/ORG2 the Secretariat was mandated to look into all possibilities while framing the budget for 2014. In response to a request from Liaison Officers and also past mandates received from Member States, this year the Secretariat has submitted detailed breakdown of the planned projects that would be implemented from 2014 to 2016. These programmes would be classified into four categories (i) Capacity building programmes for AALCO Member States; (ii) Research Intensification Projects on the Work of the International Law Commission at AALCO; (iii) Research Intensification Projects on the Work of AALCO and (iv) In House Training Programme for AALCO Secretariat Staff. The details of these programmes have been annexed to the document AALCO/52/HEADQUARTERS (NEW DELHI)/2013/ORG 1.

In addition to the above we would also strive to: (i) Establish collaboration with educational institutions and universities, (ii) Expand internship projects in AALCO, (iii) Prepare studies on the item on the agenda of AALCO, (iv) Prepare studies on selected items on the agenda of the Sixty-Eighth Session of the United Nations General Assembly, (v) Participate in International Conferences, (vi) Engage in Capacity Building Programmes, (vii) Strengthen the library, and



(vii) Bring out more special studies and briefing papers on various specialized topics of international law.

### **Concluding Remarks**

Excellencies, I am convinced that the Member States of AALCO would encourage and contribute towards the future activities to be undertaken, besides promising to echo the voice of the people of the Afro-Asian region, which is host to the largest part of the humanity, in various international forums. Towards this end I hope that the member States would extend their wholehearted support to all the activities that would be undertaken in the coming year.

**President:** I thank the Secretary-General for his very comprehensive report. He has highlighted the efforts made by him in enlarging the membership of AALCO, the work done by AALCO in fulfilling the mandate received from Member States at the Fifty-First session, he has also very comprehensively identified the challenges faced by the Organization, in this context he is seeking in-puts from Member States on how work programme of AALCO can be modified to sustain AALCO's success story so that its role is meaningful, useful for the codification of international law and also reflects the views of Member States. He has made a strong plea for the rationalization of the agenda of AALCO so that new and more contemporary subjects can be introduced in the agenda. I will now open the floor for comments and suggestions from Member States. Malaysia you have the floor.

**The Delegation of Malaysia:** Thank you very much Madam President. Excellencies, we would like to express our position on the presentation made by the Secretary-General of AALCO on the presentation of his report, setting out the progress and development of AALCO since the conclusion of the Fifty-First Session of AALCO in Abuja, Nigeria from 18-22 June 2012.

Your Excellencies, we are pleased to note about the Host Government Agreement between AALCO and Malaysia on the 26<sup>th</sup> Of March 2013, to extend Malaysia's hosting of the Kuala Lumpur Regional Centre for Arbitration. This event clearly signifies Malaysia's continuous commitment to AALCO. Malaysia further observes that the proposal for the increased budget for 2014 as contained in the paper AALCO/52/ Headquarters Session/New Delhi/2013/ORG 2 will be placed for the consideration and finally approved by the Leaders of Delegations of Member States of AALCO at this Annual Session in accordance with rule 24(4) of the Statutory Rules of AALCO. As a matter of importance Malaysia both sees the necessity to review the status of the annual contributions by Member States taking into consideration among others the inflation and increasing costs for the AALCO Secretariat, and continuing need to strengthen the Secretariat resources.

However, Malaysia would like to propose that before making any decision at this stage on this proposal a detailed study needs to be conducted by the AALCO Secretariat and interested Member States are to take part in this exercise. Once the study is completed the outcome should be circulated to Member States before the Fifty-Third Annual Session of AALCO, so that Member States will deliberate and provide comments. Member States are also expected to seek the necessary mandate so that a decision can be made at the Fifty-Third Annual Session. With respect to the proposal of increase in annual contribution for 2014, as for Malaysia the proposal will entail an increase in payment of the 2014 annual contribution Malaysia would like to draw the attention of the meeting that for the contribution of 2014 AALCO contribution, Malaysia had

already provided for that contribution in its 2014 budget, as such an increase could and would only be made in its 2015 budget for the parliament must approve the budget by next year. Malaysia further notes and hopes to see AALCO achieve further heights contributing to the progressive development of international law in this regard capacity building and research activities are of utmost importance and Malaysia remains deeply committed to this end. In order to ease the financial burden of AALCO Malaysia proposes that Member States consider hosting some of AALCO's programmes in their respective capitals particularly on training and capacity building. Malaysia would like to associate itself with the statement of Japan wherein Japan expressed its concern that the mere increase in contribution would not solve the financial problem of AALCO. Member States must be encouraged to pay their yearly contributions which are their obligation as it would be unfair for the paying Members to increase their contributions if non-paying members continue not to heed their responsibilities.

On a final note Malaysia commends the Secretary-General and the Secretariat once again for their tireless efforts in ensuring continuous progress and development of AALCO. Thank you.

**President:** Thank you Malaysia. I see that Bangladesh wants to take the floor.

**The Delegation of Bangladesh:** Madam Chair, thank you for giving us the floor. We thank the Secretary-General for his comprehensive and thought provoking report. We have taken note with interest a number of ideas that he had just put forward before us to revitalize the work of the Organization. We thought we would take this opportunity to complement some of these ideas with certain perspectives of our own.

**First,** we appreciate the efforts made by the previous Chairs, your predecessors, as well as the Secretary-General towards the possible enlargement of the Organization. We believe there is a need for an in-depth understanding as to the reasons why many countries in Asia and Africa, despite having professed their interest in joining the Organization, still remain hesitant to do so. It needs to be seen how the Organization could enhance its relevance and visibility in order to make its membership hold an added appeal for these countries. We would recommend, Madam Chair, that you and the Secretary-General may together write to Ministers of Foreign Affairs of the member States and urge them to use their good offices to approach their counterparts from non-member Asian and African countries to join the Organization.

**Second,** we take note with interest the Secretary-General's emphasis on a creative approach to sustain and enhance the relevance and effectiveness of the Organization. We feel that we do need to make a change in our rather conservative approach to dealing with things within the Organization and look at some innovative means to infuse further dynamism into its work. By this, we do not suggest that we need to "rock the boat", but we could surely consider certain adjustments that could make the Organization more nimble and efficient within its existing mandate.

**Third,** to this effect, we welcome the Secretary-General's suggestion on broadening the scope of work of the Organization to include some emerging and challenging issues for our Member States, i.e. cybercrimes, investment law and alternate dispute resolution. From our perspective, Bangladesh would be particularly interested in addressing the legal challenges in the area of cybercrimes that we believe is increasingly becoming a common area for all our countries. We

would wish to engage in more informed discussion on how we could pursue these issues through tangible, result-oriented actions in the days to come.

**Fourth,** we value AALCO's contribution in connection with the work of the International Law Commission (ILC) and UNCITRAL. For many countries such as ours, due to our obvious resource constraints, it is not always possible to engage with the work of these Organizations in a sustained and effective manner. This is where we see merit in AALCO's work in keeping us informed about the proceedings and outcomes of the meetings of these Organizations. It would be more useful for Member States if we could have, in addition to the factual reporting, some analytical inputs from AALCO as regards the key issues of divergence and the undercurrents that emerge through different negotiations at these meetings. This would certainly involve some additional work for AALCO, but could perhaps be achieved without incurring major expenses on the Organization's part provided the Secretariat could find some cost-effective ways of doing it.

**Fifth,** the Secretary-General has also reminded us Member States as to our responsibilities flowing from the different resolutions. We would suggest that the Secretariat also possibly consider some additional work in terms of making a compilation of the follow-up actions taken by different Member States in line with the resolutions, providing information on ratification of different international instruments, national legislations, related administrative measures and so forth. This would help develop a useful resource base for the Member States and would also allow them to explore the possibility of benefitting from each other's experiences and expertise.

**Sixth and finally,** we also have noted with interest the Secretary-General's suggestion on forming a young jurists' network. In Bangladesh, we do have many young jurists or lawyers well versed in international law who are ready and willing to reach out to the outside world. The Secretary-General's initiative could be a useful platform for them to connect with their peers in the Member States and benefit from each other's experience and insights. To kick off the process, we would recommend that the Secretariat explore the possibility of identifying one or two young jurists in each Member State who could start interacting with each other through virtual network at the initial stage.

With those, we would like to thank the Secretary-General once again for sharing his thoughts with us that we found to be quite pertinent and worthy of further consideration by the membership. I thank you.

**President:** Thank you Bangladesh, some of your suggestions are very useful, and I am sure that the AALCO Secretariat will keep them in mind but Member States must note that ultimately everything comes to resources. Earlier AALCO was participating in a number of UN and other multilateral fora meetings, but now over the past few years due to the resource constraints there has been no participation from AALCO, so unless AALCO's representatives are present in the meetings it will be very difficult for AALCO to present an analytical report, so as basis of their reports is also UN reports which themselves are also facing resource constraints ultimately. I think that AALCO plays a very important role in keeping the Member States informed of the developments of international law, and will be able to do more if some of the representatives participate in those meetings and would be able to guide Member States as to what are the issues involved and stances taken by various States and what are the issues of interest for the AALCO Member States, for that again the issue comes to resources, so Member States should keep that in

mind while responding to recommendations made by AALCO for increase in contributions. I have a request from Qatar, you have the floor Sir.

**The Delegation of the State of Qatar**<sup>1</sup>: The State of Qatar supports the proposal suggested by certain members to increase the budget of AALCO for the next Session. Thank you very much.

**President:** Thank you. I have Egypt on the list. Egypt you have the floor please.

**The Delegation of the Arab Republic of Egypt:** Thank you Madam President. We appreciate the great role by the Secretary-General and the Secretariat, as we heard the comprehensive presentation by the Secretary-General. Concerning the budget, let us clarify some facts. We understand that there are some economic conditions related to the hosting country but it is a contemporary matter and there are requests from several Organizations to increase the budget although the Member States are suffering from the same difficulties, so there was a decision by all the Organizations to have zero growth in their budgets.

**Secondly**, there are many procedures that can be taken to raise the capacity and respond to the requirements of the Organization some of them are (i) reducing the expenditure and the Secretariat has to present objective recommendations in that regard; (ii) reduce publications and use electronic style (soft copies) as the Organization has an effective website on the internet and (iii) find mechanisms to deal with Member States who do not fulfil their financial obligations of the previous years, by emulating the mechanisms adopted by AARDO. Thank you.

**President:** Thank you Egypt. Now I invite India to take the floor.

**The Delegation of Republic of India:** At the outset I thank the Secretary-General for his comprehensive report. The issue of finance for the Organization is serious and Member States have to suggest new methods for increasing the finances for the Organization. I agree that one way to reduce the financial burden on the Organization is to send its publications in the form of e-books. I agree that some of the topics that could be included on the agenda of AALCO are (i) e-commerce, (ii) alternate dispute settlement, (iii) cybercrimes and (iv) IPR. So far as cybercrime is concerned this is a inter jurisdictional, trans jurisdictional issue. Yes it's very important, beyond that there is international law aspect Beyond that also if you have heard the statements made by the US State department Legal Adviser about the cyber-attack that takes place on your infra-structures or on your power generation nuclear facilities if such instances takes place the causes of which are unknown, in what way would you respond? Would you consider it as interference into your affairs? Or an attack on your State and at what point of time can you take counter measures, these are some of the issues which are being discussed in other fora such as the UN. Some States have already taken a position that existing international law went in favour of the developing countries perhaps you could consider these issues. Issues such as whether we need a new law on this point are also being considered.

So far new issues are concerned apart from purely legal and investment matters; there are other matters that are being interpreted by the arbitrators fair and equitable treatment, minimum standard of treatment in international law. These issues are being very broadly interpreted to the detriment of the investing States, similarly at what point of time a measure taken by the State would amount to exploitation, a new tax measure which would amount to expropriation or any

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

environmental issue? What are the measure taken to control the pollution? These are the issues which are being left to the arbitrators mainly those who are from the western continent. I don't see any except a few who are from the ASEAN countries; there are no arbitrators and no lawyers who are participating in this legal process. Perhaps AALCO Secretariat could look at those aspects. Thank you.

**President:** Thank you India for some of your proposals and for highlighting some of the issues which might be of concern to AALCO Member States. Tanzania has requested for the floor. You have the floor Madam.

**The Delegation of United Republic of Tanzania:** First of all Tanzania would like to congratulate the Secretary-General for a very comprehensive report. We also appreciate the efforts that have been done in maintaining a close relationship between AALCO and the International Law Commission, UNODC, and the ICC. As we have heard from the Secretary-General all the activities that have been carried out in the last one year, it is no doubt that the success of AALCO directly depends on maintaining close relationship with these institutions. We also like to congratulate the Secretary-General for the steps that have been taken to revitalize the Organization as it has been enumerated in paragraph 82 at page 52 of the Report of the Secretary-General. My delegation agrees to the suggestions with regard to strengthening human resources at the Organization's Secretariat. As for the financial constraints as has been put forward by the Secretary-General for Member States to attach officers to work at the Secretariat is a good proposal. These officials who would be remunerated by the States seconding them it will not only assist the Organization but will also benefit the seconding State through the knowledge of these officials. It is our view that AALCO will benefit from the current situation of the Staff. On point of increasing membership of AALCO we appreciate the efforts being undertaken by the Secretariat in increasing the membership of AALCO it is our opinion that we the current members of AALCO could appeal to our sister states in the regions to join AALCO. We also agree with the idea of the Young Jurists conference which seems attractive and suggest that AALCO can get in touch with the Law School of Tanzania in that regard. Thank you.

**President:** Thank you Madam for your intervention. Japan has also asked for the floor.

**The Delegation of Japan:** As our Head of Delegation Amb. Ishigaki has been the Special Assistant to the Foreign Minister in order for AALCO to play an important role for the future of Asia and Africa it is important that the Organization should be placed on a sound and sustainable financial basis. Some Member States are not fulfilling their current financial obligations and the proposal to increase the budget by 14% will create a situation where Member States who fulfil their financial obligations will have to pay more simply to cover for those who do not fulfil those obligations. This is not a sound financial basis. Just for your reference if the proposed budget for 2014 is applied, Japan's contribution for the year 2014 would increase approximately by 23% from the last year's contribution allocated to Japan in US Dollars, and the portion of Japan's contribution in the total amount of the proposed budget would reach 12%. Though I do not intend to propose reopening the discussion on the budget it would have to be discussed in the near future. Japan believes that the future of AALCO depends on the will of the member States, and as the Leader of delegation of Japan had said in 2010 and we reiterate that stance here today, only two ways are in front of us either all States contribute their own share of contribution without single default to keep the budget size or concede realistically that AALCO could only receive 70% of contributions from its Member States each year, and acknowledge that as the real

budget of AALCO. Obviously the latter implies the downsizing of its activities and the personnel. We believe that the former is better than the latter. So we are not happy with the current level of attention given to the finance issue by the Member States. It is deplorable that only a few Members expressed their views at the Liaison Officers meetings, during the past year despite repeated requests from the Secretariat. So Japan cannot agree to a budgetary framework of any financial proposal whose budget rests on assumptions that it should be supported by a limited group of Member States. We call on all Member States to have a sense of urgency to deal with the finance issue, at the same time we are aware of the efforts made by the Secretariat in recovering arrears and cutting costs in all possible ways, we would still ask the Secretariat to continue to take more effective measures. Thank you very much.

**President:** Thank you Japan, would any other Member State want the floor? Actually many Member States have made their intervention on budget statement, but I would urge you to please listen to Dr. Fukahori, he would make a brief summation of the Comprehensive report for forming the Budget for the year 2014. He will discuss the proposed budget for the year 2014 as well as the report of the Sub-Committees of AALCO Secretariat's Human Resources and Financial Matters.

**Dr. Yasukata Fukahori, Deputy Secretary-General, AALCO:** Thank you Madame President. Ministers, Attorney-Generals and Distinguished delegates, as the Deputy Secretary-General of AALCO responsible for financial issues and also as the acting Chairman of the Sub-Committee on AALCO Secretariat's Human Resources, and Financial Matters I would like to highlight some of the important elements which are found in the proposed 2014 budget which is actually derived from the comprehensive report which was distributed this morning. At this juncture I would like to draw your attention to this Comprehensive Report for Forming AALCO's 2014 Budget produced by the AALCO Secretariat and based on a mandate which was received last year at the Abuja Session. From our point of view we included all kinds of elements which relate to financial and budgetary elements relating to this Organization. There was a request from Malaysia this morning that we should produce report and then report it to the next annual session. From our point of view we have already circulated this document and we included all kinds of elements relating to financial matters. Then we submitted this report to the member countries about December last year. After this, three times we had meetings in Delhi and we have also had four Liaison Officers meetings. So at the seven meetings in Delhi we discussed about these issues. As the Secretariat, if Member States request informations on for financial issues we will certainly provide it. However, we need some specific information. For example, if Malaysia considers that we need to produce another report, we need more details and instructions from Member States. From our point of view, we included all kinds of elements and produced the report nine months ago already. Having said that, I will use a power-point presentation for a better understanding of our situation. By this presentation I would like to cover items 6 and 8 on the agenda which was adopted yesterday.

This part of the module which we received from our Member states at the last year Abuja meeting, it was noted that a few more Legal Officers need to be employed. That was the instruction given by Member States. We lost several Legal officers in the last several years. So they identified the need to increase more legal officers. The inflation rate in India adversely affected the financial burdens of AALCO. This is recognition of our Member States. Based on these two points Member Countries mandated the Secretariat of AALCO to look into all

possibilities while framing the 2014 budget. This is the background. As I mentioned now that the inflation rate is very high in India, this is the Index in India in the last 10 years. As you may see from these figures between 2008 and 2012 India recorded a very very high inflation. In 2008 it was 8.4 %, in 2009 it was 10.9%, in 2010 it was 12% , in 2011 again 12% and last year 8.9% . Inflation came down to quite low level at the moment that is now between 4% to 5%, but we do not know how much it would go up and in this regard we do not have any exact figures. As part of producing this comprehensive report, we calculated based on five years average for the extension for the next 5 years. Our comprehensive report is based on the assumption that the inflation would continue for next five years for 8%. This has implications for the budget of the Secretariat. This portion is the salary portion of the Budget. In the year 2005 it was 55 %. Usually our salary portion accounts for 60 %. The salary portion is the biggest portion of our budget where as 60 % is healthy for the organization. The rate of salary portion in 2009 was 75.3% . That was the critical stage we had a financial crisis that year and that is why the Member Countries kindly agreed to increase the contribution and then 2010 with the increased budget the salary portion got reduced from 75 % to 64 %. This year it has become 63.3%. If CPI index is going to continue as we experienced in the past several years the salary portion in the AALCO budget will reach 73.2% in 2015 which is just one and half year away from now. This would be almost similar to the figures that we experienced in 2009. In three years time we may have another financial crisis. If we do not receive any revenue increase, it would go up in 2016 to over 80% . This would almost be a state of bankruptcy. We would not be able to take any projects any more. We just pay salary and that's all. We will not be able to cover even the maintenance charges and the management expenses of this Secretariat. So this is the situation that we are in. I would like to show by this diagram the budget trend of AALCO. The Blue line is the CPI Index in this country. This is equivalent to the salary increase rate of government officials. The Indian government officials are receiving the increased amount of salary, while AALCO is providing only red figures. We try our best to match our salaries with that of the Indian government but we could not because of the shortage of budget. We are underpaying our staff. Still we have problems with the substantial increase in our budget for salary. Then there is a change in the number of permanent local staff. In 2001, we had 21 permanent local staffs. In 2009 when we had a financial crisis we still had 18 staffs. After that three capable Legal Officers left us along with one accountant. The number after this was reduced to mere 13. This was unfortunate for us. But from the financial point of view it helped us. Because the number of staffs had reduced, we could save some money for other activities.

I once again like to call your attention, last year at the Abuja Session, Member States requested us to take a few Legal Officers more. Otherwise we could not do work so that this number 13 has to increase which means that we need more budget for salary. This is based on the request from Member Countries. This is another way to show our budget situation. Our AALCO budget has not increased in real terms. The bottom line shows the real terms of the budget. If we place 100 in the year 2001, budget for us has become 55. 4% in 2013. Our budget has been revised just once in 2009 and we maintained more or less a similar amount of budget for the last 13 years during which the inflation has increased in India. In real terms our budget size has been reduced to mere half. Thirteen years ago we could do double the size of work now we could do only half in real terms. So this is the situation in the light of the inflation that we experience in India.

After we received the increased amount of contribution from Members in 2010, our situation might have improved. However, as I mentioned before the inflation rates in India has been very

high during the first 5 years particularly. If you place 100 in 2010 which we received by way of increased contribution, again we are experiencing budget reduction in real terms. Even after two years of increased contributions, our budget portion in real terms reduced by 25%. And the salary portion is going to be 75% in the following year if we do not receive any increased contributions.

The distinguished delegates of Egypt and other Countries mentioned about collecting arrears. And also we stated in this comprehensive report about arrears. We have been negotiating with all countries that are in arrears. Personally I visited all the embassies in Delhi and we negotiated with them, some of the negotiations were fruitful and we agreed that it could be paid in instalments and we signed Memorandum to that effect with the States concerned. In this process, Countries like Iraq started paying for us. Similarly Nigeria paid all arrears last year. Libya, Iraq and Yemen, these three Countries started paying for us. And then a few others started paying annual contributions that include the DPRK. The DPRK has not paid arrears but it has started paying annual contributions and also Yemen, Sudan, and Syria for some portion started paying annual contributions. Yemen and Lebanon, they showed us their plans to pay back their arrears. These are the efforts which we are doing. We succeeded in collecting substantial amount of arrears.

I would like to show some of the figures. Indian government increased its budget from 735 billion rupees to 1764 billion from the year 2004 to 2011. This is the increase of 240% in India budget. But AALCO increased only about 20 %. While Indian government increased 240% including salary for the staff we have done only 20 %. And other UN affiliated organizations in India received increase of contributions from Member Countries. They have agreement with Headquarters that the budget they receive would increase automatically in line with inflation in India. Hence inflation did not affect the budget status of these institutions. The Asian African Rural Development Organization which is located in Delhi received twice increased contributions from Member Countries and could survive due to that.

These figures are part of the comprehensive budget and we discussed all kinds of elements found there for about nine months in New Delhi with the Liaison officers. In 2012-14 probably the Indian CPI would increase by about 8% annually. This is just a calculation. In accordance with the rule of AALCO we have to increase the salary of our Staff in line with this inflation rate. We will try our best to maintain the budget in relation to other expenses to mere 10 % . While the inflation is 16%, we try to contain our activities to 10%. Given the increasing human resource expenses we have to increase our budget by 14.19% and this is the conclusion to which we have come last December and this would be provided by Member Countries for consultation. I thank you very much.

As regards the query of some Member States, please refer to page 16 of the Report of our Secretary-General on the work of AALCO. There are three Countries that have officially requested that their arrears be waived or reduced. Their actual request is reproduced on this Paper from the pages 27-29. In short, Palestine requested that they get a full waiver from paying the contributions and Republic of Yemen and Lebanon requested that their arrears be reduced to half. As the Secretary-General explained earlier, we need a decision on this. Thank you very much.



**President:** I think the DSG has very forcefully put up a case for increasing the budget of AALCO. I will open the floor for comments from Member States.

**The Delegation of Republic of Korea:** Thank you very much for the comprehensive illustration of what is going on with the budget. My delegation agrees with what the Japanese delegation said before. First 14% increase is a figure. Second, in the presentation by the Secretariat. Without explaining this exchange rate we are still kept in the dark. Third 14 % increase is not really reflected in the Report. I am surprised that the increase is as much as 23%. We need Japan as a Member here. We feel the Secretariat would accommodate Japan's fears or concerns. Korea has also been asked to increase its contributions by 17%. When I hear Japanese delegation saying that its increase is as much as 23 or 25 % I feel I am not in a position to comply. Nevertheless, if there should be an increase, it should be spread to all the Member States. If it is really inevitable I hope the Secretariat would come up with certain idea that would spread the burden and then it may be more acceptable to my colleagues at the Capital.

**President:** Thank you very much Korea. Is there anybody else who wants to take the floor? Malaysia you have the floor please.

**The Delegation of Malaysia:** Malaysia commends the DSG of AALCO for his presentation of comprehensive report of AALCO Budget 2014 for our consideration. I wish to reiterate the statement of the Head of Delegation of Malaysia made during the deliberations held after the Report of the Secretary-General of AALCO presented this morning, the request for an increase in the annual contribution from Member States for the year 2014 that has been elaborated by the Deputy Secretary-General a few moments ago. We totally appreciate the issues raised by him. But at least within the context of quantum I would like to reiterate the position taken and explained by the head of the Malaysian Delegation that even if the request for the increase were to be approved during this session Malaysia would not be in a position to make payment until we receive our clearance from our treasury and Parliament, particularly not for 2014 because we have already had our 2014 budget discussed it must be approved in the forthcoming October Session.

Secondly, Malaysia notes the proposal of the AALCO Secretariat to introduce a pension scheme for local staffs. We note that if this proposal is implemented it is expected that 20, 000 US Dollars per annum would be required for the year 2014 and subsequently. The quantum represents a substantial increase to some requested for 2014 expenditure, Malaysia sees the need for this proposal also to be included as part of to be done by the Secretariat by our Head of Delegation this morning. This is where we hear clearly where our Deputy Secretary-General spoke about the need for a Report. We do realize that the request has already been distributed to Member States in December. We need to elaborate further because we think that there could be alternative steps provided within the context of the Report.

Thirdly Malaysia noted that in the Secretary-General's earlier Report he stated that efforts are needed to strengthen the human resources at the AALCO Secretariat. This proposal to recruit at least two new legal staff at the Secretariat. This would result in the increase of the annual operating expenditure of the Secretariat. Although Malaysia appreciates the fact that AALCO Secretariat needs to increase its legal man power and it has already been mandated by the Member States at the Abuja Session, the additional financial burden to the Organization to implement this proposal need to be carefully considered. Malaysia is of the view that alternative

and creative measures may be needed to be thought out. For example, we do not know whether the two new legal staff could be based on a secondment from Member States. Perhaps this would be more feasible and cost-effective. The current practice of deputing Professional officers from China, Iran and Japan, we have found to be very successful. Malaysia wonders whether such alternatives could also be considered with regard to the issue of increasing two legal officers at AALCO.

Excellencies, Malaysia notes the request by the State of Palestine, Yemen and Lebanon on arrears. Although Malaysia understands the predicament of each of these States, Malaysia is of the view that acceding to such requests may possibly derail AALCO's struggle with financial stability and sustainability. Hence, we urge the Member States to carefully consider their requests during this annual session. We may need to deliberate further and again come up with further alternatives.

Finally, Malaysia notes that 2014 budget requested for an additional increase of 11, 184 US Dollars to meet unforeseen expenditures. Although Malaysia understands the need for the Secretariat to be provided with certain amounts of money in the budget for contingency purposes, my request to Secretariat is to clarify the need for such additional increase and the extent of such unforeseen expenditures as mentioned in the budget. Thank you Madame President.

**President:** Any other State wants to make comments. It seems our Dr. Fukahori wants to respond to Malaysia's query.

**Dr. Fukahori, Deputy Secretary-General, AALCO:** I would like to respond to some of the queries that were made from the floor. First, I would like to point out to the distinguished delegate from Korea that the exchange rate issue was tabled at the Liaison Officer's meeting a few times. The Secretariat provided in this report pages 27-30 this is the effect of the exchange rate with regard to our budget. And then Secretariat identified that is actually neutral. Because exchange rate in this country fluctuated up and down. In our estimation, in the past 13 years it has come up to which is indeed stated in this paper as an attachment to the comprehensive report. We provided detailed figures for that issue. Please refer to that report.

As regards the query of Malaysia on pension, this is our proposal from our Secretariat that needs to be approved. The Secretariat would come up with a Study about the feasibility of the same in future. As for other projected expenditures, are related to our substantial work. We already have mentioned about this in our report please refer to page number 30 of the report for the detailed budgetary breakdown on this issue.

**Secretary-General:** Perhaps this is again a repeat appeal from the Secretariat for the Member States to reconsider the proposed increased contribution from Member states. What I would like to say here is that the Secretariat is duty-bound to inform Member State as to the financial affairs of AALCO. What my colleague has given you is a scenario where if we reach to a situation the Organization can no longer sustain financially what would be then the fall back position of this Organization. I think it is very important for us to take up seriously this issue. The best approach is always for asking for an increase in annual contribution, but I am also seeking, if there is any other proposal that Member States can suggest please do so. We have already looked at the arrears and we are working hard in requesting the defaulting State to pay their arrears. We have

done that. Dr. Fukahori has been going to Missions to negotiate with Countries having arrears. On our part the Secretariat is doing it. We are trying very hard to persuade Member States to contribute regularly. In fact I had floated this idea of seeking contributions from non-State actors a few years ago. Companies for example, where there is some common interest with them. I know that this is a very sensitive issue. But is there any other concrete proposal to get funds? We are reducing the expenditure. But from your part is there any concrete idea that you can help us in ensuring that we are financially stable. I do not want to come to a point where we are in an acute financial crisis and we have to call another extraordinary meeting. I understand you have to go through procedures, Malaysia for example said that it would not be implemented this year, because they have to go to Parliament. I understand that for every cent that you give it to Secretariat you are being questioned by the tax payers. We fully understand that. But we also have an obligation to inform you that when we face such a financial scenario what would be the position of the Organization. Sustainability means not just substantial sustainability but financial sustainability as well.

Looking at the increase, although it is 14 %, I must say if it is 14, 000 for a State to pay it could be 6, 000. But I understand the principle, most Countries are not objectionable to the increase in principle, probably you have to go through the bureaucracy, I understand that. But I want you to understand that we are also facing a situation that we may not be able to carry out the mandate that you have given us and as you can see the mandate keep on increasing. It is appalling to see in meetings that I have with ILC that when it comes to Asia and Africa we do not have interns even to support our ILC Members from Asia and Africa. You are alone in doing all the research. While the European side, the American side would have their interns helping their Members. I hope that on your side you fully understand our predicaments, our problems. I hope you would reconsider the proposal for an increased contribution from our Member State. This is what I wanted to say and I thank Madame President.

**President:** Thank you Mr. Secretary-General. The Secretary-General has highlighted the fact that on one side the Secretariat is mandated to revitalize and strengthen its working methods, and on the other side they have financial constraints. So if we really want AALCO to perform its mandate they would need extra finances and the Legal officers could participate in various fora. I will open the floor and I see Palestine seeking the floor. You have the floor.

**The Delegate of State of Palestine<sup>2</sup>:** Thank you Madame Chair, I need a clarification. I understand the financial situation of the Organization, but when we speak about Palestine, we speak about a unique situation. What I would like to point out here is that the situation of Palestine is not just concerned with Palestine alone, but it is a question of sharing the burden of Palestine and there is no comparison with the situation of Palestine. Therefore we hope again that the issue of our arrears will be seriously considered. In the near future, we hope that we will get an independent State to enable us to pay all the arrears and all contributions and also to contribute in helping this Organization to carry on its work. I thank you very much.

**President:** Any other delegation would like to take the floor. Yes, Sudan you have the floor.

**The Delegate of Sudan:** Madame Chairperson, since this is for the first time I am speaking in this Session, Sudan feels proud about the role being played by the Organization and the services

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

provided to the Member States especially issues such as the situation in Palestine and the unilateral laws imposed by some countries without resorting to the resolutions of international organizations or international law. There will be contributions by Sudan in order to come out with the positive results. About the request made by the State of Palestine, especially after Palestine has become the Member and Observer at the United Nations, the Sudanese delegation supports this trend for some countries especially Palestine because the situation of Palestine does not require any clarification or explanation. Thank you very much

**President:** Thank you very much. Any other Country wants to take the floor. You have the floor Japan.

**The Delegate of Japan:** First of all I would like to thank the Deputy Secretary-General for your explanation in detail about the proposed budget 2014. Before coming to Delhi, our delegation had heated discussions in Tokyo in Foreign Ministry. We read carefully the report of the Sub-Committee and the financial situation of AALCO, but at this moment we are not convinced about the proposed increase of the budget. We are not also convinced about the process of decision-making on the financial matter. Mr. Fukahori refereed to several meetings of Liaison officers here in Delhi. But we understand that we received a Report from our Embassy that very few Member States expressed their opinion and we are very concerned about the very low-level of attention to the financial matter. It is our view that we cannot accept this proposal. We have a question to the Secretariat: what are you plans or strategies to recover arrears. And also do you have any conclusion in the EPG as regards the deputation of Legal Officers from our Member States who can work at the Secretariat and whose salary paid by their respective governments. This is my question to the Secretariat.

**President:** Thank you Japan. I give the floor to the Secretary-General to respond.

**Secretary-General:** There are two questions that you have raised. In relation to the arrears that we had made it clear that we have a scheme of arrangement and we have negotiated with Countries that are in arrears. I think you can read in our Report. My colleague has worked very hard in trying to persuade Member States who are in default to pay their contributions /arrears. We have been doing it. On the second part, yes it is true that we have proposed that if it is possible for Member state to depute their Legal Officers to come to the Secretariat. I think it is up to the Member States to take up this proposal. It is beyond us. We request the States to send their Officers even if they are academics. The three deputies are involved in managing the Organization and at the same time they are also doing their substantive work. So if a Member State can agree on this we will be most happy to have your presence and that would of course would increase the number of Legal Officers. We are waiting for positive responses from our Member States. I hope I have answered your questions.

**The Delegate of Japan:** As far arrears, we fully understand the situation. But my question is what are you going to do to recover arrears? Also as regards the secondment, have you asked other international organizations to send someone?

**Secretary-General:** Not on a regular basis. We get assistance from IGO even the UN Specialized agency to help us in training. We are doing that now. For example, if we have a WTO Training programme they would send their Specialists to assist us. But not on a long stay. They can be with us for not more than one week. But that has been regularly done. We have

established this collaboration with WTO, UNODC and even to the extent of getting help from ICRC. We also seek expertise from Indian academia and Institutes such as Institute of World Trade. But they cannot put their Officers here at AALCO on a long-term basis. Because they are also required in their Organizations. Like I said, we would be most happy if we receive Specialist from Member States. It does not have to be on a three year term. It could be for a year or on a project basis. Perhaps on my side we have not come up with the scheme. We take up your suggestion and maybe we come up with a better attractive scheme. So what we need to do and I thank you for the suggestion, is to come up with a scheme.

As regards arrears, we are receiving arrears, we have the reserve fund, but I do not want to deplete the reserve fund and now at least we are safe and we are clear for three months. So we may put in the reserve fund whatever money that we have collected from the reserve fund. As I mentioned earlier, we do not want to get into a situation where we are using the reserve fund and we are going to have an acute financial crisis. The scenario that has been presented by Dr. Fukahori where 80% of the contribution money is used for maintenance and salary, I would not want that to happen. But if that happens what would be our action. This is the responsibility of all Member States. I have given you the scenario, please come out with some suggestions. Thank you.

**The Delegate of State of Qatar<sup>3</sup>:** We agree with the proposal made by Malaysia to delay the issue of implementation of the budget till the next session.

**President:** Is there any other State which wants to take the floor?. I see nobody. So it is now time to proceed with the adoption of the budget. Listening to the member States it seems that there is no insistence to adopt the proposal of the Secretariat to increase the budget. So it is proposed that we adopt the budget that was adopted in the lines of 2013. The Secretariat would amend the resolution and accordingly table a new resolution and budget plan as was adopted by the Member States for the year 2013 would be presented as the budget for 2014. If Member States are agreeable we will take that to be the decision. I see no one objecting. So that is the decision. Thank you.

We will now break for coffee and there after meet again for the Third General Meeting to discuss the agenda items “Environment and Sustainable Development” and “Palestine”.

**The meeting was thereafter adjourned.**

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<sup>3</sup> Statement delivered in Arabic. Unofficial translation from interpreter's version.

## **VIII. THIRD GENERAL MEETING**

**VIII. VERBATIM RECORD OF THE THIRD GENERAL MEETING HELD ON  
TUESDAY, 10 SEPTEMBER 2013 AT 11.45 AM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Session of AALCO in the Chair.**

**Madam President:** I call the Third General Meeting in order. The agenda item for deliberation is Environment and Sustainable Development and I invite Dr. Yasukata Fukahori, Deputy Secretary-General of AALCO to introduce this agenda item.

**Dr. Yasukata Fukahori, Deputy Secretary-General of AALCO (DSG):** Thank you Madam President.

Her Excellency Madam President; Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO; Distinguished Delegates, Ladies and Gentlemen;

It is my pleasure to introduce to the topic “Environment and Sustainable Development”. For well over the last 40 years this Organization has closely followed the international legal and policy responses concerning this issue. Our Contemporary focus is on three topics, namely Climate Change, Biological Diversity and Sustainable Development. Last year the international community witnessed a number of developments and commitments on all these three issues. The Secretariat has prepared this year’s brief, AALCO/52/HEADQUARTERS (NEW DELHI)/2013/SD/ S 10, outlining the international legal developments that pertain to them.

Excellencies, climate change is one of the most important environmental issues faced by the international community. Last year, we witnessed the Eighteenth Session of the Conference of Parties to the UNFCCC (COP18) and the Eighth Meeting of Parties to the Kyoto Protocol (CMP 8), which was held at Doha. The International Community also met at Bangkok in August 2012 and once again at Bonn in June and April 2013 for negotiations. COP 18 took place in the background of several reports from international expert bodies highlighting the growth in emissions and the catastrophic consequences it could bring forth. The Conference intended to turn its attention to ensure transparency in measurement of emissions, reporting by countries and mitigating actions. Negotiation of a work plan to meet the 2015 deadline set by the Durban platform and adopting a second commitment period under the Kyoto Protocol were the other important matters on the agenda. It can be said that considerable progress have been achieved at Doha by agreeing to the Doha Climate Gateway which amends the Kyoto Protocol and establishes a second 8 year commitment period, starting from January 2013 along with implications for noncompliance. In addition to this, a continuation of the existing mechanisms of interventions and strengthening of the reporting practices has also been agreed to. In continuation of this at the Second Session of the *Ad Hoc* working group on the Durban Platform for enhanced action, held at Bonn between April and May, efforts were directed at achieving a draft negotiating text by the time for COP 20 in 2015.

At the United Nations Climate Change Conference held at Bonn in June 2013, parties discussed some of the key issues such as developed country mitigation, guidelines for domestically

supported mitigation actions, the framework for the market and non-market approaches etc. While the Subsidiary Body for Implementation (SBI) achieved very little progress, the Subsidiary Body for Scientific and Technological Advice (SBSTA) made progress on a number of agenda items.

Even as negotiations last year have achieved results on some of the concerns, it needs to be noted that issues still remain unresolved. The Adoption and Ratification of the Doha Amendment remains a challenge as most of the Annex -1 Parties have been reluctant so far to adhere to this Amendment. While the negotiations at Bonn and Bangkok have focused on the Ad Hoc Working Group on Durban Platform for Enhanced Action and an 'instrument of legal form' replacing the Kyoto Protocol, it needs to be asserted here that any such instrument must be based on the concepts of historical accountability, common but differentiated responsibilities, justice and equity.

Excellencies, Ladies and Gentlemen, With respect to our concerns on the Protection of Bio-Diversity, at the Eleventh Meeting of the Conference of Parties to the Convention on Biological Diversity (CBD), held at Hyderabad, India, notable progress was achieved on several fronts. The Developed Countries have agreed to double the funding to support the conservation efforts in the developing countries along with several measures for conservation. However, it needs to be noted that more efforts are required to streamline and implement the initiatives to document the wealth of traditional knowledge among the indigenous and local communities. It also essential that we adopt a precautionary approach while we adopt biotechnological innovations. Addressing concerns regarding gender equity and achieving greater political commitment to expedite the process of ratification of the Nagoya and Cartagena Protocols along with achieving the necessary financial technical support for capacity building are the other challenges that remain before us.

Excellencies and Distinguished Delegates, Pursing "Sustainable Development" without focusing on legal dimension is no longer a viable option for the International Community. At the 27<sup>th</sup> Session and the First Universal Session of the UNEP Governing Council/Global Ministerial Environmental Forum, held at Nairobi, Kenya, the International community expressed its concerns and exchanged views on achieving this. Parties highlighted the need to articulate an environmental agenda that addressed issues such as energy, employment and poverty. At RIO+20, on the Implementation of para. 88 of the "Future We Want", ministers recognized the need to advance towards a participatory and effective UNEP that focuses on implementation. The Ministers, *inter alia*, called for ensuring adequate financial resources, strengthening the science – policy interface and the strengthening of the regional and sub-regional presence of the UNEP. On Green Economy, the involvement of governmental agencies, capacity building, addressing technological and financial barriers and reforming perverse subsidies that distort price signals and efficient resource allocation were all pointed out as barriers to be crossed to achieve a transformation.

Excellencies, Distinguished Delegates, Ladies and Gentlemen, before I end this brief introduction, may I draw the framework for focused deliberation:

- i. Issues touching the forthcoming Protocol/Legal instrument on Second-Term Commitment of countries regarding Climate Change.
- ii. Legal Responses to protecting and documenting traditional knowledge, and



- iii. The Importance of Green Economy and addressing barriers in the transition to Green Economy.

I thank you all for your kind attention.

**President:** Thank you Deputy Secretary General Fukahori. I now call upon Nepal.

**The Delegate of Nepal:** Thank you Madam Chair.

Distinguished Delegates, Excellences, Ladies and Gentleman, I would like to recall the meeting of Heads of State and Government and high-level representatives at Rio de Janeiro, Brazil, in June 2012, with the full participation of civil society, renewed our commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations. We recognized that poverty eradication is the greatest global challenge facing the world today and an indispensable requirement for sustainable development and expressed our commitment to freeing humanity from poverty and hunger as a matter of urgency.

It was also reaffirmed the need to achieve sustainable development by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting the integrated and sustainable management of natural resources and ecosystems that supports, inter alia, economic, social and human development while facilitating ecosystem conservation, regeneration and restoration and resilience in the face of new and emerging challenges. We have emphasized green economy in the context of sustainable development and poverty eradication, and the institutional framework for sustainable development.

We also reaffirmed our commitment to the full implementation of the Programme of Action for the Least Developed Countries for the Decade 2011–2020 (Istanbul Programme of Action), the Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, Advancing integration, implementation and coherence: assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges.

Madam Chair, From the perspective of sustainable environment and development, I would like to draw your attention, Nepal is facing from three special situations: It is least developed country where poverty is big challenge to address, it is landlocked country which has no sea cost therefore rely on transit countries' route to access sea which caused high cost for transport of goods. Finally, it is mountainous country. As a result of climate change Nepal is being affected from food and energy crises, biodiversity loss and increasing frequency and intensity of natural disasters which have added burdens of coping, particularly for vulnerable communities. There is direct link of environmental issues with poverty, climate change, loss of biodiversity and land degradation.

Madam Chair, The poor and mountainous countries contribute least to global warming but are the most vulnerable to climate change and erratic weather patterns. They have least capacity to address these problems. Therefore, the global community needs to support most vulnerable and poor countries in effectively addressing the adverse impacts of climate change and for using the opportunities created by it to improve livelihoods and achieve climate-friendly development. The ability of least developed and mountainous countries are limited for addressing the financial, food and energy crisis and therefore there is need for a mechanism to help these countries to improve their resilience.

Mountain systems provide ecosystem goods and services that are essential for sustaining the local, regional and global environments and the economy. About half of the global biodiversity hotspots are in mountains. However, providing these goods and services to the global community has high economic and social costs in the mountain countries. Nepal, with only 0.1 percent of the global landmass, has 2.5 percent of the global biodiversity. It has the 10<sup>th</sup> richest density of flowering plants; four percent of the global total for mammal species and 9% of the bird species, and its mountains supply water to the major Asian rivers. The opportunity costs of this natural capital have not been quantified, and the need to providing mountain people incentives for conserving the resource has yet to enter the global debate. Such concerns of the least developed mountain countries remain unaddressed in the green economy framework. This omission needs to be corrected by establishing global, regional, national and local mechanisms to compensate and reward mountainous communities for the services they provide.

Climate change is a sustainable development issue. Climate resilient development infrastructure can be an opportunity for mitigating the impacts of climate change, and also for promoting environmentally sound and sustainable development through the use of clean technologies.

Nepal has been taking various measures to meet these challenges. All development efforts are driven towards poverty reduction in line with Millennium Development Goals. Green economy is its targets and emphasized in agriculture and food security. It is implementing Pilot Program for Climate Resilience financed by the Climate Investment Funds. It has prepared the Strategic Program for Climate Resilience which complements the National Adaptation Program of Action (NAPA), Climate Change Policy and Local Adaptation Plan of Actions. Thank you.

**President:** Thank you Nepal. I now call upon India to make its statement.

**The Delegate of Republic of India:** Thank you Madam President.

My delegation wishes to thank the Deputy Secretary-General for his introductory remarks. We also thank the AALCO Secretariat for their report on the agenda item. One of the greatest achievements of Durban Conference was that the industrialized countries agreed to second “commitment period” of the Kyoto Protocol, which required them to reduce the emissions in a legally binding manner, potentially up to 2020. Climate Change identified as key development issue is extremely relevant and has been attributed to increased concentration of Green House Gasses (GHG) in the atmosphere due to various human activities. India is committed to pursue its social and economic development objectives in a manner not to exceed the average per capita GHG emissions of the developed countries. This effectively puts up a cap on our emissions,

which will be lower if our developed country partners choose to be more ambitious in reducing their own emissions. UN Climate Chief (Ex) Yvo De Boer recognized India's sincere efforts in joining a growing contingent of developing countries that are making very significant efforts to show what they are doing to address Climate Change and indicate what more they are willing to do.

At the UN Climate Change talks in Doha, India took an active role in asking developed nations to commit to ambitious carbon dioxide emission cuts and pledge money to combat the global challenge. India called on developed nations to raise their low level of ambitions under the second commitment period to a level required by science. India shares the view of other developing countries that the Climate Change negotiations must be based on the principles of "equity" and "common but differentiated responsibility" enshrined in the UN framework Convention on Climate Change adopted in 1992.

The so called Green Climate Fund set up after 2010 talks in Cancun, Mexico was referred to as an empty shell by some negotiators in Doha talks, had no real meaningful capitalisation for fulfilling its functions of financing the needs of developing countries in order to reduce their Carbon emissions. India reiterated its belief in outstanding issues of **shared vision, mitigation, adaptation, technology and financing** laid in Bali Action Plan to be addressed in Durban platform whereas the developed nations called for a fresh start for the world of 2020 and beyond.

Madam President, India shares the common responsibility of doing things in a fair and equitable manner but the massive inequitable consumption of resources by some has created a deficit when there is hardly enough for those whose needs are yet to be met. Imperative for equity has to be respected.

At the 27<sup>th</sup> Session of the Governing Council/Global Ministerial Environment Forum, an outcome of Rio +20 held at UNEP Headquarters in which all UN members states took part reflected the key role of the Council as a policy making forum on the environmental dimension of sustainable development and it was urged that all representative should engage with their Governments in drafting policies and programmes for the post-2015 development agenda that would ensure investment in environment and a green economy as a sound insurance policy for the future. India feels the need to move from dialogue and discussion to concrete and tangible actions to accelerate the transition to more sustainable, inclusive and enduring economies.

Madam President, India feels the need to summon the imagination to balance the costs that would be incurred in the present with the benefits that will accrue to future generations in order to achieve the targets set in "The Future We Want", outcome document of Rio+20. The task before each of us is to give practical shape and content in a manner that allows each country to develop according to its own national priorities and circumstances.

Poverty eradication was acknowledged as priority area for developing countries in the 1992 Rio Summit. Those living at the subsistence level cannot bear the costs of adjustment and their livelihood consideration is important in determining how scarce natural resources such as land, water and forest are used. The severe deterioration of land and water resources is already affecting the wellbeing of people living on the edges of subsistence. India cannot and will not

take emission reduction targets because poverty eradication and social and economic development are first and over-riding priorities. However, we continue to quantify our efforts to mitigate Climate Change and reduce emissions by a broad indicative number, although the reductions would still not be bound by legal obligation.

Sustainable development mandates the efficient use of available natural resources. We require promoting universal access to energy and shifting to cleaner energy resources by addressing various technological, financial and institutional constraints. We, in India are implementing an ambitious National Solar Mission and the mission for enhanced energy efficiency which contains initiatives designed to improve the efficiency use across sectors as a critical option for our energy security.

The National Green Tribunal, established in India is a special endeavour to have a dedicated environmental court after Australia and New Zealand, having a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the Polluter Pays Principle and powers to enforce the Precautionary Principle.

India's National Action Plan on Climate Change shows India's investment in special initiatives that the country has undertaken domestically. Reforestation as priority drive would add 0.8 million hectares of forest per year, coupled with efforts to improve forest management conservation and regeneration and to boost local capacity and job creation for some of India's poor communities. These initiatives are estimated to offset eleven percent of India's annual emissions.

Despite our increasingly proactive engagement on climate issues, India has not wavered from its position that equity concerns must underlie the International Climate Negotiations. We insist that despite a common goal of global climate stabilisation, each country has to have a different responsibility to address the problem. Thank you.

**President:** Thank you Nepal. I now give the floor to the Qatar.

**The Delegate of the State of Qatar<sup>1</sup>:** Thank you Madam President.

Excellencies, Heads of Delegations, and Members of Delegations, Ladies and Gentlemen.

At the Outset, I would like to thank the AALCO for continuously including this topic "Environment and Sustainable Development" in the agenda of the annual sessions of the Organization as this topic has particular importance to both the Member States of AALCO and the international community.

Almighty God has gifted Asian and African continents with the outstanding and huge environmental resources and components, which are a large portion of the world's resources, and

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<sup>1</sup> The Statement was delivered in Arabic. Official translation from Arabic translator's version.

this, of course, remains an issue of concern for all countries to the various environmental issues, because they pose a serious impact on their societies and their people.

In this context, I would like to stress that State of Qatar believes that ensuring sustainable economic and social growth is not possible without a comprehensive environmental vision that put, at the forefront of the priorities, preserving the environment for future generations of Qatar. Qatar National Vision 2030 aims to guide Qatar towards striking a balance between development needs and the protection of natural resources.

Qatar National Vision focuses on forming legal framework and effective environmental institutions to safeguard the environmental heritage of Qatar, as well as the Qatar National Vision 2030 stresses the importance of educating citizens of their role in protecting the environment of the country, in the interest of the health and safety of their children and for Qatar's future generations.

These aspirations relating to the economy of Qatar and its society, people and environment which the Qatar National Vision 2030 included, will be translated through a national strategy for the development leading the process of preparing the General Secretariat for Development Planning and in its formation private and public sectors, civil society and citizens of Qatar's share through a cooperative mechanism which ensures the bright future of Qataris.

In this context, the State of Qatar focusses on the technical and legal aspects of environmental issues which are the two sides of the same coin. The protection of the environment against all forms of infringement and damages is not possible without technical and legal fight to deal with these harmful acts to the environment.

Ladies and Gentlemen. I would like in brief to put light on some efforts made by State of Qatar in the field of protection of environment are following:-

Firstly, to strengthen the institutional role of the Environmental Protection. The State of Qatar has established a ministry specialized in the environment affairs is working to provide protection for the Qatar environment and national development and sustainability of living and non-living natural resources and quality assurance and environmental health through environmental awareness and proposed environmental legislation, policies and national capacity-building in accordance with the principles of community partnership and sustainable development, best practices and international standards to achieve excellence locally and global leadership of the State of Qatar in the environmental field.

Secondly, promulgating effective national legislative framework. The State of Qatar has an effective legislative system to preserve the environment and to enable state institutions to play their role and achieve its objectives. This system includes various related legislations that are as following:

- Act No (1) On the prevention of agricultural land levelling and sand beaches for the year 1993
- Act No (30) The issuance of the Environmental Protection Act of 2002

- Act No (30) The issuance of the Environmental Protection Act of 2002
- Act No (5) Organized trafficking of endangered fungal organisms for the year 2006
- Act No (24) of 2010 promulgating a law (system) on pesticides in the Gulf Cooperation Council for the Arab States of Gulf
- Act No (25) 2010 promulgating a law (system) on seeds and seedlings in the countries of the Cooperation Council for the Arab States of the Gulf

Ladies and Gentlemen, In light of the attention of the State of Qatar solving environmental problems and providing effective solutions for the sustainable development, the State of Qatar has hosted at the end of the 2012 the United Nations Conference on Climate Change. Where, 9000 participants have participated in the conference, including 4356 government officials and 3956 representatives of the bodies of United Nations, Non-governmental organizations and civil society organizations and 683 media members. The negotiations in Doha focused on ensuring the implementation of conventions were reached at previous conferences, which ended with a successful outcome in support of climate and environment issues at the international level. That was a brief overview about the vision and efforts of the State of Qatar in the field of environmental issues and sustainable development, which reflects the significance that the State of Qatar attaches to this topic. Thank you.

**President:** Thank you Qatar. I now give the floor to the People's Republic of China.

**The Delegate of People's Republic of China:** Thank you Madam President.

Madam President, 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 in 1992, the World Summit on Sustainable Development in 2002, and the UN Conference on Sustainable Development in 2012 provided guidance and action plans on sustainable development for the international community as well as for individual countries. During the past 20 years, the guidance and action plans mentioned above contributed a lot to the improvement of sustainable development and human welfare. The Framework Convention on Climate Change, the Convention on Biological Diversity and the Convention to Combat Desertification, have made positive achievements and played an indispensable role in their respective areas.

Madam President, Climate change is one of the most prominent issues faced by the international community. It is a development issue in nature, and sustainable development is both its aim and the right path for effective solution. In order to address both development and climate change challenges and uphold right to development, the developing countries should, under the framework of sustainable development, take economic development, poverty eradication and climate protection in a coherent manner.

China participates and plays constructive role in the international climate change cooperation. We welcome the outcomes of the Doha conference in particular those on the second commitment period of the Kyoto Protocol, which will enhance the implementation of UNFCCC. Regarding the negotiation on a 2015 agreement for post 2020 arrangement, we suggest that all parties, based on the principles of equity and common but differentiated responsibilities, to work further

towards a fair and equitable regime addressing climate change. During negotiations, all parties should respect and accommodate others' core concerns, taking full account of both the historic responsibilities of developed countries and the practical needs of developing countries. We would like to underline that, developing countries, most of them from our Asian and African region, as a community of common interest, should enhance solidarity and coordination, and work together to urge developed countries, according to their historic and legal responsibilities, to fulfill their obligations by taking the lead in reducing greenhouse gases emissions and providing financial, technical and capacity building support for developing countries. This is the only way for us to maintain our long-term and fundamental interests.

Madam President, we welcome the outcomes of the UN Conference on Sustainable Development in 2012, which build consensus to promote global sustainable development. To enhance international cooperation in this regard, we should adhere to the Rio spirit and principles, especially the principle of common but differentiated responsibilities, respect the right of countries to choose independently their modes of sustainable development, and strive to address the concerns of developing countries.

Madam President, as a developing country, China has prominent issues on environment protection and sustainable development. Fully recognizing the severity and urgency of these issues including climate change, China, with a strong sense of responsibility for human's long-term development, stands firm on the path of sustainable development and has taken positive and strong policies and measures, which embodies our unrelenting efforts in and contributions to addressing environmental issues. To enhance our capacity on sustainable development, the Twelfth Five-year Plan delivered by the Chinese government has underlined as follows: in five years, China, focusing on energy conservation and emission reduction, will establish the concept of green and low-carbon development, and accelerate the establishment of resource-saving and environment-friendly patterns on both production and consumption. With an open and pragmatic attitude, China is ready to deepen its cooperation and communication with all concerned parties, in order to make new contributions to environment protection and sustainable development of mankind. Thank you, Madam President.

**President:** Thank you China. I now give the floor to Kenya.

**The Delegate of Kenya:** Thank you. Distinguished delegates,

Kenya recognizes that the environment and natural resources are valuable national assets that must be sustainably managed for present and future generations. We continue to engage in international dialogue aimed at addressing environmental sustainability issues through participating in meetings of the Conference of Parties for the conventions which we are a party. These include the Convention on Biodiversity (CBD), UN Convention to Combat Desertification (UNCCD) and the UN Framework Convention on Climate Change (UNFCCC). Kenya was pleased to host the 27<sup>th</sup> session of the Governing Council /Global Ministerial Environment Forum held at UNEP Headquarters in Nairobi in February 2013.

Kenya actively participated in the Rio+20 Summit Conference on sustainable development held in Rio de Janeiro, Brazil in 2012, where key decisions were made on environment and sustainable development. Kenya is now in the process of implementation of Rio+20 outcomes.

Distinguished delegates, The following activities are being undertaken by the Government of Kenya:

- I. Finalizing the Multilateral Environmental Agreements (MEAs) strategy which will assist Kenya to implement MEAs in a coordinated manner and to maximize impacts.
- II. An initiative to update and review National Biodiversity Strategy Action Plan (NBSAP) for the period 2010-2020. The strategy will address the critical issues and challenges facing biodiversity conservation in the country.
- III. The process of finalizing the assessment and documentation of the Natural capital. This will result in the establishment of a database of the natural capital to assist in conservation and valuation of natural resources in the country.
- IV. On climate change issues, the country has mobilized key stakeholders to come up with programs and projects to mitigate and adapt to climate change. In this regard, Kenya has finalized the development of a climate change response strategy as well as a climate change action plan. The plan addresses the options for a low-carbon climate resilient development pathway as Kenya adapts to climate impacts and mitigates growing emissions. The plan also addresses the enabling aspects of finance, policy and legislation, knowledge management, capacity development, technology requirements and monitoring and reporting.
- V. The country has also programs and projects to combat desertification. These include mainstreaming of targeted intervention areas in the key development plans to guarantee sustainability.
- VI. The country has embraced sound management of chemicals as provided by the Multilateral Environmental Agreements (MEAs) dealing with chemicals. We are in the process of updating the National Implementation Plan (NIP) on chemicals management. Further, there is an initiative on the management of mercury to safeguard the environment and health.
- VII. Kenya is also focusing on phasing out Ozone Depleting Substances (ODS) and has programs on advocacy and other alternatives.

However inadequate financial and human resources remain challenges in achieving the sustainable environment development.

**President:** Thank you Kenya. I now give the floor to Thailand.

**The Delegate of Kingdom of Thailand:** Madam President, Excellencies, Distinguished delegates,

Environment and Sustainable development is an important matter for Thailand. For decades, His Majesty King Bhumibol Adulyadej's philosophy of "Sufficiency Economy" has been ingrained in our national development agenda. Our country's vision in development has always been about sustainability, for a purpose of securing a sustainable future for all.



Thailand is of the view that it is essential for international community to build on the results of the Rio+20 Summit. As for Thailand's part, we submitted the outcome of the Summit to the Cabinet and as a result, the committee on Sustainable Development has recently been established. The Committee which is chaired by the Prime Minister of Thailand comprises of many relevant agencies, inter alia, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Social Development and Human Security, Ministry of Agriculture and Cooperatives, Ministry of Transportation, Ministry of Natural resources and Environment, Ministry of Energy and Ministry of Commerce. To reaffirm our commitment, Thailand is also in the process of drafting a country strategy on green growth for the year 2014 to 2015. The Strategy aims to promote six policies, namely, green growth production and consumption; the use of economics and legal instruments in environmental management; readiness of all sectors in adapting to climate changes and natural disasters; sustainable management and use of natural resources; and creation of green society.

As a member of the Open Working Group of the General Assembly on Sustainable Development Goals, the Royal Thai Government, in collaboration with ESCAP, co-hosted the Asia-Pacific Ministerial Dialogue: from the Millennium Development Goals to the United Nations Development Agenda beyond 2015 in Bangkok in August this year. It was the first regional Ministerial-level event to discuss the United Nations development agenda beyond 2015 following the release of the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda. Thailand hopes to continue contributing to the on-going global processes.

Madam President, Distinguished Delegates, Thailand has a grave concern over the impacts of climate change we are experiencing today. It is essential for us all to build a strong and healthy environment to minimize the effects of climate change to our natural resources. Climate changes are weakening our natural resources across the country and around the world. Thailand emphasizes the importance of adaptation as well as loss and damage for developing countries. Particular effort should be given to enhance climate resilience, risk management, risk reduction, and disaster response. As one of the most disaster prone countries, Thailand stands ready to work with international community towards protecting our hard-earned development achievements from being shattered by natural disasters. Thailand hopes to see that developed countries who have taken the second commitment period of Kyoto Protocol will successfully raise their ambition level within the year 2014. As well as developed countries which are not yet part of Kyoto Protocol or have not joined the Second Commitment Period, they should also share the same responsibility in raising their ambition within the same period of time and seriously take a comparable mitigation commitment under framework of the UNFCCC.

Madam President, Distinguished Delegates, Water security and water-related disasters are matters that we should never fail to address. In May this year, Thailand and the Asia-Pacific Water forum successfully hosted the Second Asia-Pacific Water Summit. As a result, the Chiang Mai Declaration was adopted. The forum allowed leaders in the region to demonstrate their promises to ensuring water security and the efficient use of water resources.

For the future and on the related matter, the Royal Thai Government on Disaster Risk Reduction in June 2014 with the United National Ministerial Conference on Disaster Risk Reduction (UNISDR). This of course will be another forum for the region to address one of the most challenging regional and global issues, as well as sharing knowledge on how to use science,

technology and innovation (STI) to develop more comprehensive early warning systems. Thailand believes that STI and information and communication technologies are essential components in achieving the goal of sustainability.

Madam President, Last but not the least, the issue of biological diversity is equally vital. In line with the global commitment made in the Convention on Biological Diversity, Cartagena Protocol and Nagoya Protocol, Thailand is expeditiously drafting a nine-year strategic plan to manage biological diversity in the country. Thailand is also going through internal legal processes and constructively working on a detailed roadmap and proposals to successfully ratifying Nagoya Protocol in the near future.

I thank you, madam President.

**President:** Thank you Thailand. I now give the floor to Japan.

**The Delegate of Japan:** Madam President, on the question of climate change, Japan considers that the current international efforts are being focused upon how to attain the goal of a fair and effective post-2020 framework applicable to all parties, and all possible endeavours have been exerted internationally to reach agreement on the details of that framework and achieve the 2015 Agreement.

Therefore, the forthcoming meeting of COP19 to be held in Warsaw, Poland will be a crucial meeting to deliberate intensively upon the elements to be included in the future framework, and determine specific work schedule for the next two years towards the 2015 Agreement.

It should be stressed that the future agreement should be one which would duly reflect the present world's real situation of greenhouse gas emissions by all parties.

Madam President, With regard to the question of Bio-diversity, at the COP 11 held in Hyderabad, India in October last year, many important decisions were taken as a follow-up of the previous COP held in Nagoya, Japan, including agreement in principle on the goal of Resource Mobilization of doubling international financial flows to developing countries.

A mid-term review of implementation of Aichi Targets is to be conducted by 2015. In order to preserve bio-diversity, it is important to strengthen internationally coordinated cooperation among the countries concerned. Japan wishes to further promote cooperation in these endeavors with other Asian and African countries.

Madam President, How to follow up the Rio+20 and the strengthening of the UNEP are also very important tasks. Japan believes that the Rio+20 Conference has brought about an important outcome, such as highlighting the importance of Green Economy, and integrating sustainable development goals (SDGs) into 2015 development goals, which could lead to progress in international endeavours in the future to achieve sustainable development.

Japan attaches importance to the developing countries making transition to Green Economy, and announced its Green Future Initiatives on the occasion of Rio+20 Conference. Japan has been advocating the innovative concept of city building such as “Environmental Future City Vision”. 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. Japan has also a high tribute to the positive results of the 27<sup>th</sup> Session of the UNEP Governing Council/ Global Ministerial Environment Forum (18-22 February 2013, Nairobi, Kenya), in particular, on such institutional reforms and arrangements which are necessary to strengthen its role so that the UNEP would be able to assume a central role in implementing environmental dimensions of sustainable development within the UN system.

Thank you.

**President:** Thank you Japan. I now give the floor to Republic of Korea.

**The Delegate of Republic of Korea:** Madam President; Distinguished Delegates; climate Change is probably the most serious problem for the survival of the whole ecosystem, including humanity. Since the inception of the United Nations Framework Convention on Climate Change (UNFCCC) the international community has made efforts to develop an effective legal regime on climate change.

In 2011 in Durban, countries agreed to end the Kyoto Protocol by 2019 and last year in Doha, countries started debating what the post-2020 should look like. The UNFCCC is built on the principle of common but differentiated responsibilities. The new system will have to respect this principle. The principle does reflect historic responsibilities and does ask developed countries to do more. However, it does not lose sight of every country's responsibilities. Therefore the new protocol or any other legal instrument should invite all countries, both the developed and the developing, to take action. The new system should be flexible for every country to participate. Taking this opportunity, my delegation would like to thank all the member States for their support to the Republic of Korea in hosting the Secretariat of the Green Climate Fund last year. This Fund was devised support to developing nations mitigation efforts. I would like to expect continued support from all member States so that the Fund can be an effective system in tackling climate change.

Last but not least, my delegation would like to appreciate the Indian Government for the leadership it has shown in hosting the 11<sup>th</sup> Conference of Parties to the Convention on Bio-Diversity. Next year, Korea will host the 12<sup>th</sup> Conference of Parties in October. The delegation wishes that it will turn out to be a great success and I wish all the member States of AALCO to participate in this process. Thank you.

**President:** Thank you Republic of Korea. I now give the floor to Malaysia.

**The Delegate of Malaysia:** Thank you Madam President. The honourable Secretary-General; Excellencies; Distinguished Delegates; Ladies and Gentlemen.

Madam President, Malaysia takes note that the decision of the 18<sup>th</sup> Conference of Parties to the UNFCCC wished that among other things the Ad Hoc Working Group on the Durban Platform for Enhanced Action should continue and streamline its work and reaffirm its commitment towards negotiating the text of a new legal instrument. This would be applicable to and agreed upon by all parties to the UNFCCC and have legal force under the Convention.

Madam President, Malaysia wishes to underscore that the ADP is not a forum to renegotiate the rights or reinterpret the Convention. In this regard, the new legal instrument should be based on the provisions of the Convention; particularly the principles entrenched in Articles 3 and 4 of the Convention. In this aspect Malaysia emphasizes the importance of Article 4 paragraph 7 of the Convention in formulating the said new legal document. Additionally, the formulation of the new legal instrument shall be based not only on scientific finding, but also on the principle of common but differentiated responsibilities, the respective capabilities of parties, as well as the notion of sustainable development. It shall also address the 4 important pillars of obligations, adaptations, finance and development and transport technology, as well as capacity building.

Madam President, in regard to the Kyoto Protocol, Malaysia notes that the parties to the Kyoto Protocol have adopted the Doha amendment to the Kyoto Protocol by decision CMP 8 at the 8<sup>th</sup> Session of the Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol held in Doha, Qatar, in December 2012. Malaysia notes that the amendment to the Kyoto Protocol established a set commitment period to Annex 1 and 3 from 2013-2020. As a party to both conventions of the Kyoto Protocol, Malaysia welcomes the decision to amend the Kyoto Protocol to establish a second commitment period as it is the only existing legal framework under which developing countries undertake quantitative commitment to reduce greenhouse gas emissions for the eight-year period spanning 2013 to 2020. Malaysia believes that with the amendment, developed country parties to the Kyoto Protocol that have nevertheless not been willing to adopt emission reduction targets for the second commitment period, or have never ratified the Kyoto Protocol, should, in the true spirit of the Convention, undertake to reduce greenhouse gas emission in a comparable manner to the Kyoto Protocol second commitment period, and not shift the burden of reducing emission to developing countries.

Madam President, therefore in the context of the existing AALCO mandate to continue to monitor the progress in the implementation of the climate negotiation, Malaysia would like to propose to AALCO to streamline the AALCO member State views and position on this matter, and for the respective AALCO member States to bring forth such views and position in future UNFCCC negotiations.

Madam President, for the initiative under the Access to Benefit Sharing, Malaysia acknowledges the need to put in place an effective implementation to internalize the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from Utilization to the Convention on Biodiversity. Malaysia continues to make efforts to unite its national legislation to facilitate its ratification of the Nagoya Protocol.

Madam President, in addition to this discussion, Malaysia wishes to record our national plan in addressing environmental protection as mentioned by the Malaysian Head of Delegation in his General Statement. Malaysia believes that initiatives at the domestic level are the key to future

regional and global legal cooperation to achieve sustained, inclusive and equitable economic growth, sustainable development and eradication of poverty and hunger, as envisaged in the document of the future we want. In this regard, Malaysia would like to welcome AALCO Member States and AALCO Secretariat's proposal for sharing best practices and enhancement of cooperation in this particular area of discussion.

Madam President, last but not least, Malaysia would like to support AALCO in urging AALCO Member States in actively participating and express their approaches, in particular their stand on common but differentiated responsibilities as entrenched in Article 3 of the Convention, at the upcoming negotiation on environmental issues. Thank you, Madam President.

**President:** Thank you Malaysia. I now give the floor to the Democratic People's Republic of Korea.

**The Delegate of Democratic People's Republic of Korea:** Thank you Madam President.

The humanity has been making great efforts for a long time to realize their dream of righteous and equal world, clean and green Earth.

International conventions and protocols for environmental protection such as "United Nations Framework Convention on Climate Change" and "Kyoto Protocol", and United Nations Millennium Development Goal were adopted and many countries are endeavouring and cooperating with each other for their implementation.

Today, environmental issues, particularly the issue of climate change are a vital issue for not only contemporary generation but also future of human race.

Climate change is seriously detrimental to socio-economic development and human activities, and developing countries with weak capacity to cope are bound to be affected most.

It is important that the developed countries should fulfil their duties and play greater role in reducing greenhouse gas emissions, and help and cooperate the developing countries technologically and financially to improve their ability to cope with the climate change.

Madam President, Today, under the guidance of our supreme leader Kim Jong Un, the DPRK government, considering the environmental protection as its important political task, strives constantly to complete the domestic laws for protection and development of natural environment. Such domestic laws include Law on Environment Protection, the Forest Law, Law on Water Resources, Law on Protection on Useful Animals, Law on the Program of Land Development, Law on the Environment Impact Assessment, and Law on Weather and so on.

We are also fulfilling our obligations under relevant international treaties such as "United Nations Framework Convention on Climate Change", "Kyoto Protocol", "Convention on Biological Diversity", and "Vienna Convention for the Protection of the Ozone Layer" which DPRK is a party to.

The DPRK government pays its first attention to enhancing combustion efficiency of coal combustion facilities, and preventing air pollution by purifying exhaust gas, and encourages the introduction of advanced energy efficiency technology as well as the development of renewable energy.

In future, we will strengthen the cooperation with all the countries in building new peaceful and prosperous world, and make a great contribution to the efforts of the international community to achieve the Millennium Development Goal. We will also strengthen the regional and international cooperation in the environmental protection of Earth and fulfil our duty as established in the “United Nations Framework Convention on Climate Change”. Thank you.

**President:** Thank you DPR Korea for the intervention. With that we have completed the deliberations on the agenda item environment and sustainable development. We will now move on to our next agenda item, The Law of the Sea.

#### **AGENDA ITEM: THE LAW OF THE SEA**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair.**

**President:** Good afternoon every one. Now we will take up the item “Law of the Sea” and I request AALCO’s Deputy Secretary-General, Mr. Feng to present his introductory statement.

**Mr. Feng Qinghu, Deputy Secretary-General:** Hon’ble Madam President, Hon’ble Ministers, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

It is a great pleasure for me to introduce the Secretariat’s Report on the agenda item, “The Law of the Sea” contained in Secretariat Document No. AALCO/52/HEADQUARTERS (New Delhi)/2013/SD/S 2. The Report contains *inter alia*, information relating to the Status of the United Nations Convention on the Law of the Sea (UNCLOS) and its Implementing Agreements; Thirtieth and Thirty-First Sessions of the Commission on the Limits of the Continental Shelf (CLCS); Eighteenth Session of the International Seabed Authority (ISBA); Twenty-Second Meeting of the States Parties to the UN Convention on the Law of the Sea; Thirteenth meeting of the UN open-ended informal consultative process on oceans and law of the sea; and the consideration of the Oceans and the Law of the Sea issues at the Sixty-Seventh Session of the UN General Assembly.

Madam President, the United Nations Convention on the Law of the Sea (UNCLOS) popularly known as the “Constitution of the Oceans” is quickly moving towards universal participation. Currently, 165 States are parties to the UNCLOS, including 40 States who are members of AALCO. It could be hoped that all the Member States of AALCO would soon accede to the Convention and also to the two implementing agreements.

Madam President, AALCO has had a long and storied history with “The Law of the Sea” in general and UNCLOS in particular. The agenda item, “The Law of the Sea” was first taken up for consideration at the initiative of the Government of Indonesia in 1970, since then, this agenda item has been considered as one of the priority items at the successive Annual Sessions of AALCO. In the negotiations of United Nations Convention on the Law of the Sea (UNCLOS),

1982, particularly, the areas relating to the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States, the AALCO's contribution is well known at the international level.

The year 2012 marked the thirtieth anniversary of the coming into force of the UNCLOS and in commemoration of this historic event the AALCO organized a Legal Experts Meeting on the 5<sup>th</sup> of March, 2013, in collaboration with the Legal and Treaties Division of the Ministry of External Affairs of India. Notable legal luminaries such as Mr. B. Sen, the first Secretary-General of AALCO, Shri Pinak Ranjan Chakravarthy, Secretary (ER), Ministry of External Affairs, Government of India, Dr. Neeru Chadha, Joint Secretary, and the Legal Advisor, Ministry of External Affairs, Government of India, and Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, United Nations, were present at this event.

The topics under discussion at the Legal Experts meeting included: Dispute settlement under UNCLOS; Current challenges in the preservation and protection of marine environment; Issues relating to piracy and maritime security; and, AALCO's contribution to UNCLOS. Stellar presentations were given by renowned scholars of the Law of the Sea such as, H.E. Mr. Gudmundur Eiriksson, Dr. Moritaka Hayashi, Mr. Rajiv Walia of the UNODC, Dr. Sunil Aggarwal, Dato Zulkifli Adnan, Dr. Luther Rangreji. Prof. Yogesh Tyagi, Mr. H.P. Rajan, and Ms. Ticy Thomas.

Madam President, the International Tribunal for the Law of the Sea must be recognized for delivering its landmark judgment regarding the *Dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal* on 14 March 2012. This was the first maritime delimitation case heard by the ITLOS and signifies ITLOS' growing recognition as a convenient, competent and expeditious forum for maritime disputes of this magnitude. This judgment is the first to be handed down by the Hamburg Tribunal in a maritime delimitation case. It deals with novel questions of the law of the sea, including the delimitation of the continental shelf beyond 200 nautical miles and the relationship between such delimitation and the work of the Commission on the Limits of the Continental Shelf. It is likely to be of major significance for many States with extended continental shelves. This judgment came in the wake of the advisory opinion delivered on 1 February 2011 in respect of *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* the previous year. The year 2012 was also a busy year for ITLOS, which held hearings in several other cases as well; a by-product of the forums growing visibility and viability in the international arena.

Madam President, the Commission on the Limits of the Continental Shelf (CLCS) held its thirtieth Session at the UN Headquarters from 30 July to 24 August 2012 and its thirty-first Session from 21 January to 8 March 2013. The Commission decided *inter alia* to establish four new Sub-commissions to examine submissions made by Argentina, Ghana, Iceland and Denmark. These Sub-commissions join the existing two, which are examining submissions made by Uruguay and the Cook Islands. Presentations regarding their submissions were also made by Iceland and Denmark. The increasing workload of the CLCS continues to be an issue due to the large number of submissions made to it by various coastal States. Currently there are around twenty pending submissions from Asian and African states before the CLCS. There appears to be a necessity to alleviate this load somewhat and streamline the efforts of the CLCS.

Madam President, the International Seabed Authority (ISBA) held its eighteenth session in Kingston, Jamaica from 9 to 27 July 2012. At the session, Mr. Nii Odunton was elected for his second term as Secretary-General of the ISBA. The ISBA also adopted Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese crusts in the Area. These regulations, which took effect immediately, are the third set of regulations created by the ISBA to control mining of the seabed and subsoil in the Area beyond national jurisdiction. AALCO member states may consider renewing their efforts to control and restrict damage from seabed mining in keeping with these new regulations.

Madam President, among the many critical issues that has faced the UNCLOS over the past several years are pirate attacks and armed robbery against ships, which have raised a serious threat to international commerce and maritime navigation. The problem with curbing this menace is not necessarily a matter of a lack of sufficient laws, but often a lack of domestic law enforcement capability and a lack of institutional capacity to bring pirates to justice. In order to counter the menace of piracy, AALCO Member States should, among other measures, consider enacting adequate national legislation to criminalize acts of piracy and armed robbery at sea, and associated crimes, as well as modern procedural laws, which are indispensable for the effective suppression of piracy.

Madam President, for the sustainable development of oceans, it is important to take necessary measures to protect the marine environment, halt pollution at sea and preserve all marine species. Globalization has shrunk the world, including its oceans, and as resources available in the oceans remain scarce, it is vital that the international community work together to manage these resources. A growing area of concern is the conservation and sustainable use of marine biodiversity “The Area” beyond national jurisdiction. Marine Protected Areas (MPAs) are seen to be an important marine ecosystem management tool for securing protection from threats to marine biological diversity. A universally accepted legal framework has yet to be established and AALCO Member States may consider taking the lead in formulating a legal framework to conserve and maintain sustainable use of marine biodiversity in these areas.

These are some of the issues on which the Member States may deliberate upon during the course of this Meeting today. I thank you Madam President.

**President:** I thank you Mr. Feng for introducing the subject. I will now give the floor to Indonesia for their statement. Indonesia you have the floor.

**The Delegate of Indonesia:** Madam President, Distinguished Delegates, in the current joyous occasion, Indonesia would like to thank AALCO Secretariat for preparing documents for the Fifty-Second Annual Session of AALCO. We believe that the report is important for the further study and discussion in the issue on the law of the sea.

On the issue of the Law of the Sea, Indonesia continues to emphasize the importance of the implementation of UNCLOS 1982 as a major international law governing maritime issues, which have been accepted by 166 countries and Indonesia would welcome Swaziland, Timor Leste and Nigeria as the latest state parties to the UNCLOS 1982.

Madam President, Distinguished delegates, as an archipelagic state, Indonesia is of the view that 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. Therefore, Indonesia has and will always actively participate in the discussion of the issues related to the Law of the Sea.

Currently, in dealing with the law of the sea, Indonesia has participated in several conferences and meetings related to the issue. This year Indonesia has participated in the 23<sup>rd</sup> Session Meeting of States Parties to the UNCLOS; the 19<sup>th</sup> Session of the International Seabed Authority; and the 14<sup>th</sup> Session of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea.

Madam President, Distinguished delegates, in the 23<sup>rd</sup> Session Meeting of States Parties to the UNCLOS, Indonesia is of the view that the International Tribunal for the Law of the Sea (ITLOS) as an important juridical body to solve the legal disputes arising from the application and interpretation of UNCLOS.

Meanwhile, Indonesia emphasizes the role of ISA on the environmental protection of the sea from the negative impact caused by exploration and exploitation in the region.

Related to the issue of the workload of the Commission on the Limits of the Continental Shelf, Indonesia has expressed its support to the steps taken to ensure the Commission could further function effectively with the necessary support and facilities.

On the Meeting of States Parties of UNCLOS, Indonesia has also received the requests for endorsement from countries who will be re-elected in the election of the member of ITLOS that shall be held at the 24<sup>th</sup> Session in the next year, and Indonesia will consider the requests.

Madam President, Distinguished delegates, Indonesia would like to share the recommendation from United Nations Division for Ocean Affairs on the Law of the Sea (UN-DOALOS) which has partially agreed to our submission in regard to the continental shelf in the northwest of Sumatera Island. As a result, the continental shelf of Indonesia in the northwest of Sumatera Island has expanded 4205 KM outside the normal 200 mile from archipelagic baseline.

Madam President, Distinguished delegates, finally as the sea is vast and has not been exploited to its full potential, Indonesia calls on all the countries to explore the sea in accordance with the applicable international law, and the principle of environment protection for our future generation. Thank you.

**President:** Thank you Indonesia. Thailand has the floor next.

**The Delegate of Kingdom of Thailand:** Madam President, Excellencies, Distinguished Delegates, first of all on behalf of the Royal Thai Government, the Thai delegation would like to express its appreciation to the AALCO Secretariat for the comprehensive preparation on the topic. The issue of ocean affairs and the law of the sea has many dimensions, for instance, maritime security, exploration, exploitation of national resources, commerce, conservation and protection of maritime environment, sustainable development of marine life, scientific research and technology development. Therefore, it is our country's priority to ensure that all activities carried out in the oceans has taken into account the issue of sensitivity and delicacy of oceanic ecosystems.

Thailand has always placed great importance on the issues relating to the law of the sea, even before becoming a state party to the UNCLOS. As one of the UNCLOS' original creators, Thailand was one of the first countries to have signed the Convention. Even though it took us years of diligent work and determination to complete the ratification process, Thailand is now a party to the 1982 Convention. Last year, the Royal Thai Government by the Permanent Mission of Thailand to the United Nations in New York also took part in the reception to commemorate the 30<sup>th</sup> anniversary of the opening for signature of UNCLOS and on 10 December 1982 at Montego Bay, Jamaica. Moreover, a relevant article by Ambassador Kriagsak Kittichaisaree was published on this occasion to celebrate the event.

As a State Party to the 1982 Convention, Thailand is committed to continue working in an active and constructive manner to implement the Convention in order to fulfil its object and purpose. The issue of implementing the UNCLOS has always been discussed under the Committee on the Law of the Sea and Maritime Boundaries of Thailand, an inter-ministerial body in charge of issues relating to the law of the sea and maritime boundaries. The agencies who are particularly involved are, inter alia, the Royal Thai Navy, the Maritime Department, the Department of Fisheries, The department of Customs, the department of Maritime and Coastal Resources. The Committee's decision was to modify existing laws in a comprehensive manner. The relevant agencies are assigned the task of initially identifying fundamental difficulties of the implementing process. The Thai agencies are now working closely to identify all existing laws to be modified, all new laws to be enacted and matters that only require cooperation among concerned agencies. Though there are still a lot of steps to be taken but Thailand strongly believes that the Convention implementation process is sure to be successfully carried out in due course.

Madam President, on the issue of Maritime Security, Thailand believes that it is internationally significant since commercial shipping and transportation of oil are vital for world economy. Thailand continuously supports the international community by constantly making important contributions to maritime security domestically, regionally and internationally.

At the domestic level, the Office of the National Security Council of Thailand is currently preparing a three-year Maritime Security Strategy and considering the possibility of establishing a Thai Coast Guard Unit to enhance prevention and protection of transnational crime at sea.

At the regional front, Thailand is actively participating in the ASEAN Maritime Forum and the regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ship in Asia (ReCAAP) whose Governing Council is currently chaired by Thailand. As coastal state of the Malacca Straits, Thailand has participated in the Malacca Straits Coordinated Patrols since September 2008 and has joined the air patrol known as "Eyes in the Sky" since January 2009. Both operations have contributed significantly to the improvement of overall maritime safety and security in the area.

At the international level, not only Thailand is part of the Contact Group on Piracy off the Coast of Somalia (CGPCS) but the Royal Thai Navy has also dispatched its Counter-Piracy Task Unit to join the operation of the Combined Maritime Forces in 2010 and 2011. Last year, Thailand assumed the command of the Combined Task Force (CTF) 151 from March to July 2012. Once again, in May 2013 the Thai Cabinet approved the assignment of Royal Thai Navy officer as the commander of CFT 151. The new commander and fifteen other officers will serve their duties in

commanding and administering the joint naval patrol in the Internationally Recommended Transit Corridor (IRTC) between Bahrain and Somalia starting 1<sup>st</sup> of September to 30<sup>th</sup> of November 2014.

Madam President, Thailand has played an active role in international commerce, particularly, international shipping, and has been elected to the Council of the International Maritime Organization (IOM) for four consecutive terms. Thailand has supported activities of IMO including the Voluntary IMO Member States Audit Scheme, Technical Cooperation Programme aiming at improving its Member States' capacity in implementing IMO standards. Thailand strongly hopes to be re-elected to the IMO Council for the period of 2014-2015 and in this connection, Thailand would like to seek the valuable support from endorsing states gathering here in order to continue our good work in this field.

Most importantly, it is a great pleasure to announce that Thailand is the latest country joining the Proliferation Security Initiative (PSI). The Royal Thai Government effectively endorsed the PSI in November 2012 in which Thailand expresses its full commitment and willingness to cooperate actively with the international community in the PSI framework. Moreover, the Royal Thai Government has approved in principle, and set up a committee to proceed with the accession to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1998 (SAU) and 2005 SUA Protocol. While going through our internal process of becoming a party to the SUA Convention, Thailand has never stopped working effectively to promote the common aim of preventing the proliferation of WMD.

Last but not the least, Thailand has always been active in several workshops and seminars in providing opportunities for line agencies to improve their proficiency through knowledge transfers as well as the exchanging of best practices. Thailand stands firm that we will continue to do so in order to actively promote and support international community in this matter.

I thank you, Madam President.

**President:** Thank you Thailand. There is a request to Member States that we are running behind schedule and we still have ten more speakers on this subject. So I will request Member States to limit their statements to five minutes only you can give the complete statements to the Secretariat so that the same can be reflected in the records. The next speaker on the list is People's Republic of China.

**The Delegate of the People's Republic of China:** Madam President, Distinguished Delegates, on behalf of the Chinese delegation, I would like to express my appreciation to the Secretariat for its comprehensive report on the law of the sea and in particular, for offering its comments and observations on the law of the sea issues.

Last year marked the 30<sup>th</sup> anniversary of the opening for signature of UNCLOS. Many States including China, and many international organizations such as the UN and AALCO had organized commemorative activities. Meanwhile, with East Timor, Swaziland and Equador entering into the UNCLOS community, the number of States Parties has increased to 165. China welcomes these activities and progress, and believes it evidences that the Convention, which has traversed an extraordinary journey over the past 30 years, continues to hold potent vitality and

wide universality. China hopes that more members of the international community would accept the Convention and implement it in earnest.

As the capabilities of the international community to understand, use and protect oceans are improving, the implementation and development of the law of the sea are faced with new problems and challenges. Nevertheless, UNCLOS remains an important basis for us to solve new problems and challenges.

Presently, the issues on sustainable development of oceans, safety and navigation of shipping, conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction have gained considerable attention. The Chinese delegation would like to share their views on these three issues.

1. Sustainable development of the Oceans.

With the growing awareness and capabilities of marine use, the pressure posed on sustainable development of oceans from the influence of human activities is increasing. The United Nations has launched a Regular Process for global reporting and assessment of the state of marine environment, including socio-economic aspects, the Regular Process also initiated its first global assessment of the state of the marine environment, including socio-economic aspects. China notes with satisfaction the establishment of the institutional framework of the Regular Process, as well as the start of its drafting work on the first integrated global report of the state of marine environment. The Regular Process, through facilitating human kind to know the oceans more thoroughly, protecting the oceans more scientifically, and using the oceans more efficiently, plays an important role in realizing the sustainable development of the oceans and seas. China attaches importance to the smooth progress of the Regular Process, and hopes it could fulfill its function, to provide important scientific references for the States to formulate their oceans policies, and to reduce and control the negative influences of human activities to the marine environment.

Sustainable development of oceans is a goal pursued by the international community. China believes that the key to achieving this goal is to properly handle the relationship between the proper protection of the ocean and its rational utilization. Overlooking one aspect by emphasizing the other will deviate from the direction of sustainable development. Nevertheless, capacity building is the founding base both for protection and utilization. China is aware that there are apparent discrepancies among the Parties in terms of capacity, and developing countries are those whose capacity in both using and protecting needs to be strengthened. Therefore, the issue of capacity building should be a matter of priority need to be addressed in the area of sustainable development of oceans.

2. Safety and navigation of shipping.

Piracy remains a major threat to safety and navigation. The issue of piracy is considerably prominent in Asia and Africa. All countries suffer from it. China believes that the main aspects for combating piracy and armed robbery against vessels through international cooperation have been covered by existing rules of international law, which comprise the definition of piracy and the obligation of administrative assistance and judicial cooperation. The sovereignty of coastal states, the freedom of navigation of flag states and other relevant issues have been stipulated in a

balanced way. China supports to enhance, in conformity with UNCLOS and relevant international law, international cooperation in combating piracy, ensuring maritime safety and safeguarding the overall interest of the international community. China is also willing to continue working with all countries to address the root causes of piracy through facilitating the peace process of relevant countries, promoting political and social stability as well as economic development.

3. Conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ)

China welcomes the progress reached during the 6<sup>th</sup> meeting of the Ad-Hoc Open Ended Informal Working Group on BBNJ. The Working Group will recommend the general Assembly of the UN to convene 3 Working Group meetings before its 69<sup>th</sup> Session, so that to thoroughly discuss the feasibility to develop an implementing agreement under the UNCLOS, and the scope and parameter of such agreement. China is of the view that since the high seas and international seabed area involve the interest of the entire international community, the proper handling of issues relating to marine biodiversity in those areas is crucial for the maintenance of an equitable and rational international maritime order. The relevant work should therefore proceed step by step gradually, fully accommodate the legitimate needs for marine biological resources, of all countries, especially developing countries, and put great emphasis on capacity building of developing countries.

China stands ready to cooperate with all Parties to cope with major challenges faced by oceans within the framework of UNCLOS, to build up and maintain harmonious order of oceans, achieve its sustainable development and enable oceans to benefit all mankind.

Thank you Madam President.

**President:** Thank you China. Now I give the floor to Mauritius.

**The Delegate of Mauritius:** Thank you Madam President, my delegation would like to brief the meeting on the case brought by Mauritius against the United Kingdom with regard to the 'marine protected area' which the United Kingdom has purported to establish around the Chagos Archipelago.

The Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius under both Mauritian law and international law. The Republic of Mauritius is, however, being prevented from exercising its rights over the Chagos Archipelago because of the unlawful control of the UK over the Archipelago. The UK illegally excised the Chagos Archipelago from the territory of Mauritius prior to its accession to independence. This excision was carried out in violation of international law and United Nations General Assembly Resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

On 20 December 2010, the Government of Mauritius initiated proceedings against the UK Government under Article 287 of, and Annex VII to, the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the 'marine protected area' purportedly established by the UK around the Chagos Archipelago. Mauritius considers that the UK, not

being a “coastal State” under UNCLOS and international law, had no authority to establish a marine protected area around the Chagos Archipelago.

Since Mauritius and the UK did not agree on the means for the settlement of the dispute, it has been submitted to arbitration in accordance with Annex VII to UNCLOS. An Arbitral Tribunal consisting of five members, including 3 ITLOS Judges has been set up.

Following the submission by Mauritius of its Memorial on 1 August 2012, the United Kingdom raised on 31 October 2012 preliminary objections to the jurisdiction of the Arbitral Tribunal and requested that its preliminary objections be dealt with as a preliminary matter.

After consideration of the written and oral submissions made by the Parties, the Arbitral Tribunal adopted on 15 January 2013 a Procedural Order, by which it rejected the UK’s request that its preliminary objections be dealt with as a preliminary matter and ordered that the UK’s preliminary objections be considered with the proceedings on the merits. The hearing on the merits and the UK’s preliminary objections is expected to be held in 2014.

The case brought by Mauritius against the UK arises against the background of colonial legacy. The UK excised the Chagos Archipelago from the territory of Mauritius as a condition for granting independence to Mauritius. The Arbitral Tribunal is, therefore, being requested to interpret and apply UNCLOS in a way that does not perpetuate a status quo which is inconsistent with the applicable law under the Convention, including the right to self-determination and respect for the territorial integrity of a country at independence.

We are grateful to AALCO Member States for continuously supporting us, particularly at the level of the African Union and the Non-Aligned Movement, with regard to the sovereignty of Mauritius over the Chagos Archipelago. We also wish to express our appreciation for their grave concern at the purported establishment by the UK of a ‘marine protected area’ around the Chagos Archipelago, in breach of international law, including the provisions of UNCLOS.

Thank you.

**President:** Thank you Mauritius. Now I invite the delegate of Republic of Korea.

**The Delegate of the Republic of Korea:** Madam President, Distinguished delegates, I would like to begin my statement by expressing gratitude to all Member States of AALCO for supporting the “Yeosu International Conference” commemorating the 30<sup>th</sup> anniversary of the United Nations Convention on the Law of the Sea last year. I believe the Conference has presented an excellent opportunity not only to highlight achievements of UNCLOS but also to envisage and direct future of the Convention.

The earth is essentially a planet of liquid surface, with more than 70% covered by water. The world’s oceans thus provide a common link for more than 110 nations. Marine and coastal environments that cover two-thirds of the earth surface have been, and will continue to be, the important source for ensuring sustainable development to human society.

In this vein, my delegation would like to appreciate The Oceans Compact, the initiative that the UN Secretary-General Ban Ki Moon announced last year. The Compact aims at setting out a strategic vision for the UN system to deliver its ocean-related mandates consistent with the Rio+20 outcome document “The Future We Want”.

Oceans pose serious threats to us, as well. And these threats include piracy and armed robbery against ships. The international community and each nation should step up efforts to put an end to these heinous acts.

Last year, there was a substantial reduction in piracy attacks off the coast of Somalia. The global efforts to fight against piracy have significantly achieved their goals. However, there were 75 successful attacks, resulting in two dead and one injured. This shows that there is still a long way to go.

In order to uproot piracy, we should never allow piracy to go with impunity. We have to make piracy less lucrative by prosecuting and punishing those committing piracy and armed robbery. The Korean government has been tackling the piracy issue by taking legal actions under domestic and international law. Although there is no specific law or ordinance on piracy in Korea, the culprits are punished under the Criminal Act for assault, injury, kidnapping and robbery.

In January 2011, a few Somali pirates who seized a Korean freighter were arrested and indicted on charges of maritime robbery and attempted murder. They were prosecuted and sentenced to life imprisonment by the Korean judicial authorities. The government of the Republic of Korea will continue to work with the international community to eradicate piracy and secure the navigation safety.

**President:** Thank you Korea. Islamic republic of Iran is the next speaker, you have the floor Sir.

**The Delegate of the Islamic Republic of Iran:** Madam President I would like to appreciate the hard work that has been done by the Secretariat in preparing the comprehensive report on the thematic of the law of the sea. My delegation attaches high importance to this agenda item, which is an important factor for enhancing of trade cooperation among the Member States. I would like to make a few points on certain issues of the law of the sea including piracy, marine environment as well as marine biological diversity.

**Piracy:** Madam President, it's now for several years that piracy in the Gulf of Aden and off the coast of Somalia, and recently in the Gulf of Guinea and beyond, continues to pose an increasing challenge to maritime safety and security. The increasing acts of piracy in one of the key maritime trade routes affect all countries, specially AALCO's States in one way or another, though some countries are more, or more directly, affected, e.g. their vessels are attacked by the pirates or their nationals are taken hostages. In this sense, Iran is among the latter countries: Iranian or Iran-bound vessels have frequently been targeted by pirates and Iranian nationals have been taken as hostages, in some cases for months. Several Iranian nationals have also lost their lives as a result of such attacks or during confrontations between pirates and third parties' navies attempting to counter pirates. Here I would like to highlight the plight of seafarers and crews

who fall victim to piracy and are taken hostages or killed and injured during clashes between pirates and navies.

Madam President, The Islamic Republic of Iran has played an outstanding role in countering maritime piracy. Following the first major attack by Somali pirates against an Iranian cargo vessel “Iran Dianat” in 2008, Iran deployed a flotilla of naval vessels to the Gulf of Aden in order to prevent and suppress piracy in the region and to provide protection to the vessels navigating under the flag of the Islamic Republic of Iran or other vessels in distress. These operations in line with the fight against piracy have been carried out through active cooperation with the countries in the region. Since then, Iranian navy has managed to foil many attacks against Iranian and other vessels navigating through open waters in the Indian Ocean; last year, Iranian sailors achieved a key success in countering piracy by capturing several pirates, among them one of the most infamous pirates, after the pirates made an ill fated attempt at hijacking the Xianghuamen, a Panamanian-flagged cargo ship belonging to a Chinese shipping company. Iranian navy also freed, during a separate operation in early April 2012, a Chinese freighter hijacked by Somali pirates in the sea of Oman.

Iran has been also active in exchange of information and reports on piracy with other relevant international bodies and countries.

I would also like to stress that all countries which are able and willing to contribute to this cause should be welcomed to do so. We are pleased that the contributions made by countries like Iran to fight piracy off the coast of Somalia have been well recognized and commended by the international community and relevant UN bodies, including the Security Council Resolutions 1950 and 2020.

Madam President, the problem of piracy in the Gulf of Eden and off the coast of Somalia should be seen more as a sign of deep and long disorder in land rather than an isolated problem. For years Somalia has been left at the mercy of warlords and different groups which are involved in a merciless tug of war with horrible consequences for the population and for the country. The problem of piracy at sea off the coast of Somalia could not be dealt with without a comprehensive plan for peace and stability in Somalia as the necessary precondition for reconstructing the war-torn country. At the same time, we believe that we should also continue to concentrate and cooperate on the elimination of the root causes of piracy, which are embedded in Somalia’s long years of political and economic situation. To address the complexities with regard to the situation in Somalia one should not put pressure on one nation or even one region, rather the international community bears its own responsibilities.

Madam President, the crime of piracy is clearly defined under international customary law. Therefore, fighting piracy should be carried out in accordance with international law, and here I would like to quote parts of paragraph 90 of resolution 66/231 of the general Assembly where it reads “....and also notes that the authorization in resolution 1816 (2008), and the provisions in resolutions 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009) and 1950 (2010) apply only to the situation in Somalia and do not affect the rights, 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, the fact that they are not to be considered as establishing customary international law”.

The Islamic republic of Iran is determined to continue its important contributions to the cause of maritime safety and security by preventing piracy in the piracy stricken regions in the Indian Ocean.

Marine Environment: Madam President, it goes without saying that protection of marine environment is vitally crucial in safeguarding the health and well being of human beings. Unfortunately, pollution at seas and oceans has reached to an alarming level and the international community cannot afford to pay very high prices for the consequences. One important issue, among others, is the problems caused by land reclamation activities. My delegation would like to draw attention of distinguished delegations to the United Nations’ expression of “deep concern at the adverse economic, social and social and environmental impacts of the physical alteration and destruction of marine habitats that may result from land-based and coastal development activities, in particular those land reclamation activities that are carried out in a manner that has a detrimental impact on marine environment” (preambular paragraph 14 of A/RES/67/78). In this regard the United Nations General Assembly has repeatedly “call (ed) on all states to ensure that urban and coastal development projects and related land-reclamation activities are carried out in a responsible manner that protects the marine habitat and environment and mitigates the negative consequences of such activities (Operative paragraph 164, A/Res/67/78). We call on the Secretariat to include this important issue in its next report on the agenda item.

My delegation takes this opportunity to note the considerable jobs taken under the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects (Regular Process), so far. In this regard, the Islamic Republic of Iran has provided the Secretariat with the names of a number of experts to be reflected in its pool of experts and hope that they would be able to contribute to the continuation of the process.

Marine biological Diversity: Madam President, my delegation has followed the proceedings of the 6<sup>th</sup> meeting of the Ad-Hoc Open ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which took place in New York from 19-23 August 2013. For the past several years there have been various workshops, events, and meetings on this key issue and different views have been expressed by Member States regarding how best to manage the use of marine biological diversity at high seas in a sustainable manner while ensuring its conservation. As it has been observed during the debate of the Working Group and which is reflected in paragraph 89 of the Summary of Proceedings prepared by the Co-Chairs of the Working Group (A/AC.276/6), “the fact that discussions among States were ongoing regarding the need for a legal regime for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction attested to the concerns of many states over regional or crosssectoral approaches and initiatives.” In this regard my delegation is of the view that these resources fall under the legal regime of common heritage of mankind and as such the provisions of relevant part of the UN Convention on the Law of the Sea shall be applicable to their use and conservation.

We hope that all States cooperate, in a spirit of common responsibility, to reach an agreement on the legal regime applicable to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Thank you, Madam President.

**President:** I thank the Islamic Republic of Iran for their statement and now give the floor to Japan.

**The Delegate of Japan:** Madam President, Japan as a maritime nation and from the standpoint of regarding the rule of law essential in the international community, highly values the roles that the International Tribunal for the Law of the Sea (ITLOS) has been playing for the peaceful settlement of maritime disputes and the maintenance of legal order relating to the sea.

It is noted that in recent years the number of referrals of cases to the ITLOS has been on the steady increase. This reflects growing recognition and trust by the international community towards the ITLOS as competent dispute-settlement organ. Furthermore, most recently we have seen important developments such as the ITLOS delivering a judgment on the dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in March 2012 and also the ITLOS receiving a request for advisory opinion from Sub-Regional Fisheries Commission of West African countries. This trend is a clear evidence of growing recognition of the role of the Tribunal on the part of Asian-African countries and the international community as a whole. We welcome greatly increasing trust and confidence by the international community for the activities of the ITLOS.

From the outset of the establishment of the ITLOS, Japan has been fully cooperating with it, as the largest financial contributor as well as provider of valuable human resources including many competent judges. We will continue to render maximum cooperation so that the ITLOS will be able to fulfill its activities under the leadership of President Shunji Yanai more effectively to respond to the growing trust and expectations of the international community. In 2014 there will be an election of judges during the 24<sup>th</sup> Meeting of States Parties of UNCLOS, and the Japanese Government has decided to nominate Judge Yanai as a candidate. We are confident that Judge Yanai, if re-elected, will with his fair and sincere character and competence; make further contribution to the ITLOS activities and the advancement of maritime legal order.

Next, I would like to refer to the work and constraints faced by the two important organizations relating to the sea, that is, the UN Commission on the Limits of the Continental Shelf and the International Seabed Authority.

The UN Commission on the Limits of the Continental Shelf, which is in charge of the task of examining and making recommendations on the submissions regarding the outer limits of the continental shelf beyond 200 nautical miles, by States Parties pursuant to UNCLOS has been continuously confronted with the serious “workload issue” caused by a large increase in the numbers of submissions which has to be discussed by the State Parties of the Convention on the Law of the Sea. Until present, while 66 submissions have been made, only 18 recommendations were issued.

One of the practical ways to reduce effectively the said workload is to lengthen the working period of the members of the Commission. Japan has been contributing to the Trust Fund established for the purpose of defraying the costs of participation of members of the Commission on the Limits of the Continental Shelf from developing States in the meetings of the Commission, six times totalling 1.44 million US Dollars.

Similarly, with regard to the International Seabed Authority, there has been established a Voluntary Trust Fund for the purpose of defraying the cost of participation of the members of the Legal and Technical Commission from developing countries in the meetings of the Commission and the Committee held in Jamaica. At the recent 19<sup>th</sup> session of the Assembly of the Authority held in Kingston, Japan announced that it will make a contribution to the Fund in the amount of 44,760 US Dollars.

Thank you.

**President:** Thank you Japan. Now I will give the floor to Tanzania.

**The Delegate of United Republic of Tanzania:** Madam President, consideration of this topic comes at a time when we are commemorating the 30<sup>th</sup> Anniversary of the United Nations Convention on the law of the Sea. The importance of UNCLOS in regulating ocean affairs cannot be overemphasized. We wish to state that the four topics which were extensively discussed at the Legal Experts Meeting to Commemorate the 30<sup>th</sup> Anniversary of the UNCLOS in March 2013. The topics that were deliberated in that meeting namely: (i) Dispute Settlement Mechanism under UNCLOS; (ii) Preservation and Protection of Marine Environment; (iii) Piracy and (iv) UNCLOS and AALCO.

We as legal experts should take deliberate efforts to uphold the principles and mechanisms which uphold the UNCLOS is promoting and upholding the governance of the Oceans. Piracy: the two continents have witnessed a number of achievements in reducing the number of piracy incidents, however in order to make this success sustainable States have to make concerted efforts particularly in strengthening their legal framework and in adding legislations where there are none. Furthermore, in strengthening cooperation in the region particularly in information sharing is of utmost importance. Member States should continue strengthening alliances and cooperation within the already existing frameworks, such as within the framework of the Djibouti Code of Conduct and the Contact Group on Piracy off the Coast of Somalia.

Madam President, the workload of the Commission on the Limits of the Continental Shelf as we all know due to the growing number of submissions the Commission continues to face a major challenge in looking through all the submissions and provide appropriate recommendations. In making an effort to alleviate the workload of the Commission Tanzania is of the view that AALCO States should collaborate with other UN Member States concerning efforts to ensure that the Commission continues to undertake its duties smoothly. In this respect as stated in the 20<sup>th</sup> Session of the Commission Tanzania strongly encourages Member States to solve amicable disputes relating to their submissions.

Thank you Madam President.

**President:** Thank you Tanzania. Malaysia you have the floor.

**The Delegate of Malaysia:** Madam President, the Honourable Secretary-General, Excellencies and Distinguished Delegates, Ladies and Gentlemen.

**Capacity Building in the areas of Ocean Affairs and The Law of The Sea:** It is noted that lack of capacity building could limit the ability of States to protect the oceans and their resources from maritime pollution, maritime safety, maritime security and overexploitation. Capacity building is necessary in ensuring that States possess economic, legal, navigational, scientific and technical skills for the full implementation of the obligations and responsibilities relating to ocean affairs as provided under the UNCLOS.

Thus, for this purpose Malaysia agrees with the observation made by the Secretariat of AALCO that priority should be given in strengthening institutions and standards to enable least developed countries to fully benefit from UNCLOS.

In relation to institutions, national and international financial institutions could be invited to examine innovative approaches to assist low-income countries. Whilst academic and research institutions could contribute to institutional development through capacity building.

Further to the above, strengthening and improving standards relating to shipping, marine safety and pollution prevention would require the involvement of government and state departments as well as private sectors and all stakeholders to ensure a holistic approach in facing challenges for achieving effective capacity-building in ocean affairs and the law of the sea.

**Workload of the Commission on the Limits of the Continental Shelf (CLCS):** Malaysia takes note of the concern of the Secretariat as regards the workload of the CLCS. Malaysia submitted a joint submission with the Socialist Republic of Vietnam in accordance with Article 76, paragraph 8, of UNCLOS, in respect of the southern part of the South China Sea. The consideration of the Malaysia-Vietnam Joint Submission was included in the provisional agenda of the 24<sup>th</sup> session of the Commission, held in New York from 10 August to 11 September 2009. We have been made to understand that the Malaysia-Vietnam Joint Submission is currently listed at number 33 out of 66, in the list of submission and expected to be considered in 2016/2017. In this respect, Malaysia commends the Commission for its initiatives in adopting the necessary measures to expedite its work while maintaining the high level of quality and expertise in discharging its functions.

**Safety and Navigation of Shipping:** On the issue of safety and security of navigation, Malaysia, together with its neighbours, Indonesia and Singapore, continued to undertake the appropriate measures to further reinforce the safety and security of the Straits of Malacca. A vital shipping lane for the maritime industry. The implementation of the International Maritime Organization's (IOM's) Traffic Separation Scheme in 1981, the introduction of a system named STRAITREP which came into force on 1 December 1998 and the development of the Marine Electronic Highway in 2005 have significantly improved navigational safety in the Straits of Malacca.

In acknowledging the contribution and support of the user States, the shipping industry and other stakeholders, the Cooperative Mechanism had been established under the ambit of the Tripartite Technical Experts Group (TTEG) of Malaysia, Indonesia and Singapore.

**Sustainable development of oceans as well as conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction:** It is duly noted that UNCLOS, in particular Part XII, provides the framework and general principles for the sustainable development of the oceans including the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

In view of the fact that UNCLOS contains only basic, general principles on the protection and preservation of marine environment, the provisions under Part XII of UNCLOS further emphasize the importance of cooperation between States on a global and regional basis be it directly or through the competent international organizations in formulating and elaborating international rules, standards and recommended practices and procedures consistent with UNCLOS.

Some of the instruments which have been formulated are the Convention on Biological Diversity, Convention on Migratory Species, United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

Malaysia recognizes that there is a need to improve the implementation of and compliance with existing international rules and standards. In this regard, enhancing regional ties particularly through regional institutions would enable States to effectively address international concerns and emerging challenges as regards the various activities affecting the marine biodiversity in areas beyond national jurisdiction.

Thank you.

**President:** Thank you Malaysia. Now I give the floor to Kenya.

**The Delegate of Kenya:** Kenya is a party to the UNCLOS and had enacted several laws to address the issue of piracy within its territorial waters and the High Seas.

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.

Distinguished delegates, the resurgence in piracy at sea, particularly hijackings off the coast of Somalia, has prompted a range of efforts to tackle it. Kenya welcomes and commends 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 hence the reduction of piracy cases at the Indian Ocean.

Distinguished delegates, there are several legal issues that require to be addressed under public international law such as the use of private armed security guards, the use of force and the transferring of suspects for trial or imprisonment, collection of evidence at the high seas and submission in courts, extradition, jurisdictional issues.

Under international law and 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, has taken steps to prosecute, or incarcerate pirates. However, we are faced with challenges of capacity, particularly congestion of our prison facilities. We urge all States and international organizations to further enhance international efforts in this regard.

Distinguished delegates, Kenya is in the process of reviewing its laws on piracy to include all crimes committed at the High Seas, to this end we shall seek to borrow the best practices from some of the partner States who are more advanced in this area.

Thank you.

**President:** Thank you Kenya. India has the floor.

**The Delegate of Republic of India:** Thank you Madam President. On behalf of the delegation of India, let me thank the Deputy Secretary-General for his introductory remarks on the topic. Let me also commend the AALCO Secretariat for the report on the agenda item, “The Law of the Sea”. The report is very informative and useful for Member States.

Madam President, the Law of the Sea Convention, 1982 is the key international instrument governing the ocean affairs. It sets out the legal framework for activities in oceans and seas and is of strategic importance as the basis for national, regional and global action in the marine sector.

India, given its geography as a country with a vast coastline and numerous islands, has a traditional and abiding interest in the maritime and ocean affairs. India is a party to the Convention, the Implementing Agreement, and the Fish Stocks Agreement. It takes keen interest in all matters pertaining to the ocean affairs. We believe that it is in the interest of the international community as a whole to continue to extend full cooperation in efforts towards ensuring the proper management and sustainable use of the oceans and seas.

In this context, it may be recalled that the AALCO Secretariat in collaboration with the Legal and Treaties Division of the Ministry of External Affairs, Government of India organized a Legal Experts Meeting to commemorate the 30<sup>th</sup> Anniversary of the UNCLOS on 5<sup>th</sup> March 2013 in New Delhi. This meeting was successful in highlighting the achievements of UNCLOS and also identifying the challenges ahead.

Madam President, oceans play a vital role in supporting life on Earth. The outcome document of the United Nations Conference on Sustainable Development held in Rio de Janeiro, Brazil in June 2012 entitled “The Future We Want” recognized oceans and seas as an integrated and essential component of the Earth’s ecosystem that are critical to sustaining it. This, however, is possible only through the proper management and use of ocean resources and the preservation and protection of marine environment. The oceans are facing a number of challenges including from illegal, unreported and unregulated fishing, deterioration of marine environment, biodiversity loss, climate change, and those relating to the maritime safety and security including the acts of piracy.

Madam President, we would like to express our serious concern over piracy and armed robbery at sea, particularly off the coast of Somalia. Piracy is a grave threat to the freedom of the seas, maritime trade and the security of maritime shipping. India is actively cooperating in international efforts to combat piracy and armed robbery at sea. We support the joint and concerted efforts by the international community to tackle this menace.

In this regard, we express our deep appreciations for the Contact Group on Piracy off the coast of Somalia (CGPCS), which since its establishment in January 2009 is serving as an excellent forum for international cooperation and coordination in fight against piracy off the coast of Somalia.

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.

Madam President, oceans have significant potential to contribute to energy needs, to improve economic well-being and to reduce greenhouse gas emissions. However, while the marine renewable energies offer opportunities, also poses environmental and economic challenges, especially to developing countries, including with regard to undertaking scientific research and acquiring technological knowledge, which could only be met through effective international cooperation and coordination.

Madam President, the effective and unhindered functioning of the institutions established under the Convention namely the International Sea-bed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf are the key in achieving the goal of fair and equitable uses of oceans and their resources including through the effective implementation of the provisions of the Convention. We note with satisfaction the progress made by these institutions in their respective areas and support all efforts towards ensuring the smooth functioning thereof.

The fisheries sector occupies an important place in the socio-economic development of a great number of countries including India. We support the concerted efforts of international

community towards achieving sustainable fisheries inter-alia by adopting measures to prevent and combat the illegal, unreported and unregulated (IUU) fishing, by effectively implementing the Fish Stocks Agreement and the relevant instruments at the regional level, and by preserving over-fishing. We consider the role of the Food and Agriculture Organization (FAO) of the United Nations as crucial in the conservation of fisheries resources and the management and development of fisheries.

Thank you Madam President.

**President:** Thank you India. India was the last speaker on my list with that we come to an end of the discussions on the item Law of the Sea.

**The Meeting was thereafter adjourned.**



## **IX. VERBATIM RECORD OF THE FOURTH GENERAL MEETING**

**IX. VERBATIM RECORD OF THE FOURTH GENERAL MEETING HELD ON  
TUESDAY, 10<sup>TH</sup> SEPTEMBER 2013 AT 02:30 PM**

**Her Excellency Mrs. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair.**

**President:** Now we move on to the agenda on corruption. I will request the Deputy Secretary-General to introduce the subject.

**Mr. Feng Qinghu, Deputy Secretary-General of AALCO :** Madam President, Hon'ble Ministers; Excellencies, Distinguished Delegates, Ladies and Gentlemen, Mr. Kiyono Kenichi, Deputy Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFED), it is indeed my pleasure to introduce to you the Report of the Secretariat on the subject contained in AALCO/52/HEADQUARTERS (NEW DELHI)/2013/SD/S 11 that gives an overview on a number of meetings in the context of the United Nations Convention Against Corruption (UNCAC or the Convention) that have taken place in 2012.

We all know how important and at the same time difficult it is to fight and curb corruption. The battle against corruption has not only become more urgent, it has also become more obvious as the extent of its reach is growingly apparent in different parts of the world. Not only does corruption impoverish economies, threaten democracy and undermine the rule of law, it channels terrorism, organized crime and human trafficking etc. These far reaching consequences clearly indicate that the war against corruption cannot be fought at the national level alone. Corruption is without a doubt a problem of international interest as it touches developed and developing countries alike and respects no borders. The UNCAC is a product of this heightened consciousness of corruption as a growing and indiscriminate threat.

On the global scene, the UNCAC, which attempts to create global anticorruption standards and obligations, is the most comprehensive anti-corruption instrument available. The Convention provides the framework and tools for the States Parties to advance their work on Prevention, Criminalization, Asset Recovery and International Cooperation, as well as Technical Assistance. These five areas are divided into separate chapters and form the foundational pillars of the international anti-corruption regime. With 167 States Parties, the UNCAC is truly on a road to universality, which I am sure it will reach in the near future.

Corruption has been a matter of discourse within the Asian-African Legal Consultative Organization (AALCO) since 2002 when the then Secretary-General of AALCO Ambassador Dr. Wafik Z. Kamil introduced it as an agenda item during AALCO's Forty-First Annual Session held in Abuja, Nigeria. This coincided with the negotiations at the United Nations General Assembly to adopt the first global legally binding international anti-corruption instrument, which was adopted unanimously in 2003. Since then the issues embedded in UNCAC has always remained as a subject of concern and discussions to AALCO and its Member States and hence has been deliberated frequently in a number of Annual Sessions of AALCO.

Apart from actively deliberating various anti-corruption strategies undertaken at the national level by its Member States at its Annual Sessions, the AALCO Secretariat has also produced two

special studies on the subject over the years. The first study entitled, “*Combating Corruption: A Legal Analysis*” was released during the Forty-Fourth Annual Session of AALCO held in Nairobi, Kenya in the year 2005. The objective of this study was to create awareness among the AALCO Member States and other Asian-African Countries as to what the phenomenon of corruption entailed for their national and economic development. Included within were the salient features of the international anti-corruption instruments developed at the regional and international levels. After the UNCAC came into force in 2005, the Secretariat embarked on a second special study on the issue that culminated in the preparation of “*Rights and Obligations under the United Nations Convention against Corruption*” that was released in the year 2006. This study focused the areas of critical concern to the efforts of the developing world in the area of anti-corruption, and gave a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the UNCAC into their national jurisdictions.

Madam President, it is now a matter of great pride for me to mention that along with this year’s Report of the Secretariat, a sequel to these above-mentioned Special Studies has also been prepared by the Secretariat which is contained in *AALCO/52/HEADQUARTERS (NEW DELHI)/2013/SD/S 11–A*. Included within it are the details pertaining to the major anti-corruption international events that took place in a particular year, as well as the efforts of the regional forums that work in the area of anti-corruption since 2006. I sincerely hope that this would be of significant benefit to the Member States of AALCO.

Be that as it may, the Report of the Secretariat prepared for this Session focuses on three important meetings that took place in 2012. The first was the *Third Session of the Implementation Review Group of the UNCAC* that was held in Vienna from 18 to 22 June 2012. It may be recalled that the Implementation Review Group was established to have an overview of the review process in order to identify challenges and good practices, and to consider technical assistance requirements in order to ensure effective implementation of the Convention.

The second meeting, namely the *Sixth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery* that was held in Vienna from 30-31 August 2012. This meeting had a thematic discussion on cooperation in confiscation: article 54 (Mechanisms for recovery of property through international cooperation in confiscation) and article 55 (International cooperation for purposes of confiscation). It also discussed the practical aspects of asset recovery, including challenges and good practices that exist in this area.

The third one was the *First Session of the Open-ended Intergovernmental Expert Meeting on International Cooperation* that was held in Vienna from 22 to 23 October 2012. This meeting focused on assisting the developing countries in the area of international cooperation including assistance in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives which in turn would go a long way from contributing to the implementation of the related provisions of the UNCAC.

Madam President, It is my firm belief that the Distinguished Delegates would use this forum and the expertise of our distinguished speakers who are present today to discuss all the issues involved in the implementation of the UNCAC with a view to shape their respective countries’ anti-corruption efforts in a way that supports their anti-corruption efforts domestically. I wish all of you a fruitful deliberation.

I thank you Madam President.

**President:** I now invite Dr. Manoj Dwivedi to make his presentation.

**Dr. Manoj Dwivedi, Director, Department of Personnel and training, Ministry of Personnel, Government of India:** Madam President, Secretary General, Deputy Secretary General, Eminent panelists and delegates in this conference,

I am here to make a brief presentation on the Indian perspective on combating corruption. To start, I will introduce myself. I am working as Director in the Department of Personnel and Training, which works under the Ministry of Personnel and Public Grievances of the Government of India. This is the Ministry which coordinates various efforts made by the Government of India in combating corruption, amongst other functions which the Ministry handles. As in the introductory note by the Deputy Secretary General, it was mentioned very clearly that corruption is a complex issue and a very difficult and challenging problem, but at the same time, as we slowly move we realize that it is a very important aspect to be addressed, especially for developing countries like India. It was also highlighted that fighting corruption is not possible in isolation and a country as an entity cannot alone handle the various issues and various dimensions of corruption and therefore international cooperation in association with other countries of the world is a very important aspect of combating corruption.

To give you a background, I can say that India has a very elaborate legal and institutional framework for preventing and combating corruption in public services. We have a huge set of legislations; there is a Prevention of Corruption Act, 1988; the Indian Penal Code; the Criminal Procedure Code; the Companies Act; the Income Tax Act; Prevention of Money-Laundering Act, which was recently amended; and many other such legislations which come together to form a framework for combating corruption. Some countries have a single framework; we have multiple frameworks but all put together they constitute the dimensions to help us in combating corruption.

We also have a well-structured public administration resting on a merit-based system of recruitment. We have a clear and transparent policy of promotion and provision for institutionalized mechanism for revision of pay structures, etc. We have a central vigilance commission and also an elaborate code of conduct for all officials.

On the investigating and prosecuting side, we have agencies like the Central Bureau of Investigation, Directorate of Enforcement, Financial Intelligence Units etc. We have an independent constitutional body known as the Controller-Auditor General at the federal level for overseeing the accounts of the Union and State governments, and is accountable to the legislature which is the backbone of our democracy as far as fiscal administration of the government is concerned. We have various channels of addressing matters relating to corruption through the judiciary also as a separate independent entity.

Besides this, in the recent developments of the past decade, India has had a very vibrant media and civil society that is empowered with the right of freedom of speech and expression. Collective involvement is encouraged. The freedom of expression of the media is, I think, far more compared to many countries in the world. The recent developments in connection with the movement of a strong elective ombudsman law is a testimony to the governments continued resolve to recognize the voices outside the three pillars of the Executive, Legislative and

Judiciary. This close consultation is now not an exception, but rather the rule where any policy-making is concerned.

We have an elaborate system of fiscal regulations, budgeting and auditing. To save time we can go into the details later on. We have a Right To Information Act in which information on matters of public importance or of public or official use is accessible to the common man through this act, and now with the coming of information technology we have created systems where this information can be achieved online also through various central ministries of the Government of India.

Despite such a robust and vast legal and institutional framework, there are still challenges in combating corruption. The challenges are primarily that there are gaps in the policies and there are deficiencies in implementation. So whereas implementation is a continuous mechanism where we have to strengthen our institutions and improve the quality of manpower which is recruited, but the framework works on the policies and thus identifying the gaps in the policies and filling up those gaps is a big challenge we have taken up and we are working on that. Slowly, I would say we are evolving a strong policy framework which would be capable of handling all the dimensions of corruption.

So the various measures in combating corruption, have been listed in the order of their importance. The most important thing for corruption is to prevent corruption. Now to prevent corruption, if our public service delivery is streamlined, if it is systematic, it works with proper systems which are more accountable and efficient and which have time-bound restrictions on them, then we would be able to deliver services and leave little scope for corruption. A bill called the 'Right of Citizens for Time-Bound Delivery of Goods, Services and Reduction of Grievances Bill' was introduced in 2011. It is under the active deliberation of our legislature and in the near future we are hopeful that this will be a full-fledged act ensuring that the public services are delivered to the common man and public at large.

Some of the federal state governments have gone ahead and implemented such similar acts in their states and now their public goods deliveries are under the framework of those acts. So many state governments have taken the initiative and I think the central government will also have this act very soon. This will definitely make a dent on the scope of corruption and make our systems more accountable.

Public procurement is one area in which we see that the scope of corruption is the highest. To combat this and back it up with legislation, the Public Procurement Bill has been introduced in 2012. It is under active discussion of the legislature and I'm sure that very soon we will have such a framework which will not only streamline the public procurement procedure systems but also create a lot of legislative frameworks to act on so that there is little scope for corruption in the areas of public procurements that are handled by the government.

Money laundering is an important aspect. Recently, a bill was introduced amending the money-laundering Act and these amendments are in line with the standards set by the Financial Action Task Force (FATF). International forums created some standards or principles on this aspect. Those principles have been adopted and the amendments that have been adduced to the money-laundering Act of 2002 have now made it stronger and more effective in handling money-laundering.

Whistle-blower protection is a very important aspect. Although we have a very good Right to Information Act which provides access to all public information to the public at large and to the common man, we also need certain laws to protect whistle-blowers who provide information relating to the department or organization functioning and certain immunities have to be introduced. For that, the 'Protection of Persons making Disclosures Bill' has been introduced and it is again under active consideration of our legislature and soon I think we will have a legislative framework which provides protection to whistle-blowers and in that way help in revealing information which will help in combating corruption.

The Judiciary, as I said, is an independent entity. It is one of the pillars of our democracy but it also needs to be accountable. The judiciary also needs to be more transparent and accountable and therefore the 'Judicial Standards and Accountability Bill' has been introduced and the Bill will soon be a legislation which will allow us to keep checks and balances on our judiciary also. So, this would go a long way in maintaining more accountability and transparency in the functioning of the judiciary.

In fact, many such initiatives are there. The prevention of bribery of foreign officials and officials in public international organizations was a missing link where we did not have proper legislations. Now there is a bill to take care of this. The Lokpal and Lokayukt Bill is again an important aspect which will allow a framework which will help us in combating corruption.

Now, as was said here, that international cooperation is very important to fight corruption, I think the UN Convention Against Corruption (UNCAC) has a very properly laid out and systematic listing of the various aspects which would be required to fight corruption of all kinds. In the various articles that have been mentioned in the Convention they deal with these subjects and by being a signatory to the Convention, countries commit themselves and to fight corruption and adhere to the various proposals and aspects of the Convention.

India ratified the UNCAC in May 2011 and since this year we have been actively pursuing all forums which deal with this subject. We have been actively participating there. We are committed to implementing various aspects of the Convention to make our laws consonant with international standards and ensure that our compliance is a hundred percent. For this, India is being reviewed also this year and two other countries – Uganda and Kazakhstan – will be reviewing India on Chapter III and IV. Based on this review, feedback will be given about what the gaps are which remain in our legislative framework, in our implementation and in the various best practices that we follow, which need to be addressed and plugged. I think it's going to be very important and I think we will learn and evolve a better framework for combating corruption. Many policy initiatives are a direct outcome of Convention compliance to achieve internationally acceptable standards and also to address gaps in the Indian framework of law and policy. The conflict of interest in public service has been closely examined for suitable policy measures to restrict conflicts that hamper public services as per UNCAC provisions.

India has also supported academic initiatives in the field of prevention of corruption. We are in agreement with the International Anti-Corruption Academy (IACA) for collaborative efforts in the form of training, education and research in the areas relating to anti-corruption. An officer has been sponsored for courses conducted by IACA and we are working together on a module which can be taught in the academy to train people in combating corruption. Recently, experts

from India have reviewed Korea for UNCAC compliance and as a signatory to UNCAC, India has been involved in all reviews and procedures of UNCAC.

So what we have benefited from our UNCAC arrangement is, I would say, we have been able to map Indian legal provisions with UNCAC Articles and see whether our compliance to each and every aspect of the UNCAC agreement is being met or not. We are correlating the data, anti-corruption data, prosecution data, and the best practices and are correlating it with various provisions of the articles to see that law is effective and being effectively implemented to combat corruption. We are identifying gaps and addressing them by way of fresh legislations and amendments. We have participated in working groups such as the recent one in Vienna and have participated in many such review groups and working groups. We have not only participating but also contributing in such forums. We have also been learning from the experience-sharing of various countries in such forums.

So in the end I would say that India stands by its commitment of compliance with the UNCAC and we stand committed as a country to fight corruption so that this evil can be rooted out and we can come up with a clean system and develop as a country.

Thank you very much.

**President:** Thank you Mr. Dwivedi for highlighting steps which have been taken by India for combating corruption and for also highlighting steps which are still in the pipeline. I will now give the floor to Mr. Kenichi Kiyono. You now have the floor.

**Mr. Kenichi Kiyono Deputy Director of United Nations Asia and Far East Institute (UNAFEI):** Thank you very much Madam President. Secretary General, Deputy Secretary General, Your Excellencies, and, Ladies and Gentlemen; It is a great honour and privilege for me to be here to talk about the criminal justice capacity-building efforts focusing on UNAFEI and the UNCAC training programme. UNAFEI is the United Nations Asia and Far East Institute for the prevention of crime and treatment of offenders. It was established in 1962 by agreement between the United Nations and the Government of Japan to provide training courses for officials from developing countries. UNAFEI is not an institute for academics for students, but a training institute for police officers, prosecutors and judges, and prison and probation officers. We have practitioners for professors from those areas.

Today I'd like to talk about the importance of capacity-building for criminal justice officials. I'd like to explain this in three ways. To do this, I'd like to ask you several questions.

Firstly, I would like to praise the efforts of the UNODC and Member States of AALCO in drafting and ratifying the UN Convention Against Corruption. But is it enough to ratify the Convention? Of course not. After making legislations and ratifying the Convention, you must enforce it. The number of countries which have ratified the UN Convention is as many as 167, but many countries which have ratified the Convention have seen little progress after ratification. Why have they seen little progress? Because the culture of corruption and systems have not changed. This includes the administrative, public procurement and systems of transactions between civil parties. You must change these systems and peoples' culture to eradicate corruption.

How can you change these cultures and systems? Tackling corruption requires a three-pronged approach involving preventative measures, punishment and publicity. You can rephrase preventative measures as deterrence, punishment as enforcement, and publicity as awareness-raising or education. Which do you think is the most important especially if you have limited resources to allocate? I would claim that punishment is the most important and the relocation of resources to provide punishment and deterrence is being done by Japan, Singapore and Hong Kong. Hong Kong has allocated 70% of its resources for punishment.

What is important to punish corrupt officials? The important thing is to punish the highest-ranking and influential officials if they are corrupt. Also, at the same time punish the lowest-ranking officials if they are corrupt. Those 2 are the most important and indispensable. No corruption is too small or big to punish. So the punishment is most important because they have great power in preventing corruption.

In Japan there is a saying that one punishment deters a hundred crimes, so punishment has a very powerful deterrent influence.

Investigators must be very determined to punish the offenders and must be brave of course. Also, corruption is committed amongst policy parties so it is very difficult to the law enforcers to get cooperation from witnesses. Taking into account these difficulties, what is most important is to build the capacity of law enforcers. Because time is limited, I would like to explain the rest of my slides quickly.<sup>1</sup>

I'd like to talk about UNAFEI's UNCAC training plan which started 16 years ago before the adoption of the UNCAC. So what is UNAFEI? UNAFEI is the UN Asia and Far East Institute for prevention of crime and treatment of offenders. It is located in the West part of Tokyo. UNAFEI's Director is from the prosecution service and has over 30 years of experience as a public prosecutor. I am the Deputy Director with over 20 years of experience as a public prosecutor. We have professors from the judiciary, prosecutors and from the prisons, and one police officer who is a part-time professor.

The main training programmes we are providing are four 5-week programmes on offender treatment, criminal justice areas, UNAFEI-UNCAC training programme and an international senior seminar. As well as these, we have regional programmes such as good governance seminars for South East Asian Countries, Seminar on Criminal Justice for Central European Countries, Criminal Justice Training for African Countries, which we will start from this fiscal year, Comparative Criminal Justice for Japan and Nepal, and Training Course for Vietnamese Public Prosecutors.

We have handled things such as security, protection and cooperation of witnesses and whistle-blowers, the criminal justice response to cyber-crimes, corporate crime and criminal liability for corporate entities, effective measures for combating corruption and strengthening the legal regime for combating terrorism and economic crimes in the globalized society, and counter-measures against money-laundering.

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<sup>1</sup> Due to the long length of the original presentation, only the most salient features of the slides/viewpoints are included in this report.



Our approach to training programmes is practical, integrative and comparative. Practical means it is not just academic. Integrative means everything from arrest and investigation to prosecution, punishment and treatment in prisons. The comparative approach means usually we invite from 10-20 overseas participants so they not only discuss their own countries but also contribute to the improvement of the other participating countries.

The programme structure includes lectures by faculty members on the criminal justice systems of Japan and individual presentations from participants, lectures by visiting experts from various countries that I will introduce later, group discussions etc. Among the UNAFEI alumni, we have 4800 officials from 131 countries. Of course Asian countries are the biggest with over 2000. Africa has over 400.

Two weeks ago we welcomed Mr. Dimitri Vlassis who is the Chief of the Corruption and Economic Crimes Branch of the UNODC and Mr. Tony Kwok Man-wai who is the former Deputy Commissioner of the Independent Commission Against Corruption (ICAC) in Hong Kong. This week we will welcome the Director of Operations of the Hong Kong ICAC and the Director of the Malaysian Anti-Corruption Academy. We are publishing the outcome of our training courses on our website so you can download our materials for free.

Next I'd like to introduce the visiting experts lecture by Mr. Tony Kwok Man-wai. He has very rich experience not only as Deputy Commissioner of the Hong Kong ICAC, but also he is working as a consultant for the improvement of developing countries so he has vast knowledge in this technical support area.

There are anti-corruption agencies in various countries in Asia. In Singapore, Malaysia, Hong Kong, Brunei, Philippines, Pakistan, Thailand, Macau, South Korea, Indonesia, Bangladesh, Mongolia, Cambodia and Timor-Leste.

**Effective deterrence:** This comprises of an effective complaint system that encourages public report, quick response, zero tolerance, as I have explained, practical approach, proactive investigation and prosecution, effective disciplinary procedures and publicity of successful cases.

**Success factors for effective implementation:** The key is intelligence systems, proactive investigation, whistle-blower and witness protection, financial investigation, international cooperation, full use of executive power, large-scale asset search operations, use of immunity for witnesses.

To change the culture of people or a system, a strong political will is very important and crucial. Strong political will comes from the mind to develop the countries. Where corruption exists there will be little investment and the country will not develop enough. So political will is important in this sense. Strong political will can be a major resource and support for anti-corruption agencies with adequate legal support and independence in implementation and a zero tolerance policy.

**Best Practices:** Anti-corruption agency budget cannot be reduced in Mongolia. The anti-corruption agency budget is pegged to the national budget in Malawi. There is a legal obligation to report corruption in Canada and Malaysia and a reward for reporting bribery in South Korea.

**Best Practices in Education:** Publication of the national anti-corruption plan: In China there is a public integration network, anti-corruption guidelines on the web and active participation with civil society.

**Best Practices in Enforcement:** A special court, lifestyle checks, joint task force with the anti-money laundering office, blacklisting of contractors and integrity testing.

As you know, Hong Kong and Singapore are the two of the cleanest countries in Asia and Japan is the third, so this explains how they have achieved such improvement from very corrupted countries to very clean countries. This is a three-pronged strategy as I explained: prevention, deterrence and education. Hong Kong places the most importance on enforcement and punishment and has allocated 70 percent of resources towards punishment, operations, professional staff, effective deterrent strategies and effective education strategies.

**Effective Legal Framework:** For example, accepting gifts, illicit enrichment, abuse of power and review mechanism. This review mechanism reviews cases which are not prosecuted. The complaint was made with ICAC, but there was no prosecution. Such cases are reviewed by third parties.

**Prerequisites for Effective Implementation:** Independence, adequate executive power, adequate resources, confidentiality, national and mutual assistance, and an effective complaints system.

**Processes of Corruption:** These are stages of how officials are corrupted. Softening up process, soliciting and offering bribes. And if the officials accept bribes they must pay, so the source of the bribe and payment and disposal of the bribe. This is the chain of acts in bribery cases, so we must investigate and respond and collect evidence on these stages.

**Investigative techniques:** Ability to identify and arrest persons, interrogative technique, document examination, financial investigation, conducting search, surveillance and observation, acting as undercover agents, handling informants, conducting entrapment operations and so on. Professional investigative support is essential in intelligence section, surveillance section, technical services section, information technology section, financial investigation section and witness protection section.

Of course, the best practice in Hong Kong was shared during our training course. The course is a UNAFEI professor's lecture, which was delivered last year by the Director of UNAFEI. The Director was a public prosecutor with the special investigations division.

Japanese practices for enforcement of bribery laws are very stringent. We place great importance on the detection, investigation and prosecution of corruption offences. But, our law is very conventional. Japan is unfortunately one of the exceptional countries which has not yet ratified the new convention because we do not have the state of the art legislation in substantial law and also procedural law. We do not use special measures to detect and prove the cases. But, that is why the Japanese practices in investigation are a good example for developing countries which do not have state of the art legislations, and because our method to investigate corruption cases is very traditional.

But, we are very strict in sticking to the basic principles of investigation. Basic investigation is important and we seize a lot of documents and we analyze seized documents and interrogate witnesses, which is very stringent. So, this is why have recently been criticized for our stringent interrogations. We are now in the process of improving our interrogation systems. The Japanese anti-corruption enforcement framework is not a special commission or agency of crime and enforcement. We do not have an independent anticorruption body. This is one of the characteristics of Japanese enforcement.

In many countries, prosecutors can be involved in the investigation, but in most cases I understand that the prosecutors cannot direct the police to do so some investigations. In some countries prosecutors have the power to investigate the crimes. But in Japan we go further to investigate the crimes independent of this.

We do not have a special independent agency and one reason is police integrity and public confidence, and the second is that the prosecutor's independence is highly regarded by politicians. The prosecutor's position is secured by law.

In Japan there is also no plea-bargaining and no electric surveillance, no undercover operations and so on.

**Intensive investigation of physical evidence and interrogation:** clues and source of investigation come from informant and criminal complaint, suspicious report report and investigation of other cases. The most important source of corruption information comes from investigation of other cases. So, this is why we have an advantage because a prosecutor can investigate any crime including tax evasion, embezzlement, other financial crimes, fraud and so on. So, in the course of the investigation of these cases we analyze and find clues to corruption cases.

**How to detect flow of funds and source of bribes:** This is a technical area and requires very intensive investigations and takes perseverance and time.

Regional programs are important to enhance the regional international cooperation. This is where I'd like to finish my presentation.

Thank you very much for your attention.

**President:** Thank you Mr. Kiyono for your very comprehensive presentation on the role of UNAFEI and its various programs and best practices and the Japanese position which you have highlighted. We'll take a very short break of 10 minutes and will thereafter resume at 5:15 sharp and Mr. Nimesh Jani will then give his presentation. Thank you.

**Mr. Nimesh Jani, Regional Anti-Corruption Advisor, United Nations Office on Drugs and Crimes (UNODC):** Thank you Madame President. Hon'ble Ministers, Excellencies, Distinguished Delegates, Ladies and Gentlemen, I am going to take your time very briefly to talk about in combating corruption and the role of UN Convention Against Corruption in this regard. I think it is appropriate to introduce myself first. I am Nimesh Jani, I have literally arrived to New Delhi last Wednesday as the Regional Advisor for the UN Officer of Drugs and crimes (UNODC). Prior to that I was working in Afghanistan as a prosecution advisor and prior to that I was working 20 years as a prosecutor in the United Kingdom. I have also negotiated for

the UK on the Review Mechanism for the UNCAC. I am not sure how many of you have been to negotiations, but suffice it to say, I am painfully aware of the lengths and depths we went to achieve the Review Mechanism for UNCAC and I have no doubt at all that historically speaking similar lengths and depths were achieved by very many people to make sure that we actually do have an UNCAC.

Let me say few things about the Organization that I work for, that is the UNODC. This Office is the global leader in the fight against drugs and international crimes. It also has the honour of being the Secretariat and guardian of the UNCAC. We are mandated to assist Member States in their attempts to address issues of drugs, crime and terrorism and there are three pillars to our work. Number one relates to technical cooperation that is to enhance the capacity of each individual Member State to research and analyze the work that has to be carried out to increase the general knowledge and awareness of all Member States in relation to these very important areas. It is also part our function to assist the States in the ratification and implementation of the Convention which is equally important. That is the plug over. I can now deal with the challenges in the fight against corruption.

In terms of challenges in combating corruption, I would say the first challenge every State has is to address corruption. This is a very difficult and sensitive area and no doubt for many reasons it may not necessarily be easy for any State to take this step of saying we need to make a dent on corruption. It tends to tell that there is a problem. But as the saying goes ‘where there is a will there is a way’ and in the absence of it there is no way. So first of all I think it is a matter to be applauded that so many Member States over 160 now have reached the point of ratification. This for me represents the fact that they have taken seriously their own obligations to address corruption. That is very first step to be taken. In terms of follow-up, however, one needs to understand that it will does not end with the simple ratification of a Convention. It never should with the ratification of the Convention. The will extends to making sure that the words that are written on a piece of paper which is the UNCAC are given life in every single state. This is not to say that they have to be given the same form in every single State. We will have our own individual issues and that again has to be appreciated. However, it does mean, it needs to be followed-up.

The second challenge pertains to resources. Many Countries have face many different challenges when it comes to resources. There are the Least Developed Countries which simply do not have the resources. For those it is incumbent upon donor agencies and the donors to come forward to provide as required by those Countries. Without it we are ignoring the ability of those States to address the issue of corruption themselves. There are Countries that do have assets but they have to distribute those resources to very many issues that they face. In this situation, I think it is the responsibility of first and foremost of the State concerned to think about how it addresses the issue of corruption and secondly to see whether we can support in some way which will assist those States. When it comes to corruption the reward would come very soon after when you put the resources in and in terms of those resources I do not simply mean in enforcement although that is an important element, I mean resources holistically put to make sure that you can address corruption. That means you have to resource the police to investigate, that means you have to resource the prosecutors to facilitate prosecution and that means you have resource the judiciary to make sure that the judiciary can carry out its mission without the threat from organized crimes and other forces who have sufficient money to take out people from

prosecution. In Afghanistan for example, there are very many situation where prosecutors were executed literally because they were simply doing their job. Similarly with the investigators and similarly with the judiciary. So there in terms of resources there is a need to make sure that there is protection for those who will take on these areas of work and there is a need to carry out enough to carry out the work in the scale required. But only the State itself can measure this in terms of how they do it. But it does need to be done.

Another issue which was touched upon was the legal framework. Another challenge for many States would be to make sure that the legal framework is fit for our purposes. By fit I mean you address the issues of how to tackle bribery, how to tackle not only the receipt of bribes by public officials but those who make the bribes, how to tackle bribery in public sector, how to deal with witness protection, how to deal with procurement, all these things are the legal framework which will be underpinning the ability of a State to weed out corruption. If there are gaps in this, then there are gaps in your ability to fight corruption. In its absence that is another challenge every state has.

Another challenge relates to systemic weaknesses. By systemic weaknesses what I refer to is the every single element of your State system for addressing corruption needs to be protected. It needs to be protected to the extent that it can not be blocked. I come very much from a enforcement background so you will have to bear with me if I lean towards enforcement, which is the way enforcement people unfortunately. To be able to tackle corruption you need first and foremost a clean and quick system. By a clean system what I mean is uncorrupt police investigations, uncorrupt prosecutions, and uncorrupt judiciary. It is a massive challenge especially when you are dealing with many other challenges around you. But whether you do it through a specific measure or whether you do it at a general level, you need to make sure that you have a clean system. And you have to trust them. Once you have them you have to make sure that some is elements of certainty. Otherwise, what you are going to find, and many States have found is this that you are trying to swim through dirty waters and come out clean on the other side. It is just not going to happen. In terms of enforcement capacity I have already touched upon that aspect.

The next challenge relates to technology, which is a new one. I think technology for corruption is both a boon and a bane. It is a boon in the sense of increased capacity of investigator's work because you have at your disposal new technology but at the same time organized criminals who are corrupt who would use the same technology to prevent them from gathering evidence. Again this is why the State is trying to address this a very firm intelligence foundation in terms of what it is and how corruption is taking place because then it can decide the role of technology that it needs to invest in or indeed the level of technology in needs to prevent creating in order to make sure that they can identify evidences that are useful.

The final challenge relates to the international criminal elements. The world is getting smaller and unfortunately it is getting smaller for criminals faster than it is for the enforcement side of the work that we do. Criminals now do not have to respect borders, they can move money anywhere they want, they can use banks transnationally etc. Within two seconds the money is gone. How are we going to get it back, how are going to make sure that it could be millions or trillions. You may be able to prosecute that person and put him behind bars, but if you do not bring the money back to the place where it can do some good, you cannot call that a complete victory, it is a victory in name but you still do not have funds to help those who are in need of it

from where it was taken in the first place. So in that sense there are tools you need to be able to develop with the objective that you can chase money quickly and to ensure that those issues are addressed in a relatively quick way for your own state. I fully appreciate that it is not very easy in the real world. To be able to do it you need to have things like mutual legal assistance treaties, bilateral treaties, multilateral treaties, using UNCAC as a framework also, in terms of money laundering again using technology having fantastic and very good investigation capacity within your own State to do this. Without it will be very difficult to deal these issues. This is an important challenge that you need to tackle in your fight against corruption.

Coming to the relevance of UNCAC, many people have already touched upon it and I thank them for that mean I do not have to speak so much on that. I will be very brief. It has taken ten-fifteen years to get to where we are, from a point where very little was known about corruption and again the very fact that we are all here talking about needs to be appreciated in terms of trying to eradicate corruption now. The next step is of course addressing it properly. In terms of the purpose of the UNCAC may I refer you to Article 1 of the Convention where there are three main purposes to it; first to promote and strengthen measures to prevent and combat corruption effectively and efficiently, second, to promote and support international cooperation and technical assistance in the fight against corruption including in the asset recovery and third, to promote integrity, accountability management of public affairs and public property.

If you look at the website of UNODC, you will find that there is a whole lot of information freely available to anyone who wants to the tools of anti-corruption including the four pillars of the UNCAC as well as Implementation Review Group and other bodies which have been touched upon as well. In summary, there are four pillars of UNCAC. One is Prevention, one is Criminalization, one is International Cooperation and of course Asset Recovery. On these four pillars, you will find a great deal of information in each one of those areas you need to address. Taken as a whole UNCAC provides a very comprehensive for any State seriously looking at trying to tackle corruption in terms of what they need to do and what they need to implement domestically, to enact laws to make sure that corruption is eradicated or minimized within that State. The next step would be the Review Mechanism which is a fairly new thing. It is a peer-review mechanism, first and foremost it is not intended to be a finger-pointing exercise, it is not intended to be a critique of any State, it is supposed to be a tool so that every state can learn from other states so that every state can understand the difficulties that are found in other states whether it is rich or poor and to learn from that experience. It is very much trying to make sure that every state has the access to the full wealth of information from a 167 odd Countries in terms of how they have tackled same issues. If it is taken as that I would suggest that this in future would be the very function of future trying to reduce corruption in every single country that has ratified UNCAC. Because you will have not only your learning but also the learning of so many states to choose from in terms of how you develop your own capacity. I thank Dr. Manoj for his approach to this because in his presentation you understood immediately that this is a living experience, this is not about a photo, it is about a video if I may put it that way. You are not going to address corruption by just doing one thing in one given point of time, you have to carry on working on it, working on it and working on it to get to a point where corruption is minimized. I won't even say eradicate it, frankly, that is an utopian view of corruption. Because where there is humanity which is willing to sacrifice its principles for the sake of accumulating wealth, you will find corruption. That could be with regard to criminality, drug trafficking, human trafficking or procurement. You name it we will find it. But what we can do is to try to

minimize its effect on the society. Certainly this is the whole ethos of the UN Convention against Corruption. I thank all for the time that you have taken to listen to me today. The UNODC has and always remain committed to make sure that UNCAC is implemented with a view to making sure that lives of millions of people are improved by it and we stand with every state to assist them in every way we can.

**President:** Thank you for your presentation.

**Professor Charles Sampford, Director, The Institute for Ethics, Governance and Law (IEGL) Griffith University<sup>2</sup>:** At the outset I would like to thank the Secretariat of AALCO, particularly its Secretary-General Prof. Dr. Rahmat Mohamad for giving this opportunity to share some of my thoughts on corruption, an issue that I have been dealing with for quite some time now.

Today, I want to talk about corruption and its obverse, integrity, in a globalising world. I will commence with definitions of corruption and integrity and relate them to each other and to power. I will then discuss how, as power evolves and grows, the opportunities for the abuse of that power (i.e. corruption) grow too – delivering to us the history of corruption from ancient abuses of priestly, gubernatorial and military power to state capture. I will then look at the development of anti-corruption measures from the execution of those discovered, to national integrity systems, and international collaboration to develop them. However, those who pursue power in order to abuse it for their own ends do not stand still. I will emphasise the collaboration of the corrupt in national corruption systems and emerging global corruption systems. I will conclude by arguing that the remedy lies in the development of global integrity systems.

### **‘Corruption’ and ‘Integrity’**

Integrity and corruption are conceptually linked terms – with one the obverse of the other. TI defines corruption as the ‘misuse of entrusted power for private benefit or personal gain’<sup>3</sup>. By contrast, integrity is ‘the *use* of public power for officially endorsed and publicly justified purposes’.<sup>4</sup> The latter definition is primary because you cannot know what an abuse is if you do not know what the correct ‘use’ is. The form of official endorsement will vary from system to system but, in a democracy, the officially endorsed uses of public power are those set by the elected government and legislature. Indeed, democratic competition is about differing views as to how public power should be used for the benefit of citizens.<sup>5</sup>

Both definitions centre on power – specifically its uses and abuses. This is not to restate Lord Acton’s famous dictum (that power corrupts and absolute power corrupts absolutely). The

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<sup>2</sup> Professor Charles Sampford’ paper on the theme: “*Meeting the Challenge of Globalizing Corruption: Building a Global Integrity System*” was read out at the Annual Session since he could not come in person to deliver the same.

<sup>3</sup> ‘Personal’ gain is very widely construed. It extends beyond personal enrichment and includes benefits to the power holder’s family, associates, political party – indeed, anyone other than those who are the publicly intended beneficiaries of that power.

<sup>4</sup> I will not go into detailed argument here, but I would distinguish between originally intended purposes and publicly justified purposes on the basis that the purposes for which institutional power is used may change over time. However, any new uses of entrusted power must be publicly justified and officially endorsed.

<sup>5</sup> Note that this approach treats integrity as a process value rather than a substantive value. It is a question of living by the publicly stated values relevant to your role.

relationship between power and corruption is contingent rather than a necessary one. However, wherever there is power there is the risk of its abuse. That risk must be recognized and minimized by appropriate governance and integrity measures (see below). We must recognize that the corrupt are attracted to ungoverned power – power that is not channelled by governance integrity measures towards the purposes for which the power is justified. For them, the point of gaining power is to use it in their own interest.

While there are many ways that power can be abused for personal gain (the ingenuity of the corrupt is considerable), I wish to distinguish two different forms of abuse. One is when the power holder uses the power directly for their own benefit – using property with which you have been entrusted for your own use, stealing entrusted money, using entrusted power to force others to do what you want. The other form of abuse is when the exercise of public power is for the benefit of another who rewards the power holder for the abuse – a corrupt exchange that we recognize as bribery. We could distinguish these two forms of abuse as unipolar and bipolar corruption. The power that is relevant to unipolar corruption is that which has been entrusted and which there is a risk of abuse. In bipolar corruption, the power held by the corruptor is as relevant as the power held by the corrupted. The risk lies in the power held by each and risk management needs to be applied to both.

### **Evolution of Corruption**

As power evolves and grows, so too do the opportunities for corruption. Human imagination, innovation and drive give us scientific and engineering advances. They also give us new forms of social organisation, from the hunting party to the sovereign state, to the global corporation that bring together people, power and resources capable of achieving much more than uncoordinated individual behaviour. But that same imagination, innovation and drive also generate new ways of abusing institutional power. The potential for corruption is built into all institutions because of the dynamics of collective action and agency. The reason why we create and support governments, joint stock companies – and international NGOs – is because so often more can be achieved collectively than individually with the pooling of people power and resources for shared goals. However, that opens the possibility that institutional leaders may turn that entrusted power to their own benefit or use against their citizens/stockholders/bondholders.

Accordingly, the history of institutional innovation is also the history of corruption. I will not attempt a full history of either but provide a few snapshots. In late Republican Rome, provincial governorships were seen a license to amass personal fortunes through corruption. Cicero's prosecution of the Sicilian governor Verres in 70BC was remarkable for its oratory, audacity and rarity. The Roman generals enjoying 'Imperium', the power of command, started using that power against the Republic they were supposed to defend. In Medieval Europe, the Church claimed the power to provide salvation and eternal life – and extracted a very good income from the sale of 'indulgences' and the provision of special masses.<sup>6</sup> The great lords or 'tenants-in-chief' received land and serfs so that they could provide men at arms to fight the king's wars and defend his territory. However, these men at arms were often turned against the king to wrest extra privileges and sometimes the crown itself. The sovereign states that emerged in seventeenth century Europe were designed to eliminate reliance on these 'over-mighty' subjects by creating a

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<sup>6</sup> Those corrupt enough to think they could buy salvation from a supposedly omnipresent and omniscient God were likely to be in need of it.



national bureaucracy, collecting taxes and paying for a standing army. However, this created new opportunities for corruption by the bureaucrats and generals reminiscent of Ancient Rome. Nicholas Fouquet was Louis XIV's minister of finance – having bought two public offices and being given a third as a favour by the corrupt Cardinal Mazarin which made him the leader of the 'tax farmers' who took a cut from the taxes they collected. He built Vaux le Vicomte, the most magnificent chateau in France and entertained the king in August 1661 in such a lavish manner that the King had him arrested.<sup>7</sup> The following century, Napoleon used the army command given him to defend the French Republic to take it over – setting the example to be followed by hundreds of later generals, colonels, a flight lieutenant<sup>8</sup> and even a master sergeant.<sup>9</sup> Thus financial corruption and *coups d'état* became diseases of the modern state as the great power of the modern state attracted those who wanted to engage in unipolar corruption. As corporations grew in number and strength, some found a variety of ways to secure what they wanted from government through multiple forms of bipolar corruption.<sup>10</sup>

More recent multi-ethnic empires provided further examples of financial corruption. Christopher Columbus wanted to become Viceroy of the territory he conquered and 10% of all taxation. Robert Clive was not as demanding but made much more money in Bengal. Neither left a good example to the local inhabitants who finally regained control of their territory.

### **Governance and Risk**

All institutions concentrate power, people and resources to achieve certain publicly stated goals which are, or are seen to be, of benefit to the relevant community. However, that concentration of power, people and resources could be used for other purposes that might harm that same community. Police forces and the armed services are supposed to protect citizens but can use their coercive force to secure bribes, to terrorize inhabitants or even to seize state power. Banks and other financial institutions concentrate the resources of their shareholders, depositors and others who entrust them with their money. These resources are supposed to ensure liquidity for those who engage in the provisions of goods and services to others. Yet those resources can be used in transactions that generate very high fees for the financial intermediaries at the same time as they create great risk for those who have entrusted their money to them.

For anarchists, the dangers are just too great, but most of us are sufficiently keen to reap the intended benefits of states and corporations that we are prepared to take a risk. The American revolutionaries considered the former issue very carefully. For them, governments are instituted to support the 'inalienable rights to life, liberty and the pursuit of happiness', but they could turn against the people they were supposed to benefit, justifying revolution and the establishment of governments that could perform the relevant function (or in my terms, justify themselves). But they did not decide to abandon the idea of government because government power had been abused by the British. However, they wanted to reduce the risk of future abuse by creating a system of 'checks and balances' that developed into a form of 'risk management' that we now recognize as 'governance'.

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<sup>7</sup> The arrest was by a captain of musketeers named d'Artagnan – leading Dumas to craft a series of books about him and three other musketeers culminating in the story of the 'man with the iron mask'.

<sup>8</sup> Jerry Rawlings of Ghana.

<sup>9</sup> Samuel Doe of Liberia.

<sup>10</sup> From outright bribes to funding party elections.

Governance is about the allocation and direction of power within individual institutions and within polities as a whole. While the term is relatively recent, the idea is not and a number of 'governance disciplines' have been developed. All of them recognize and theorize corruption and other governance problems within institutions but do so in different ways. When lawyers look at institutions and see sets of formal norms. Ethicists see informal norms and the values the institution claims to further. Economists see incentives and disincentives. Political and social scientists see power relations and complex webs of interpersonal and group relationships. Accordingly, institutional problems are seen in the deficiency of laws, ethical standards, incentives etc. and the solutions are seen as lying in remedying the deficiencies their disciplines identify. All these partial insights into institutions and their problems are important. Any solution that ignores them is likely to fail. However, solutions limited to the insights of a single discipline are also likely to fail. Solutions to governance problems such as corruption should recognize and integrate the insights of law, ethics, politics and economics.

In doing so, most of the explicitly acknowledge the importance of power and its abuse. Law seeks to set out what powers officials have; how they must be exercise; for whose benefit it is to be exercised; and, penalties for using it for other purposes. Ethics is always particularly concerned about how those who hold power should exercise that power – asking hard questions about their values, giving honest and public answers and then living by those answers.<sup>11</sup> Political science is, first and foremost, a study of how power is exercised. Economics is one governance discipline that avoids discussion of power because it seeks to describe a world in which all exchanges are voluntary and Pareto efficient.

### **The Evolution of Anti-Corruption Responses**

The long history of institutional power and its abuse by the corrupt has led to a wide range of responses. The first instinct is a strong 'legal' response in which the corrupt are executed by the King or Party Strong responses. Not infrequently, the head of state who felt cheated did not take a chance on the accused being acquitted (Louis XIV was not the last to do so – though he only insisted on life imprisonment). The rule of law ruled out such certainties of outcome. But in any case, its limitations must be recognized.

Prosecutions still have a cathartic effect and may help to mobilize reform. Criminal laws can support other reforms. But they are not the key part of the answer. First, prosecutions take a long time and are frequently inconclusive. Even if successful the will not bring back the destroyed shareholder wealth, the stolen money, the uncollected revenue or even a significant proportion of it. Even for the few who are brought to justice, most of the wealth that has been destroyed or stolen will be irrecoverable. This is not just because it cannot be traced but often because it no longer exists. Second, as we all know, laws whose purposes are not internalized are rarely effective. This is where ethics comes in. Third, they do not address the key institutional questions of why the corrupt 'bad apples' got to such positions of power and were tempted to abuse that power for their own ends. If there are a lot more crooked CEOs or senior public servants, it is not because there are more bad people in a particular country; it is because its corporate, bureaucratic and/or political institutions generate a lot of temptations and opportunities for corruption and tend to promote those who will give in to those temptations.

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<sup>11</sup> C Sampford and Preston, N. Encouraging Ethics and Challenging Corruption: Public Sector Ethics in theory and practice Federation Press, 2002.

The point is that many of the problems that lead to corruption are essentially institutional rather than individual and you cannot fix institutional problems merely by punishing individuals. Much of this is appreciated. In fact, there are almost as many zealous proponents of ethics and institutional reform as single solutions to governance problems. After law reform has failed – as it always does if tried in isolation – the other solutions are preached from a range of soapboxes.

Those pressing for essentially ethical solutions emphasize that law is ineffective if not backed up by the values of those they are supposed to govern. This leads to attempts to create codes of conduct and to persuade relevant players to abide by them. Some enthusiasts (not including myself) push for a form of ‘bare ethics’ as a singular solution involving voluntary codes and ‘all regulation short of law’. Yet ethics without the sanction of law to back it up is a ‘knave’s charter’ – a guide for the good and a dead letter for the bad.

Those pressing for institutional solutions are attuned to the institutional nature of many of these problems. They recognize that much of the problem lies in the opportunities and temptations for corrupt and unethical behaviour and the difficulty in detecting it. The solution becomes the creation of new agencies and the reform of existing ones – ticking every box on the list of institutions that have worked in other countries.

Institutional solutions have taken a variety of forms – removing temptations to act corruptly, making it more difficult to act corruptly (from the separation of powers to administrative law) and making it easier to detect corruption (from regular audits and assets checks to financial tracking). By the late 1980s, a common response was the creation of a single, very powerful, anti-corruption agency along the lines of the Hong Kong Independent Commission Against Corruption (ICAC) enforcing very strong anti-corruption law. However, this model caused concern for placing too much reliance on a dangerously powerful single institution. In the 1990s, the approach to reform taken in Queensland and Western Australia (two Australian states plagued by corruption) reflected a new approach. The answer to corruption does not lie in a single institution, let alone a single law, but rather in the institutionalization of integrity through a number of agencies, laws, practices and ethical codes. Instead of a single agency, what was needed is a *combination* of state institutions and agencies (courts, parliament, police, prosecutors, DPP), state watchdog agencies (ombudsman, auditor general, parliamentary committees), non-governmental organizations (NGOs) and the norms (including values and laws) and incentive mechanisms by which relevant groups live.

This combination has been given various names. Following work with the Electoral and Administrative Reform Commission and the Parliamentary Committee to which it reported, I called it an ‘ethics regime’.<sup>12</sup> The idea was adopted by the UK Nolan Committee on Standards in Public Life<sup>13</sup> and the OECD which renamed it an ‘ethics infrastructure’.<sup>14</sup> Under the different

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<sup>12</sup> C. Sampford (1990) *Law, Institutions and the Public Private Divide (Keynote address)*, Australasian Law Teachers Association Conference, Canberra – later published in the *Federal Law Review*.

<sup>13</sup> The Right Hon Lord Nolan (1995) *Standards in Public Life: First Report of the Committee on Standards in Public Life*, HMSO.

<sup>14</sup> OECD (1996) *Ethics in the Public Sector: Current Issues and Practices*; OECD (1997) *PUMA Draft Checklist*, Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries; OECD (1997) *Survey of Anti-Corruption Mechanisms in OECD Countries*, Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries; OECD (1998) *Council Recommendations on Improving Ethical Conduct in the Public Service - Background note*.

names, this approach has become the preferred model for governance reform within national and sub-national jurisdictions.<sup>15</sup> However, the term with the widest currency is Pope's 'national integrity system'<sup>16</sup> which was widely promoted by TI and is the term used in the subsequent joint work with TI, which I had the privilege to lead while working closely with Pope. Our team developed the conceptual analysis, methodology and a sophisticated tool for mapping and assessing 'integrity systems'.

In an effective integrity system, the relationships between the various elements of the system will be rich and varied. Relationships will be those based on powers and responsibilities set out in the constitution and other laws, on mutual involvement in each other's knowledge gathering or policy formation, and on support for each other's operational effectiveness. Some relationships will be supportive, some procedural and some will involve checks and balances. However, these should not be seen as limiting and negative but as part of the way that the integrity system keeps its elements to their mission and prevents them from abusing their power for other purposes.

While the term was used to describe the relatively well integrated and developed governance systems found in some western jurisdictions and advocated for others, every jurisdiction has an integrity system of some description in place, whatever its challenges. A NIS can vary in completeness and effectiveness, but there is almost always some base on which it can be built. Even if it is not effective in promoting and supporting public integrity, it will almost always contain some institutions or entities that could become vital elements in an effective integrity system. Institutions that play no part in the integrity system in one context may play a prominent role in others (e.g. religious institutions do not appear in most descriptions of western integrity systems but the Catholic Church played a critical role in the emergence of the Polish integrity system and liberal Islamic faith based NGOs may be an important part of an emerging Indonesian system).

Since 2000, two methodologies have been developed by TI research partners to map and describe national integrity systems – an early, static 'tick box' model developed by Jeremy Pope and Alan Doig that seeks to take a quick snapshot of the individual elements of the integrity system and a more recent and more ambitious and dynamic model and methodology developed by Jeremy Pope and I that seeks to see the way that a particular integrity system is actually operating.

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<sup>15</sup> e.g. Acar, M., & Emek, U. (2008). Building a clean government in Turkey *Crime Law and Social Change*, 49(3), 185–203; Anechiarico, F. (2010). Protecting integrity at the local level. *Crime, Law and Social Change*, 53(1), 79; Behnke, N., & Maesschalck, J. (2006). Integrity Systems at Work: Theoretical & Empirical Foundations. *Pub Admin Q*, 30, 263; Huberts, L. W., Maesschalck, J., & Jurkiewicz, C. (2008 ). *Ethics and integrity of governance*: Edward Elgar.

<sup>16</sup> Langseth, P., Stapenhurst, R., & Pope, J. (1997). Role of National Integrity Systems in Fighting Corruption *Comm L Bull*, 23, 499 and J Pope (2000) *Confronting Corruption: The elements of a National Integrity System (The TI Source Book)*, Transparency International. The choice of the term 'integrity system' rather than 'anti-corruption' system was inspired. Corruption (the abuse of entrusted power for personal gain) is a derivative concept and a derivative goal. One cannot know what an abuse is without knowing what the legitimate uses of those powers are. Integrity (the use of entrusted power for publicly justified ends) is primary. We want effective institutions that deliver a sufficient proportion of their promises. If all we just wanted to avoid government corruption that goal could be achieved in theory by not having government and in practice from anti-corruption practices that prevented the government doing anything.

### **Integrity Systems as a form of risk management that provide insurance against corruption**

Integrity systems can be seen as a form of risk management. One of the most important drivers of integrity system reform should be the identification of integrity risks. It is not necessary to prove that the risk has materialized (though this will provide conclusive evidence of the existence of the risk) for us to take action.

Like all insurance, there will be costs. Integrity measures utilize money and talent. While almost always ensuring better decisions and avoiding corrupt decisions, they may make decisions slow or timid or even stall decision making completely in ways that prevent public agencies providing the benefits they claim to deliver as surely as if they were acting corruptly.

Some important insights flow from this:

1. The purpose of integrity measures is to ensure that government agencies do what they claim to do.
2. Like all risk management, you should look at the probability of the risk and the seriousness of the risk as well as the costs of insurance.
3. Like insurance the cost of integrity measures is real but is generally a small proportion of the total. I am not sure what the cost of parliament, courts and the various integrity agencies is but let us assume that it is 5%.
4. The purpose of the 5% investment is to ensure that we get the other 95%.
5. But if extra integrity measures eat into the 95% without significantly reducing risk, they are either not worth it or the integrity measures have been poorly designed.
6. Similarly, if the extra integrity measures mean that we start getting a lot less for that 95%, they are either not worth it or the integrity measures have been poorly designed.
7. Even if the risk has materialized, it does not necessarily require action if the risk is proven to be very rare or that it has been dealt with effectively.
8. However, confidence in integrity measures is important so that sometimes we may engage in integrity measures to ensure confidence. This is related to another point – that risk can never be fully quantified and, in human systems, a risk that is not addressed may encourage behaviour to exploit that risk. For these reasons, it is rational to err on the side of over insurance rather than under-insurance.

We can distinguish three ways of reducing the risk that power will be abused is a function of temptation and opportunity.

1. Reduce temptation: there is a temptation where governments have the power to make decisions that particularly favour individuals by increasing the value of their property in the broadest sense. The classic case is building approvals and rezoning. If there is a betterment tax or a charge for service provision there is less temptation.
2. Reduce opportunity – ensure that those who benefit cannot be involved in the decision. Those who are interested:
  - a. Do not decide – conflict of interest rules.
  - b. Do not have input – lobbying rules.
3. Increase likelihood of being discovered:
  - a. Transparency – we know what is done and who benefits and who has spoken to whom about what.
  - b. Right to know/FOI/public own information.

- c. Requirement to give reasons and defend them under administrative law.

### **International Collaboration**

Since the 1990s, there has been considerable international collaboration to strengthen the integrity systems of our nation states. There was benchmarking and comparative studies by OECD (comparing 'ethics infrastructures' in 1997) and UNODC. UNDP and the World Bank provided aid for institutional strengthening within integrity systems (though it was not uncommon for different donors to send 'experts' on their own institutions who sought to replicate them within the 'donee' country without a great deal of regard for either the institutions that were already there or the new institutions being created in the likeness of the donor's own institutions. States have signed the UN convention against corruption and various G20 initiatives. Companies have signed up for the UN Global Compact, the UN Principles of Responsible Investments, the Earth Charter, the partnering against corruption initiative, Extractive Industries Transparency Initiative and others. However, there are concerns about how these initiatives can be co-ordinated. But there are three serious reservations that this can be enough.

### **Anti-Corruption Systems**

While National Integrity Systems were seen to be the answer to corruption, Transparency International's (TI's) early comparative studies generated some surprising results. While countries with stronger national integrity systems were generally less corrupt than those with weak national integrity systems, the correlation was not as great as it might be imagined. Some countries with very low levels of corruption seemed to lack institutions that TI's model of a national integrity system seemed to need. Some highly corrupt countries appeared to have all the elements of the TI model – and some new ideas and improvements of their own that should have made their integrity systems even more effective.

Unfortunately, the strength of a national integrity system is not the only relevant variable in determining the level of corruption.<sup>17</sup> It is quite possible that the more significant variable is the strength of the 'national corruptions system' (NCS) – which is, in many states, better organized, better resourced, and more effective than the NIS. This may explain why some states with apparently limited 'integrity systems' are relatively free from corruption and some states with apparently extensive 'integrity systems' remain highly corrupt. Coalitions of leaders are needed to create, reinforce and integrate the institutions of the NIS and to co-ordinate their activities.<sup>18</sup> While a NIS may be seen as the best way to promote integrity, the corrupt are often far more organised and in some states national corruption systems (NCS) may be better organised, better resourced and more effective – with long established patterns of behaviour, strong institutions, clear norms and effective positive and negative sanctions. The NCS will seek to disrupt and

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<sup>17</sup> See A. Doig and S. McIvor (2003) 'The National Integrity System: Assessing corruption and reform' 23 *Public Administration and Development* 317. This article built on a Transparency International (TI)-sponsored research study funded by the Dutch Government into the National Integrity System (NIS) in practice. It assesses the findings of the study to consider how the approach can work in practice, and what the approach can reveal about the causes and nature of corruption as well as the implications for reform.

<sup>18</sup> See Sampford and Connors (2006). This was a major conclusion of the first World Ethics Forum held in Oxford in 2006.

corrupt the NIS. As a corollary, the NIS should positively react. It should not merely seek to deter, detect and prosecute bribe givers and bribe takers but should first set to map and understand the corruption system then plan how to disrupt and destroy it.

Organized crime (whether gangsters or corrupt cliques) will always attempt to suborn or intimidate police, judges and any one official or institution within the NIS. A corollary, however, is not always noted. The task of the NIS is not just to prosecute corrupt individuals. It is to disrupt the corruption system so that it is difficult for it to function. Corruption flourishes in well-established networks where trust is present on both sides of the exchange relationship. This phenomenon is as old as human civilization; its forms subject to continual change and redefinition. Too often, moral accusations are aimed at the failings of individuals, thus distracting attention from institutional and structural patterns of corruption. Systemic, pervasive sub-systems of corruption can and have existed across a range of historical periods, geographic areas as well as religious, political and economic systems. A key operating feature of corruption sub-systems is that they are relatively stable networks that survive changes in personnel.<sup>19</sup> Such networks support the common good of particular elites or social groupings rather than uphold the national public good. The failure of public trust leads to solidarity networks within a state. It is important to understand how corrupt and unethical subsystems operate in order to reform and change them. We can certainly recognise a well organised corruption system in 1980s Queensland and in many other jurisdictions. We can also recognize some of the means of breaking corruption systems from the Queensland experience (sequential investigation with immunity for those who come forward when their information is still useful) and approaches to tackling other systemic abuses (general amnesties for those who tell all and a version of truth and reconciliation commission).

### **Growth of Power Beyond Nation States And The Opportunity For Global Corruption Systems To Emerge**

For the last two decades, the primary focus of corruption studies and anti-corruption activism has been corruption within sovereign states. International activism was largely directed at co-ordinating national campaigns and to use international instruments to make them more effective domestically. This reflects the broader fact that, since the rise of the nation state, states have comprised most of the largest institutional actors and have been the most significant institution in the lives of most individuals. This action made states the 'main game in town' for the 'governance disciplines' – lawyers, political scientists, economists and ethicists. It also made it fair game for the corrupt.

However, over the last twenty years, the flow of money, goods, people and ideas across borders has threatened to overwhelm the system of sovereign states. Much activity has moved outside the control of nation states at the same time as nation states have 'deregulated' and in so doing have transferred power from those exercising governmental power at the nominal behest of the

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<sup>19</sup> See R Neilsen (2003) 'Corruption networks and Implications for Ethical Corruption Reform' 42 *Journal of Business Ethics* 125. Neilsen identifies examples of exclusive corruption networks as criminal organisations such as the Mafia and the Japanese Yakuza and more subtle types of corruption networks, known as 'crony capitalism', as informal networks of large family businesses and where government officials control such activities as large loans from state bank that are not repaid, preferential government contracts, protected monopolies, investment banking and brokerage conflicts of interest, auditing, and consulting conflicts of interests etc.

majority of its citizens to those with greater wealth and/or greater knowledge in markets in which knowledge is typically asymmetric.

It is now recognized that many governance problems have arisen because of globalisation and can only be addressed by global solutions. It must also be recognized that governance problems at the national level contribute to governance problems and the global level and vice versa. This is true of current issues from the melting Greenland glaciers to the ethical and financial meltdown of Wall St. It is also true of traditional issues involving interlinked domestic and international conflict and the toxic symbiosis of foreigners paying bribes to officials which are deposited by subsidiaries in tax havens in helpfully secretive banks.

This is not about the United Nations and other intergovernmental organisations. Corruption within the UN system is limited because there is limited power. We have seen the ‘oil for food’ (in which almost all of the corruption was by the Iraqi government and corporations. We have seen ‘jobs for the boys’ and one or two cases of ‘jobs for the girlfriends’. The most serious issues are attempts to buy UNSC votes in an attempt to secure support for violent action that would otherwise be in clear breach of the UN charter.

The forms of power that we need to be concerned with include those which are increasingly beyond state regulation. These include:

- The long standing and increasingly profitable operations of organized crime – including the arms trade and drug trafficking.
- Deregulated corporations who can operate in multiple companies and shift money and assets (especially intellectual property) to maximize profit and avoid regulation and taxation. These corporations have the opportunity to assist communities and economies to develop but often play one country off against another. Many will use their unregulated commercial power to secure compliance of states through corruption and offers states and/or political parties that they cannot refuse.
- Transport and shipping using flags of convenience.
- Banks and financial institutions who can move money from one currency to another, sometimes using bank bailout money to speculate against the currencies of the countries which saved them – and sometimes merely providing conduits for corrupt money to move beyond the hands of local enforcement authorities.
- Private military companies – the mercenaries who flourished in Europe before the rise of sovereign states and are re-emerging as sovereign states weaken. Some of these are employed by sovereign states to avoid their responsibilities under international law. Some are employed by corporations and may break the supposed monopoly (and general superiority) on the use of force by sovereign states.
- Surveillance by states across borders – aided by corporations whose are separately securing networks of surveillance.

There is an opportunity for global corruption systems to emerge with a combination of the above. We can see state capture through corruption, or the use states as based for operations in other states that are illegal and or highly damaging. Corrupt payments or favours to ensure that operations which are not defined as criminal because laws are not passed, modified or not enforced. When financial power is linked to surveillance or, worse, state or non-state use of force, we enter potential nightmare territory. The abuse of financial power produced a global financial crisis in which banks pressed governments to save them (sometimes using threats that



would otherwise be considered extortion.<sup>20</sup> When financial power is recklessly used to seek profits, we may face another global financial crisis

This is not to say that a global corruption system has emerged. I am not suggesting that a majority of those in a position to do so do not act corruptly or that they succeed when they attempt to. Some attempts by corporate interests to stage coups have been spectacularly ineffective when using mercenaries – though commercial interests have sometimes been willing participants in coups backed by foreign governments. However, the risk is there and must be addressed to ensure that corrupt corporations do not profit at the expense of ethical ones and thereby become a larger part of global capitalism. We must also be on the lookout for behaviour that benefits corporations and governments at the expense of the communities they are supposed to serve for which excuses are proffered (such as ‘everyone else does it,’ ‘I have to serve my shareholders,’ ‘my workers are getting \$2 a day instead of \$1 per day,’ ‘health and safety regulation is the responsibility of the local government and we comply – and giving gifts to local inspectors is part of the culture,’ ‘it is legal to advertise tobacco so there should be no constraint on our advertising and packaging’). We must also be careful about the co-option, willing or wilfully blind, of those who do not see themselves as doing their job – such as bankers operating under strict secrecy regimes (which the Swiss nearly perfected before pressure from the EU and which other countries have taken up).

As emphasized above, governance reform and integrity measures are justified by the risk that they occur. We do not have to await proof that the risk has materialized. Once it does, it will be much harder to deal with.

### **Systemic Collaboration – Building Global Integrity Systems to Deal With Globalising Corruption Systems**

As always, this leads us to the question: ‘What is to be done?’ The application of the national integrity system approach to global problems was suggested by Prof Ramesh Thakur when he was UNU Senior Vice - Rector and UN Assistant Secretary General working with Kofi Annan on UN reform. In 2008, TI also recognized its value and commissioned me to write the conference overview paper (‘From National Integrity Systems to Global Integrity Systems’) for the 13<sup>th</sup> International Anti-corruption Conference 2008 (13 IACC).<sup>21</sup>

In doing so, we should learn from the lessons of studying national integrity systems. The first lesson is that corruption does matter. Corruption is not a minor issue, let alone a sustainable alternative route to development. Corruption is linked to the failure of states to achieve the goals they set themselves for the very simple reason that the power, people and resources allocated to achieving those goals are used for other purposes. The second lesson is the approach to be taken in combating corruption. If corruption involves the abuse of entrusted power for personal gain, the attempt to limit corruption in an emerging global order involves identifying:

#### **1. Areas of significant power.**

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<sup>20</sup> I am reliably told that the Irish bankers demanded a government guarantee of their debts or all ATM machines would cease dispensing cash that afternoon.

<sup>21</sup> Sampford, C. ”**Global Transparency: Fighting Corruption For A Sustainable Future:** From National Integrity Systems to Global Integrity Systems” commissioned conference discussion paper for 13 IACC, Athens, November 2008.

2. The ostensible purpose (the claimed purposes that are used to publicly justify the existence of that power and the ends for which it may be legitimately used).
3. Potential abuses of that power by those who hold it and the benefits they and others will gain from them.
4. Potential corruption systems that may emerge to organize those abuses of power.
5. Potential integrity systems that disrupt corruption systems and increase the likelihood that power are used for their ostensible purpose not abused for other purposes.

In studying global integrity systems, we should not cease to study national integrity and corruption systems as these are a part of the global systems which operate at global, regional, national, sub-national levels as well as through corporations and the professions

Unfortunately governance experts are not well equipped to handle global problems. As we saw earlier, most are tied to mono-disciplinary approaches to institutions, their problems and solutions. This is exacerbated by the fact that most focus on one 'level' of governance: global, regional, national, corporate, professional or not-for-profit institutions. However, many of the most intractable global problems involve mutually reinforcing weaknesses in institutions at the global, regional, national, sub-national level as well as corporations, professions and NGOs. Corruption flourishes because of weaknesses in all levels. Thus solutions to global problems do not lie in new norms or reformed institutions at any one level but the identification of normative, legal, institutional and governance changes at some or all levels and their integration into emerging Global Integrity Systems. We need multi-disciplinary, multi-country, multi-cultural research teams. While IEGL puts these together with the assistance of the United Nations University and our partners in South East Asia, AALCO's large number and varied Asian and African jurisdictions could make AALCO a major player in this area.

I would like to suggest that AALCO work with Member States and others to:

1. Study and compare both national integrity and national corruption systems.
2. Examine the possibilities of co-ordinating global integrity with the goal of ensuring that they are at least as well co-ordinated as the corruption systems.
3. Examine the most effective mechanisms. One favourite of mine is to simply set the goal for the international banking system that tracking mechanisms are sufficiently robust that no rational corrupt official would deposit his ill-gotten gains within it.

In this exercise we would be a proud and willing partner. I thank for this opportunity.

**President:** Now I call upon the delegate from Japan to deliver his statement.

**The Delegate of Japan:** Madam President, Japan shares the view that the international cooperation on combating corruption needs to be further promoted effectively by the combined efforts of the international community as a whole, and the UN Convention against Corruption is a central and most important vehicle and undertaking for such international cooperation. Japan has been carrying out official development programme to the developing countries. In particular, in view of the importance of technical assistance to the countries which desire such assistance bilaterally or through international organizations, Japan has been providing such assistance

programme for capacity building in cooperation with UNODC for the countries in Southeast Asia to help them ratify and/or implement the said UN Convention. The Japanese Diet has already approved the Convention and the necessary domestic legislation has been under consideration by the Government for submission to the Diet. Thank you.

**President:** Thank you Japan, I now give the floor to Qatar.

**The Delegate of State of Qatar<sup>22</sup>:** Madame President, The spread of corruption in all its forms is the main reason for the elimination of democracy and the squandering rule of law, as well as the loss of opportunities for development which are basic obstacle in the way of progress and stability.

It is must to address firmly the phenomenon of the spread of corruption and forming international and national effective mechanisms in this regard in order to prevent the corruption and prosecution of perpetrators, elimination of all safe haven for smuggling funds obtained through corruption.

In addition to the initiative taken by the State of Qatar to enhance the Arab and international cooperation in the field of recovery of funds derived from corruption, while the State of Qatar initiated the establishment of the Arab Forum for recovery of looted money, which is a institution to support efforts to recover the looted funds and assets owned by the countries of the Arab Spring.

**President:** Thank you Qatar. The next intervention is by Thailand.

**The Delegate of Kingdom of Thailand:** Thailand recognizes the important role of AALCO in promoting the implementation of the UN Convention against Corruption through the exchange of experiences and good practices among its members. As an inter-regional forum, it is encouraging that this year, AALCO decided to focus our deliberation on promoting international cooperation under the obligation of the UNCAC, particularly with respect to extradition and mutual legal assistance, in line with the international effort to encourage international cooperation to implement the Convention.

As the State Party to the UNCAC since March 2011, Thailand realizes that ratification is not an end in itself, but rather the commitment to ensure the effective implementation of the Convention. Much of our national effort is not put into finding the ways in which the Convention can be best implemented.

One key development in this direction is the renewed effort to amend domestic legal framework with respect to mutual legal assistance for the purposes of seizures, freezing, and confiscation of proceeds of crime in such a way that allows Thailand to better fulfill the obligation under the Convention with respect to international cooperation. Similar effort has been made with respect to enhancing law enforcement effectiveness, particularly through the amendment of the Penal Code, and the Organic Act on Counter Corruption, to allow for longer statute of limitations period for the offence concerning foreign public officials covered by the Convention, and for suspension of the statute of limitations where appropriate.

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<sup>22</sup> Statement delivered in Arabic. Unofficial translation from interpreter's version.

In another related development, the amended Organic Act on Counter Corruption provides the National Commission on Counter-Corruption with increased authority to provide effective protection for whistleblowers, witnesses, and victims of corruption. As a measure to ensure transparency in public procurement, the Act introduces a new measure which requires that any government agencies engaging in public procurement make publicly available all procurement information.

Increasing institutional capacity is also a priority area for Thailand. To help reduce the excessive investigation workload of the NACC, the Office of Public Sector Anti-Corruption Commission has been established under the Ministry of Justice. The new agency is charged with the investigation of the offenses allegedly committed by middle or low-ranking public officials, which previous had been the responsibility of the NACC. It is expected that this institutional arrangement will allow NACC to concentrate its work on the investigation of bribery of, embezzlement or misappropriation of property by, and illicit enrichment of public office holders and high-ranking public officials.

Madam President, public-private partnership in the fight against corruption in Thailand has been strengthened over the past years. Recently, the anti-corruption network comprising the public and private sector, civil society, NGOs, and the media, which has been campaigning against corruption since 2011, was transformed into the Anti-Corruption Organization of Thailand or ACT. The new ACT has doubled the number of its members from 23 to 46, whose new members include the Thai Chamber of Commerce, the Thai Bankers' Association, the Federation of Thai Industries, the Stock Exchange of Thailand, as well as the United Nations Development Programme as the first international member. The ACT strives for the promotion of good governance by serving as a change agent in the area of public awareness against corruption. The ACT has also been working with the Government to introduce the so-called "integrity pact" to ensure efficient budget spending on mega-projects as well as to reduce fraudulent and unfair systems in the public, private and civil sect.

**President:** Thank you Thailand. People's Republic of China, you have the floor.

**The Delegate of People's Republic of China:** Thank you Madam Chair. I'll try to be brief.

I'd like to take this opportunity to thank the distinguished panelists for giving us food for thought. Special thanks go to the expert from UNAFEI who introduced the best practices of Hong Kong which is of course not a country but a special administrative region of China. I'll try to tackle two important points under this item.

One is that it is necessary for us Asian and African countries to work together to improve the cooperation of the reviewing mechanisms. We think that the principle of sovereign equality and non-intervention into domestic affairs should be adhered to. The inter-governmental nature of the mechanism should be kept in mind.

The other important thing is about asset recovery. We think that asset recovery is a unique and innovative legal framework set by the UNCAC and it is important for enhancing international cooperation under anti-corruption. We hope that Asian and African countries will pay more attention to asset recovery and enhance it to prevent corrupt criminals from transferring the proceeds of crime.

Thank you very much.

**President:** Thank you very much. South Africa, you have the floor.

**The Delegate of Republic of South Africa:** Madam President, it is common knowledge that corruption is a global challenge and undermines growth and development, diverting limited resources from important development programmes, thus exacerbating poverty, inequality and underdevelopment. Corruption also contributes towards social, political and security instability of a country when ignored. Therefore, combating this scourge is one of the key elements to ensuring delivery of the Millennium Development Goals, and requires our collective responsibility and action as States Parties to the United Nations Convention against Corruption.

Madam President, the significance of the United Nations Convention against Corruption cannot be overemphasized. It provides Member States with opportunities not only to develop and align their legislation with its provisions to combat corruption and related crimes, but also most importantly for criminal justice, security and development. The Convention further provides some general principles and tangible steps upon which national and global good governance efforts to combat this scourge could be greatly enhanced.

South Africa signed the United Nations Convention against Corruption on 09 December 2003, and ratified on 22 November 2004. South Africa also played a pivotal role not only during the negotiations to elaborate this Convention, but also in the negotiations for the establishment of the Implementation Review Mechanism. South Africa has the necessary legislation to comply with the reporting obligations of the Convention. In this regard it has in place the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) and the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

In 2011, the experts from South Africa and Slovenia participated in the review of Morocco on the implementation of the Convention, while in 2012 South Africa was reviewed by experts from Mali and Senegal. At the regional level South Africa is party to the following anti-corruption instruments: the Southern African Development Community (SADC) Protocol against Corruption, the African Union (AU) Convention on Preventing and Combating Corruption, and the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

We have at the national level launched the National Anti-Corruption Forum (NACF), which is a multi-stakeholder formation bringing the public, private sector and civil society programme of action together for preventing and combating corruption. As part of Government strategies to deal with corruption at various levels, we are also putting in place an Anti-Corruption Bureau (ACB) to deal with corruption within the public service.

Madam President, combating corruption is not without challenges. There are some discernable manifestations that could impede institutions, including Government, from tackling corruption effectively, which need to be addressed if we were to prevail over this scourge. These include issues such as capacity, political will, commitment, technical assistance, cooperation, collaboration, etc.

For example, the issue of whether we have a common definition of corruption is at times prohibitive to the successful implementation of measures, as more often than not States Parties

tend to adopt a politically generalized interpretative stance when it comes to this aspect, depending on whether there are interests that countries need to pursue or not. One of the impacts of this unfortunate state of affairs is that it compromises international cooperation, criminalization of corrupt activities, as well as mutual legal assistance. Also due to this situation you find countries hiding behind such nuances as sovereignty, internal security and other considerations to block the review mechanism.

The challenge of lack of a common definition also plays itself to the international stage when it comes to governance issues of Forums like this one. The other issue that we need to attend to is the question of mutual trust and respect especially in the area of technical assistance. States Parties need to embrace transparency as an aspect of democracy and good governance.

On this point, Madam President, the issue of partnership with civil society formation comes into the picture. In conclusion, Madam President, South Africa wishes to emphasize that we will not win the war against corruption for as long as we are prepared to only listen to our voices as government and close opportunities for broader participation by civil society. Thank you.

**President :** Thank you South Africa. Iran you may take the floor.

**The Delegate of Islamic Republic of Iran:** Madam President, my delegation would like to express its appreciation to the Secretariat for preparing the informative report and putting this important item on the agenda of the meeting, my delegation attaches great importance to this issue.

Madam President, corruption is a global phenomenon which represents one of our greatest challenges in our interconnected world. There is no country or territory untouched by this threat, which undermines the rule of law and adversely affects the fabric of societies. In this context, the UN Convention Against Corruption (UNCAC) has become the milestone in our cooperation and the high number of accession by States indicate the hope and confidence the international community has made *vis-a-vis* the Convention.

Madam President, the Islamic Republic of Iran as a responsible party to the Convention has spared no efforts in implementing the Convention by adopting wide ranging measures including preventive, legislative, law enforcement and judicial measures as well as contributing to activities of the Conference of States Parties of the Convention, in order to review and promote its implementation. We are looking forward to the convening of the Fifth Session of the Conference of the States Parties to the Convention in November 2013 in Panama. We need to appreciate what we have achieved under the Convention and to safeguard it. The Convention is the only international, almost universal, binding agreement on corruption. It's simply a matter of logic and economy to expect that any other initiative or campaign should be closely in line with the Convention and build upon the provisions of the Convention. They should, in no way, dilute or alter the principles or provisions of the Convention or create unhelpful parallels.

Madam President, the UNCAC has rightly put 'Asset Recovery' as a fundamental principle of the Convention and obliged states Parties to afford one another the widest measure of cooperation and assistance to recover assets derived from corruption and return them to the original owners. One whole chapter, Chapter V, is dedicated to Asset Recovery due to the fact that a great majority of Member States felt it necessary to equip the instrument with legal

apparatus to give effect to the cooperative measures against corruption by ensuring that the proceeds of corruption would be confiscated and returned to the States of origin. In other words, asset recovery shall be among the end results of cooperation between and among Member States against corruption. Though, it would, as well, deter potential corrupt officials from committing corrupt behavior.

Madam President, Chapter V of the Convention is a cornerstone of any meaningful and result-based cooperation against corruption. Likewise, it can be a good benchmark to gauge how serious States Parties are in exhausting their commitments to collaborate in the fight against corruption. This is the main sphere where bilateral cooperation between the State of origin and the State where the proceeds of corruption are transferred and/or stockpiled is required and could lead to tangible results for the victims. The facts on the ground are rather bleak, though, since only very tiny part, almost nothing, of the stolen assets has been returned to the States of origin after a highly cumbersome legal and administrative process. This is far from satisfactory and requires serious consideration. A number of legal and technical hurdles, bank secrecy being almost always at the top of them, are often cited as the reasons for lack of productive cooperation in this area, let alone the political considerations and biases which in fact are the main causes for lack of cooperation. However, if there is a will there is always a way. We need to develop genuine political will on the part of all stakeholders, especially the destination countries in this case, to extend sincere cooperation for tracking, locating and recovering the stolen assets and returning them to their owners.

For the past couple of years, there has been a kind of proliferation of initiatives and campaigns on asset recovery. This might, at least partly, be attributed to the normative environment generated by the UNCAC, particularly its Chapter V, and indicates, per se, an increasing demand on the part of Member States to reclaim their stolen public and private funds. That's a welcome move, for sure, but 'action speaks louder than words', and we have yet to see some tangible results from these initiatives.

Madam President, in conclusion, my delegation wishes to remind that the Convention is a legally binding instrument for the States Parties, to be implemented, though, it requires political will in its true sense, free from political biases and prejudices. Thank you, Madam President.

**President :** Thank you Iran. I now give the floor to Indonesia.

**The Delegate of Indonesia:** Madame President, Distinguished delegates, thank you for the opportunity to speak on the issue of combating corruption. Corruption is our common problem. It is one of the development obstacles to develop the country. In order to combat corruption we not only need a robust law enforcement nationally but also international development. This is especially important as funds and the corruptor suspect often seek refuge in another country.

The process of recovering stolen assets is immensely intricate, time-consuming and resource intensive. Efforts are often hampered by two main hurdles, technical and legal political challenges to precisely identifying the stolen funds. We need specialized knowledge on financial investigations to prove the illicit nature of the assets. We also as well as overcoming the inconsistent legal requirements, the lack of legal expertise and the lack of political will in requesting and requested countries, also the lack of co-ordination and cooperation between national and international agencies.

In order to overcome such challenges, we need to share the technique and success story in handling the corruption case. Hopefully, with the technique sharing, success story also the adoption and implementation of the UNCAC, we could fight the corruption in a massive worldwide level. We need to implement UNCAC consistently that includes the provision of extradition and mutual legal assistance cooperation between countries. International cooperation is needed since today the corruptor is not only hiding in another country but also bring their corrupted fund. The fund that could be use to build school or clinic at originating country.

Madame President, Distinguished delegates, to that end in international level, Indonesia has ratified UNCAC and UN Convention Against Transnational Organized Crime. Indonesia also actively participates in UNCAC related meetings such as Implementation Review Group, Working Group on Prevention of Corruption, Working Group on Asset Recovery and Conference of the State Parties. Indonesia concluded and ratified treaties on extradition with Malaysia, Thailand, People's Republic of China, India and Vietnam among others. We also have concluded and ratified Mutual Legal Assistance Treaty within framework of ASEAN under ASEAN MLA Treaty and bilaterally with People's Republic of China, Republic of Korea and India among others.

Thus, Indonesia invites all members countries to adopt the UNCAC. We believe with the adoption of the UNCAC, the international community including AALCO Member States aims at setting up a comprehensive global framework to contain and ultimately lower significantly the levels of corruption worldwide.

Internationally, in 2012, we have participated in Implementation Review Group, the 3rd Session of Open-ended Intergovernmental Working Group on the Prevention of Corruption, the 6th Session of Open-ended International Working Group on Asset Recovery and G20 Working Group on Anti-Corruption. The fight against corruption is a long journey. We hope we could be together cooperate in this journey. I thank you.

**President:** I thank the representative from Indonesia and now invite the delegate from Tanzania to make his statement.

**The Delegate of United Republic of Tanzania:** Madame Chairperson; Excellencies; Distinguished Delegates; Ladies and Gentlemen.

My delegation congratulates the tremendous work of the Secretary General in preparing a comprehensive Report on the challenges in combating corruption: The Role of the UN Convention Against Corruption. Indeed, the Report is sufficiently informative to Member States on the various processes that are currently ongoing globally, with regard to the fight against corruption. Tanzania is closely following up on these processes and highly recommends other States also to continue doing so. In accordance with AALCO's recommendation in Paragraph 102 of the Report, Tanzania has ratified the UN Convention Against Corruption, and has enacted a number of legislations for the purposes of upholding the spirit of this Convention.

We all agree that corruption is one of the world's greatest challenges. It is a major hindrance to sustainable development, with a disproportionate impact on poor communities and is corrosive on the very fabric of society. The impact on the private sector is also considerable – it impedes economic growth, distorts competition and represents serious legal and reputational risks.



The Government of Tanzania has committed itself to fighting corruption in all spheres. During the inauguration of the 2005-2010 Parliament, the President, His Excellency Jakaya Mrisho Kikwete, made it very clear that in strengthening good governance, the problem of corruption will be dealt with relentlessly.

The functioning of public institutions continues to be one of the grey areas at which corruption flourishes. In this respect we strongly encourage Member States to concentrate in strengthening the fight against corruption from the public institutions and private alike.

**National Anti-Corruption Strategy and Action Plan:** Since the first multi-party general elections in 1995, one of the main priorities of the Government of Tanzania has been the improvement of the economy of the country. To achieve this objective, the Government has embarked on a number of radical reforms including, privatization, liberalization of the economy and restructuring and improvement of the efficiency of the public service delivery.

Among the interventions, which Tanzania has adopted, is enacting legislations criminalizing corruption acts, enacting a law on the Leadership Code of Ethics and establishing a Presidential Commission of Inquiry Against Corruption (PCIC).

In our experience, we recommend to other Member States that because of financial and institutional capacity constraints, States should be very selective in choosing modes of interventions. Those that can be implemented quickly and less costly but with significant impact are planned to be implemented immediately and others will be programmed for the medium and long-term period.

**Tanzania's NACSAP II Experience:** The Plan aims at complementing and integrating anti-corruption measures into the core public sector reforms. In strengthening and instituting good governance, transparency, accountability, integrity, efficiency and improved public service delivery. NACSAP II encourages strategic partnership between the Anti-Corruption bodies of the National Government, the private sector, civil society, media and Development Partners (DP) in combating corruption and enhancing good governance in Tanzania. Key strategic goals include : addressing its root causes of corruption, strengthen anticorruption mechanisms, introducing systems of integrity, accountability and transparency, mainstream and empower Private Sector into anticorruption, raise public awareness of anticorruption.

**Progress of NACSAP II Implementation:** The National Anti-Corruption Strategy and Action Plan II, was launched on 10 December 2006. Aiming to help set up, organize and mainstream a suitable mechanism and responses against corruption. Also aims to address NACSAM I challenges by becoming more focused, robust, relevant and inclusive.

**NACSAP II Achievements:** Regular reporting within the Monitoring and Review mechanisms established under the Program have proved to be very effective. In this respect we recommend that in the fight against corruption, Member States should strive to establish within their systems, mechanisms of monitoring and reviewing the progress of their Policies and strategies on corruption.

**Challenges and Way Forward:** We align ourselves with the recommendation of the Secretariat in Paragraph 104 of the Report that among the areas which Member States can cooperate is in

the field of cooperation in mutual legal assistance. The effort to combat transnational organized crimes in general needs a collaborative framework and the involvement of all States.

Thank You Madam President.

**President:** Thank you Tanzania. Malaysia has the floor now.

**The Delegate of Malaysia:** Madam President, Excellencies and Distinguished Delegates, Ladies and Gentlemen. On behalf of my delegation, allow me to express Malaysia's appreciation to the AALCO Secretariat for placing this topic on Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption ("UNCAC") as a deliberated agenda in this session. It is indeed timely for the effective implementation of the UNCAC be discussed at this fora as the Implementation Review Group had already concluded its Fourth Session recently. Further, Malaysia also notes the observation made by the AALCO Secretariat on the implementation of UNCAC, namely the need to increase participation of civil society in the review process, the need to reduce secrecy and improve transparency, the need to have in place the mechanism on asset recovery and the need to enhance the international cooperation under UNCAC.

Madam President,

1. As a State Party to the UNCAC, Malaysia stands by its belief that if the provisions of this Convention are implemented effectively, the global community will achieve substantial success in its effort to combat corruption.
2. Malaysia implements its obligations under UNCAC primarily through the Malaysian Anti-Corruption Commission Act 2009 which established under it the Malaysian Anti-Corruption Commission ("MACC"). The MACC was established in order to enhance effectiveness and efficiency of its anti-corruption efforts.
3. Malaysia remains faithful in fulfilling its obligations to the UNCAC. This is exhibited by its involvement in the UNCAC Implementation Review Process both as a reviewing expert and the State reviewed. In this regard, Malaysia along with Jordan had reviewed Iraq in 2011.
4. The review on Malaysia was done by Kenya and the Philippines and was completed in February 2013. In this regard, Malaysia wishes to highlight that it has received positive feedbacks from the reviewing experts which are also included in the official report of the review. Among the positive highlights is that the reviewing experts welcomed the initiative of establishing various supervisory committees to oversee the implementation of the MACC Act 2009 as a means to foster the involvement of all stakeholders in the prevention and fight against corruption.
5. As part of our effort to reduce secrecy and improve transparency, Malaysia had established The Anti-Corruption Advisory Board, the Special Committee on Corruption, the Complaints Committee, the Operations Review Panel and the Consultation and Corruption Prevention Panel are formed to closely watch over the activities of the MACC to ensure transparency and integrity in the carrying out of its duties. They report to Parliament as well as to the Prime Minister on the activities and performance of the MACC on a quarterly and annual basis with their advice, comments and recommendations in regards the further improvement of the Commission in its mission in

combating and preventing corruption, abuse of powers and other related malpractice in the public as well as the private sectors.

6. In addition to that, the MACC has also taken to publishing the details of persons convicted under the MACC Act 2009 in a 'name and shame' database available on its website.
7. Hence, Malaysia supports the increase in transparency in the implementation of the domestic anti-corruption legal framework in line with the UNCAC.
8. Malaysia notes asset recovery is one of the most important component of the UNCAC. In this regard, MACC Act 2009 provides for asset recovery in domestic cases. Where the assets have been transferred abroad, assistance in asset recovery may be sought and provided in Malaysia under the Mutual Assistance in Criminal Matters Act 2002 (MACMA).
9. With regard to international cooperation, Malaysia has in place the extradition and mutual legal assistance in criminal matters regimes, namely the Extradition Act 1992 and Mutual Legal Assistance in Criminal Matters Act 2002, through which several bilateral agreements had been entered into. In addition to that, as previously stated, Chambers had been actively involved in the implementation review of UNCAC as a reviewing expert as well as a country under review.
10. Therefore, as country who is actively implementing the UNCAC, Malaysia calls upon all AALCO Member States to consider ratifying/acceding to the UNCAC if they have not done so and for Members who are already parties to the UNCAC to afford one another the widest measure of support in implementing the UNCAC. Malaysia also supports the proposal for the Secretariat to consider the possibility of holding training programmes/expert meetings/seminars with relevant international organizations working in this area on the various issues of concern under the UNCAC.

Thank you.

**President:** May I now invite the delegate from India to make his statement.

**The Delegate of Republic of India:** Madam President, corruption has become a major governance challenge in today's world. Its effect on the economy of a country, more so of a developing country, is debilitating as it hampers socio-economic development. Corruption is a complex socio-economic and cultural phenomena, the fight against which not only calls for innovative and localized solutions but also requires the support of the global community. Corruption makes a deep negative impact on the basic institutions of the country and weakens the rule of law. Furthermore, it not only hinders investment but also prevents the overall growth and development of any country. It diverts funds for the development and hurts the poor and undermines the government ability to provide basic services. It also distorts level playing field and fair competition.

Madam President, the Government of India is committed to fight the menace of corruption and has taken several steps in the recent past towards this. India ratified the United Nations Convention against Corruption in May, 2011 and entered into force in June 2011. This major step is intended to facilitate efforts to secure effective international co-operation in tackling trans-border corruption.

As regards the 'bribery of foreign public officials', a stand-alone Bill titled "The Prevention of Bribery of Foreign Public Officials and Officials of Public international Organizations Bill,

2011” has been introduced in the Indian Parliament. The Report of the Parliamentary Standing Committee on the Bill is under consideration of the Government. As regards private sector bribery, a process of due diligence has been initiated by the Government of India, to consider necessary amendments in the Indian Penal Code in consultation with the State Governments.

The Lokpal and Lokayukta Bill, aimed at bringing an ombudsman type body in India is another significant step to eradicate corruption among public functionaries. To make the judicial system more accountable to the common public, a mechanism for enquiring into complaints against judges of higher courts and to lay down the standards of conduct, Government of India has introduced the “Judicial Standards Accountability Bill, 2011”.

In order to protect honest officials from undue harassment and to establish a mechanism to receive complaints relating to disclosure of any allegation of corruption against any public servant, our Government has introduced “The public interest disclosure and protection to persons making Disclosure Bill” i.e., Whistle Blower’s Bill in the Parliament. Thus, several legislative measures have been attempted by our Government to sternly deal the corruption issues in India.

India is preparing its position for the peer review mechanism scheduled to be held in 2014. We truly believe that intensifying the solidarity at regional and multilateral level and cooperation amongst different agencies would assist in asset-tracing and recovery efforts. It is also important to ensure technical assistance for the developing countries in order to implement the Convention effectively.

Madam President, we are grateful for the useful exchange of ideas here today and look forward to continued collaboration in this global fight against corruption.

I thank you.

**President:** Thank You India. I now invite the delegate from Korea to make his statement.

**The Delegate of Republic of Korea:** Madam President and Distinguished Delegates, corruption serves as an obstacle to robust economic growth in the market economy. The United Nations Conventions Against Corruption has become an important milestone in the battle against corruption because of its holistic approach to tackle both public and private corruption at the same time. As a Member of the Convention, the Republic of Korea has been actively cooperating and coordinating with the international community pursuant to the UNCAC. The Republic of Korea has established domestic legal system to fight against and prevent corruption to implement measures of the Convention.

The Convention is itself an important legal instrument in the fight against corruption, but what is more crucial is how seriously it is implemented. In this regard, my delegation commends the Implementation Review Mechanism (IRM) established at the Conference of State parties to the UNCAC. The Republic of Korea was reviewed in 2012 and is a reviewer this year. In addition, Republic of Korea has been running joint programmes with Indonesia, Thailand and Mongolia based on the MOUs with these Countries. My delegation expects such common efforts would be extended further with those countries and many other Member States of AALCO.

**President:** Thank you republic of Korea. I now invite the delegate from Nepal to make his statement.

**The Delegate of Nepal:** Madam Chair, Distinguished Delegates, Excellencies, Ladies and Gentleman, first of all, let me allow to extend my sincere thanks to the Secretary-General for putting this agenda for deliberations. Corruption is the most serious threat and challenge that we are facing in sustaining democracy and ensuring good governance and rule of law. Particularly, South Asia region is the most affected region by the problem of corruption. Nepal being a least developed country, corruption has directly affected in development and economic growth. The poorer sections of the population are more disproportionately affected by this problem.

Madam Chair, the link between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering, is a serious concern of international community. It is no longer a local matter but a transnational phenomenon that affects all societies and economies. Therefore, a comprehensive and multidisciplinary approach including international cooperation is essential to prevent and control corruption effectively.

Madam Chair, the United Nations Conventions Against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. It covers five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as trading in influence, abuse of power, and various acts of corruption in the private sector. Nepal considers that it is milestone framework to combat the challenges of corruption requiring States to take all feasible measures including policy, legislative, institutional and others administrative measures in the domestic spheres and extradition, mutual legal assistance, transfer of sentenced persons, asset recovery, confiscation, return and disposal of assets, and exchange of information through international cooperation.

Nepal was actively involved in the framing of the Convention and ratified it in 23 February 2011. As a Party to this Convention, a comprehensive Strategy and Action Plan has been adopted by the Government of Nepal in 2012 to facilitate the implementation of the Convention. The Strategy and Action Plan has specifically identified the laws that are to be amended, enacted as new one, institutions to be set up and strengthened and identified other activities to be carried out by specific institutions within specified time frame.

Madam Chair, the Interim Constitution of Nepal establishes an independent, impartial and autonomous constitutional body, the Commission on Investigation of Abuse of Authority to prevent and prosecute corruption. Similarly, under the supervision of the Office of the Prime Minister and Council of Minister, a National Vigilance Center has also be established by the executive decision of the Government. The Auditor General is also an independent, impartial and autonomous constitutional body to control and identify the financial irregularity. Likewise, Public Procurement Monitoring Office is also established by the executive decision of the Government.

Nepal has been taking so many legislative measures namely, the Corruption Control Act 2002, Commission on Investigation of Abuse of Authority Act 1991, Public Procurement Act, 2007, Bank and Financial Institutions Act, 2007, Good Governance (Management and Operation) Act, 2007, Financial Procedures Act, 1999, Special Court Act, 2002, Money Laundering Act, 2008, Extradition Ordinance, 2012 and Mutual Legal Assistance Ordinance, 2012 are some examples to name.

Madam Chair, Nepal is still suffering from transition. Once a new elected government comes into place we will move more rigorously to strengthen means of international cooperation. The Government of Nepal is of the opinion that an enhanced level of cooperation is necessary to combat corruption in an effective manner. I propose that AALCO Secretariat develop a model instrument to that end. State Parties have to conclude bilateral extradition and mutual legal assistance agreements or arrangements to enhance the effectiveness of international cooperation to face the challenge of corruption as envisaged by the Convention. Thank you very much.

**President:** I thank the delegate from Nepal and now invite the delegate from Kenya to deliver the statement.

**The Delegate of Kenya:** Madam President, and Distinguished delegates, in our opening statement, we informed Member States that Kenya is set to undergo a review of the UNCAC (2013/14). By being a State party to UNAC, Kenya has been encouraged to adopt best practices in the fight against corruption and to develop the relevant policies, and legislation, and to establish appropriate Agencies.

The Constitution of Kenya, promulgated in 2010, entrenches Kenya's commitment to the fight against corruption is concerned. Article 79 provides for the establishment of an independent ethics and anti-corruption commission, while Chapter Six of the Constitution is dedicated to issues of Leadership and Integrity, and has created benchmarks to ensure that public officers, especially State officers, uphold the highest standards of ethics, integrity and conduct. Our Parliament has enacted legislation necessary for implementing the provisions of the Constitution - the Leadership and Integrity Act, 2012, the Ethics and Anti-Corruption Commission Act, 2011, the Commission on Administrative Justice Act, 2011- and these set out an enabling institutional and legal framework to combat corruption and promote good governance.

The establishment of the Ethics and Anti-Corruption Commission; the Commission on Administrative Justice, and the reform of a number of institutions such as the Office of the Director of Public Prosecutions, and the Judiciary are some of the measures to strengthen the implementation of the anti-corruption laws and policies that the Government has put in place over the past ten years.

Distinguished delegates, the Government of Kenya is working to ensure that the following laws are reviewed to address any gaps and weaknesses and to enhance their capacity to deal with the challenges we have been facing in the fight against corruption: the Anti-Corruption and Economic Crimes Act (Cap. 65); the Public Officer Ethics Act (Cap. 183); the Ethics and Anti-Corruption Commission Act, 2011; the Leadership and Integrity Act, 2012; the Proceeds of Crime and Anti-Money Laundering Act, 2009, and the Mutual Legal Assistance Act, 2010.

Thank you for your kind attention.

**President:** That brings us to a close of our consideration of this topic. We will now break for coffee and thereafter meet again to hold deliberations on our next agenda item – Palestine.

**The meeting was thereafter adjourned.**

**VERBATIM RECORD OF THE FOURTH GENERAL MEETING HELD ON  
TUESDAY, 10<sup>TH</sup> SEPTEMBER 2013 AT 04:30 PM (Cond.)**

**Her Excellency Mrs. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair**

**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**

**President:** On the first day a book was released on the ‘Statehood of Palestine under International Law’. Today there will be further deliberations on that subject. I request the Secretary- General to introduce the subject.

**H.E. Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO:** Thank You Madam President, 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”. This issue was included in the agenda of the organization in the year 1988 upon the initiative of the Islamic Republic of Iran. Since that year, the secretariat has closely monitored the developments regarding this matter.

At the 51st Annual Session of AALCO held in Abuja last year, the Secretariat was mandated to conduct a study “to examine and establish the legal requirements and principles that would determine the status of Palestine as a State” taking 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”.<sup>23</sup>

Following this mandate, the Secretariat has prepared “A Study on the Statehood of Palestine under International Law” The Executive Summary of the Study is already before you and the study was released here, today in the morning, in the form of a book. The study has paid attention to the International Law on recognition of States, the criteria on which Statehood is determined, and the extent to which Palestine satisfies these conditions. Attention is also bestowed on the Palestinian people’s right to self-determination and its impact on the claim for Statehood. In addition to this, the study also makes a survey of the history of the conflict and the Israeli practices in the occupied Palestinian territories, and documents the work done by AALCO on this topic so far. The study also focuses on the jurisdiction of the International Criminal Court with respect to the illegal acts committed by Israel.

Excellencies, Ladies & Gentlemen, the illegal military occupation of Palestinian territories & the human rights abuses perpetrated on the people of Palestine has now been continuing for more than 4 decades. Despite international consensus expressed through the binding resolutions of the Security Council and the General Assembly of the United Nations, the occupying power

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<sup>23</sup> AALCO/RES/51/S 4 (22 June 2012), 12 *bis*.

continues to defy international law and the will of the international community. Even as peace talks have now resumed after a significant gap of time, the occupying power is continuing with its expansionist policies.

Time and again the international community has asserted the application of the Fourth Geneva Convention relative to the protection of Civilian Persons in the Time of War to this conflict. The illegal annexation of Palestinian Land, The creation of Jewish Colonial Settlements and the massive deportation of Palestinians are all actions in violation of humanitarian law and international law. The denial of water and other essential services to Palestinians and the continuing blockade of Gaza that prevents the Palestinians from exercising their right to seek refuge in other territories are acts in the nature of “collective punishment”, imposed on the people of Palestine, in violation of the Geneva Conventions.

Excellencies, Ladies and Gentlemen, we must also recall the historic judgment of the International Court of Justice that has reaffirmed the illegal nature of these practices and in particular the construction and maintenance of “the Wall” that separate and isolate a group of Palestinians.<sup>24</sup> The Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arab Territories has well documented the human rights abuses perpetrated by Israel. The salient features of the report are highlighted in the Special Study prepared by the Secretariat.

These actions and the continuing expansionist policies of Israel strike at the root of all hopes for peace.

Excellencies, Ladies and Gentlemen, the situation in Palestine is grave and the principal tool to redress this is ensuring compliance with international law. AALCO has time and again asserted the illegal nature of Israeli practices in the OPT and called for the resolution of the conflict in accordance with the principles of international law including 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 regarding the Protection of Civilian Persons in Time of War. It is also relevant here to recall the widely supported United Nations Security Council and UN General Assembly resolutions 242, 338 and 1515 which affirm the legal obligation of Israel to withdraw from Palestinian territories obtained in the year 1967.

It is in this context that the declaration that was made by the State of Palestine under Article 12 (3) of the Rome Statue was of significance. Let me recollect here that The Rome Statute of the International Criminal Court was negotiated and concluded to put an end to the culture of impunity from punishments for violations of the laws of war. However, after nearly three years of deliberations, the office of the Prosecutor refused to act on the application concluding that it

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<sup>24</sup> The Advisory opinion of the International Court of Justice , dt. 9 July 2004 in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.



was unable to decide whether Palestine possessed the necessary qualifications to be considered a “State” within the meaning of the Rome Statute and hence accept the jurisdiction of the Court.<sup>25</sup>

The Special study conducted by the Secretariat notes that Montevideo Convention on the Rights and Duties of States embodies the four basic criteria employed in International law to determine Statehood, i.e. : First, A Defined Territory; Second, A Permanent Population; Third, Government; and Fourth, Capacity to enter into relations with other States.<sup>26</sup>

The Study notes that there are convincing reasons to conclude that Palestine satisfies these criteria: Firstly, though the territory of Palestine is not a continuous one, there is practice which indicates that the boundaries need not be fixed and that it can be the subject matter of dispute and yet the entity may be recognized as a state. Secondly, though living in different territories, according to the Palestinian Central Bureau of Statistics, the estimated population on Palestinian territory in 2012 was a little over 4.2 million, thus satisfying the requirement of a permanent population. Thirdly, under Israel-PLO Interim agreement on the West Bank and the Gaza strip, some of the functions of a government have been transferred to the Palestinian Authority which it continues to perform in these territories.

Numerous international organizations including expert bodies of the United Nations have attested to the capabilities of Palestinian Authority to govern and have endorsed its functioning and effectiveness. The Palestinian Authority exercises its capacity to enter into relations with other states.

Despite the existence of these criteria, Statehood in international law is closely connected to acts of recognition. Recognition is essentially a unilateral and discretionary act and its consequence is that the recognizing state cannot subsequently deny or act to the prejudice of the situation so established. The State of Palestine has been recognized as of November 2012 by 131 of the 193 Member States of the United Nations, making its case for complete recognition of its statehood a stronger one.

Another matter of importance here is the Palestinian people’s right to self-determination. The international community has time and again reaffirmed the right of Palestinian people to self-determination. The fulfilment of this right can be achieved only with the establishment of a sovereign and independent state.

The Issue concerning the Statehood of Palestine has once again gained international attention with an overwhelming majority of the Member States voting last year to upgrade the Status of Palestine as a “Non-member Observer State” within the United Nations system. The issues highlighted in the special study and the work of AALCO on this issue is now of great significance as the parties to the conflict have agreed to come for negotiations once again after a significant gap of time.

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<sup>25</sup> Statement of the Office of the Prosecutor on the Situation in Palestine, dt. 3 April 2012, available at : <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>

<sup>26</sup> Article 1, Montevideo Convention on the Rights and Duties of States.

Excellencies, Ladies and Gentlemen with these introductory remarks, let me draw the framework for the deliberations, which will follow. Deliberations may focus on the violations of international law, particularly international human rights law and humanitarian law committed by the Government of Israel in the Occupied Palestinian Territory (OPT); the role of the International Criminal Court in redressing these violations and the role of the international community to pressurize Israel to comply with its international obligations.

I thank you madam President.

**President:** Thank You. I open the floor for interventions and the first speaker on the list is Hon'ble Minister of Justice for Palestine. You have the floor sir.

**The Delegate of State of Palestine<sup>27</sup>:** In the name of the God, the Most compassionate, The Most Merciful, We pay regards of the Palestinian leadership, President Mahmoud Abbas, and His Excellency Prime Minister Dr Rami Al-Hamdallah and the whole Palestinian people.

We sincerely thank the leadership, government and people of India for their kind hospitality and cordiality; and the AALCO for giving me this opportunity to meet and speak to your good selves.

Palestine is a unique and overly intricate case which makes it difficult to cover all relevant issues and to pass the message across, since in Palestine will clash; the darkness and oppression of the occupation clashes with the will of struggle and the determination to accomplish the Palestinian national project. Suffering is intertwined with hope, and so is oppression with resilience, and life is born from the womb of death and bloodshed.

Israel, the occupying power still completely disregards the international public opinion, and the resolutions of the UN and its international agencies which have so far well exceeded 6 volumes, the most recent and important of which are: the 29<sup>th</sup> November 2012 UN General Assembly Resolution recognizing Palestine as a state on the 4<sup>th</sup> June 1967 borders. The Occupying State continues also to disrespect the peace process obligations and the Oslo Accords signed between it and the Palestine Liberation Organization in September 1993 which was supposed to reach its final stage after the end of a 3-year transitional period.

The Palestinian territories are still under the occupation since about 46 years and more than 4000 Palestinian prisoners are still held in Israeli jails, including children and tens of women. The occupying state continues to deny Palestinian prisoners their right to the protection afforded under the Geneva Conventions, particularly the fourth one. In addition, the ongoing land, aerial, and naval blockade imposed against Gaza strip which has turned into the world's largest open air prison housing around 2 million inmates. The occupation, in grave violation of all human rights principles and international conventions as well as international legitimacy decisions, continues to deny Palestinians their rights to freedom of opinion, movement and work, and carries on with the apartheid policy through the construction of the separation wall.

**Major Israeli violations that Palestinians suffer from on a daily basis include:**

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<sup>27</sup> Statement delivered in Arabic. Unofficial translation from interpreter's version.

- Ongoing settlement construction, settler attacks against Palestinian citizens and sabotaging and damaging their property under protection of the Israeli army
- Ongoing Judaization of Jerusalem, demolition of citizens' houses, expulsion of citizens and revocation of their identities in order to drive the Palestinian population out of the city
- Controlling groundwater and the amount of water allowed for Palestinians
- Construction of by-pass roads at the expense of Palestinian lands
- Construction of the Apartheid wall
- Controlling imports and exports
- House demolitions
- Arrests and administrative detentions
- Setting up check points at the entrances of Palestinian cities hindering the freedom of movement for Palestinians
- Preventing farmers from farming their lands
- Isolation of Gaza strip
- Killing Palestinian protestors
- Obstruction of negotiations

Such violations are planned and systematic and reflect the Israeli inclination of not accepting the other, where the latest of which was the establishment of the separation wall which spans from the north to the south of the West Bank. This construction is an extension of Ariel Sharon's theory on voluntary migration, for the wall creates the conditions that would attract natural migration of the population without use of guns.

Palestinians are destined to fight 2 parallel battles: the battle of liberation and the battle of building.

We have bound ourselves to set off the building process and establish a Palestinian state that adheres to all sublime principles including HRs and dignity, pluralism, good governance and combating corruption. But this battles will not be won without the support and backing of all of you.

It is worth mentioning that the Palestinian leadership shall not spare any effort to provide all the success factors of a sound process, including the efforts made by the US State Secretary John Kerry, and we hope that these efforts will continue to fruition within the 9-month period set for the Palestinian-Israeli talks, and will culminate in 2 viable states along the 4<sup>th</sup> of June, 1967 borders.

The international resolution accorded to Palestine on 29<sup>th</sup> November 2012 makes the Palestinian territory occupied since 1967, a State under occupation and puts an end to the flawed claim that it is a disputed territory. It also urgently calls for the removal of Israeli settlement in the Palestinian territories.

Palestine will not be reluctant to exercise its legitimate right to accede to all international conventions, treaties and UN Organizations, including the International Criminal Court, sign the ICC Rome Statute and file lawsuits before this court against Israeli political and military leaders who committed war crimes against Palestinian people.

We also hope that all the countries would follow the footsteps of the European Union in boycotting Israeli settlements products and divest from companies that work with them.

We truly believe that national sovereignty cannot be reached without establishing the rule of law, and there won't be national independence without the independence of judiciary. We have taken the approach of full cooperation and integration of all the components of this sector which comprises the High Judicial Council, the Ministry of Justice, the Attorney General's Office, the Palestinian Bar Association, the Independent Commission for Human Rights, representatives of law schools and representatives of Civil Society.

Palestine has come a long way in the justice performance level, whether it relates to technological developments or the delivery of academic and practical trainings for judge as well as development of sentencing criteria in consistency with HRs and dignity, developing the penalty philosophy without derogation to judges and their discretion.

In conclusion, and despite the foregoing, we still need much, and we hope that with the cooperation of friendly states we will be able to promote synergies between our counterparts in our respective justice sectors, this includes exchange of expertise, training courses and exposure to new models in a manner that warrants qualitative and quantitative justice advancement in harmony with modern justice standards.

Thank you very much

**President :** Thank You very much. The next in line is Japan. I request Japan to take the floor.

**The Delegate of Japan:** Thank You Madame President,

My delegation appreciates the release of a new publication "A Study on the Statehood of Palestine under International Law", which we have not yet the opportunity to look into detail, but should be a useful study report very relevant to our agenda item. The question of Deportation of Palestinians and other Israeli practices concerned has been consistently discussed at our forum since 1989 from the international law perspective. However, regrettably we have been unable to see any significant breakthrough on the matter. In my view, this question is inseparably linked to the overall political situation in the region.

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.

It has been Japan's basic position that on the basis of UN Security Council Resolution 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 and that peace should be realized, paying due consideration to legitimate security interests of the countries of the region.

Japan welcomes the good offices and strenuous endeavours of the US Secretary of State Kerry which led to the resumption of direct negotiations between Israel and Palestinian real progress towards the realization of a fair, lasting and comprehensive peace on the two-state solution.

In late July, in a separate move in parallel with the above efforts, Foreign Minister Kishida of Japan visited the region and encouraged the two parties for engagement in serious direct talks, and held 4 party ministerial talks among Israel, Palestine, Jordan and Japan at Jericho in the West Bank.

Japan wishes to continue its own efforts to push forward the peace process from both political economic sides, under its initiatives such as the Corridor for Peace and Prosperity and also the conference on Cooperation among East Asian Countries for Palestinian Development (CEAPAD), the meeting of which was held in Tokyo in last February with the participation of Prime Minister of Palestine Dr. Salam Fayyad and the Japanese Foreign Minister and other ministerial and high ranking officials from Indonesia, Malaysia, Thailand, Vietnam, Brunei Darussalam and the Republic of Korea.

With regard to the recent report of Israel's approval of a plan for the construction of further housing units in the Jewish settlements in the West Bank, the Government of Japan issued a statement, deploring such plan and stating that the continued settlement activity of the Israeli Government clearly goes against the efforts of the parties involved and could greatly impact the recently resumed peace process and that Japan strongly calls upon Israel not to implement the plan for the sake of progress in the peace process and once again strongly urges both sides to act to enhance mutual trust and continue to make steady efforts for peace.

Lastly, I would like to add that Japan voted in favour of the UNGA resolution granting Palestine non-member observer state status which was adopted last year, from its standpoint of supporting the two-state solution.

Thank You.

**President :** Thank you Japan. The next delegation on the list is Islamic Republic of Iran. You have the floor sir.

**The Delegate of the Islamic Republic of Iran:** In the name of the God, the Most compassionate The Most Merciful, Madam President, At the outset, I would like to express my sincere appreciations to the Secretariat of the AALCO for preparing the study on "The Statehood of Palestine Under International Law". My delegation has found the study as a useful and informative document which touches upon such a matter of high significance.

Madam President, For more than 60 years, the question of Palestine had been one of the main challenges facing the international community. The crisis in the region, which had lasted for decades, is one of the "dramatic consequences" of the occupation of Palestine by the Zionist regime. That regime had persisted with its aggression and uncivilized behaviour, disregarding the calls of the international community for it to cease such actions. The Islamic Republic of Iran believes that ignoring the legitimate right of the Palestinian people to self-determination would hinder the steps towards a just solution to the question.

Madam President, The Islamic Republic of Iran with strong willing condemns the Israeli Authorities for breaching the international human rights and humanitarian law. Human Rights watch reported serious violations of the laws of the war by Israel in December 2008 attack to Gaza, some of which amounted to war crimes, including drone-launched missile attacks that killed civilians holding white flags and the use of white phosphorous munitions in densely

populated areas. Moreover, in 2010 a series of violations of international were committed by the Israel forces during the interception of the flotilla and during the detention of passengers in Israel prior to their expulsion. These violations of international law, including international humanitarian and human rights law has been emphasized in the independent report of the international fact-finding mission, established by the Human Rights Council, as the results of the Israeli attacks on the flotilla of ships carrying humanitarian assistance.

My delegation regret to say that despite the State's opposition for the violation of rules of international law by Israel, unfortunately in November 2012 once again Israel unleashed a massive armed attack in Palestine territory which made immense damage to life and property of Palestinian peoples who were subjected to indiscriminate attacks in violation of international humanitarian laws.

The Islamic Republic of Iran has always approved the firm position of AALCO over the years in condemning Israel's grave breaches of international humanitarian law in the occupied territories including : the wilful killing of Palestinian civilians, bombing and shelling of populated Palestinian areas, ruining agricultural fields and destroying industrial and economic facilities, imposing severe restrictions on the movement of persons and goods with the outside world and within the occupied Palestinian territory, and a vast number of other forms of collective punishment and harassment of Palestinian civilians in violation of international humanitarian law.

The Islamic republic of Iran declares that the most serious crimes of concern to the international community as a whole must not go unpunished and affirms the application of the Fourth Geneva Convention on the protection of civilians in occupied territories.

Madam President, My delegation would like to pose the question that what is our "shared responsibility" to react against these heinous crimes and what role this organization could play in this respect. The nation and government of Islamic Republic of Iran from the beginning of this conflict on many occasions and in different forums announced that the Israeli criminals shall be brought into justice for their actions or omissions.

The Islamic republic of Iran believes that the international community is currently confronting a situation in which the governments and international community shall demonstrate that "all are equal before the law" and there is no privileged person or states. Furthermore all states and international institutions are responsible to put an end to these human tragedies and prosecuting and punishing the Israeli accused persons.

The Islamic Republic of Iran firmly believe that the world community should in a united manner take urgent measures to stop the future criminal attacks which bear all the trademarks of collective punishment, crimes against humanity and war crimes. In addition, the international community must urge the occupying power to fulfil its obligations presented in the Advisory Opinion delivered by the International Court of Justice (ICJ) in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory which include: The construction of the wall being built by Israel, the occupying power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law.

Madam President, My delegation would like to affirm the need to enable the Palestinian people to exercise their sovereignty over their occupied territory. The International Court of Justice (ICJ) in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory held that the existence of a Palestinian people is no longer in issue and affirmed their right to self-determination and stressed on the necessity to remove all obstacles in the exercise of this right: the end of its occupation and the Jews settlement in their national territories.

The Islamic Republic of Iran welcomes the decision of the UNGA on 29 November 2012 to grant to the Palestinians a State observer status in the United Nations as an important political gesture. Nevertheless, we have to continue our fight and help Palestinians to remove all obstacles still existing to allow them to exercise fully their right to self-determination that is the end of Zionist occupation from all Palestinian Territories.

Thank You, Madam President.

**President :** Thank you Iran. Indonesia has the floor now.

**The Delegate of Indonesia:** Thank You Madam President.

Distinguished delegates, On today's occasion, Indonesia would congratulate the Palestine delegation for their acceptance as non - member observer in the United Nations General Assembly. Indonesia also would like to complement all AALCO's members for the efforts and support in the acceptance of Palestine's non- member observer in the United Nations General Assembly.

The historic decision by the General Assembly to accord non-member Observer State status to Palestine is indeed a strong testament to the support of the majority of United Nations Member States in supporting the struggle of the majority of United Nations Member States in supporting the struggle of Palestine to exercise its right of self-determination. However, we have to continue or support for the full membership of Palestine at the UN, in line with the principles outlined in relevant Security Council Resolutions, the road map of the Quarter and the Arab Peace initiative.

Madam President, Excellencies, Distinguished delegates, Indonesia remains ardently supportive of the two-State solution based on the conviction that an independent State of Palestine with rights and responsibilities equal to those of other States, will contribute to achieving a just, lasting and comprehensive peace in the Middle East.

Although a positive development has occurred, we want to emphasize that the struggle for Palestine is not over yet. We regret Israeli attack to Gaza especially in the middle of November 2012 and we regret the further development of Israel's illegal settlement in Palestine's territory. We are very clear about one thing: that the hurdle of illegal settlements is the most potent obstacle to the prospects of peace in the Middle East, with particular issue for the two-state solution.

I thank you.

**President:** Thank you Indonesia for your statement. I will give the floor now to Mauritius. You have the floor sir.

**The Delegate of Mauritius:** Madame President, distinguished delegates, My delegation would take this opportunity to thank and congratulate the secretariat for its report and extensive work undertaken in the preparation of this special study on the Statehood of Palestine under international law.

Madam President, My delegation would like to state very briefly its views on the agenda item under consideration “Special Study on the Statehood of Palestine under International Law”.

Just as we do at every available opportunity and forum, we wish to reiterate our deep commitment, consistent and unwavering support to the Palestinian people in the pursuit of their legitimate aspirations for freedom and equality as a sovereign member of the family of nations. We reaffirm our unequivocal solidarity with the Government and People of Palestine.

Mauritius remains indeed preoccupied that the perennial question of Palestine is still unresolved and that the friendly Palestinian people are yet to fully exercise their inalienable rights, including the right to self-determination without interference and the right to national independence sovereignty and sustainable development.

In this respect Mauritius salutes the outstanding act of statesmanship and political resolve of President Mahmoud Abbas in withstanding pressure and submitting an application to the United Nations General Assembly, for the long-overdue full membership of Palestine.

Mauritius fully supports this bold initiative as we are convinced that full membership status will correct and injustice that has lasted more than six decades and will contribute to a comprehensive, lasting and just resolution of the Israeli-Palestine conflict.

At a time when world attention is focused on the powerful transformations in the political landscape of the Middle – East Region, it is more than ever in the interest of the international community that a lasting solution to the Israeli-Palestinian conflict is found at the earliest, resulting in a sovereign independent, viable prosperous and united state of Palestine living within secured and recognized borders, side by side at peace with the State of Israel.

Thank you,

**President:** Thank you Mauritius. I will give the floor to Egypt now.

**The Delegate of the Arab Republic of Egypt:** Thank You Madam President, Mr. Secretary General. We are sharing the same feeling appreciation to have this important report about the Palestinian Issue, as there was a need to give legal perspective to that issue, mainly to those countries that did not decide yet to support the recognition of the Palestinian State.

The Palestinian question remains the main source of tension in our region, which is still suffering from the effects of the continuation of the Israeli occupation of the Arab territories, and the intensification of settlement activities. The hope of achieving the two state solution was on the verge of fading away irrevocably.

We are in total agreement with what the Hon’ble Minister of Justice of Palestine said, mainly about the Israeli practices with respect to Human Rights and the Al Aqsa mosque. Really it is a shame for the world of our age.



Egypt has provided and will continue to support the Palestinian people in order to achieve their aspiration to have an independent state with the borders of June 1967 with East Jerusalem as its capital. Egypt is keen to have a comprehensive and sustainable peace process that tackles all the status issues to end the occupation of the Palestinian territories, as it is one of the rare cases of occupation in the world.

Egypt views the issue regarding the storming of the Aqsa mosque on top of political considerations and harnesses all its relations to support and defend Jerusalem. Egypt denounces the continuing Israeli practices, including the storming of the Aqsa mosque by the settlers. We believe that all the Member States should continue to reject Israel's decision to expand settlements as we should emphasize that the international community is fed up with the Israeli settlement and it is well accepted that the settlements are one of the tools to punish the Palestinians for their turning towards international legitimacy, represented by the United Nations.

Thank You Madam President.

**President:** Thank you Egypt. South Africa, you may take the floor.

**The Delegate of the Republic of South Africa:** Thank you madam president and also to the Secretary General.

The Government of South Africa condemns the deportation of people by force and the disregard for international law especially with regard to the ongoing issue of Palestinians and their territories. The government of South Africa has noted, with great concern that since 1967 Israel has deported 1,522 Palestinians from the occupied territories. Out of this total number, 415 Palestinians were deported in December 1992. Since that date deportations to locations abroad ceased. As of August 2001, Israel has deported 32 Palestinians from the West Bank to the Gaza strip under its policy of "assigned residence". International law prohibits the expulsion of people in occupied territories, be it deportation to any other country or forced reconciliation within the occupied territory.

South Africa agrees with the international community that the continued illegal occupation of Palestinian Territory is an obstacle to negotiate for peace and contrary to international law, because it puts facts on the ground in a territory which is not recognized as Israeli land. This view is articulated in all interactions with the Israeli government. Israel regards the area it occupied in June 1964 as "disputed" territory.

South Africa remains deeply concerned about Israeli settlement expansion, especially in East Jerusalem. The South African Government has called on Israel to abandon all settlement activities. South Africa shares the view that a two-state solution to the conflict is under increasing threat as Israeli settlement activity in the West Bank continues to make the separation of both the peoples into two states increasingly difficult.

During the NAM Ministerial meeting in Sharm El Sheikh, Egypt, on 10 May 2012, Minister Nkoana Mashabane reiterated South Africa's unwavering commitment to and calls for recognition of the Palestinian State. South Africa expressed its disappointment and regret when the NAM Committee on Palestine was prevented from holding a special meeting in Ramallah on 5 August 2012, by the Israeli Government. The Israeli government blocked the Committee from

entering Palestine on the pretext that four of the member nations of the committee do not have diplomatic relations with Israel, this despite the fact that the meeting was to take place in Palestine. Sought Africa remains steadfast that the Palestinian Struggle is a legitimate struggle for self-determination, justice and freedom. The action of the Israel government does not assist in the international community's quest for a permanent solution to the Israeli-Palestine conflict.

The Sought African Government has repeatedly called for the lifting of the ongoing Israeli blockade of Gaza, considering it to amount to collective punishment of the population of the enclave. During May 2010, South Africa recalled its ambassador to Israel for consultations and handed a demarche to the Israeli ambassador in protest of an Israeli military assault on the international assistance flotilla to Gaza in international waters in the eastern Mediterranean Sea, which resulted in the death of seven Turkish nationals aboard a Turkish vessel.

South Africa does not support the Israeli practices relating to the detention of Palestinian children, the arbitrary use of administrative detention against Palestinians, the demolition of Palestinian homes, the continued Israeli colonization of Palestinian territory and related violence carried out by Israeli settlers against Palestinians and tier property, and the maintenance of a blockade against the Gaza strip. The Human Sciences Research Council of South Africa (HSRC) as released a report confirming that Israel is practicing both colonialism and apartheid in the Occupied Palestinian Territories (OPT).

Since South Africa's democratic transformation in 1994, successive governments have expressed strong support in regional and international for a such as the UN, NAM, IBSA and BRICS, for the Palestinian cause within the framework of a viable two-state solution, South Africa is of the opinion that some of the Israeli practices within the Occupied Palestinian Territories are not just contrary to International Law but also contrary in attaining a viable two-state solution.

I thank you Madam President.

**President:** Thank You South Africa. India has the floor now. You may take the floor.

**The Delegate of Republic of India:** Thank You Madam President.

I have a very brief statement. Before that I would like to share a case law, a court case which happened about one and a half year ago, regarding the status of East Jerusalem. An American Citizen, she gave birth to a son in East Jerusalem way back in 2010 – I don't know exactly the time, but she applied for a passport for her son, stating that he is American citizen and he was born in Israel. She insisted that his passport should state that his birth place is Israel. But the concerned department in USA rejected it, stating that we do not recognize East Jerusalem as a part of Israel. She went to the court, insisting that it should be mentioned in the passport that Israel was the birth place. One of her grounds was that the United States Congress has passed a resolution recognizing East Jerusalem and other parts which were occupied subsequent to 1867 by the Israel as a part of Israel. But that resolution was rejected by the State Department and Administration. He went to the Supreme Court and the plea of the Administration was that the Congress resolution cannot be recognized as the legal basis because in foreign affairs, the authority was the State Department and that the legislature has no role to play. Supreme Court has accepted that argument of the State Department, stating that what the administration says

was correct and therefore the boy cannot be issued a passport recognising his place of birth as Israel. In this case, Hillary Clinton was the defending party. Now I will read out the Statement.

Madam President, We Compliment the AALCO Secretariat for the Special Study on the Statehood of Palestine and International Law, which was released earlier today. We subscribe to the study. Though 2012 resolution and October 2011 resolution of UNESCO, admitting Palestine as a full-fledged member and November 2012 Resolution of United Nations, admitting as a non-member observer State of Palestine is very significant, but still we consider Palestine as an unfinished and long pending task of International Community. We wish to see Palestine as a full-fledged sovereign and independent State at the United Nations and other forums as per various resolutions. As per various resolutions of the UN General Assembly and the Security Council Palestine borders are well defined, demarcated as what was before the 1967 war. The Palestine people have a right to return to their territory and their continued displacement from their place of abode and the expanding settlements is illegal and immoral. In this regard, we support the operative paragraphs of the resolution proposed by the Secretariat that, the operative paragraphs 13m “that AALCO Secretariat closely follow the developments in Occupied Territories from the view point of relevant legal aspects”, and also paragraph 14, “decides to place the item on the provisional agenda of the 53<sup>rd</sup> Annual Session.

Thank you Madam President.

**President:** Thank you India. I will give the floor to China now. You have the floor Ma'am.

**The Delegate of People's Republic of China: :** Madame Chairperson; Distinguished Delegates.

We are glad to see that the topic of “the role of UN Convention Against Corruption” has been reintroduced into the agenda of the annual session of AALCO. UNCAC ss the most authoritative and influential international legal instrument in the field of anti-corruption. We Asian-African countries have always attached great importance to the Convention, taken an active part in the Mechanism for Implementation Review as well as other works, and made our contributions to its effective implementation and the strengthening of international cooperation.

Distinguished delegates, as the international community puts increasing emphasis on the preventing and penalizing of corruption, the role of the UNCAC is being further strengthened and consolidated. We hope that the Convention, being complemented and supported by other multilateral mechanisms, will continue to serve as the main channel of anti-corruption cooperation and be more facilitative in this regard.

It is the common commitment of the international community to promote effective implementation of the UNCAC. For this purpose, the 3<sup>rd</sup> Conference of State Parties to the Convention in 2009 established the Mechanism for the Review of Implementation, which had been operated since 2010. From the general view, the Mechanism operates well and basically satisfies the purpose of promoting effective implementation of the Convention and cooperation among States Parties. Meanwhile, we have to recognize that there are still some problems which are not so constructive to the development of the Mechanism. It is necessary that the Asian and African countries work together to ensure that the principles and rules of the Mechanism be strictly followed.

Firstly, the principle of sovereign equality and non-intervention in the domestic affairs should be adhered to. According to the rules of the Mechanism, a State under review has the right to take decisions on such issues as the involvement of private sectors on the self-assessment checklist, whether or not to permit country visit and to publicize the country review report. These rules are designed to guarantee the state ownership of the affairs with sovereign implications, and meet the interest and needs of Asian and African States. We should work jointly to maintain these rules and ensure the sound operation of the Mechanism.

Secondly, the inter-governmental nature of the Mechanism should be kept in mind. Only states could be contracting Parties and the Mechanism is a “peer review” process. This principle, as consensus of all countries, has been included in the Terms of Reference. We highly appreciate the positive efforts in anti-corruption made by NGOs as well as other individuals and groups outside the public sector. Although they are not expected a direct involvement in the Mechanism, they still can give full play to their advantages on combating corruption and help their respective country in this regard. The decision adopted by the 4<sup>th</sup> Conference of State Parties to brief NGOs on the margin of sessions of the Implementation Reviewing Group provides an appropriate channel for NGOS to follow the status of the Mechanism and relevant implementation information while sticking to the rules of the Terms of Reference.

Distinguished delegates, asset recovery is a unique and innovative legal framework set by UNCAC, and it is an important part of international cooperation on anti-corruption. We hope that Asian-African countries will pay more attention to assets recovery, enhance the political will of cooperation, overcome the obstacles arising from the difference of various legal systems, and make full use of UNCAC to prevent criminals of corruption from transferring proceeds of crime.

In addition, UNCAC provides an important legal basis for the cooperation on extradition and mutual legal assistance. China is willing to enhance the cooperation with Asian-African countries in this regard, based on the Convention through various means such as conducting cooperation on a case-by-case basis or concluding bilateral treaties.

Madame Chairperson, the 5<sup>th</sup> Conference of State Parties to the Convention will be convened in November in Panama. We are looking forward to working together with the Asian-African countries, coordinating and cooperating with each other, to promote the implementation of the Convention, and maintain the sound and sustainable development of the Mechanism of Implementation Review.

Thank you.

**President:** Thank you China. I now invite the Delegate of Republic of Korea to make their Statement

**The Delegate of Democratic People’s Republic of Korea:** Madame President, Deportation of Palestinians and other Israeli violations of International Law, particularly the Fourth Geneva Convention of 1949, has been AALCO’s Agenda Item for decades.

The DPRK delegation appreciates very much the fact that AALCO, considering the Palestinian issue as an important one with serious political and legal implications, has included this item in the agenda and making contribution with constructive opinions in its deliberations and other

international fora like the United Nations representing the positions of the AALCO member states.

It is particularly noteworthy that in this session we are able to study further in depth the legal aspects regarding the establishment of the Statehood of Palestine in order to help the early realization of the Palestinians' cherished desire to have their own independent state and I believe this would be very useful work.

Madame President, The continued acts of violations of international law committed by Israel such as deportation of Palestinians, massive immigration and settlement of Jews in all occupied territories, blockade of Gaza Strip and prohibiting international humanitarian assistance etc. Have been causing grave concern of international community today,

The international community must urge in stronger terms that Israel should respect and observe relevant international laws and fulfil its responsibilities and obligations towards the international society.

And furthermore, the international community should also pay a due attention to the behaviour 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 the Gaza strip without delay.

Madame 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 and withdraw from all the occupied Arab Territories.

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

**President:** Thank you Korea.

With that we come to the end of our discussions for the day. We will once again meet tomorrow at 09:00 in the morning and continue with our deliberations and meetings.

I thank you all for your attendance today.

**The meeting was thereafter adjourned.**

**X. VERBATIM RECORD OF THE  
SPECIAL HALF-DAY MEETING  
ON  
“SELECTED ITEMS ON THE  
AGENDA OF THE  
INTERNATIONAL LAW  
COMMISSION”**

**X. VERBATIM RECORD OF THE SPECIAL HALF-DAY MEETING ON  
“SELECTED ITEMS ON THE AGENDA OF THE INTERNATIONAL LAW  
COMMISSION” HELD ON WEDNESDAY, 11 SEPTEMBER 2013 AT 09.00 AM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Session of AALCO in the Chair.**

**President:** Today on the first-half of the day, we have the special half-day meeting on “Selected Items on the Agenda of the International Law Commission”. I will give the floor to the Secretary-General now to introduce the panellists.

**Secretary-General:** Thank you Madam President. Her Excellency Madam President of Fifty-Second Annual Session of AALCO; Sir Michael Wood and Mr. Narinder Singh, Distinguished Members of the International Law Commission; Dr. A. Rohan Perera, Former Member of the International Law Commission; 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”. First and foremost, on behalf of the Organization, I would like to pay tribute to late Ambassador Chusei Yamada and commemorate in grief, his contributions in the field of International Law as distinguished Member of the ILC from Japan and as Special Rapporteur on the topic “Shared Natural Resources”.

The AALCO and the International Law Commission (ILC) has a longstanding mutual cooperation. Considering the importance of the work of ILC, the AALCO was statutorily mandated by its Member States to follow and exchange the views of its Member States on the agenda items of the ILC. Customarily, both the Organizations mutually represent at their respective annual session. On behalf of AALCO, I had the opportunity to address the Sixty-Fifth Session of the ILC. Since the AALCO’s fifty-second annual session was scheduled after the sixty-fifth session of the ILC, I had briefed the Commission about AALCO’s comments and observations on specific agenda items of ILC on (9 July 2013).

Excellencies, I have the privilege to invite Sir Michael Wood, Member of the ILC and distinguished Special Rapporteur for the agenda item “Formation and Evidence of Customary International Law” to this Annual Session. I look forward for Commission’s message to AALCO on the Work of the ILC. I take the opportunity to invite Mr. Narinder Singh, distinguished Member of the ILC from India who has served as former President of AALCO as a panellist to this session; and Dr. A. Rohan Perera, the distinguished member of the Commission from Sri Lanka and the Chairman of the Eminent Persons Group (EPG) of AALCO, to this special Half-Day Meeting.

Briefly, the deliberations at the sixty-fifth session of the Commission focused on seven topics listed on the agenda of the ILC; namely, (i) Subsequent agreements and subsequent practice in relation to the interpretation of treaties, (ii) Provisional application of treaties, (iii) Most-Favoured Nation clause, and (iv) Obligation to Extradite or Prosecute (*aut dedere aut judicare*). With a view to have a focused deliberation on the work of the ILC; it was decided that this

Special Meeting on “Selected Items on the Agenda of the International Law Commission” would be on three important topics of ILC: namely,

- Protection of persons in the event of disasters
- Immunity of State officials from foreign criminal jurisdiction
- Formation and evidence of customary international law

***Summary of the Work of ILC on its agenda Items***

Madam President, Excellencies, Ladies and Gentlemen; The topic “Treaties over Time” was changed to “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and Mr. Georg Nolte was appointed as the Special Rapporteur for this topic. The Commission considered the first report and dealt with (i) general rule and means of treaty interpretation, (ii) Subsequent agreements and subsequent practice as means of interpretation, (iii) Definition of subsequent agreement and subsequent practice as means of treaty interpretation, and (iv) Attribution of treaty-related practice to a State.

On “Provisional Application of Treaties”, the Commission considered the Memorandum of the Secretariat and the First Report of the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo. The report discussed the procedural history of the “provisional application of treaties”, *Raison d’être* of provisional application of treaties; Shift from provisional “entry into force” to provisional “application”; legal basis for provisional application; Provisional application of part of a treaty; Conditionality, Juridical nature of provisional application Termination of provisional application. The focus of the study would be on Article 25 of the Vienna Convention on the Law of Treaties, 1969. The principal legal issues that arise in the context of the provisional application of treaties by virtue of doctrinal approaches to the topic would review the existing State practice.

The Study Group on “Most-Favoured Nation clause” had before it a working paper entitled “A BIT on Mixed Tribunals: Legal Character of Investment Dispute Settlements” by Mr. Shinya Murase. The catalogue of the provision was prepared by Mr. Donald McRea and Dr. A. Rohan Perera. The Study Group traced the contemporary practice and jurisprudence relevant to the interpretation of MFN clauses. In this connection, it had before it recent awards and dissenting and separate opinions addressing the issues under consideration by the Study Group.

The Report of the Working Group on “Obligation to Extradite or Prosecute (*aut dedere aut judicare*)”, consisted of detailed discussion of recent ICJ decision on Obligation to Extradite or Prosecute (2012) (Belgium v. Senegal). The decision was helpful in elucidating: Basic elements of the obligation to extradite or prosecute to be included in national legislation, Establishment of the necessary jurisdiction, Obligation to investigate, Obligation to prosecute, Obligation to extradite, and Consequences of non-compliance with the obligation to extradite or prosecute.

Madam President, Excellencies, Ladies and Gentlemen; As mentioned earlier, this special meeting would be focusing on three agenda items: (i) protection of persons in the event of disasters; (ii) immunity of State Officials from foreign criminal jurisdiction; and (iii) formation and evidence of customary international law. On “Protection of Persons in the Event of



Disasters”, the Commission considered the sixth report of the Special Rapporteur Mr. Eduardo Valencia-Ospina. The report discussed about the historical development of concept of disaster risk reduction, prevention as a principle of international law tracing from human rights law and environmental law; international cooperation on prevention as dealt under bilateral and multilateral instruments; national policy and legislative framework on prevention, mitigation and preparedness; and proposal to include draft Article 16 on ‘duty to prevent’ and draft Article 5 ter on ‘Cooperation for disaster risk reduction’.

As regards the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission considered the second report which dealt with the Scope of the topic and the draft articles; the concepts of immunity and jurisdiction; the distinction between immunity *ratione personae* and immunity *ratione materiae*; and, the normative elements of immunity *ratione personae*. Moreover, three draft Articles 1, 3 and 4 on ‘scope of the present draft articles’, ‘persons enjoying immunity *ratione personae*’, and ‘scope of immunity *ratione personae*’, was adopted by the Commission.

Madam President, Excellencies, Ladies and Gentlemen; I need not mention at length on the topic “Formation and Evidence of Customary International Law” as we have Special Rapporteur Sir Michael Wood amongst us to enlighten us on this topic. However, I would like to precisely refer to this subject. There were two main documents which were considered by the Commission. First, the memorandum of the Secretariat on “elements in the previous work of the International Law Commission that could be particularly relevant to the topic Formation and evidence of Customary Evidence of International Law; and second, First Report of the Special Rapporteur Mr. Michael Wood on this subject of Formation and evidence of Customary Evidence of International Law. The First report on the topic explains the scope and outcome of the topic which addresses whether to cover *jus cogens*; customary international law as source of international law under Article 38 of the Statute of the International Court of Justice. Also, refer to materials that would be considered during the study which focuses on (i) Approach of States and other intergovernmental actors, (ii) Case law of the International Court of Justice, (iii) Case law of other courts and tribunals, (iv) work of other bodies, and (v) Writings.

### ***Comments of AALCO Secretariat***

Madam President, Excellencies, Ladies and Gentlemen; The concept of prevention as referred under ‘protection of persons in the event of disasters’ is definitive concept in international law and is a possible measure to reduce the disaster risk. However, pre-disaster preparedness even at the presence of national legislations and authorities would be very limited due to shortage of funding disaster management which remains a challenge for many of the developing countries. It would be more relevant to deal with technology transfer in terms of addressing post-disaster relief and rescue operations within the country. Indeed, AALCO Secretariat is of the view that duty to offer assistance, previously discussed in the fifth report on this subject, shall be not compulsory but voluntary and should respect the principle of non-intervention in the internal affairs of the state by assistance offering state.

With regard to applicability of immunity *ratione personae* beyond Troika, there was a need to identify a clear criterion in establishing such practice and also to consider the suggestion of

enhancing cooperation between States in matters relating to invocation of immunity between the State exercising jurisdiction and the State of the official, in respect of the Troika as well as others. The view of AALCO Secretariat conforms to the view of the Special Rapporteur to the extent that in the absence of compelling arguments to the contrary, the status quo with regard to the extension of protection offered by immunity *ratione personae* being limited to the “troika” be maintained.

The topic “Formation and Evidence of Customary International Law” is very significant as far as AALCO Member States are concerned, because, in order to derive the ‘attitude of states and international organization’, materials on state practice which has been requested by the Rapporteur must be transmitted by the States. Those approaches and materials would be very essential to evolve evidentiary practices on customary international law from the developing country’s perspective. Such comments and country positions would contribute towards established State practices under international law. Further, it is the strong view of the AALCO Secretariat that resolutions of International Organizations, especially AALCO, form part of customary international law. Moreover, the statements presented at forums such as AALCO, depict the ‘state practice’ which should also be regarded as customary international law.

I once again welcome all the panellists to this Special Meeting and look forward for a detailed discussion on these three subjects.

Thank you very much Madam President.

**President:** Thank you for introducing the subject. I now request Sir Michael Wood, who is a member of the International Law Commission as well as the Special Rapporteur on the topic of “Formation and Evidence of Customary International Law” to make the presentation.

**Sir Michael Wood, Distinguished Member of the International Law Commission and Special Rapporteur on the topic “Formation and Evidence of Customary International Law”:** Thank you Madam Chairperson.

Mr. Secretary-General, Your Excellencies, Ladies and Gentlemen,

Thank you, Your Excellency, Professor Dr. Rahmat Mohamad, for the invitation. It is a great honour, and a pleasure, to address this distinguished body. The last time I attended the AALCO Annual Session was in Cairo in 1990.

I must make it clear that I am here in a personal capacity, not as a representative of the Commission in any formal sense.

Let me say how much I appreciate the fact that AALCO is organising a full half-day session on the International Law Commission, which is much appreciated.

I propose to do three things. First, I shall mention some ILC-related matters which do not actually arise from this year’s session. Second, I shall describe briefly the Commission’s 2013

session, focusing on those areas where the views of States would be most welcome. And finally I shall speak on the three topics which you have chosen for the present session.

### **United Nations Convention on the Jurisdictional Immunities of States and Their Property, 2004**

I should like pay tribute to the AALCO's contribution, over the years, to the development of international law. I note that you held special meeting in March this year to commemorate the thirtieth anniversary of the Law of the Sea Convention, as well as a session yesterday. The law of treaties is another topic to which the AALCO made a significant contribution. But I would like to mention an even earlier project. Professor Gerhard Hafner has recently written that the AALCC 'led the way with its work on State immunity in the late 1950s'.<sup>1</sup> It was the first inter-governmental body to work, in a general way, on State immunity. At your third session, in 1960 in New Delhi, you considered a report which "proceeded from the premise that a State which entered into a transaction of a commercial or otherwise private character ought not to enjoy immunity from proceedings in another State's courts in respect of that transaction."<sup>2</sup>

Eventually, the seeds sown by this organization bore fruit with the adoption by the UN General Assembly, in 2004, of the **UN Convention on the Jurisdictional Immunities of States and Their Property**. A number of AALCO members played a major role: Sompong Sucharitkul from Thailand and Ambassador Ogiso from Japan were very distinguished Special Rapporteurs; more recently, the late Ambassador Chusei Yamada from Japan, whose passing we mourned earlier this year, played a central role, as did China and India. A number of AALCO members have already signed or acceded to the Convention. Those that have ratified or acceded include Iran, Japan, Lebanon and Saudi Arabia; in addition China and India have signed. I hope that more AALCO members will join the Convention in the near future, thus continuing to lead the way in this important field. 2014 will mark the tenth anniversary of the adoption of the Convention, and that would be a good date to aim for. Perhaps AALCO might make this a special topic for its meeting in 2014, with a view to encouraging participation in the Convention.

### **Draft Articles on Expulsion of aliens**

I now turn to the Commission's first reading draft articles on expulsion of aliens, which were completed in 2011, under the wise leadership of Professor Kamto of Cameroon. States have been requested to submit written comments on the 32 draft articles by 1 January 2014. The Commission will then conduct a second (and final) reading in 2014. We will do so in light of the written and oral comments of States over the years, but particularly their written comments this year. It is essential that comments be received in good time, if Special Rapporteur Kamto, and the Commission itself, are to be able to take them fully into account. I need not stress the importance of this sensitive topic, and the importance of getting the draft articles right, both for States and for the affected individuals.

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<sup>1</sup> G Hafner, in: O'Keefe, Tams, *The United Nations Convention on Jurisdictional Immunities of States and Their Property. A Commentary* (2013), p. 3.

<sup>2</sup> AALCC, *Final Report of the Committee on Immunity of States in respect of Commercial and Other Transactions of a Private Character, as revised at the third session of the AALCC* (partly reprinted in M Whiteman's Digest vol 6, 553, 573).

## **Guide to Practice on Reservations to Treaties**

This year the annual debate on our work in the Legal Committee of the UN General Assembly will, at long last, hold a debate on the Guide to Practice on Reservations to Treaties, which the Commission adopted in 2011.<sup>3</sup>

The Guide is a monumental work, and your comments will be of great interest. I only have time to mention two matters:

First, the vexed question of Guideline 4.5.3, on the ‘Status of the author of an invalid reservation in relation to the treaty’. This deals with what is perhaps the most difficult, and the most contentious issue of the law of reservations. Is a State making an invalid reservation a party to the treaty without benefit of the reservation, as some maintain? Or is the State concerned not a party to the treaty at all? Paragraph (1) of guideline 4.5.3 makes it clear that the decisive factor is the intention of the reserving State. This is the principle. However, paragraph (2) then raises a positive rebuttable presumption: the reserving States is considered to be a party without the benefit of the reservation *unless* it has expressed a contrary intention or such an intention is otherwise established. These two paragraphs, which are the essence of the guideline, are in my view balanced and workable.

The commentary explains that guideline 4.5.3 ‘largely corresponds to the progressive development of international law’, and that it would therefore ‘seem expedient to let the practice evolve’.<sup>4</sup> It is important to note that the guideline was adopted by the Commission without dissent. And it was adopted after careful study of the practice and case-law, and taking into account the views of human rights bodies and the comments of Governments, especially as expressed in the Sixth Committee in 2010.

Practice to date has been divided, though all sides seem ultimately to accept the principle that the intention of the reserving State is determinative. In my view, members of the AALCO could make an important contribution to achieving more legal certainty in this area if they could speak in support of Commission’s proposal.

The second point I want to mention about reservations is possible follow-up action by the General Assembly. There are three elements:

*First*, the Commission’s modest recommendation to the GA was “to take note of the Guide”. This should not be problematic.

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<sup>3</sup> A/66/10/Add.1. The Commission included a useful Introduction, which makes some important points about the nature of the Guide. Professor Pellet intends to publish a book, as Professor Crawford did with the State Responsibility articles. That will be an invaluable guide for the reader of the Guide. There is already a helpful ‘symposium’, with articles by Professor Pellet, his former assistant, Daniel Mueller, Ineta Ziemele and Lāsma Liede (respectively Latvian judge and Registry member of the ECtHR), and myself. These are available online, in the *Jean Monnet Working Paper Series* (XXXXXXXXXXXX), also to be published in the *European Journal of International Law*.

<sup>4</sup>Para. 55.

*Second*, the Commission has set out, in an annex to the Guide to Practice, nine ‘conclusions’, and recommended that “[t]he General Assembly call upon States and international organizations, as well as monitoring bodies, to initiate and pursue such a reservations dialogue in a pragmatic and transparent manner.” This too seems sensible, and should not be problematic.

The *third* element of possible action for the GA is the Commission’s ‘**Recommendation on mechanisms of assistance**’ is perhaps a bit more complicated. The Commission has transmitted to the General Assembly a ‘recommendation ... on mechanisms of assistance in relation to reservations to treaties’.

The annex to the recommendation seeks to illustrate, in a tentative way, what a ‘reservations assistance mechanism’ might look like. It would have essentially two tasks: to ‘make proposals to requesting States in order to settle differences of view concerning reservations’, proposals which States could undertake to accept as compulsory; and to provide States with ‘technical assistance in formulating reservations or objections to reservations.’

The recommendation also includes the idea of reservations ‘observatories’ within the Sixth Committee and elsewhere.

### **ILC session 2013**

I now turn to the work of the ILC in 2013. You already have a thorough background paper on the work of the ILC in 2013 prepared by your Secretariat. I do not have time to go into such detail.

The topic **Subsequent agreements and subsequent practice in relation to the interpretation of treaties** deals with an important aspect of treaty interpretation. It covers subsequent agreements and subsequent practice both under article 31.3(a) and (b) (‘authentic interpretation’) and under article 32 VCLT (‘supplementary means of interpretation’). Five draft conclusions were adopted this year, with detailed commentaries. They are largely introductory but include some interesting points. For example, one issue addressed is the role of subsequent agreements and practice in relation to ‘evolutionary’ interpretation.

There has not yet been great progress on the new topic **Provisional application of treaties**, though we had an interesting discussion on the first report by the Special Rapporteur, and there was a very helpful study by the Secretariat. This is potentially very interesting topic, which should be of practical interest and assistance to States.

The Commission added the topic **Protection of the environment in relation to armed conflict** to its current work programme, and appointed Ms. Jacobsson as Special Rapporteur. We look forward to her first report.

The Commission added the topic **Protection of the atmosphere** to its current work programme, and appointed Professor Shinya Murase of Japan as Special Rapporteur. The proposed topic had proved quite controversial, and it was included in the Commission’s work programme, on the

last day of the session, on the basis of certain understandings put forward by Professor Murase. You will find these set out verbatim in the Commission's report.

A working group under Ambassador Kriangsak Kittichaiserie continued its consultations on where to go with the topic **Obligation to extradite or prosecute** (*aut dedere aut judicare*). A rather detailed report is annexed to the ILC's report, in the hope of eliciting reactions in the Sixth Committee on the future of the topic. The report describes how the topic has developed, and analyses the ICJ judgment of 20 July 2012 (*Belgium v. Senegal*). It does not deal with the question whether the obligation to extradite or prosecute is, already a rule of customary international law, at least in relation to certain crimes. There seems to be a general view that this is something that it would not be helpful for the Commission to address.

The Commission added the topic **crimes against humanity** (proposed by Professor Sean Murphy) to its long-term programme of work.<sup>5</sup> The idea is to prepare, for the General Assembly, draft articles requiring States to prevent and punish crimes against humanity and to cooperate among themselves to these ends (principally through 'extradite or prosecute' provisions). A Convention along these lines would fill a gap in international criminal law.<sup>6</sup> The Commission is expected, in 2014, to decide on the inclusion of the topic in its current programme of work, in light of the reactions of States in the Sixth Committee. Your views will be much appreciated.

### **Immunity of State officials from foreign criminal jurisdiction**

I now turn to the first of the three topics highlighted on your agenda today. The topic 'Immunity of State officials from foreign criminal jurisdiction' is politically important, and there are quite different views among the members of the ILC. I do hope that government lawyers, including those represented on the AALCO, will follow it closely, and will comment in the Sixth Committee and respond in writing to the Commission's questions.

The Commission adopted three draft articles, articles 1, 3 and 4.<sup>7</sup> Draft article 1 defines the scope of the topic, which concerns immunity from foreign criminal jurisdiction. It does not cover the vexed question of immunities before international criminal courts and tribunals. Article 1 also makes it clear that the present draft is without prejudice to the immunity enjoyed by diplomats, consuls, persons on special missions, and others governed by special rules.

I need to say a word about special missions. The Commission's commentary stresses the practical importance of the law on special missions, both under the 1969 New York Convention and under customary international law. There have been a number of recent cases in this field, including one in the English High Court which confirmed the customary law status of the immunity of persons on special missions.<sup>8</sup> This is of practical importance because it means that senior officials may enjoy personal immunity from foreign criminal jurisdiction even if they do

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<sup>5</sup> A/68/10, annex B.

<sup>6</sup> See, for example, L. Sadat (ed.), *Forging a Convention for Crimes against Humanity* (2011).

<sup>7</sup> The Special Rapporteur, Ms. Escobar Hernández, produced a second report (A/C.4/661), proposing five draft articles. The report relied heavily on the materials in the former Special Rapporteur, Ambassador Roman Kolodkin's reports, and on an excellent Secretariat memorandum from 2008.

<sup>8</sup> *Khurts Bat* 2011.

not fall into that narrow circle of high State officials who enjoy immunity *ratione personae* by virtue of their office.

This brings me to the main outcome of the Commission's work on his topic this year, the endorsement in draft article 3 of the so-called 'troika' (Heads of State, Heads of Government and Ministers for Foreign Affairs) enjoy immunity *ratione personae*. This was a compromise, as there remain one or two members of the Commission who do not think foreign ministers should have such immunity (i.e., they think the ICJ was wrong in the *Arrest Warrant* case) and some others who think the narrow circle of persons concerned should not be regarded as confined to the three (but include, for example, Defence Ministers and Ministers of Commerce and International Trade).

The next stages will be to look at the more complex questions surrounding official act immunity, immunity *ratione materiae*, which we should do in 2014, and then we shall come to the politically very sensitive question of possible exceptions, for example, for core crimes of international concern.<sup>9</sup>

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

The Special Rapporteur, Valencia-Ospina, produced a lengthy sixth report on disaster risk reduction. This report dealt with eminently practical matters: the need to take steps to avert disasters before they occur, and to make preparations so that they can be dealt with as effectively as possible if and when they do occur. The report contained a great deal of information, and drew on a wealth of texts and documents. It was well researched, and afforded a sound and solid basis for the two draft articles proposed by the Special Rapporteur. However, Part IIB of the report ('Prevention as a principle of international law') was criticized.

Following the Special Rapporteur's suggestions, the Commission adopted two articles on disaster risk reduction, together with commentaries, as well the commentaries as for five draft articles approved in 2012.

The Special Rapporteur plans a final report in 2014, which should see the completion of a first reading set of draft articles.

### **Formation and evidence of customary international law**

The topic 'Formation and evidence of customary international law', for which I have the honour to be special rapporteur, has now been renamed 'Identification of customary international law'. Work this year was of a preliminary nature, and no draft conclusions were adopted.

There seems to be agreement that the outcome of the Commission's work on this topic should be practical. "The aim is to provide guidance for anyone, and particularly those not expert in the field of public international law, faced with the task of determining whether or not a rule of

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<sup>9</sup> The Special Rapporteur and one or two members of the Commission emphasised that the draft articles adopted so far are without prejudice to possible exceptions to immunity *ratione personae*: Draft article 4, commentary (4) *in fine*.

customary international law exists.” It seems to be widely accepted that it is not our task to seek to resolve purely theoretical disputes about the basis of customary law and the various approaches to be found in the literature as to its formation and identification.

The outcome that the Commission has in mind is not a hard-and-fast set of rules, but rather a set of conclusions, with commentaries. It is important to retain the flexibility of this source of international law. Clearly “we need to strike a balance between certainty and flexibility”, as Mr. Huang, the Chinese member of the Commission said. In this regard, I very much liked the way our Jordanian member, Mr. Hmoud, put it. He said that

“... even if the Commission merely describes the current state of the law, through adopting a set of conclusions, such conclusions will definitely advance the rule of law and a clear understanding of what is part of customary international law and what is not.”<sup>10</sup>

It is important to be clear about the scope of the topic. The aim is not to consider the substance of customary international law. We are concerned with secondary or systemic rules, that is with the means of identifying whether a rule of customary international law has emerged or not. The Secretariat memorandum puts it well: we are looking at the “approach to the identification of the rules of customary international law and the process leading to their formation.”<sup>11</sup>

The Commission decided that we should not seek to deal with *jus cogens* within the present topic. There is a proposal that we should have a separate topic on that interesting subject.

The debate this year in the Commission was based on two papers: my first report; and an excellent Secretariat memorandum describing ‘elements in the previous work of the Commission that could be particularly relevant to the topic’.<sup>12</sup> The memorandum is of the high quality that we have come to expect from the Codification Division of the United Nations. It contains a wealth of learning, information and insight. It is divided into five sections: the Commission’s general approach; its approach to State practice; its approach to the subjective element of customary international law (*opinion juris sive necessitatis*); the relevance of the practice of international organizations; and the relevance of judicial pronouncements and writings. The memorandum finds that the Commission’s practice in identifying the existence of a rule of customary international law reflects the widely accepted ‘two-element’ approach.

The Secretariat succeeded in distilling a coherent set of observations from the diverse elements of the work of the Commission over a long period and in many different contexts. This encourages me to hope that it may indeed be possible to conduct a similar exercise on the much broader canvas of materials listed in the first report

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<sup>10</sup>Mr.Hmoud went on to say that ‘the complexities associated with the vagueness in determining the law undermine legal stability and certainty.’ He also emphasised that conclusions in this topic would lead to “the avoidance of dispute and assist in reaching legal certainty that otherwise may only be reached through judicial pronouncements”.

<sup>11</sup>Para. 12.

<sup>12</sup> A/CN.4/659.



My first report was introductory in nature. It sets out the basic approach that I propose to the Commission. In particular, I suggest that the rules of public international law for identifying the sources of law “can be found for present purposes by examining in particular how States and courts set about the task of identifying the law.”<sup>13</sup>

Among other things the report dealt with the relationship between customary international law and other sources of international law. The relationship between customary international law and treaties is a matter of great practical importance for the topic. It is a reasonably well-understood question, on which there is a wealth of case-law and writings. Less obvious, less studied, perhaps less well understood is the relationship between customary international law and general principles of law within the meaning of Article 38.1(c) of the ICJ Statute.

The report sets out at some length, with examples, the range of materials that the Commission may need to take into account in the course of our work. When illustrating their richness and diversity, it also tries to highlight the general approach to the formation and evidence of customary international law which they reveal. It is noteworthy that virtually all of the materials stress the need for both State practice and *opinio juris*. The International Court of Justice, in particular, “has clearly and constantly held [...] that customary international law is formed through State practice accompanied by *opinio juris*.”<sup>14</sup> among others, in Section VIII of the report. If one studies the case-law of the International Court of Justice, in particular the *North Sea*, *Nicaragua*, and *Germany v. Italy* cases, it is clear that the Court views the two elements, State practice and *opinio juris*, as essential for the formation of a rule of customary international law.

This topic must be a collective effort. The Commission has requested States to provide, by 31 January 2014. It was stressed in the Commission that we need to have regard to practice of States from all of the principal legal systems of the world and from all regions.

Conferences and academic institutions can also play their part. The Council of Europe, together with France, organized a short but very interesting conference in Paris in September 2012, on ‘*The Judge and International Custom*’.<sup>15</sup> A number of distinguished judges spoke at that conference about the experience of their own courts, both national and international. There was a particularly interesting contribution from President Tomka of the International Court of Justice.

One of the aspirations of the AALCO, as I understand it, is to ensure that the voice of Asian and African States is heard loud and clear in the progressive development and codification of international law. An important part of this is the contribution of Commission members from AALCO Member States, and the contribution of AALCO Member States themselves to the work of the Commission. The Asian and African members of the Commission have undoubtedly made, and continue to make, a valuable contribution to the work of the Commission. Their presence is essential if the Commission is to be truly representative. It is unfortunate if those elected by the General Assembly do not attend regularly or at all. Of course, there are no doubt often good reasons for this; we are all busy.

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<sup>13</sup>Para. 38.

<sup>14</sup>Report, para. 55

<sup>15</sup>*The Law and Practice of International Courts and Tribunals*.

States too have their role to play, and I would encourage all of you to respond to the various requests for information and views, both in writing and in the Sixth Committee debate which is held in October each year. I know from personal experience how difficult this can be for busy government lawyers. But it is important to contribute to the long-term development of international law, as well as with day-to-day crises.

Mr Chairman, Ladies and Gentlemen, I thank you very much for your attention.

**President:** Thank you Sir Michael Wood for giving various issues addressed before the ILC, and also the key issues on the agenda of this session. I shall now give the floor to Mr. Narinder Singh who is also a Member of the International Law Commission from India and has also served as President of AALCO as the former Legal Adviser to the Government of India.

**Mr. Narinder Singh, Member of the International Law Commission (ILC):** Thank you Madam President. Madam President, Mr. Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen, I thank the Secretary-General of AALCO for inviting me to this special meeting on the work of the ILC at AALCO's Annual Session. Sir Michael Wood has already given us a very detailed account of the work of the Commission accomplished at the current year. He has also highlighted a number of issues considered by the ILC which are very relevant for AALCO Member States.

I would like to refer first of all to the Convention on Jurisdictional Immunities of States and Their Property. This is a very important Convention which recognizes the principle that States cannot claim immunity for commercial transactions. This Convention was adopted after extensive consideration over a long period both in the Commission and in the Sixth Committee. The contribution by AALCO Member States both at the Commission and at the Sixth Committee was also highlighted by Sir Michael Wood. India has signed this Convention but has not yet ratified. However, India in practice has already been applying the Convention. Under the Indian civil procedure laws, any person wishing to file a suit against a foreign government before an Indian Court requires permission from the Central government to file that case. While considering whether or not permission is to be given the government takes into account the practice of States around the world as well as the evolving jurisprudence in international law. In many cases where permission is refused the matter is taken to court. The Supreme Court of India has held that in considering whether or not to grant permission, the Government must take into consideration the "trends and developments in international law". Accordingly the Government has often referred to this Convention while taking its decision and also in responding to cases filed for refusal of permission. I hope that the Member States of AALCO sign and ratify this Convention so that it comes into force and becomes effective.

Some other topics on which the Commission has completed its work and which are important for the Member States of AALCO have also been highlighted by Sir Michael Wood. They are 'Expulsion of Aliens', 'Reservations to Treaties', and the Draft Articles of State Responsibility. I recommend that AALCO continue its consideration of these important items.

Coming to the topics which are under consideration of today's meeting, the first is the "Immunity of State Officials from Foreign Criminal Jurisdiction". This topic has great practical

significance and is also very important for all Member States. In the ILC, there is disagreement among the Members on the scope and objective of the topic. A number of Members have highlighted the importance of the need to address serious crimes and on that basis they have advocated a very restrictive application of immunity given to higher state officials. However other Members have emphasized the importance of immunity to ensure the independent exercise of their functions by the State officials, to protect them from frivolous complaints and harassment, as well as consistent State practice to justify the continuation of immunities. The Commission has agreed that the Troika that is the Head of State, Head of Government and the Foreign Minister enjoy full immunity that is they enjoy immunities both for personal acts and official acts. The Commission by including a savings clause in respect of other conventions, such as those on diplomatic and consular relations and special missions, etc., has also recognized that immunities may apply to officials other than the troika. However, some Members of the ILC still continue to question the personal immunity granted to the Ministers of Foreign Affairs on the ground that there is a need to restrict immunity and that full immunity should apply only to Heads of State and Heads of Governments. Other members including myself prefer a wider circle of high officials based on their functions to be given immunity especially in the present day world, where the conduct of foreign affairs, unlike traditionally is not limited to Ministries of Foreign Affairs and may involve a wide range of State departments. This is a topic which is of great importance to all the Member States. We look forward to further developments in the further reports which the Special Rapporteur would be coming up with on the more complex issues regarding the definition of official acts and the immunity *ratione materiae* which will happen next year. And then we also have to deal with the very sensitive issue of the possible exceptions to immunity, for example in the context of the core crimes of international concern.

The next topic that I would refer to is the 'Protection of Persons in the Event of Disasters'. The Special Rapporteur Mr. Valencia-Ospina has so far presented six reports. In the sixth report which was presented this year, he focused on prevention and the Commission has adopted two articles on this. This report emphasized the need for States to take measures to prevent disasters before they occur and also to ensure that if and when disasters do occur they can be dealt with as quickly as possible to eliminate or at least to mitigate the effects of the disaster. In the draft articles which were adopted by the Commission in previous Sessions, the Commission has recognized the concerns of certain Members as well as opinion of States expressed in the Sixth Committee that the state in whose territory the disaster occurred is in the best position to assess the severity and extent of the disaster as well as the needs of those who are affected by the disaster. It is this State which must decide on the action which is required to deal with the after effects including the assistance to the victims. It has also recognized that it is the affected state that has the right to decide whether in dealing with the disaster it has adequate capacity to deal with the disaster on its own, or whether it would require assistance of third states and if so the extent and the nature of the assistance which is required. The draft Articles have also recognized that even when foreign state assistance is sought and received the affected State has the right to coordinate all matters relating to responses to the disaster, and also to decide on which States or organizations it would accept assistance from.

The topic of Customary International Law has been explained in great detail by Sir. Michael Wood, who is also the Special Rapporteur, and who has presented his first report on the topic this year. Hence I am not going to go into that. I thank you Madam President.

**President:** I now invite Dr. Rohan Perera who is a former Member of ILC and also the Chairperson of the AALCO Eminent Persons Group (EPG) to make his presentation.

**Dr. A. Rohan Perera, Former Member, International Law Commission (ILC):** Thank you Madam President. Mr. Secretary-General, Colleagues on the panel, Distinguished Delegates, after both the presentations including the introduction by the Secretary-General, my intention this morning is to make some comments primarily on the all-important topic as underlined by Sir Michael Wood of 'Immunity of State Officials from Foreign Criminal Jurisdiction'.

It is a topic, both legally complex and involving political sensitivity. Excellent preparatory work was accomplished by the previous Special Rapporteur Mr. Roman Kolodkin. With regard to the general orientation of the topic, the starting point of the Special Rapporteur with regard to the question 'is there exceptions to immunity *ratione personae*'? was that it should be approached on the basis of *Lex lata* or law as it exists, rather than *Lege Ferenda* which involves the element of progressive development. Accordingly he took the view that immunity was the established principle and any exceptions thereto must be proved. Although no draft articles were prepared at the time, debate in the Sixth Committee on this item, reflected a cautious approach by Member States, which underlined the importance of the *Lex lata* approach, at least as a starting point.

Number of delegations made the point that the Commission should keep in mind the distinction between the task of codifying the *Lex lata* and making proposals for the progressive development of the law, *de lege ferenda*.

Given the practical importance of the Commission's work for the Member States, the ultimate objective is that these draft articles must be acceptable to the States. International law Commission is serving the Member States of the United Nations. So this distinction must be kept in mind throughout the work on the part of the Commission on this very complex and sensitive topic. And I believe this should and will continue to guide the work of the Commission.

Considerable progress on the topic has been made under the stewardship of the current Special Rapporteur, Ms. Escobar Hernandez, who has presented several draft articles on the scope of the topic. An effort has been made to define the terms, 'immunity *ratione personae*' and 'immunity *ratione materiae*', as a frame of reference for the future consideration of the topic, and to establish the respective legal regimes applicable to these notions. These definitions place an emphasis on the function of representing the State, with regard to high level State Officials enjoying immunity *ratione personae*, while the definition of immunity *ratione materiae* cover official acts performed by other officials'.

I now move on to the dilemma confronting the Commission, with regard to the scope of persons entitled to enjoy immunity *ratione personae*. The notion of the 'Troika', namely the Heads of State, Heads of Government and the Minister of Foreign Affairs, was referred to by the ICJ in the Arrest Warrant Case, as being entitled to absolute immunity, in respect of all acts performed by them, whether official or private. I believe that there are cogent reasons for including the Minister of Foreign Affairs in this category. There have been some voices of dissent within the Commission who have raised doubts as to the inclusion of the Foreign Minister within the Troika.

The Special Rapporteur explains the rationale for the according of immunity *ratione personae* to the Troika on the basis that under the Rules of International Law, these three office holders represent the State, in its international relations, simply by virtue of their office directly, and without the need for specific powers or authorization to be granted by the State. It is the representational character which International Law attributes to these high State Officials. The sole function is to establish a homogenous, hierarchical system for the representation of the State within the international community as a whole and which promotes and facilitates the conduct of international relations. It is precisely International Law which explains the status that is granted to these officials, within International Law as a whole.

I think that encapsulates the underlying rationale for the immunity of state officials including Minister of Foreign Affairs should enjoy absolute immunity: the representational character and the conduct of international relations. We all know that under the Vienna Convention on Law of Treaties the Minister of Foreign Affairs can represent the State without the requirement of full powers. He is the intermediary between the State and the international community in international law to Heads of States and Head of Governments. It also has to be understood that customary international law recognizes the Troika that is the immunity of these three categories of officials in respect of *ratione personae*.

The other issue is should one go beyond the Troika, taking into account the realities of contemporary international relations? On the one hand, the Special Rapporteur identified the impossibility of finalizing an exhaustive list of 'other officials' outside the Troika who should be accorded immunity *ratione personae*. But on the other hand the as pointed out by some, the conduct of international relations has seen numerous changes in recent times. It has moved away from the Ministries of Foreign Affairs and as was observed by them, in a post WTO world, the Minister of Trade or Commerce also engages in international affairs with other States. These functions would be as important as that of the Minister of Foreign Affairs. Similarly, a Minister of Defence would be travelling on behalf of his State and if the immunity of the Minister is denied, courts and tribunals of a foreign State would be exercising criminal jurisdiction over visiting dignitaries. These are the realities of contemporary international relations. There are persons other than the Minister of Foreign Affairs, who are widely engaged in the conduct of international affairs.

The initial approach of the International Law Commission was to attempt to develop some criteria to determine 'other officials', who may be entitled to immunity *ratione personae*. A high degree of involvement in the conduct of inter-State affairs, of representing the State and carrying out functions on behalf of the State, was among possible criteria identified.

Now the Commission appears to be looking at the Law on Special Missions, both under Customary International Law and under the 1969 New York Convention, which could cover 'other categories' of officials even if they do not fall within the Troika. It is to be noted in this connection that there is developing recent jurisprudence in this area, as mentioned by Sir Michael Wood.

It is very important that this question needs to be addressed through such means, bearing in mind also that an expansive interpretation or an expansive approach to include 'other categories' could create an environment of impunity. So, one must have some very clear guidelines, including the possible application of the Special Missions regime.

The Commission is yet to grapple with the very difficult issue of possible 'exceptions' to immunity *ratione personae*, in respect of serious crimes under International Law or grave crimes, which have to be defined. The work of the ILC in this regard is very important. Member States should follow these developments closely and let the voices of Asia and Africa be heard.

I will now make some brief remarks about the topic Protection of Persons in the Event of Disasters. In its previous work, the draft articles reaffirmed the sovereignty and territorial integrity of an affected State and the Principle of non-intervention in the internal affairs of States in the context of providing of disaster relief. Such relief is made subject to the consent of the affected State. The draft articles however provides for a qualified consent regime, in that such consent should not be unreasonably withheld. The commentary clarifies in what circumstances the withholding of consent would be considered unreasonable and specific elements are identified.

The reaction of Member States to the draft articles, during the debate in the Sixth Committee has been a cautious one. The initial response has been that the outcome should be one comprising non-binding principles and guidelines, which preserves the operational flexibility that is required in disaster situations. The draft articles should be of practical value to States and likely to attract widespread support and acceptance, rather than conventional binding obligations.

Sir Michael Wood referred to the draft articles adopted at the last session on disaster risk reduction. The Report contains extensive treatment of the Precautionary Principle including the jurisprudence of the ICJ, starting with the Corfu Channel Case. Draft article 5 *bis* refers to forms of cooperation in providing disaster relief. Here I would like to refer to the initial reaction of Member States when the Draft Articles were debated in the Sixth Committee. States need to reflect and deepen discussion on the centrality of the principle of international cooperation and solidarity as a guiding principle on this topic, rather than approaching it from the perspective of a regime of legal rights and duties. There has been some controversy within the Commission on a host of issues such as is there a duty to seek assistance on the part of an affected State? Is there a duty to provide assistance on the part of the international community? Should international organizations and non-governmental organizations be treated on an equal basis ?

These are very sensitive issues. Rather than a strict rights and duties approach, should not a wider approach be followed with regard to these articles that is providing of disaster relief on the basis of international co-operation and solidarity Since the UNCLOS, the duty to co-operate has been entrenched. One could say that is a customary principle of International Law.

So these are perspective which Member States must bear in mind. How should States balance the consideration of preserving the sovereignty and territorial integrity of affected States, and at the same time how does it discharge the obligation of protecting its own citizens. The draft Articles and the commentaries on this topic require the closest attention of AALCO Member States. It is important that they make their views known both in writing to the Commission as well as in the deliberations in the Sixth Committee. I thank you.

**President:** Thank you Dr. Rohan Perera for your views on these important issues of ILC.

**Prof. Djamchid Momtaz, Former Member of the ILC and the Delegate from Islamic Republic of Iran:** Thank you very much Madame President. I would like to thank the Secretariat

of AALCO for organizing this very interesting Half-Day Meeting on the work of the ILC. If you allow me I would like to make some brief comments on the question of 'Immunity of State Officials from Foreign Criminal Jurisdiction' and raise some questions regarding the topic of the 'Formation and Evidence of Customary International Law' to the Special Rapporteur on this topic.

Regarding the question of Immunity of State Officials, in our view the topic must be approached from the perspective of both *lex lata* and *lex ferenda*, in other words, of codification and progressive development of international law. I feel that many States endorse the use of your methodological approach and think that such approach allow us to go beyond the Troika concept. A Product of immunity *ratione personae* would allow us to grant immunity to persons whose functions are comparable to the head of States, heads of Governments and Ministry of Foreign Affairs. Regarding this question we think that we have to on this subject adopt a special approach and I think some elements are in favour of this approach. And to throw the attention of the distinguished delegates to the fact that in some judicial practice certain domestic courts have granted immunity *ratione personae* to senior officials other than the Troika. And I would also add a second element in favour of this approach to say that the judgment of the ICJ in the Arrest Warrants case is in favour of this approach. I think the wordings of this judgment and the use of the expressions such as this allow us to extend the immunity to persons other than the Troika. It goes without saying that this immunity *ratione personae* is temporary in nature and is contingent on the term of office of person who enjoys such immunity. That is the reason why we think that the next step of the work of the Commission embark on definition of 'official acts'. This is very important in this regard.

Turning now to the 'Formation and Evidence of Customary International Law', if you allow me I want to raise some questions to the Special Rapporteur Sir. Michael Wood. The first question regards the scope of the topic. My question is why *jus cogens* should not be covered by this exercise and I am very happy to be informed by the Special Rapporteur that the question of *jus cogens* would be included in the work of the Commission as a separate topic. The *jus cogens* is not anymore a anti-box concept under international law and the ICJ in its judgment regarding the *Democratic Republic of Congo vs. Belgium* has referred to the notion of *jus cogens*. My delegation thinks that regarding this topic we need to preserve the flexibility of this important source of international law that is the customary law. And the ILC should aim to describe the current state of international law and not embark to create a new form of custom. In this regard we welcome the comments made by the Special Rapporteur regarding the importance of the Books of the Asian and African States and he underlined this important question. My question would be how the Special Rapporteur is intending to use the materials produced by the jurists from these countries because they are written in language other than French and English.

Another question I want to raise is that would you elaborate a single and unified system of law regarding this issue or in your opinion we have to take a different approach to the formation and evidence of customary international law in different field of international law.

And my last question relates to the role and place of the judgment of the ICJ in the formation and evidence of customary international law. I read with great interest your first report on this topic. You have said that separate and dissenting opinions of the Judges of the Court and I quote, 'must shed some light on the general approach to the formation and evidence of customary international law and codification'. I need some clarification on this point. I want to know if you

put at the same level the judgment and opinions of the Judge appended to the judgment. With that I will end. I thank you for your lucid and complete report on the work of ILC. Thank you.

**President:** Thank you and now I give the floor to Sir Michael Wood to respond to these questions.

**Sir Michael Wood:** Many thanks to Prof. Momtaz for his very pertinent questions. On the Customary International Law topic, you first asked why the ILC decided not to deal with *jus cogens* as part of this topic; I think the reasons are principle and pragmatic. In principle, it really is a distinct issue, *jus cogens* is not necessarily customary international law. The concept relates to both treaty law as well as to customary law. I think the issue is in identification: there may be overlapping but if I can put it that way, the important role of customary international law. But the real reason, the chief reason for recommending that we do not deal with the concept of *jus cogens* is pragmatic. I think it is already a very challenging subject and to add to it a whole new dimension of *jus cogens* with all its complexities and all its political difficulties would perhaps overload the Commission and that is why I was very pleased when one of our Member of the Commission made a proposal to treat the topic of *jus cogens* separately. I should stress here that the Commission has not yet decided to take that topic up. Agenda will look at that next year you will find references the proposals in this years' report to the Commission explaining why we are not including *jus cogens* as part of customary law topic. We will decide next year whether we will put it on the longer programme of work. At that stage it will be easy for the States to make their submission. There are some countries who are promoting *jus cogens* and others who are against it. Hence we will see what happens next year. You also said it used to be an anti-box, but I hope it is not a Pandora's box, because it could get extremely complicated.

The second point you referred related to the need to preserve flexibility and the need to describe the current stage of the formation of the customary law. I very much agree with that. It is not our job in this field any way to come up with theories to say that we need to be looking at this looking at that as regards customary international law in the non-traditional sense if I may call it that way.

You asked how you are intending to take account of writings and case-law from the Asian-African region which might be in languages other than English and French. The only answer to that would be that we would rely upon academic institutions that may study this matter. And one advantage of the ILC taking up a topic is to stimulate consideration of topics in academic institutions. I can more or less understand what is said in Spanish. But if it is in Arabic then I would very much look to the other Members of the Commission/ States to tell what there is there to translate the relevant parts as necessary. This applies to all the languages, the Chinese, Parsi, and others. I am very cautious of that issue.

Your third question related to whether there is a single approach to the formation of customary international law across different fields of international law, or whether there are different approaches to different fields, take law of the sea, take human rights, take humanitarian law or environmental law. My own view on that is that there must be overall a single approach otherwise international law would be fragmented following different basic approach depending on the field. There has to be a single approach but nevertheless particular types of rules, the evidence the materials you look at could vary. The ICJ gave a good example of that in the recent *Germany vs Italy* case where it was looking at the question of state immunity. It said in this area



of state immunity we find particular in looking at the decisions of national courts. It is at the national courts that questions of state immunity come up. So they said the decisions of national courts are helpful in this regard. Maybe it relates to international humanitarian law as well. If you read the methodology of the ICRC in relation to its special study on customary principles of international humanitarian law, there are particular issues, particular ways of looking at customary law. So overall there must be one general approach, but it does not exclude the types of rules you have to look as evidence in different ways.

On Immunity, your emphasis on looking at both *lex lata* and *lex ferenda* is interesting. But I am not sure how practical that would be because if start looking at *lex ferenda* we have to look at what the current special rapporteur has referred to as the values and principles of the international community which is something that I find extremely wary. The examples you gave that we should look at *lex ferenda* in relation to determining the scope of persons entitled to immunity *ratione personae* further going beyond the troika, what I would say is that that would be *lex ferenda*. That would be extrapolating the existing principles and it would also be relying upon existing case laws including the case of the international court including cases from around the world which have dealt with these cases involving Minister of Commerce and Defence. There is case law that we can look at. I think as much as, I would personally, that we should go beyond Troika, I suspect the Commission will not and unless questions of many States deal with that in their written comments which I think will be reviewed in the next year. Only then will the Commission be able to review what it has put forward.

**President:** I now give the floor to Dr. Rohan Perera to respond to the questions.

**Dr. A. Rohan Perera:** Thank you Madam Chairperson. I just want to say something about the last point which Sir Michael Wood touched upon in response to the observations made by Prof. Momtaz that there should be both *lex lata* and *de lege ferenda*. Now the position of the former Special Rapporteur was that the starting point should be *lex lata* in relation to the question of possible exceptions to immunity *ratione persone* in respect of the Troika. And he proceeded on the basis that immunity is the established principle any exception must be proved. Interestingly, it has become an interesting debate there were several delegations who took a kind of middle position. That is once you start a *lex lata* approach and then identify what are the lacunae in the existing law and once that is done then you get on to the *de lege ferenda* to identify the existing lacunae on the basis of a *lex lata* approach. But there again as Sir Michael Wood pointed out there is a danger between the context of possible exceptions this whole concept of values and principles comes in which can be political. So the point was made that *lex lata* must be the starting point. How the Commission would proceed beyond this basis point is the crux issue. Thank you.

**President:** Thank you Dr. Rohan Perera for your response. Now, may I open the floor for interventions from Member States. India you have the floor.

**The Delegate of Republic of India:** Thank you Madam President. I thank all the panellists for their presentations. I also congratulate the AALCO Secretariat for the in-depth study on this subject. I also thank the Secretary-General for introducing this agenda item. Indeed, during his introductory remarks, the Secretary-General had mentioned that AALCO Secretariat observes that immunity shall not be extended beyond Troika and there must be extreme caution while

extending the same. However, it is observed the views of the AALCO Secretariat need not be the views of the Member States of AALCO.

On the topic, “Immunity of State Officials from Foreign Criminal Jurisdiction” we appreciate the progress made thus far on the work of this topic in ILC. We agree that the State Officials, viz., Heads of State, Heads of Government and the Foreign Ministers, so called *Troika*, are entitled to immunity from criminal jurisdiction of foreign States. This is notwithstanding doubts expressed with regard to immunity of Foreign Ministers. In this regard, we may recall the ICJ Judgment in the *Arrest Warrant case (Arrest Warrant of 11 April 2001 between Democratic Republic of the Congo & Belgium)*, where the Court analysed the State practice and concluded that the functional necessity had afforded immunity to the Foreign Ministers and accordingly the (majority) Court held that the criminal proceedings (issuance of arrest warrant) against Mr. Yarodia were *void ab initio*, since they were initiated during his term of office as Congo’s Foreign Minister.

The reasons/grounds for according immunity to Troika are their seniority or high ranking offices they hold and the functions they discharge for and on behalf of the State. Thus their representational capacity of the State abroad for and functional necessity are the prime reasons for recognition and according immunity to them.

On Troika, or extending immunity to officials beyond Troika, we consider that, were the same criteria applied, a few other high ranking officials especially, Ministers of Defence and Ministers of International Trade could also be considered as the State Officials deserving immunity from the criminal jurisdiction of foreign States. We may therefore urge the Special Rapporteur and ILC to collect and analyse the State practice in this regard and come up with appropriate propositions. (In most AALCO countries – Korea, Japan, ASEAN countries, Foreign Ministers are also Ministers for international trade)

On Military Personnel, we could also agree with the proposed collapsing of all elements (other officials) in a concise manner in para 2 of draft article 1 (originally proposed as draft article 2 in the Special Rapporteur’s 2<sup>nd</sup> report A/CN.4/661 dt. 4 April 2013). The new Para reads:

“The present draft articles are without prejudice to the immunity from criminal jurisdiction enjoyed under international law by persons connected with diplomatic missions, consular posts, special missions, international organizations and military forces of a State.”

However, we have certain reservations about inclusion of “military forces” by the Drafting Committee in this para. The proposition that the military personnel also enjoy immunity under international law needs clarification.

We consider that the military personnel without express (or seldom tacit) consent of a foreign State would not enjoy immunity from its criminal jurisdiction under general international law. They enjoy immunity only if that foreign State is party to the agreements, like SOFA – status of forces agreement - with the sending State. We consider that the issue of immunity to the acts (atrocities) of German forces on the Italian & Greek territory, dealt with by ICJ in the case of *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* case, was in the

context of war and not in peace time. Further, if the ILC (Drafting Committee) considers that immunity from criminal jurisdiction to the experts under agreements on economic, cultural and technical assistance and cooperation is of exceptional category, there is no reason why immunity accorded to the military personnel under SOFAs should not be considered as special or exceptional category as well.

As to the exceptions to immunity from foreign criminal jurisdiction, we must keep in mind that immunity is a procedural and preliminary issue. This was affirmed by ICJ in *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* case. Once immunity from criminal jurisdiction is established or decided to be applicable, no higher rule (*erga omnes*) could pierce the immunity shield, unless it is specifically agreed otherwise by the States concerned and such exception would be applicable only between the consenting parties.

We agree with the Drafting Committee that the definitions part of the topic could be considered towards the end of the work. (Drafting Committee Chairman statement dt. 7<sup>th</sup> June 2013). Further, the work on the topic may take the form of draft articles to be presented to the UNGA and the States. This would fill the gap in the immunity law.

On the topic “Formation and Evidence of Customary International Law”, it is well known that the CIL (customary international law or rules of CIL) is a formal source of international law. The ICJ is mandated to apply CIL to settle the disputes brought before it by the States.

Article 38 (1) (b) of the ICJ Statute describes CIL “as evidence of general practice accepted as law”. One may consider this description to be of reverse (since 1920) and frequently referred to and reproduced in other international instruments.

CIL consists of “settled practice” of States and the belief that it is binding. Thus it has objective and subjective/mental elements (*opinio juris*).

While conventional law is both formal and material source of international law, CIL is not considered to be material source. Therefore, unlike the treaty provisions it is not so easy to find out what the applicable CIL is in a given case or situation; the amount of evidence that needs to be produced or examined and relative weight/importance to be given to the objective or subjective elements to identify or for formation of CIL are tough call. The challenge is compounded, if the persons who seek to apply CIL are domestic lawyers, judges, courts or arbitral tribunals, who may not be trained or well versed in international law. And it is not easy even for those who have training and experience in international law, to identify rules of CIL in all cases. There is no readily available guidance or methods by which evidence of the existence or process of formation of CIL rules could be appreciated and identified.

Therefore, it is indeed laudable that the ILC took up the topic “Formation and Evidence of Customary International Law” at its 64<sup>th</sup> session last year and appointed Sir Michael Wood as Special Rapporteur. ILC considered a Note submitted by the Special Rapporteur outlining his preliminary views and ambitious schedule to complete the work on the topic by 2016. At the 65<sup>th</sup> session the ILC discussed a Memorandum on the previous work of ILC relevant to the topic and 1<sup>st</sup> Report of the Special Rapporteur.

The objective of the work on the topic, as stated by SR, was to offer guidance “on how to identify rules of customary international law in concrete cases” to the people like judges, lawyers, arbitrators, legal advisers who work in other than Foreign Ministries, etc., ie., those who might not have training in international law, but called upon to apply CIL. The study seeks to shed light on the current state of international law on the process of formation and on methods of finding evidence of rules of CIL. The task taken up by the ILC neither is nor does to find any particular rule of CIL or set of rule applicable to a situation or event or series of events. The task is to identify the manner or methods by which the processes of formation of CIL takes place to identify rules of CIL.

We welcome this. Also we welcome and look forward to his proposed further study on the relationship of CIL with other sources of international law, viz., treaties, “general principles of international law recognized by civilized nations” and also “soft law”. For this, the Special Rapporteur and ILC proposed to examine and study the approaches of States and other intergovernmental actors to the topic. We agree that the concept of *jus cogens* should be kept aside from the present study. Also subject to study would be the decisions of international as well as domestic judicial bodies (especially ICJ), writings of publicists and also the work of other bodies like the International Law Association (especially its 2000 London Principles).

We look forward to further detailed reports of the Special Rapporteur and work of the ILC elaborating various elements of this topic. Thank you.

**President:** Thank you India. I now give the floor to Japan.

**The Delegate of Japan:** Thank you Madam Chairperson. First of all, I would like to express our appreciation to the Secretariat for preparing a useful document for this session as always on the work of the ILC.

At the outset of discussing the question of the work of ILC, I consider it as my duty both official and personal to inform the AALCO members with great sorrow of the passing away in March this year of Ambassador Chusei Yamada, who has been well-known among many here by his long-term dedicated service as a member of the ILC from 1992 to 2009 and as a delegate for Japan to the AALCO for 14 years from 1993 to 2007.

As member of the ILC, the late Amb. Yamada served as chairperson during the fifty-second session in the year 2000 and in 2002 he was appointed Special Rapporteur on the shared natural resources and completed drafting of the articles on the law on transboundary aquifers. As delegate to the AALCO, he regularly participated in its Annual Meetings and contributed greatly to deepening the discussions on the agenda of ILC in particular.

During the first session of ILC this year, on the third day, 8<sup>th</sup> May, a memorial session for Amb. Yamada was especially held and as many as 16 members of the Commission delivered their personal remarks praising his contribution to the work of ILC as excellent international law scholar as well as experienced diplomatic practitioner.

Madam Chair,

The provisional agenda of the forthcoming session of UN General Assembly includes among others the law of transboundary aquifers and the question of the draft articles of the law of transboundary aquifers will be considered by the Six Committee of the General Assembly under its resolution 66/104.

Against the background of rapid social and economic development and population growth in the developing countries, the demand for water resources is dramatically increasing and in particular the appropriate management of underground water is essential to the realization of sustainable development. Transboundary underground water exists all over the world. Therefore, to establish a legal framework thereupon is of vital importance to avoid disputes among the states concerned and to keep the stability of region.

From such viewpoint, the draft articles adopted by the ILC could serve as a useful platform for managing regional underground aquifers. The UNGA resolution adopted in 2008 encourages the states concerned to take into account the provisions of these draft articles in making appropriate bilateral or regional arrangements for the management of their transboundary aquifers. The draft articles reflect the wide range of the state practices and scientific grounds which have been proven in cooperation with the UNESCO and other Special Agencies. Throughout the deliberations of the Six Committee in 2008 and 2011, many countries referred to the usefulness of those draft articles.

Japan considers that the draft articles are outcome of the codification and progressive development of international law and should be taken into account widely in making bilateral and regional agreements and will actively participate in the discussion of the Six Committee. Japan, in its note submitted to the Secretary General, called for declaring the draft articles as the guiding principles.

To the Asian and African states, the appropriate management of water resources is a great task to realize their development and stabilization of society and the draft articles are useful instruments to both regions. In the course of discussions at the Six Committee, some water resource-scarce countries expressed concerns on the draft articles. But they will certainly be a useful legal framework for the appropriate management of groundwater and thereby would guarantee access to groundwater for resource-scarce countries. Japan wishes to get the cooperation of as many countries as possible.

Madam Chair,

Japan welcomes that the ILC decided to include the topic “Protection of the atmosphere” in its work programme and designated Dr. Shinya Murase as the Special Rapporteur for the topic.

Japan believes that the ILC has a large role to play in the area of protecting the atmosphere and the international community needs to make concerted efforts to that end. We hope earnestly that through consideration of that topic, the ILC will sort out various issues relating to the subject and avails itself of the opportunity to contribute to the codification and progressive development of international law.

As the protection of the atmosphere is a great task confronting the Asian-African region, we earnestly hope that the AALCO Member States will contribute actively to the deliberation on that question at the ILC.

Madam Chair, ILC, in its work to make a worthwhile contribution to the codification and progressive development of international law, needs the input from the widest range of the international community, in particular from the Asian and African states. To that end, the AALCO has an important role to play.

There are two ways of AALCO Member States to contribute to codification and progressive development of international law: one is by presenting comments in reply to inquiry, another making statements during the deliberation at the Sixth Committee. We would like to see the AALCO Member States do make utmost use of these opportunities and actively participate in those important communications with the ILC. Thank you.

**President:** Thank you Japan. I now call upon Thailand to make their intervention.

**The Delegate of Kingdom of Thailand:** Madam President, Excellencies, Distinguished Delegates, My delegation would like to express our appreciation to the speakers for their presentations which have provided us with the overall pictures of the ILC issues under consideration. Also we wish to thank AALCO for organizing this Special Half-day Meeting on “Selected Items on the Agenda of the International Law Commission” and to thank AALCO Secretariat for preparing a report of excellent quality on related matters. Thailand would also like to reconfirm our commitment to cooperate with the ILC and AALCO in their long standing task of codification and progressive development of international law.

Madam President, While there are many topics on the agenda of the ILC, the selected topics to be discussed in details are indeed of particular concern for various AALCO Member States. This delegation would like to make a few comments in this regard.

**On the Protection of Persons in the Event of Disasters,** it is recognized that people’s lives need to be protected on the one hand, and that appropriate procedures must be put in place for the necessary operations to be conducted effectively, on the other hand. At the same time, even in the event of disasters, one cannot choose to ignore the important and often highly sensitive issue of state sovereignty. Therefore, we need to strike a right balance between the two principles under the specific circumstances of each case.

Madam President, The Royal Thai Government has taken a progressive view regarding disaster management and prevention. There has been a series of four-year plans to deal with various forms of potential disasters, with water management being the latest. From monitoring and early warning systems to responses and recovery measures, our process is based upon the principles of preparedness and risk reduction. In any case, while we have such active strategy in place, we also recognize that determining the national response capacity of a state is a process that may affect certain core principles, be they sovereignty, territorial integrity or non-intervention. Thus, it will not be an easy task to alleviate the concerns of States on these points.

My delegation is of the view that the nature of state sovereignty in this context encompasses both rights and obligations. That is to say, while a state affected by disaster indeed needs to ensure that its nationals and others within its territory are given assistance, this does not mean that all of the necessary components of its sovereignty are to be disregarded.

Madam President, On the **Expulsion of Aliens**, one cannot deny that it is a sovereign prerogative of a state to regulate the presence of foreigners on its territory. However, it has also been established that such a power may not be exercised with no limitation, particularly where human rights are concerned. Safeguards need to be put in place in order to ensure proper conduct in this area. While a State may be concerned with ridding itself of further problems from particular individuals, it cannot turn a blind eye on the potential violation of human rights and the consequences from the expulsion of aliens in certain circumstances. Ensuring a fair and transparent procedure of expulsion would at least lead to a more substantive protection against arbitrariness and maltreatment. In this regard, States are bound to respect the right to life and, at the least, physical integrity. Also, expulsion should not lead to cruel, inhumane or degrading treatment.

Madam President, On the **formation and evidence of customary international law**, AALCO Member States need to compile evidence of their State practice and *opinion juris* on the ILC agenda, as well as to answer questions posed by the ILC. This is to ensure that AALCO play a role in shaping the development of international law and, more importantly, that the development is shaped in the direction that takes into account the interests of AALCO Member States.

In closing, my delegation would like to commend the work of both the AALCO and ILC on these topics. Comments on specific issues have been requested with regard to ILC in particular. This delegation believes that the expertise and experience shared in this august assembly would provide ILC with valuable inputs for further deliberation. Session such as this is of great significance in the maintenance of the ILC and AALCO longstanding and mutually beneficial relationship; and we find the statements made here most constructive and thought provoking. Perhaps, we may need to reschedule the annual session of AALCO to precede the sessions of ILC to allow ILC to consider our inputs during its same year session. I thank you, Madam President.

**President:** Thank you Thailand. Now I call upon Malaysia to make their statements.

**The Delegate of Malaysia:** Madam Chair, Malaysia wishes to extend its gratitude to the secretariat for preparing the report on matters relating to the work of the international law commission at its 64<sup>th</sup> and 65<sup>th</sup> Session.

Madam Chair, Malaysia acknowledges the role and importance of customary international law and views that customary international law should be accorded the same recognition by the whole of the international community. Although customary international law is recognized as a source of law, views as to what constitutes customary international law are manifestly disseminated and deeply deliberated upon. Hence Malaysia agrees with the Secretariat that in-depth study should be conducted in relation to determining the formation and evidence of customary international law by taking into consideration views from different States.

In relation to the issues highlighted by the AALCO at the Commission's 65<sup>th</sup> Session, Malaysia supports that notion that analysis of the 10 questions posted is of crucial importance and that it will further shed some light in the core study of customary international law<sup>16</sup>. Additionally, Malaysia recommends that other related issues which the international law commission could take into consideration in formulating its study are:

- (i) Customary international law for group of states / regional level – its existence and requirements for formation and evidence;
- (ii) Persistent objection – density /before and after the formation of customary international law;
- (iii) Evidence of customary international law – whether a piece of evidence can be used to prove both the subjective and objective elements of customary international law.

Malaysia also notes 2 draft conclusions in the first report of the Special Rapporteur relating to the scope and use of terms of “customary international law”. With regard to the scope, Malaysia is agreeable to the proposition and emphasizes that the draft conclusion should be reflective of State practices from all of the principal legal systems of the world and from all regions. Further, the conclusions should be practical and able to give guidance not only to international tribunals or practitioners but also to the domestic courts and judges.

In relation to the proposed term, Malaysia is generally agreeable on the use of term of “customary international law” as per the proposal. For purposes of other terms, Malaysia reiterates that the Commission takes into account the widest possible States practices and their approaches relating to the relevant terminology/definitions, before a common understanding could be reached.

Malaysia also wishes to highlight the 10 the questions highlighted by the AALCO at the 65<sup>th</sup> Session, regarding the resolutions of organs of international organizations, including the General Assembly of the United Nations, and international conferences, and the formation of customary international law; their significance as possible evidence of customary international law. Malaysia views this part of the study as essential and looks forward to the study on the value of such resolution in light of identifying the formation and evidence of customary international law.

In conclusion, Malaysia supports the call for Member States to submit materials on state practice to the Commission to ensure that the outcome of the Study will reflect all perspectives, including that of developing countries.

Madam Chair, On the topic **“Immunity of State Officials from Foreign Criminal Jurisdiction”**, Malaysia notes that the Preliminary Report of the Special Rapporteur for the topic was considered at the Commission's Sixty Fourth session while the Second Report was considered at the Sixty Fifth Session. Malaysia is particularly interested in the matter as the Special Rapporteur has proposed six (6) draft articles which capture the key issues pertaining to the immunity of State officials from foreign criminal jurisdiction.

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<sup>16</sup> At page 70 of AALCO's report on Matters relating to the Work of international Law Commission at its Sixty-Fourth and Sixty-Fifth Session.



Malaysia has been studying and closely following the development of the subject since the inclusion of the topic at the Commission's Fifty Eighth Session in 2006. At the Sixth committee of the Sixty Third Session of the United Nations General Assembly, New York in 2008, Malaysia made intervention as regards to its stand on the Preliminary Report prepared by the previous Special Rapporteur, Mr. Roman Kolodkin. In this regard, Malaysia would like to reiterate its position at the Sixth Committee in 2008 that the topic should focus on the immunities accorded under international law, in particular customary international law and not under domestic law. There is also no necessity to re-examine previously codified areas such as the immunities of diplomatic agents, consular officials, members of special missions and representatives of States to international organizations, these categories of persons should be excluded from any definition of "State officials" for the purpose of this study.

Malaysia welcomes the proposed draft Articles and will continue to conduct an in-depth study of the draft Articles. Meanwhile, Malaysia notes that draft articles 1 and 2 deal with the scope of the topic and the draft articles. It was drafted to set clear the parameters of the subject and the draft articles thereafter, taking into considerations issues that States commonly face in practice when dealing with the question of the immunity of state officials from criminal jurisdiction. Malaysia fully support the establishment of such parameters as it would set clear from the outset the scope of the topic.

Specially to draft Article 1, Malaysia would like to raise the issue on the usage of the word "certain State officials" as it raises question as who are these officials that enjoy immunity. However, Malaysia takes note that the Special Rapporteur has acknowledged the need to define the term "official", therefore the term will be used on provisional basis in the draft articles until a decision on the terminological issue has been taken<sup>17</sup>. On the note, Malaysia is of the view that the all State officials should be covered under the definition. A related consideration would be whether State officials who are employed on a contract basis would be covered under such definition when they undertake the function of State officials.

Further, as the Commission will exclude previously codified areas such as the immunities of diplomatic agents, consular officials members of special missions and representatives of states to international organizations, these categories of persons should be excluded from the definition of "State officials".

As regards draft Article 2, Malaysia agrees that criminal immunities granted in the context of diplomatic or consular relations or during in connection with a special mission, criminal immunities established in headquarters agreements or in treaties that govern diplomatic representation to international organizations or establish the privileges and immunities of international organization and their officials or agents, from the scope of the topic as they are settled unilaterally by a State to the officials of another State, especially while they are in its territory should also be excluded from the discussion.

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<sup>17</sup>A/CN.4/661 para. 33 at p.10

Madam Chair, As regards Article 3(b), Malaysia queries the reason the word “judges” is also included in the above paragraph. Malaysia is of the view such inclusion is not necessary as the word “courts” should be sufficient.

As regards Article 3(d), Malaysia reiterates its view that all State officials should be receive the immunity from foreign criminal jurisdiction. As such, reference to the word “certain” State officials should be deleted. “Official acts” should also be carefully defined.

As regards Article 4, Malaysia is of the view that the categories of persons considered as Heads of State and Heads of Government should also be defined. Malaysia would suggest that the definition should include sovereign rulers who act as Head of State such as Yang di-Pertuan Agong, in addition to the head of Government such as the Prime Minister of President.

Malaysia notes that draft Article 5 focuses on one the normative element that characterize immunity *ratione personae*, which is the type of actions that the covered by such immunity. This Article explains that such immunity include all acts, whether private or official, that are performed by Head of State, Heads of Government and minister for foreign affairs prior to or during the term of their office.

Malaysia further observes that paragraph (a) of draft Article 5 covers the types of actions done prior to or during their term of office. Based on draft Article 6, it is clear that this immunity applies only while the Head of State, Head of Government or minister for foreign affairs holds office. Hence, Malaysia would like to seek clarification on the intention of the proposed term as the said term seems to contradict the temporal scope of immunity *ratione personae* which only begins when the said official takes office.

Malaysia also note that sub-paragraph (b) of draft Article 5 iterates the intention to highlight the limitation to the enjoyment of immunity *ratione personae* in sub-paragraph (a) of draft Article 5. However Malaysia queries the usage of the term “may” in sub-paragraph (b) of Article 6 as such usage seems to indicate that the enjoyment of immunity *ratione personae* is dependent upon other conditions.

Malaysia further notes that following the work plan set out in her preliminary report, the Special Rapporteur proposes to devote her third report, which will be submitted to the Commission at its sixty-sixth session, to a study of the normative elements of **immunity *ratione materiae***, focusing primarily on two particularly complex issues: the terms “official” and “official act”. Malaysia looks forward to this report, particularly the draft articles on these issues and consequently the issue of exceptions to immunity. Due to the complexity of the matter, Malaysia welcomes any further guidance from AALCO Member States to enable Malaysia to study the topic in greater detail and depth.

Madam Chair, On the topic “**Protection of Persons in the Event of Disasters**”, Malaysia thanks the Special Rapporteur to the topic of Protection of Persons in the Event of Disasters, Mr. Eduardo Valencia-Ospina for his Sixth Report which contained new draft Articles 2 *ter* and 16. Malaysia notes that the International Law commission at its 65<sup>th</sup> Session in 2013 has now provisionally adopted draft Articles 5 *ter* and 16 as coming out of the work of the Commission’s Drafting Committee.

Malaysia further notes the Report produced by the AALCO Secretariat on this Agenda Item. Although the said AALCO Secretariat Report covered the Commission's work at its 64<sup>th</sup> and 65<sup>th</sup> Sessions, Malaysia will limit its observations to draft Articles 16 and 5 *ter*, being the latest development in regards to the work of the Commission on this topic. Pending the production of the official report of the International Law Commission of its deliberations at its 65<sup>th</sup> Session and for purposes of discussion in this AALCO session, Malaysia wishes to put on record that the observations in relation to these draft articles are preliminary in nature. Malaysia will study further on the draft Articles and specific comments to the same will be submitted later.

Madam Chair, In relation to Draft Article 5 *ter* as proposed by Special Rapporteur and the Drafting Committee, Malaysia finds the general idea behind the formulation of Draft Article 5 *ter* favourable and supports cooperation that could lead to disaster risk reduction within the ambit of the principle of State sovereignty under public international law. Malaysia joins many other in subscribing to the belief that prevention is better than cure and as in this case, Malaysia supports cooperation that could lead to the circumvention of a disaster and any form of disaster risk reduction.

Madam Chair, Malaysia notes that the reference to the term "measures" at draft Article 5 *ter* appears to correlate to the "appropriate measures" stated at draft Article 16. Malaysia notes that this correlation may prove to be venturesome when Article 5 *ter* is read together with Article 5 on the "Duty to cooperate".

Malaysia further notes that Article 5 makes it mandatory for States to cooperate with the United Nations and other competent intergovernmental organizations, the International Federation of the Red Cross and Red Crescent and the International Committee of the Red Cross, and with relevant non-governmental organizations. This cooperation, read together with the measures of implementation stated at draft Article 16 and draft Article 5 *ter* may lead to the sovereign right of the States being usurped by any supra-international body.

Madam Chair, With regard to Draft Article 16, Malaysia notes that the Drafting Committee has taken a different approach in the adoption of the said Draft Article. In this context, Malaysia notes that draft Article 16 as introduced by the Special Rapporteur limits the adoption of "appropriate measures" through the establishment of institutional arrangements, whereas draft Article 16 as adopted by the Drafting Committee widens the scope of the implementation of "appropriate measures" to include the adoption of legislation and regulations by the State.

Malaysia finds that Draft Article 16 coming out from the Drafting Committee, in particular, paragraph 1 of Draft Article 16, the proposed draft by the Special Rapporteur is preferred. Malaysia maintains that any measures to be undertaken by a State to reduce the risk of disasters should be within its full capabilities and having regard to the principle of State sovereignty under public international law.

Malaysia feels that the Drafting Committee in imposing the requirement for States to adopt legislation and regulations for the prevention, mitigation and preparation for disasters may not be sensitive to these considerations. Be that as it may, Malaysia awaits the statement by the Drafting

Committee in explaining its deviation from draft Article 16 as initially proposed by the Special Rapporteur.

Whilst noting the observations made by the AALCO Secretariat on this topic, Malaysia makes reference to paragraph 132 of the Report on Matters Relating to the Work of the International Law Commission at its Sixty-Fourth and Sixty Fifth Session whereby Malaysia is of the view that the AALCO Secretariat should not only focus its observations and report on the previous session of the International Law Commission, but more importantly, AALCO should be focusing its report on the latest development in the work of the Commission and in this case, the proposed Draft Article 16 and 5 *ter*. Thank you.

**President:** Thank you Malaysia. South Africa you have the floor.

**The Delegate of Republic of South Africa:** Thank you Madam Chair.

South Africa occupies a strategic position in the world when it comes to international law enforcement cooperation. It is clear that South Africa, by virtue of its position in Southern Africa, Africa and the whole world, is an important player in combating transnational crime.

Chair, South Africa, being a State party to the UN Convention against Transnational Organized Crime (UNTOC), the Protocol against Trafficking in Arms, Trafficking in Persons and Smuggling of Migrants has obligations to assist regarding the cooperation in the fight against crime and corruption, extradition of suspects and the obtaining of evidence. Furthermore, with its membership to Interpol, the Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO), and its formal police-to-police cooperation agreements, South Africa is able to comply with the majority of requests for international cooperation.

Chair, regarding Mutual Legal Assistance the Director-General of the Department of Justice and Constitutional Development (DOJCD) is the Central Authority for all matters pertaining to mutual legal assistance and extradition within South Africa. Requests for mutual legal assistance are therefore directed to the Office of the Director General in the DOJCD for processing according to the relevant provisions in the International Cooperation in Criminal Matters Act, 1996 (Act No. 75 of 1996) (ICCMA) or the relevant treaty or convention concerned. With respect to mutual legal assistance, South Africa adopts a flexible approach in dealing with requests, and is able to render a wide range of mutual legal assistance under the ICCMA. South Africa is able to render assistance regardless of a treaty or agreement (although South Africa has a number of agreements in place). There is also no requirement for dual criminality, or where the request is to obtain evidence, there is no requirement that judicial proceedings should have been instituted before assistance can be rendered.

Chair, with respect to South Africa's extradition framework, the Extradition Act, 1962 (Act No. 67 of 1962) provides for extradition on the basis of principle dual criminality for offences punishable by a sentence of six months imprisonment or more. South Africa can also extradite its own nationals. All extraditions must be consistent with the South African Constitution, e.g. South Africa will not extradite if capital punishment were to be imposed.

Chair, South Africa has signed extradition (also mutual legal assistance) agreements with some of the Member States of AALCO. It is also a party to the EU Convention on Extradition. It should be noted that extradition is not dependent on a treaty. Under Section 3(2) of the Extradition Act, the President may in writing consent to the surrender of a fugitive. Under Section 3(3), fugitives may also be surrendered to countries, which have been designated pursuant to that section.

Having said that Chair, there are challenges encountered in implementing pertinent provisions of international legal instruments. With respect to extradition and mutual legal assistance, the problems experienced in most countries are that the process is too lengthy. The international community should look at simplifying international cooperation procedures to ensure speedy finalization of extradition and mutual legal assistance matters. With reference to the question of overcoming obstacles in exchanging information through mutual legal assistance there is a standard procedure that is followed when dealing with requests for mutual legal assistance, namely exchanging information directly between Central Authorities, through diplomatic channels.

In conclusion, Chair, it would be ideal if Member States can establish central Authorities in the jurisdictions of the respective member states, with the specific intention of expediting the process of requests in instances where the request is urgent. I thank you.

**President:** Thank you South Africa. I now give the floor to People's Republic of China.

**The Delegate of the People's Republic of China:** Thank you Madam President, I would like to thank the panelists for their excellent presentations and we also thank the AALCO Secretariat for their report on this agenda item. The ILC plays an important role in promoting rule of law at international level. We note that there is a regular communication mechanism, which we highly appreciate, between the AALCO and the ILC in order to facilitate the sharing of views on issues of mutual concern.

Madam President, now I would like to make a preliminary comment on the key topics of the ILC considered at its 65<sup>th</sup> session.

On immunity of state officials from foreign criminal jurisdictions, Ms. Hernandez, the Special Rapporteur of the topic, submitted her second report. She also correctly limits the scope of this topic to the immunity of state officials from criminal jurisdiction of a foreign court, while excluding the immunity of state officials in international judicial institutions, and excluding immunity of specific groups of officials such as diplomatic and consular officials which were already covered by relevant conventions. In the 65<sup>th</sup> session, the ILC has preliminarily adopted three draft articles on the scope of this topic and immunity *ratione personae*.

As to the scope of immunity *ratione personae*, we hold the view the customary international law is that heads of states, heads of governments and foreign ministers (the *Troika*) enjoy immunity *ratione personae*. The immunity is an absolute one without exception. However, international practice does not rule out the possibility of granting immunity *ratione personae* to other high ranking officials of a State. If we probe into state practices, it may be observed that many cases

in national courts have demonstrated that immunity *ratione personae* for officials is not limited to the *Troika*. From statements made by states at the 66<sup>th</sup> and 67<sup>th</sup> session of Sixth Committee, it can be found that many countries agree to explore, in varying degrees, the scope of immunity *ratione personae*.

On the topic of formation and evidence of customary international law, we appreciate the first report submitted by the Special Rapporteur Sir. Michael Wood. The Special Rapporteur defined the scope and outcome of this topic, and made a thorough review of research materials, in a very clear and open approach. In our opinion, the criteria on the formation and evidence of customary international law should be unified system applied to all situations; there should not be different criteria for different branches of international law or for different audiences. As *Jus cogens* and customary international law are just different legal concepts and they are not necessarily connected, we don't think it's necessary to introduce the concept of *Jus cogens* in this topic. We believe it is more helpful for the Commission to discuss relationship between customary international law and treaties, as well as customary international law and general principles of law. As for the outcome of the topic, a unified and clear guiding principle may serve the purpose. We agree with the idea that for this topic we need to strike the balance between certainty and flexibility. We agree to change the title of this topic to "Identification of customary international law", which could reflect more appropriately the substance of this topic.

Under the topic of "protection of persons in the event of disasters", the special Rapporteur, Mr. Valencia-Ospina in his sixth report proposed two draft articles regarding "prevention of disasters and disaster risk reduction", expanding the scope of this topic from the response phases after the disaster to the pre- and the post-disaster phases. We agree to this expansion. Chinese government highly values the disaster prevention, mitigation and preparedness in the disaster management. At the same time, we are of the view the ILC should note the difference between natural disaster and man-made disasters. And those states who suffered from disaster should not be obliged to bear too many responsibilities with regard to unpredictable disasters. While in the process of pre-disaster prevention, we suggest that the Commission shed some lights on the application of space technologies, add new contents on "encouraging application of space technology in field of disaster prevention, mitigation and preparedness". In that regard, we appreciate the comments made by Dr. Perera that it would be better to provide guidance for international community for international cooperation and enhancing the solidarity of it rather than impose obligations or duties on the State that has suffered from the disaster. Thank you very much madam President.

**Madam President:** Thank you China for the comments. I don't see any request from the floor. Iran wants to take the floor.

**The Delegate of Islamic Republic of Iran:** Thank you Madam President. I have a small question to Mr. Michael Wood regarding identification of customary international law. The first question is do you think we can accept the resolution of international and regional organizations in the same level as the state practice. Do these resolutions have the criteria of being CIL? And the second question is in line with the question raised by Prof. Momtaz as I want to repeat the question, regarding the separate and dissenting opinion of the ICJ. Are they in the same level of judgment of the ICJ itself. May I ask Sir Michael Wood to convey the message and opinion of the majority of the views of AALCO Member States regarding expanding the scope of immunity

*ratione personae* to officials beyond Troika and it was beneficial to have this meeting between the meetings of the ILC and Sixth Committee in the New York. We could have more discussion here and share our views and at the Sixth Committee. Thank you very much.

**President:** Thank you Iran. Sir Michael Wood you have the floor.

**Sir Michael Wood:** Thank you very much. Well on the last point, the views expressed in this meeting are well known to the members of the ILC and would be reporting it while reading it. I agree with you on the timing of this meeting, which is good. It would be even better if we have the views before the report of the ILC. Perhaps, on other occasion at similar level, you should make effort to try and get an advance copy of the report. On your questions, firstly I apologies for not responding to Prof. Djamchid's query on the dissenting and separate opinion. My answer would be that I would not give the same weight to separate and dissenting opinions because they are not judgments, but sometimes they give explanations and may be was required to explain certain parts of judgments and sometimes they show the way to the future. And they may give views which become international law itself. I think one must not give the same weight as the majority opinion.

On your question on resolutions of international and regional organizations as state practice- I think it is difficult to give a general answer. We have to look very carefully to circumstances in which the resolution was adopted, whether it was intended to reflect state practice, for example as with the Friendly Relations Declaration of 1970, was very carefully negotiated which understood by all State's consent to reflect the view of the law that States held at that time. There are other resolutions adopted by the UN General Assembly that has less or more weight, which one has to look very carefully. At the individual resolution before deciding whether or not they could be considered as a contribution to state practice. I did mention earlier of the possibility of regional customary law, which is an important topic which the Commission will look at. We also would look at other topics raised by the representative of Malaysia in his thoughtful presentation. Thank you.

**President:** Thank you. I will give the floor to the Secretary-General to make an announcement.

**Secretary-General:** Thank you Madam President. Having heard the statements made by the Member States of AALCO, I would like to propose to adopt a resolution in memory of late Amb. Chusie Yamada recognizing his contributions in the field of international law. Late Amb. Yamada has played a significant role in undertaking research and formulating viewpoints based on his experiences and practices from this part of the world and carrying forward to ILC for codification and progressive development of international law. In that regard, the AALCO Secretariat would provide a draft resolution expressing condolence to Late Amb. Yamada. The resolution could be adopted tomorrow at the plenary meeting. May I suggest that this message could be incorporated as a Preambular paragraph within the resolution on Special Half-Day Meeting on "Selected Items on the Agenda of the ILC" contained in AALCO/RES/52/SP 1. Thank you Madam President.

**President:** Thank you. I would like to request the Member States to give their comments on resolutions on different subjects to the Secretariat by this afternoon, so that the necessary

amendments could be carried out. Before we end, it is time to thank our eminent panellists, who have spared their valuable time to be here for sharing their views with Member States of AALCO on some very important subjects under consideration in the Commission and for also for agreeing to respond to the questions raised by the Member States. We thank you and with these, this half-day meeting has come to a close.

**The meeting was thereafter adjourned.**



**XI. VERBATIM RECORD OF THE  
SPECIAL HALF-DAY MEETING  
ON  
“EXTRA-TERRITORIAL APPLICATION  
OF NATIONAL LEGISLATION:  
SANCTIONS IMPOSED AGAINST  
THIRD PARTIES”.**

**XI. VERBATIM RECORD OF THE SPECIAL HALF-DAY MEETING ON  
“EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATIONS:  
SANCTIONS IMPOSED AGAINST THIRD PARTIES”  
HELD ON WEDNESDAY, 11 SEPTEMBER 2013 AT 2.00 PM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Session of AALCO in the Chair.**

**President:** The second half of the today we have “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties”. I will now give the floor to the Secretary-General of AALCO to introduce the topic.

**Secretary-General:** Thank you Madam President. Her Excellency Mrs. Neeru Chadha, Madam President of Fifty-Second Annual Session of AALCO;

Prof. Vera Gowlland-Debbas, Professor of International Law, Graduate Institute of International Studies, Geneva;

Prof. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies, Jindal Global Law School; and,

Prof. R. Rajesh Babu, Associate Professor, Indian Institute of Management – Calcutta (IIM-C);

Excellencies, Distinguished Delegates, Ladies and Gentlemen;

It is my pleasure to welcome you all to the Special Half-Day Meeting on the topic of “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties” organized by AALCO in collaboration with the Government of the India. At the outset I would like to formally welcome and thank all the panelists for taking time from their busy schedule to be a part of this discussion today and to provide us with their valuable insights into the topic at hand.

The agenda item entitled, “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” was first placed on the provisional agenda of the Thirty-Sixth Session at Tehran, 1997, following a reference made by the Government of the Islamic Republic of Iran. Thereafter the item had been considered at the successive sessions of the Organization. At last year’s Fifty-First Annual Session of AALCO (Abuja, Nigeria) vide resolution AALCO/RES/51/S 6, the Secretariat was mandated to undertake a Special Study on the ‘legal implications of the application of unilateral sanctions on third parties’. The Secretariat is proud to announce that this Study, entitled “Unilateral and Secondary Sanctions: An International Law Perspective”, has been completed and would be released soon. An executive summary of the Study, as well as the contents page of the Study, has been distributed for your perusal.

Madam Chair, The topic of unilateral sanctions is of particular importance to AALCO as some of its Member States have been the targets of unilateral sanctions in the recent past. Indeed, the

topic is also of great relevance to the wider community of developing nations as well as this community exclusively finds itself the target of such sanctions.

‘Sanction’ as we all know, in international affairs means a penalty imposed against a nation to coerce it into compliance with international law or to compel an alteration in its policies in some other respect. Legitimacy of sanctions under international law is applicable only to ‘multilateral sanctions’, which are applied as per Chapter VII of the Charter of the United Nations. The Security Council is vested with the ‘primary responsibility’ for maintenance of international peace and security under the UN Charter.

Unilateral sanctions often refer to economic measures taken by one State to compel a change in policy in another State. The most widely used forms of economic pressure are trade sanctions in the form of embargoes and/or boycotts, and the interruption of financial and investment flows between sender and target countries. However, while the common conception of unilateral sanctions is as a tactic by which a State refuses to maintain trade relations with a country whose policies it disagrees with, or with whom it has a dispute, these unilateral sanctions also give rise to secondary sanctions. These secondary sanctions are imposed against third parties, either States or non-State entities, who are outside the jurisdiction of the sanctioning State, in order to prevent them from trading with the ‘target State’. Essentially, this results in the sanctioning State enforcing its own domestically enacted legislations against entities that are outside of its territory and jurisdiction, thus resulting in a violation of some of the most basic principles of international law.

Your Excellencies, the Study conducted by the AALCO Secretariat deals in detail with the violation of international law by Unilateral and Secondary Sanctions and these violations can be broadly divided into 4 areas. The first chapter provides the genesis of the subject within AALCO; how sanctions have been listed under international law; and the political economy of sanctions regime. It also briefly describes the concepts like extraterritorial jurisdiction, unilateral sanctions, secondary sanctions and collective or multilateral sanctions.

Chapter 2 argues that Unilateral and Secondary Sanctions are impermissible under international law. The foundational principles that regulate and govern international relations are stated in Charter of the United Nations and the authoritative 1970 Declaration of Friendly relations and Cooperation among States. These include the principle of sovereign equality of states, principle of non-use of force, the principle of self-determination of people, the principle of non-intervention into the internal and external affairs of States, the principle of peaceful settlement of international disputes, the principle of cooperation among States, and the principle of fulfilling in good faith obligations assumed under international law.

Madam Chair, Chapter 3 attempts to highlight the adverse effects of financial sanctions that are imposed against financial institutions especially the central bank of an economy, which hampers the effective functioning of these institutions in developing countries. The role played by the central banks in achieving development in developing countries is very pivotal. The central bank has a crucial function towards developing the banking and financial system of the country in order for ensuring well-organised money and capital markets within the economies. The main

contention is that since central bank has major role and function in regulating financial system of country, they should be granted immunity and their properties shall not be attached.

Chapter 4 attempts to elaborate on the adverse effects and the illegality of unilateral and secondary sanctions in the context of the international trade agreements (be it multilateral or bilateral) and freedom of trade and navigation. It highlights the violation of the core principles of international trade law vis-à-vis multilateral trade agreements and bilateral trade treaties with analyzes the impact of the secondary sanctions on third parties with country-specific examples. The Chapter suggests possible measures for the developing countries against the imposition of unilateral and secondary sanctions; in other words, the possible legal options for the third countries to respond to the Secondary Sanctions.

Chapter 5 focuses on the list of recognized human rights that are adversely affected by sanctions is long and varied, but the discussion within this chapter is limited to some of the more pertinent rights, particularly in view of the fact that the targeted states are developing and third-world States. The rights discussed will include: the right to self-determination; the right to development; and, the right to life, with particular attention paid to the right to food and the right to health and medicine. While a classification of the importance of rights is obviously not possible, these particular rights were chosen for their relevance to the developing world and because of the massive problems caused by their violation.

Chapter 6 addresses the responses of the International Community on the Imposition of Unilateral and secondary Sanctions. This chapter deals with the opinions voiced by some of the international organizations, as well as their Member States in the forum provided by the organization through resolutions and statements of the organizations. This includes the United Nations General Assembly (UNGA), the Asian-African Legal Consultative Organization (AALCO), the Group of 77 (G-77), and the Non-Aligned Movement (NAM); which form part of in-depth analysis for evolving evidentiary customary international law.

The Study contends that unilateral and secondary sanctions is against international rule of law and promotes self-interest. Unilateral and secondary sanctions affect trade relations of the target country as well as its trading partners; affect the economic and banking system besides inflicting suffering and deprivation of basic human rights on innocent civilian population of the target countries. These sanctions disrupt international trade and navigation and are impermissible and unjustifiable under international law.

In addition to the theoretical discussions in the Study regarding international law and unilateral sanctions, illustration of the practical aspects and real-world consequences of unilateral sanctions regimes will be done through the use of the case study of certain countries who have been the targets of sanctions, primarily Iran.

Madam Chair, Your Excellencies, Ladies and Gentlemen, I hope I have been able to highlight the salient points relating to AALCO's Special Study and that I have given you a brief overview of some of the pertinent issues relating the topic of "Extraterritorial Application Of National Legislation: Sanctions Imposed Against Third Parties" in an effort to set the stage for the

discussion that is to follow. I have no doubt that the discussion that is to follow will be extremely illuminating. Thank you.

**President:** Thank you for introducing the study. We have four eminent panelists here today. Dr. Rohan Perera, who needs no introduction because he was a panelist for the morning session. Dr. Perera is a former member of the International Law Commission and the Chairperson of the Eminent Persons Group of AALCO. He would initiate this discussion by speaking on the subject “Sanctions and International Law”.

**Dr. Rohan Perera, Former Member of International Law Commission from Sri Lanka:** Thank you Madam Chairperson.

Hon’ble Secretary-General, Distinguished Panelists and distinguished delegates, The task before me this afternoon is somewhat a difficult task because I am actually filling in the task entrusted to Prof. Dr. V.S. Mani who was supposed to have addressed the meeting on the question of sanctions and international law. Since he is unavoidably held up, I have been requested to make some remarks on this aspect, before the specific aspects are developed by the eminent experts who are on this podium.

By way of setting the back drop, the Secretary-General just referred to the legal framework; post-United Nations legal framework regulating inter-State relations – primarily the UN Charter and the 1970 Declaration on Principles of International Law Governing Friendly Relations and Cooperation amongst States, contained in General Assembly Resolution 2625. We also have the Draft Declaration on the Rights and Duties of States 1949, adopted by the International Law Commission. Although it is in draft form it is of considerable policy value. These agreements collectively constitute the edifice of core principles governing international relations and of course international peace and security. We all know what these core principles are: the principles of sovereign equality and territorial integrity, non-use of force, non-intervention in the internal affairs of states and international cooperation and solidarity.

It may be worthwhile to recall at this juncture the judgment of the ICJ in the *Nicaragua v. United States Case*, where the ICJ viewed that these fundamental principles exist as both charter provisions and as customary principles of law, and on this the ICJ was able to overcome the jurisdictional objections that was taken by the United States.

The objective of sanctions, to quote from this very useful publication by the Secretariat, “Unilateral and Secondary Sanctions: An International Law Perspective”, is to “through the adoption of economic measures by one State to compel another to change its policies, economic or political”. There is a very useful reference at page five of that publication to the definition of George Abi-Saab, which I am very sure my colleagues will further revert to and I just wish to extract from that which says:

“the ultimate purpose being, as with all forcible execution or enforcement measures, precisely to bend its will in order to bring it back to a conduct compatible with legal prescriptions.”

To bend the will of a State, the purpose is to bring it back, compatible with legal prescriptions. But for that there is an important qualifier (at page 6) which says that “more over this “determination” must be accompanied by a “decision” that these measures are taken in application of a decision or recommendation of a competent social organ. So here in international law we are not talking of unilateral measures by one State or by a collection of States, but a decision or a recommendation of a competent social organ. The ‘competent social organ’ to whom the international community has vested these power in terms of the Charter is the Security Council and may I quote from James Crawford, “The relationship between sanctions and Countermeasures” in a publication edited by Prof. Vera Gowlland-Debbas, who is with us today. Crawford expresses the view that:

“it may be inferred from the definition of Abi-Saab that a “competent social organ” is not an individual State acting in its own right, or even a small group of States so acting. Instead it appears to refer to some organ authorized to act on behalf of a collective interest”.

I think that is very important – to act on behalf of collective interest - such as, for example the Security Council. Imposition of national legislation having extra-territorial application is thus contrary to this norm and as such undermines the collective authority of the Security Council, which is the only competent social organ mandated by the international community to impose coercive measures. I think, in that it captures the essence of the position of international law in respect of recourse to unilateral sanctions.

Once again may I refer to the ICJ judgment in the *Nicaragua Case* in the context of compelling a change of policy. Now here just take a situation of unilateral sanction to compel a change of policy, and I think the words of the ICJ are very important at this point. The ICJ referred to the doctrine of rights and duties of States in the case of *Military and Paramilitary Activities in Nicaragua by the United States* and the Court upheld the sovereign right of every State, including Nicaragua, to pursue its own political system or its own economic policies free of intervention by any other State. So that forms an essential ingredient of the doctrine of rights and interests of States. One more word, when we are examining the question of unilateral sanctions, it is useful for us to bear in mind the reaction both within the International Law Commission and in the Sixth Committee to this whole institution of countermeasures in the context of State responsibility and more recently in the context of responsibility of International Organizations.

‘Countermeasures’ is a unilateral measure, that a State takes which would otherwise be unlawful if not for the prior illegal act by another State. Now, this was shrouded in so much of controversy. Given the element of potential for abuse for political purposes a number of safeguards and caveats had to be worked in and the case of State responsibility, a number of safeguards in the form of the test of proportionality – is the countermeasure in proportion to the original act of illegality? In the case of International Organizations, the Rules of the Organization must provide that it is not contrary to the Rule of the Organization to adopt countermeasures. So the international community even in that respect, when it has to take the legitimate countermeasures, is cautious and there are number of caveats that have been worked into these draft Articles. So this is something we need to bear in mind: that in institution of countermeasures, international community is aware that there can be an abuse of that practice.

Therefore, in our approach to unilateral sanctions, we have to bear in mind that the escalation of a situation through recourse to unilateral sanctions can pose a threat to international peace and security and in that process cause irreparable harm to fundamental principles of international law on which the international order is based today. I thank you Madam Chair.

**President:** Thank you Dr. Perera. Thank you for accepting to be a part of the panel on a short notice. I give the floor now to Professor Vera Gowlland-Debbas. She will take the discussion forward. She will be speaking on ‘Sanctions and State Responsibility’. Professor Debbas is a professor of international law at Geneva School of International Studies, Geneva. Madam, you have the floor.

**Prof. Vera Gowlland-Debbas, Professor of International Law, Graduate Institute of International Studies, Geneva:** Thank you very much Madam Chair. I would particularly like to extend my thanks to AALCO and particularly its Secretary-General, Prof. Dr. Rahmat Mohamad for having extended to me his invitation to be here amongst you and I am really delighted to be here. I come from your part of the world, which means that I am particularly committed to the cause of AALCO, which is to see to it that the African and Asian States feed into the development of International Law so that ultimately it is not just left to a cross-Atlantic dialogue.

My topic is on State Responsibility. I will focus on individual State accountability for the imposition of economic measures and from the perspective of state responsibility that will also include human rights law. But this is from a particular perspective, in other words, what interests me is the relationship between unilateral measures and collective measures because we have seen increasingly the intertwining of these two areas. I think it is important to see how they relate. I would like to pick-up from Dr. Perera’s intervention regarding, first of all, the importance of ILC Draft Articles on State Responsibility, which has in fact reserved the term “sanctions” for institutional measures adopted by international organizations, i.e. centralized collective measures, in particular the UN Security Council under Chapter VII. The ILC was obviously reflecting general international law on this matter. The ILC therefore distinguished between sanctions and unilateral measures, which are termed “countermeasures” as a decentralized reaction in response to particular conduct by a State.

Now it is evident that the progressive institutionalization of international society with the development of international organizations has had a very important impact on the enforcement of international law and this has gone, hand in hand, first with the progressive limiting of the use of force as we know in international relations, but also in the attempts to constrain countermeasures. The term, by the way, was first used in the 1979 Air Services arbitration between France and was meant to be a euphemism to distinguish it from forcible reprisals; in other words there was the detachment of countermeasures from the use of force.

We all know the negative impact of sanctions on trade and investment and the right to development; this has been underlined in numerous General Assembly resolutions. In the ILC, there is a controversy over whether to include countermeasures at all in the Articles on State Responsibility. They were recognized as liable to be abused in view of the fact of inequality between States. In other words, these were obviously measures which were open to some States

and not to all. So the ILC ended up by adopting the regime of countermeasures but accompanying this was a very strict framework in order to avoid abuse. Now the ILC was not the only efforts to constrain countermeasures. We have regulated through prior conditioning or subsequent control by international institutions. For example trade measures under the law of the WTO or the European Union.

Now, I will focus on the Draft Articles on State Responsibility. There is obviously a framework for unilateral measures but at the same time, and this is what I mean by the 'relationship between unilateral and collective', we've had an ongoing debate on how to also constrain collective measures. In other words, the Security Council has been challenged also in the field of Chapter VII. The idea was that the State could not escape by imposing unilateral measures by hiding behind the collective veil. In a way, the ILC efforts impacted on the collective measures. There was once a huge discussion in the ILC on whether to integrate the UN Mechanism into the ILC drafts but finally the ILC decided to exclude collective measures from the scope of State Responsibility. However, my point is they continued to be extremely relevant.

So what I'm focusing on, as I've said before, is unilateral measures adopted in parallel with collective measures and I would like to give, as a very good example, the economic measures adopted by the United States against Iran. I think it's important there, it provides us with a framework for analysis.

Now the first question to be asked about these sanctions; should they be seen as implementation or enforcement of Security Council sanctions?

If they are seen as implementation or enforcement, they will benefit from certain circumstances precluding wrongfulness. In other words, they will be regulated by Article 25 of the Charter, which imposes an obligation on States to carry them out, as well as Article 103 of the Charter, which states that the obligations under the Charter prevail over any other international agreement.

If they are not seen as implementation or enforcement, in that case the only justification will be lawful countermeasures, and if so what are the conditions that apply to them?

So, the implementation of Security Council measures I have no time to go into great detail but if we look at their legal basis, the web of legislative and executive measures imposed against Iran were first adopted in the 1980's and actually preceded the adoption of collective measures. And as you know, the US has a long history of using economic sanctions as a tool of foreign policy. This goes right back, in fact, to the 19<sup>th</sup> Century. So, it's obvious that these measures in the 1980s and beyond do not invoke the UN Participation Act, which the US adopted in order to carry out measures by the Security Council.

Instead, the measures generally have their basis in a number of domestic legislative acts including the 1977 International Emergency Economic Powers Act (IEEPA), which was first used in 1979 following the hostage case, as the legal basis to block Iranian assets and so on. Now the importance of that and in fact the first use of the UN Participation Act was in 2001 following the terrorist attack on 9/11, which blocked property and prohibited transactions with persons



determined to be supporting international terrorism, which included the freezing of assets of certain Iranian entities. But, interestingly, when the measures adopted by the Security Council against Iran in 2005 were taken, there was no mention of the UN Participation Act, so the point I'm making is that the legal basis is clearly US domestic legislation.

Now, the problem with using the Emergency Act that is the IEEPA, the US has to declare a state of national emergency, and I quote "an unusual or extraordinary threat to national security, foreign policy or economy of the United States". So this means that we are in a constant state of emergency, which means of course that there will be difficulty in challenging before domestic courts because the executive orders rely on its emergency situation, plus the fact that many of the documents in evidence are kept confidential.

Now as far as their content is concerned, and so far we've spoken of the legal basis, but as far as the content is concerned, it's not identical either to that decreed by the UN Security Council resolutions on Iran. The UNSC adopted resolutions in 2006 and 2010, which imposed targeted sanctions on Iran for its failures to comply with the International Atomic Energy Agency requirements and its continuing Uranium-enrichment activities. Now as I said I have no time to go into the details, but one thing that is extremely clear is that the Security Council was avoiding comprehensive sanctions. I will come back to it later on; comprehensive sanctions have been discredited after the sanctions against Iraq. So the Security Council imposed certain targeted measures on certain materials and technologies, on certain designated persons.

The US sanctions however, are far more comprehensive. So they go back a step and are a regression to comprehensive sanctions. The measures include, in particular, sanctions on the energy sector, which are based on new legislative acts, in particular the Iran Sanctions Act (ISA) adopted in 1996, which curbs international investment into Iran's energy sector. This is not something which reflected in the Security Council resolutions. There is also the Comprehensive Iran Sanctions Accountability and Divestment Act (CISADA) of 2010, which aims to penalize domestic and foreign companies for selling to Iran refined gasoline and related equipment. Also a comprehensive ban on US trade and investment in Iran, though again the point I want to make here is the departure from the targeted sanctions, which was the deliberate choice of the Security Council. Aims to further the sanctions within the Security Council were met by opposition. So it's clear that US measures are well beyond the targeted measures of the Security Council.

As to their objectives, it is clear that these are not the same of the Security Council. The objective of sanctions in the Security Council is to end the threat to international peace and security posed by Iran's Uranium enrichment related nuclear program as determined by the Security Council. It is very clear from the resolutions that it is the Council alone that is competent to determine when the sanctions are to be suspended or terminated; that is, to determine when Iran has complied with its obligations under the resolutions of the Security Council. Again, the resolutions reserve to the Council and its sanctions committee the full authority to add designations to list of targeted persons leaving no margin of appreciation to the Member States.

On the contrary, the objectives of the US sanctions, or countermeasures, include of course, regime change so on and so forth. They go well beyond implementation of Security Council Sanctions.

So, could the US economic measures be viewed if not as implementation then as enforcement of the Security Council Resolutions against Iran, i.e., the unilateral adoption of new measures which would actually strengthen and enforce Security Council sanctions by adding new legislative measures?

It's interesting that Council through its Resolution 1929 (2010) stresses "that nothing in this resolution compels States to take measures or actions exceeding the scope of this resolution, including the use of force or threat of force". The Council also establishes its own monitoring and recording system for implementation of its sanctions; it says *it shall review* Iran's actions and *if* it determines that Iran is not in compliance, it shall adopt further appropriate measures. The Council further specifies that "concrete measures on exploring an overall strategy of resolving the Iranian nuclear issue" taken by states should be sought through non-forceful ways, and encourages the use of a negotiated solution. The Council continues to be seized of the matter.

So, nowhere would it appear that individual Member States are authorized to enforce Council decisions against Iran extraterritorially or against third parties. Nor does the Council authorize an embargo at sea as it did in regard to previous sanctions regimes. It calls upon States to inspect the cargo of Iranian State owned aircraft and vessels, only at airports and seaports. It is quite obvious that the Security Council resolutions do not require extraterritorial application, as did some of the earlier resolutions of the council and other sanctions regimes. This was debated and some States vociferously opposed the application of sanctions extraterritorially.

So in short, they cannot be seen in the light of collective measures and the US cannot use the justification of Article 25 or 103 to justify the measures. The justification that remains is as unilateral countermeasures. However, they have to meet a certain number of conditions laid down in the State Responsibility articles. Also, as has been mentioned by Dr. Perera; who can invoke these measures? The State imposing measures has to firstly demonstrate that it is an injured State, which would allow it to take these countermeasures. A State is considered injured, hence entitled to invoke responsibility of another State and adopt countermeasures, if the obligation is owed to it individually or if in the case of a collective obligation is owed to a group of States of which the injured State is a part; such as, and I will give the example here that perhaps the NPT treaty, if considered an interdependent treaty will fall into this category as a collective obligation owed to a group of States. But in the latter case one would have to demonstrate that first there is a breach in the obligations contained therein, which is not evident, or that it has radically affected the enjoyment of the rights or performance of the obligation of all the other State parties. These conditions may prove difficult to demonstrate.

In short, the legal basis for a countermeasure is not a threat to the peace or a threat to national security, but a violation of international law and a State must be an injured State within that definition.

Under Article 48 of the ILC Articles, a State which is not an injured State has a legal interest in compliance but has no right to take countermeasures only to invoke responsibility in order to demand cessation of the breach or recurrence on behalf of the injured State. There is a question which is controversial and has been debated in the ILC and that is whether is State which is not an injured State in that sense may impose countermeasures to enforce obligations protecting general or collective interests important for the, or fundamental to the, international community as a whole. This type of countermeasure however is controversial and Article 54 refers to the right of any State other than the injured State to take lawful measures. I'm saying that this Article 54 is ambiguous and has perhaps deliberate ambiguity causing controversy in the ILC.

It may be argued that the law of collective security has, in this particular situation of parallel imposition of collective measures, displaced the law of State Responsibility. It could very well be, but that again is debatable, that a State's right to adopt countermeasures terminates in situations where the Council has exercised its exclusive responsibility under Chapter VII to deal with a threat to peace. The exercise of unilateral measures in this situation would only serve to undermine the authority of the Security Council. Assuming that the measures can nevertheless be characterized as lawful countermeasures, they still have to comply with conditions and limitations laid down.

For example, they may not be punitive; they may not cause irreparable damage, and that is important. They are supposed to be temporary measures which are reversible. They are not meant to be punitive. So one can debate whether the measures taken in particular situations go beyond reversibility and others where they cause such damage that they can no longer be reversed

Secondly, they are not to be directed against third parties and so on, which of course the US laws can be seen to be in imposing penalties on third parties who have certain transactions with Iran.

They must be proportional and commensurate to the injury suffered and they must not depart from certain basic obligations. We know that the prohibition on the use of force applies too, but there is also the protection of fundamental human rights interpreted by the ILC as the non-derogable rights in the respective treaties and of the humanitarian character, as well as the peremptory norms of international law.

Then there are procedural requirements which must implement procedures. The term good faith is applied to these dispute settlement proceedings; offers to negotiate and so on.

The question in the light of this framework is, whether these sanctions constitute comprehensive sanctions and affect Iran's economy and right to development and so on. But as it is, I am only providing a grid for the analysis.

That's not the be-all and end-all. I don't want to stop with the State Responsibility articles because the articles themselves recognize that their provisions are not exhaustive. In other words, you have to also turn to general international law and to a particular regime. And there may be also a development of the law. We know that outside the framework, for example the UNGA has underlined numerous resolutions that the embargo on Cuba is of course contrary to the Sovereign

Equality of States, non-intervention, non-interference, and so on. What I am trying to say is that we have to approach unilateral measures also in the light of what is happening with respect to collective measures because there is kind of feeding in here and just as one argues that the States cannot escape the unilateral obligations by hiding behind the corporate veil, so too they cannot hide behind the corporate veil in trying to escape the constraints placed on collective measures. So unilateral measures should be viewed in the light of what has been happening, and a lot has been happening in the field of collective measures.

We have had charges to such collective measures; we have had a re-reading of Charter purposes and principles. Article 1 speaks of collective security – one of the functions of the UN. But collective security has to be interpreted in the light of the concept of human security now and the Security Council has been very aware of that in insisting in some of the Resolutions that States implementing sanctions should do so with regard to the obligations under human rights law. There is also the concept of rule of law which has sprung up in terms of the International Organizations; So there has been a grand debate over the humanitarian fault of comprehensive sanctions, particularly the decade long sanctions against Iraq; and then the Security Council was pushed to move to targeted sanctions.

There has been a great debate as to the due process rights of the individuals who have been targeted as terrorist suspects. And recent reforms proposals for the UN have emphasized the link between collective security and respect for human rights and underlined that the term ‘security’ can no longer be confined to the security of States but must be ultimately destined to protect individuals. Now, while acknowledging that sanctions remain an important tool, the 2005 World Summit Outcome Document has also underscored that sanctions should be

“implemented in ways that balance effectiveness, to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences for populations and Third States”, and importantly it has underlined the temporary nature of sanctions measures which should “remain for as limited a period as necessary to achieve the objectives of the sanctions and should be terminated once their objectives have been achieved.”

Numerous discussions both outside and within the Security Council, in other words, in Regional Courts for example, over the fact that the Security Council’s sanctions are not limited and the Council was not above the law. Though courts have refrained from reviewing directly the sanctions, on the grounds that it is not within their competence, Regional Courts such as the European Courts of Human Rights and so on, have raised the individual responsibility of Member States to respect their human rights obligations while implementing Security Council decisions.

There has nevertheless been a number of cases which have underlined the responsibility of Member States in implementing collective sanctions, for carrying out their obligations under human rights treaties, and the emphasis also has been on the ‘due process’ for individuals. So the Council has responded to such pressure in a small manner, rather grudgingly, but it has: it has gone from comprehensive to targeted sanctions. It instituted an Ombudsman for persons on the blacklist, which is not a judicial review but is at least something; and has responded to calls of the World Summit Outcome Document; And so we have had, of course, also the various bodies of the United Nations such as the Economic, Social and Cultural Rights Committee, which has

called on the Permanent Members to be responsible - that's General Comment No.8 - in adopting sanctions decisions to be very conscious of their obligations under the Covenant on Economic, Social and Cultural Rights.

So we have had a lot of pressure from all kinds of Organizations, Specialized Agencies and Regional Courts as well as the Human Rights Committee for example in the Case of Behrami. At the European level we have the decisions of *Kadi*, *Al-Jeddah* and so on and so forth. The European Court of Human Rights in the *Al-Jeddah Case* turned into the limitations placed by the purpose of the Charter in Security Council decisions said that the Court, interpreting the resolutions of the Council must presume that the Council does not intend to impose any obligation on Member States to breach fundamental principles of Human Rights, and in the event of any ambiguity, the Court must choose the interpretation which is most in harmony with the requirements of the Convention [that is the European Convention], which avoids any conflict of Obligations. And in fact a point that is important to align is that while Human Rights in the Charter was part of the Secondary Obligations of the United Nations, and collective security for peace was the primary obligation, what has happened is that the Human Rights purposes has shifted emphasis and become a part of the whole collective security apparatus. The Council now imposes sanctions to protect human rights. So you are not saying now that there is a conflict between public order and respect for Human Rights law – One is an integral part of the other.

So, the responsibility of the Member States has been underlined also in the Draft Articles on the Responsibility of International Organizations, which recognizes a dual and even multiple addition of conduct which are shared responsibility between the International Organizations and the Member States. So there are certain circumstances in which a state through the Council may be responsible for the collective measures if it exercises direction and control of the Council Decision, exercises coercion by playing a prominent role in the Council for example, participation in the decision making process when it rise to the level of overwhelming control. So, in short, my conclusion is that in the field of collective measure, we have had certain limitations which are going even beyond the constraints imposed by the ILC Draft Articles or rather, one would debate this, I am not saying that it is hard and fast development, but I think this is worth pursuing as a study on the comparison between the restraints on collective and unilateral measures.

Just to conclude on things, which are important, the problem in international law is that there are no compulsory dispute settlement measures or countermeasures. The ILC excluded finally the section which would have dealt with dispute settlement. Moreover, the collective measures adopted by the UN Security Council, the UN cannot be brought before any court for any international instance and for domestic instances immunity applies. So we have a paradoxical situation in which states can impose coercive measures but there is no way to counter them peacefully in other way, there is no compulsory dispute settlement measure. So, there have been few challenges before the court.

Secondly, I think it is important to revisit certain principles like the principle of non-intervention. I would say that measures like sanctions or countermeasures interfere with the principle of non-intervention. They are allowable if there is consonance with prior illegal act but they are not allowable if it intends to deal with change in foreign policy or intervene in the sovereignty of the states.

Third reflection is that, there has to be a balancing act. We are really talking about public order, emergency situations and human rights. As you know that all the treaties of human rights, there are special clauses for the ability to derogate, in times of public emergency. But we don't have such clauses in general.

Finally, while non-forcible measures are unilateral or collective, it continues to be a part and perhaps that is another debate, is another instrument for the achievement of certain important priorities of the international community, which you know has developed in public international law per se. These are a set of fundamental principles to the international community as a whole; they are nevertheless not compatible with the basic principle of international rule of law.

Finally, I just want to quote Roberto Ago, I think Dr. Perera had mentioned this development, where he says in seeking a more structured organization which refers to institutionalization of the international society. We must address about institutions, which must tell us the international institutions which has exclusive responsibility for determining the breach of an obligation which is a basic importance to the international community as a whole and thereafter for deciding what measures should be taken. In other words, it is a big debate as to who should protect from the member country interest, should it be left to unilateral measures by individual states or it should in fact return to more institutionalized system. Thank you very much.

**President:** Thank you Prof. Debbas for outlining the various contours of sanctions, the move from unilateral sanctions to targeted sanctions in the pretext of humanitarian grounds and also for explaining to us the countermeasures that can be lawfully applied. Next, I will give the floor to Prof. Gandhi, who will speak on 'sanctions and financial institutions'. Dr. Gandhi is a former colleague of mine; he was the legal adviser to the Legal and Treaties Division, Ministry of External Affairs, Government of India. Now he is a Professor and Executive Director at the Centre for International Legal Studies, Jindal Global Law School. Dr. Gandhi, you have the floor please.

**Prof. Dr. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies, Jindal Global Law School, India:** Thank You Madam Chair. I would like to thank AALCO and its Secretary-General for inviting me as a panelist. I would like to discuss on "Implications of Unilateral and Secondary sanction on financial institutions: An international law perspective".

Madam Chair, Since the days of Pericles Athens, political States have deployed economic sanction as a weapon of international diplomacy to bring change in the attitude of sanctioned state.

Jeffrey Meyer in his research paper on 'Secondary sanctions' enumerates that the United States today has unilateral sanctions programs relating to many countries and regions, including the Balkans, Belarus, Cuba, the Congo, Iran, Iraq, Cote d'Ivoire, Myanmar, North Korea, the Sudan, Syria, and Zimbabwe. The broadest of its programs involve general embargos on trade and financial transactions with longstanding hostile regimes such as Cuba, North Korea, Iran, and Syria. Other sanctions measures focus more narrowly on penalizing the leadership and close

associates of enemy regimes, as well as hundreds of designated terrorist, drug trafficking, and weapons-proliferating persons and entities. UK and EU have sanction programmes of their own.

Most of the economic sanction regimes deployed by the US are primary sanctions only— which restrict its own companies and citizens (or other people who are in the United States) from doing business with certain specified countries, terrorist group, or other countries, against them already international sanctions are in place.

Secondary sanctions, such as secondary trade boycotts and foreign company divestment, involve additional economic restrictions designed to inhibit non-U.S. citizens and companies abroad from doing business with a target of primary U.S. sanctions. Secondary sanctions have proven highly controversial, in part because of broad claims that they are illegally “extraterritorial” in purpose and effect.

#### *Resistance to Sanction*

When US imposed unilateral sanctions on Cuba, Iran and Libya, their major trading partners EU were hit by secondary sanctions. They opposed the sanction and regard the extra-territorial application of US sanctions as an unacceptable attempt to expand US jurisdiction. Despite sanctions were in place EU reaffirmed its commitment to the achievement "to the greatest extent possible" of the objective of the "free movement of capital" and to the lowering of trade barriers. EU viewed the US imposition of secondary sanctions as a departure from the free trade principles long advocated by the US.

Another case of Europe’s resistance for unilateral secondary sanction was the Siberian Pipelines case. This happened in 1982, when the United States sought to impede the construction of a pipeline from the former Soviet Union to Western Europe. It not only prohibited U.S. companies from providing parts and services, but also most controversially extended this prohibition to foreign subsidiaries of U.S. companies (similarly Canadian supplies to China (through US subsidiaries) at one point of time was prohibited under unilateral sanction).

Amidst storm of protest from the United States, Western European trading partners decrying the regulations as improperly “extraterritorial” and a Dutch court decision declining to allow its enforcement against a Dutch subsidiary of a U.S. company, finally the United States retracted its extension of the export control regulations within several months of their issuance.

In 1996, Congress enacted the Iran and Libya Sanctions Act (now known as the Iran Sanctions Act) that aimed to deter investment by non-U.S. companies in the oil production sectors of Iran and Libya. As amended to date, the Act provides that for any non-U.S. company that invests within one year more than \$40million in the Iranian oil sector, the President is required to select at least two sanctions from the following menu of retaliatory measures:

- denial of any export licenses and approvals for products to be shipped to any sanctioned person;
- denial of Export-Import Bank assistance in connection with any products to be exported to any sanctioned person;
- prohibiting U.S. banks from loaning more than \$10 million in one year to any sanctioned person (subject to certain exceptions);

- procurement debarment of sanctioned persons from U.S. government contracts;
- import restrictions against the sanctioned person; and
- denial of certain U.S.-government-linked banking privileges (in the case of sanctioned entities that are financial institutions).

Both the Cuba and Iran/Libya laws were vehemently condemned as “extraterritorially” illegal by the U.S.’s major trading partners, some of whom enacted their own retaliatory laws to block or offset any damage to their companies’ business interests.

As these examples show, secondary sanctions often prove politically problematic. The resentment of third-party countries may divert attention from the wrongful conduct of the target regime and undermine U.S. efforts to rally multilateral consensus for United Nations trade sanctions. Still, as George Shambaugh notes, “[w]hat critics misunderstand is that secondary sanctions tend to cause intergovernmental conflict precisely because they can provide an effective means for states to influence the activities of foreign firms and individuals operating abroad.”

Similarly, U.S. sanctions against Myanmar not only prohibit U.S. persons from investing directly there but—in secondary sanctions fashion—prohibit them from buying shares in a third country company if the company’s profits are predominantly derived from its economic development of resources located in Myanmar. In addition, U.S. persons are prohibited from approving, financing, facilitating, or guaranteeing a transaction in Myanmar by a person who is a foreign person if the transaction would be prohibited if performed by a U.S. person or within the United States.

The political controversy about secondary sanctions is complicated by questions about their legality under international law. The majority view is that secondary sanctions are an impermissible “extraterritorial” extension of U.S. jurisdiction that impinges on the rights of neutral states to regulate their own citizens and companies. For example, Sarah Cleveland notes that “[e]xtraterritorial” sanctions, or secondary boycotts . . . since they purport to exercise authority over foreign states and entities for engaging in conduct (business with third countries) that has no jurisdictional nexus with the sanctioning state.” Similarly, Peter Fitzgerald claims: [A]n international consensus does appear to be building that the unilateral extraterritorial application of these controls [sanctions] to third parties is impermissible . . . .

The international community is coming to regard the blacklisting of third parties, or secondary boycotts, as “unreasonable,” and therefore an unjustifiable intrusion upon the sovereignty of the neutral state.

To the same effect, Andreas Lowenfeld argues that “secondary boycott” measures such as the Helms-Burton Act and the Arab League boycott are “contrary to international law, because [they seek] unreasonably to coerce conduct that takes place wholly outside of the state purporting to exercise its jurisdiction to prescribe.” He further suggests that “[w]hile no precise rules have been formulated, it seems that in the areas of sanctions . . . customary international law places limits on unilateral extraterritorial measures.” Other commentators have joined the chorus casting doubt on the legality of secondary sanctions measures.



*Black listing of Iranian banks*

The U.S. Treasury Department began blacklisting major Iranian banks, pressuring and cajoling other states to follow suit. Senior U.S. officials travelled the world, allegedly arguing that the Iranian financial system has ties with Hizbollah, Hamas and Islamic Jihad, highlighting the reputational risks of working with allegedly involved in banks engaged in illicit financial conduct and warning of severe penalties. With many financial institutions worldwide halting their business with Iran and the U.S. barring Iranian banks from dealing in dollars, Iran virtually became a financial hermit.

The current wave of secondary sanctions can be traced to 2006, when U.S. authorities began a concerted effort to dissuade non-U.S. financial institutions from doing business with Iranian banks — not because of their nationality or affiliation with the Iranian state, but because of their presumed conduct.

*Role of OFAC and SDN's*

To begin, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) amended a provision in its Iranian sanctions regulations that had authorized so-called U-turn payments, or funds transfers originating and terminating outside the United States, effectively to prohibit any such payments involving Iran's Bank Saderat, which OFAC stated was serving as a conduit between the Iranian government and terrorist organizations. OFAC's 2007 sanctions on Iran's Bank Sepah for its role in Iran's missile procurement was the next in a series of U.S. government actions imposing various economic sanctions on large Iranian commercial enterprises because of their alleged conduct.

By late 2008, the U-turn authorization for Iranian parties had been revoked altogether, and by 2012 it seemed as if almost every major Iranian commercial enterprise had been accused of a role in Iran's nuclear program or support for international terrorism.

*US sanction programme is confusion: too much legislation too many agencies to deal with*

Not only are all U.S. sanctions programs different in scope, but certain sanctions programs change on a regular basis. For example, under 31 CFR part 598, OFAC is authorized to identify and prohibit virtually all transactions with Specially Designated Narcotics Traffickers (SDNTs). SDNTs, along with other specially designated individuals and entities (collectively, "SDNs"), are listed on OFAC's SDN List, which is updated on a regular basis with new names as OFAC identifies new SDNs. So if a Colombian business partner of your company is designated as an SDNT, your company no longer can conduct any business with that partner, even if there are pending contracts or other ongoing business with that partner. The list of SDNs can change very quickly. Moreover, many SDNs reside in countries against which the United States does not otherwise impose sanctions; with respect to SDNTs, many SDNTs reside in Colombia, Mexico, Peru, or other countries against which the United States does not impose any sanctions. In addition to changing frequently, the SDN List is expanded on a regular basis. Ten years ago there

were a few several thousand entries on the SDN List; now, it has increased to more than 46,000 entries. Moreover, in 2008 alone, the SDN List was modified approximately 50 times, that is, nearly once a week.

*Iranian banks on SDN List*

On October 25, 2007, OFAC announced that it had added Iran's largest bank, Bank Melli, to the SDN List for its alleged connections to the proliferation of weapons of mass destruction. At the same time, OFAC took similar action against Bank Mellat, which supports Iran's nuclear programs. The designation of these two banks as financiers of unconventional weapons programs effectively prohibits all U.S. persons (including U.S. branches of non-U.S. banks) from conducting any business with either bank. OFAC simultaneously identified Iran's Bank Saderat as a terrorist financier and added it to the SDN List. As with Bank Melli and Bank Mellat, Bank Saderat's addition to the SDN List effectively prohibits all transactions with that bank by entities subject to U.S. sanctions. Prior to this designation, OFAC had taken the intermediate step in September 2006 of revoking its general licenses with respect to Bank Saderat, thereby excluding the bank from certain activities in the U.S. financial sector that had otherwise been permitted. In January 2007, OFAC added Bank Sepah to the SDN List, thus prohibiting all U.S. persons from doing business with the bank. Bank Sepah was also made subject to sanction by the U.K. government under the Iran (Financial sanctions) Order 2007 and has been subject to sanctions in other countries as a result of Security Council Resolution 1747.

Significantly, on 31 December 2011, under Congressional pressure and after obtaining flexibility for incremental implementation to mitigate any impact on global energy prices, Obama signed the National Defense Authorization Act of 2012 (NDAA 2012), section 1245 of which bars foreign banks from processing oil receipts through the CBI, with the goal of gradually depleting Iran's revenues.

The U.S. took the lead in this regard, penalizing foreign banks and firms that violated its regulation with several high-profile cases involving penalties against major international financial institutions (eg, Lloyds, Barclays, Credit Suisse and Standard Charter. In some cases, firms took extra precautions that affected permissible trade. Many small and mid-sized companies, for whom compliance with overlapping and layered regulations was too costly and cumbersome, simply left the Iranian .market.

The complex U.S. framework for secondary sanctions is no longer properly understood as sanctions "against" Iran, but rather U.S. sanctions against third-country companies that do business with Iran. Over the past several years, there has been a series of settlements, each exceeding \$100 million, between U.S. authorities and non-U.S. banks — including ABN AMRO, Barclays, Credit Suisse, ING, Lloyds and Standard Chartered — alleging violations of U.S. sanctions against Iran and other countries.

*Judicial scrutiny of executive determination*

It is pertinent to note that the executive determination with regard to the allegation of involvement of certain Iranian banks have not been brought under the judicial scrutiny in the US.

However, recently similar sanctions have been brought under the scrutiny of the Supreme Court in London and the General court of the European Union. These cases are great eye opener.

In a series of recent judgments, the Fourth Chamber of the General Court of the European Union (“the General Court”) annulled the designation of some of the largest privately held commercial Iranian banks on the EU’s sanctions list. On 11 December 2012, sanctions against Sina Bank (Case T-15/11 *Sina Bank v. Council*) were annulled. Similarly, sanctions against Bank Mellat (Case T-496/10 *Bank Mellat v. Council*) were struck down on 29 January 2013. On 5 February, sanctions targeting Bank Saderat (Case T-494/10 *Bank Saderat Iran v. Council*) met the same fate, further illustrating the General Court’s willingness to annul sanctions if their adoption is not based on sufficient evidence and if the entity concerned is not given ample time to review and respond to the evidence against it.

*Brief background of the sanction regime involved in these cases:*

On 26 July 2010, the Council of the European Union (“the Council”) imposed sanctions on a number of Iranian banks, listing them in Annex II of Council Decision 2010/413/CFSP. The sanctions included, *inter alia*, the freezing of assets and economic resources of entities presumed to be linked to Iran’s nuclear proliferation program. Bank Saderat and Bank Mellat were two of several listed banks and their funds and assets were frozen across the EU.

In Decision 2010/413, the Council stated that “*Bank Mellat is a state-owned Iranian bank [that] engages in a pattern of conduct which supports and facilitates Iran’s nuclear and ballistic missile programmes. As for Bank Saderat, the Council got a little bit more specific and held that [it]...is an Iranian state-owned bank (94 %- owned by IRN government) [and] has provided financial services for entities procuring on behalf of Iran’s nuclear and ballistic missile programmes, including [...] Iran Electronics [and] Mesbah Energy Company.*”

In October 2010, both banks appealed against the Decision, arguing that the Council had not advanced any evidence in support of its claim. The banks thus argued that their fundamental rights of defence and their right to effective judicial protection were breached and that the Council violated its obligation to give reasons for their designation. Secondly, they claimed that the Council had committed a manifest error of assessment as regards the adoption of restrictive measures against them. Thirdly, the banks argued that the designation was an infringement of their right to property and of the principle of proportionality.

### *The Judgments*

In both cases, the Council argued that the banks were emanations of the Iranian state and therefore not entitled to rely on fundamental rights protection and safeguards under EU law. According to the Council, a “*state is the guarantor of respect for fundamental rights in its territory but cannot qualify for such rights*” (*Bank Saderat* para.37, *Bank Mellat* para.39).

The General Court firmly rejected this argument. It held that EU law contains no rule preventing legal persons, even if they were emanations of a non-Member state (which was

not proven in this case), from relying on fundamental rights protection and guarantees. Moreover, the General Court held that: "the fact that a State is the guarantor of respect for fundamental rights in its own territory is of no relevance as regards the extent of the rights to which legal persons which are emanations of that same State may be entitled [...]" (*Bank Saderat* para.38; *Bank Mellat* para.40).

1. *Infringement of the obligation to state reasons, the banks' rights of defence and their right to effective judicial protection* Turning to the substance of the case, the General Court held that the obligation to state reasons for an act adversely affecting a person constitutes an essential principle of EU law and may only be derogated from for compelling reasons touching upon the security of the Union or its Members. The Council is thus under an obligation to disclose the considerations which led to the adoption of the sanctions and the considerations must be sufficiently detailed and clear. Additionally, the Council must notify the designee in good time, so that he has ample time to review the Council's file and to make known its own point of view
2. *Manifest error of assessment in relation to the adoption of restrictive measures against the applicant:* The banks also claimed that the reasoning for designation provided by the Council was not substantiated by evidence and, consequently, the Council made a manifest error of assessment by putting the two banks on the sanctions list.

The General Court largely agreed with this.

First, in the *Bank Saderat* case, the General Court established that the Council had acted on a mistaken factual premise by asserting that the bank was 94% held by the Iranian state, when in fact the state was only a minority shareholder.

Second, the General Court held in both cases that the fact that the Iranian state holds shares in the banks did not imply, in itself, that they were facilitating nuclear proliferation. Furthermore, the Council did not present any evidence that the banks were providing illicit services to entities that were engaged in proliferation.

Third, the General Court had asked the Council to submit evidence to support its claims, but the Council failed to do so. On the contrary, the Council argued that the burden was on the bank to produce evidence that it was not involved in facilitating nuclear proliferation. The General Court swiftly dismissed this argument: the burden of proof was upon the Council and the absence of evidence should not be held against the banks.

In the light of the foregoing, the General Court decided in both judgments that the sanctions had to be partially annulled, and that there was no need to further examine the banks' claim concerning an infringement of the principle of proportionality and/or of their right to property.

The judgments raise a number of interesting issues. First, in both cases the General Court referred to the role of diplomatic cables (read "Wikileaks") and the suggestion that some Member States, in particular the UK, were subject to American pressure to ensure the

adoption of restrictive measures against Iran. The General Court, however, firmly rejected the banks' allegation that this cast doubt on the lawfulness of the measures and of the procedure for their adoption. It held that the fact that Member States might be subject to diplomatic pressure – even if proven – did not imply, in itself, that such pressure had any effect on contested measures.

Second, the General Court confirmed that if the Council is going to rely on Member States' information as evidence for including entities on EU sanctions lists, it is obliged to conduct its own assessment of the “*relevance and validity*” of the evidence. The incorrect statement in the Council Decision concerning the extent of the Iranian State's holding in Bank Saderat indicated that no such checking took place.

Finally, the General Court's judgments show that the Council does not have unfettered discretion to designate undertakings and persons on the sanctions list without providing sufficient evidence to support its claim and without giving the designate ample chance to exercise its right to self-defense.

Interestingly, neither the Council nor the Commission invoked confidentiality reasons for not presenting evidence against the banks to the General Court or the applicants. Rather, the General Court notes that the Council simply did not put forward any evidence even though the General Court requested the Council to do so. The General Court did thus not get a chance to rule on the legality of relying on classified information or how the Council could base its decisions on such information without infringing the defendant's rights of defence. But regardless of the rulings, the EU will be utterly careful not to disclose or upset their intelligence sources. Without an EU-lead spy agency, Brussels relies fully on Member States' support to obtain any such information. Opening up its information and sources to the public would probably dry them up for good.

But the sensitive issue of using intelligence as evidence in court has caused severe judicial problems in Luxembourg. On 21 March, the UK Supreme Court took the highly controversial decision and went into secret session for the first time ever to hear sensitive intelligence about Bank Mellat of Iran. If this practice will also find hold in the proceedings in Luxembourg remains in doubt (cf. Article 31, Statute of the Court of Justice), but the question as to how to deal with intelligence in court will soon have to be discussed very openly.

The Supreme Court has quashed the Financial Restriction (Iran) Order 2009. Writing the judgment for the majority, Lord Sumpton held that the Order was irrational and unjustifiable, as it singled out the bank even though it posed no risks than other Iranian financial institutions.

### *Conclusion*

The Law is very clear as summed up in the first part of the presentation that the unilateral secondary sanctions targeting financial institutions are violative of international law as it interferes with sovereignty of State. They are illegally “extraterritorial” in purpose and effect. It

affects free movement of capital. The unilateral secondary sanctions are unreasonable and impermissible under international law. Moreover, the unilateral secondary sanctions, as we have seen, instead of providing necessary immunities to the central bank (as it performs sovereign functions. It is a market regulator and its functions include maintaining price stability and inflation), targeted it.

The recent court decisions from UK and EU indicate that the black listing of financial institutions under sanction regime has not been done on a sound and factual basis. Mostly it is done by the executive in a non-transparent way without subjecting the decision under judicial scrutiny. Thank you Madam Chair.

**President:** Thank you Dr. Gandhi, for a very comprehensive review of the recent happenings and case laws on Illegality of Sanctions Imposed against financial institutions of Third Parties. We will re-assemble after 20 minutes. Thereafter, Dr. Rajesh Babu will make a presentation on “Sanctions and International Trade Law”.

### **Tea break**

**President:** Now, I would like to invite Dr. R. Rajesh Babu, Associate Professor, Indian Institute of Management, Calcutta (IIM – C) to speak on “Sanctions and International Trade Law”.

**Dr. R. Rajesh Babu, Associate Professor, Indian Institute of Management, Calcutta (IIM–C), India:** Thank you Madam Chair. I would also like to take this opportunity to thank the Secretary-General and the Secretariat for inviting me. It’s always a pleasure to be back in AALCO.

The issue that I am trying to bring in is sanctions within the context of International Trade Law and how sanctions are regulated. If you look at the World Trade Organisation, which has provided a framework for trade, it also provides for limitations or conditions on which sanctions can be imposed. So, the Marrakesh Agreement establishing WTO consists the core background on the principles on which the WTO is based such as the principle of Most-Favored-Nation Treatment, refraining from imposing quantitative restrictions, high tariffs, National Treatment, etc. So, you cannot discriminate between two countries unless there is an enabling provision provided in the text. If a member state discriminates and takes unilateral action, this will fall in direct conflict with the principles of the WTO, which would be considered as invalid, and a violation of the WTO Agreement. So, in case there is any violation by a Member State, a procedure has been provided, called the Dispute Settlement Understanding (DSU). Therefore, rather than going for a unilateral determination of violations, the WTO mandates for a multilateral settlement or determination of whether sanction has to be imposed for the violation which has been committed against the WTO law.

To reiterate this point, a specific Article was incorporated in the Uruguay round of negotiations, which is Article XXIII that prohibits explicitly unilateral actions. The reason why this Article came into being is because in the earlier decades, there has been a huge problem with the United States Trade Act, Section 301 and all other sections that permitted unilateral determination of sanctions, and taking action against foreign countries. So, in order to counter that, the section

provides that when a Member seeks for the redress of a violation of obligations, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

Article XXIII (2) says that in such cases, “a Member shall not make a determination to the effect that a violation has occurred, except through recourse to dispute settlement, in accordance with the rules and procedures of this Understanding”. This basically means that the Member States of the WTO, cannot make unilateral determination of violation, rather take recourse to the multilateral dispute resolution process.

So, this has marked the shift from what is called as the power-based system to the rule-based system, where the lowest, or the smallest of the countries can have access to the system and enforce WTO rules.

Again, sanctions in the context of violations, the WTO Agreement specifically mentions that the sanctions can only be imposed if it is authorised by the Dispute Settlement Body, which is a body consisting of all Member States. It provides for a slightly minor form of compensation or sanctions when compared to ILC Draft Articles, which says that it should be prospective in nature, and not from the date of injury, but rather from the date on which the Member is supposed to comply with its WTO obligations, meaning that every country is given a reasonable period of time to comply with the directions. So only from the date of the completion of the reasonable period of time, the average will be calculated for the purpose of sanctions. Not only that, in terms of proportionality, there is always a debate about whether the object of sanctions is to induce compliance or of rebalancing right. Although most of them are in the academic area, but if you look at all the Panel Reports, they point more towards the rebalancing of a right in the context of Proportionality.

Also, you will find a progressive and high retaliation provided for in the WTO Agreement. For example for some sector, where violation is found, the aggrieved country can suspend concessions, and if it is not practical or effective, you go to a different sector in the same Agreement. And then, go again to a different Agreement altogether where a country will find higher retaliation, and if the country is asking for higher retaliation, it can prove that the earlier sectors weren't practical or effective, and the circumstances are serious enough- which is known as cross-retaliation measures.

So, these are the procedural sanctions within the sequence of the dispute settlement under the multilateral dispute settlement process. Of course, there are some problems related to this, the sequencing problem for instance. I am not going to enter into that, but suffice to say that it is basically when to take retaliatory action, and there is conflict and ambiguity between language of Article XXI (5) and XXII (6). So, it is in this context the problem has arisen. It has not been settled yet. So there are procedural problems.

But some of the broader problems remain with respect to the exceptions that are permissible under WTO Agreement, where you can deviate from the non-discriminatory principle and impose sanctions, and which you find in the context of Article XX and Article XXI of GATT. Article XX talks of general exceptions, and Article XXI talks about special security exceptions.

First we will consider Article XX, and then move on to the security exceptions, which are much broader in scope than the general exceptions provide.

The problem with Article XX is that it has several types of exceptions which are acceptable unilateral action within the WTO, but then some provisions are being used recurrently. The broadest of these exceptions allow nations to allow discriminatory and restrictive trade laws to protect public health, environment, public moral, or conservation of exhaustible resources. These are some of the broader provisions where there have been cases where the Panel has attempted to interpret the scope of these exceptions. In addition to the specific measures or sanctions in place, the chapeau of the Article XX speaks that, of course you can take a measure but then you have to make sure that the measures are not arbitrary or unjustifiable discrimination, or a disguised restriction on international trade. Same two-tier approach, first tier-provisional justification under one of the sub-clauses, either the public moral issue, or public health issue. To identify the measure, whether it is justified under that count; and then moving on to the second tier- which is final justification under chapeau requirements.

One of the earliest cases relating to this Article, of course there have been several cases, but for our purpose, we have the Tuna Dolphin case. There are two cases - 1991 GATT case by Mexico, and the 1995 case filed by the European countries - both against the US. Through US Marine Mammal Protection Act, the US sought to justify the import prohibition on tuna harvested with purse-seine nets (incidental killing of dolphin) from Mexico and the EU under both Art. XX(b) and (g). There were several issues in this case. But one of them was relating to the extra-territorial application of national laws. The key question was whether one country can dictate to another, what its environmental regulation should be. So, the first panel said that Article XX exceptions does not apply outside jurisdiction of a country, and that GATT rules does not allow members to take measures for the purpose of enforcing its own domestic laws outside the jurisdiction of the country, even to protect animal health or exhaustible natural resources. "Negotiation of international cooperative arrangements seems to be desirable in view of the fact that dolphins roam around the waters of many states and in the high seas." The Panel was suggesting that rather than going for a unilateral measure, go for a multilateral approach towards something that would impact the entire world.

*Tuna-Dolphin II*, again here is a slight difference in the interpretation of the panel. The panel did not reject *extraterritoriality*, but preferred a narrow interpretation of Art XX and, said that Measures taken so as to *force other countries to change their policies could not be considered "necessary"*. So, the first requirement is the measure should be 'necessary' and hence, a less discriminatory measure as the one that has to be adopted. The Panel, however, deviated from the earlier decision that –nothing in Art. XX prevents measures affecting *outside the territory of the contracting parties*. So, there is large scale dilution of the concept and said that there was nothing in Article XX which does not prevent extraterritoriality. Now, both the reports never got adopted because there was blockade in GATT period. So US blocked the adoption of the Report.

Now comes the WTO establishment and one of the first cases which was in defence of Article XX was in the context of *Shrimp/Turtle I and II* 1998. Case II was a review petition filed and started in 1998. Again a similar kind of situation, which said that US imposed ban on all shrimp imports from developing countries that does not enforce US prescribed environmental



regulations to protect endangered sea turtles from shrimp trawling. US trade measures to protect sea turtles (conservation of exhaustible resources), stated that there should be mandatory use of TED, and that if there was a gap in the net it provides for escape of the turtles. And unless one gets a certification, it could not import its products to US. Joint complaint was made by developing countries, such as India, Malaysia, Pakistan and Thailand, wherein complainants maintained that the US statute was antidemocratic because it attempts to dictate how the Complainants will allocate its scarce resources, to protect the environment. Again there were several measures, like product-process method, etc, but focussing the issue at hand, the first time the Appellate Body justified action under Article XX (g) - Turtle constituted "exhaustible natural resources". By saying so, the AB justified unilateral extraterritorial measures for protecting public health, the environment, and public morals. But again in that context, even though measure is valid, the ways it was implemented by the US, that is within condition under chapeau, found that it violated the chapeau due to lack of multilateralism in its procedure. The US failed to adequately attempt to negotiate a solution with the complainants. That is, the US did not sufficiently attempt to negotiate a re-regulation of shrimp trawling rules at the international level. So, it should have agreed on the conclusion of an international agreement rather than going on bilateral agreement. If US had committed that Procedural error, the measure would have been justified under Article XX. US failed to engage in meaningful negotiations with an *objective of concluding bilateral or multilateral agreements*.

In compliance with the findings of the Appellate Body, the US complied with the recommendations and brought a Revised Guidelines of 1999. But then, some of the countries did not agree, specifically Malaysia, with that the US had implemented the recommendation or not for upholding the spirit of it. It was challenged under Article XXI (5) on Compliance Review mechanism. One of the central questions here was whether under the multilateral process in which the AB was talking about a Panel, there was an Obligation to negotiate or conclude international agreement. Here, the AB said that it was sufficient long as it continued to satisfy conditions of, *inter alia*, ongoing *serious good faith efforts* to reach a multilateral agreement. So you don't need to conclude a treaty, but rather there should be serious good faith negotiations at international level. Hence, there is only an *obligation to negotiate*, as opposed to an obligation to conclude an international agreement. The AB, thus, made it clear that countries have the right to take unilateral trade action to protect the environment. So this action, i.e., extraterritorial legislation was considered permissible as per Chapeau to Article XX.

Unlike Article XXI, Article XX has a higher threshold. It says that the applicability of this exception was moderated by the scope of limitations of the *chapeau* of Article XX itself. The exceptions are "[s]ubject to the requirement that member state is measures are not applied in a manner, which constitute a means of arbitrary or unjustifiable discrimination between countries ...or a disguised restriction on international trade." Even if you are taking a measure for public health purpose or for consumption of natural resources, it should not be discriminated between two countries. So, the chapeau provides a limitation on implementation of unilateral sanctions within the context of this provision. Thus, action "provisionally justified" under an exception may nevertheless constitute an abuse or misuse of the exception "in the light of the *chapeau* of Article XX'.

On the other hand, Article XXI provides for security exceptions. There is no *chapeau* for national security exception. The scope of the Article says that: “Nothing in this Agreement shall be construed:

- (b) to prevent any CP from taking **any action which it considers necessary** for the protection of its essential security interests
  - (i) relating to fissionable materials ...;
  - (ii) relating to the traffic in arms, ammunition ...;
  - (iii) taken in time of war or **other emergency in international relations**; or

Therefore, any action which the states considers necessary is permissible. So what is important is that the provision is self-judging, meaning, that a State on its own decides what is national security interest and it is not for any other state to judge whether its national security interest is at stake. Prof. John Jackson states that this provision is: “so broad, self-judging and ambiguous that is obviously can be abused”, “the spirit in which Members of the Organization would interpret these provisions was the only guarantee against abuse”. Historically, this has been there since 1947 and claimed the provision as “self judging”. For instance, the provision was directly or indirectly invoked in the several contexts. In 1949, against Czechoslovakia by the US, in 1961 - Ghana justifying its boycott of Portuguese goods, in 1975 - Sweden import quota on certain footwear, in 1982 - Trade action against Argentina (annexation of Falkland Islands), in 1984-86 - US embargo against Nicaragua I and II. It was also a matter of discussion that the UAR accession to GATT and the Kingdom of Saudi Arabia accession to WTO within the context of Arab Embargo.

In 1985 *US-Nicaragua* case, one of the panels was established but was not adopted. The Panel noted that nation relying on the exception must balance its need to do so against the more fundamental need for stable trade regulations. When being considered for adoption, the representative of India said that:

“...only actions in time of war or other emergency in international relations could be given the benefit of such exception. Clearly, the two contracting parties in this case could not be said to be in a state of belligerency. The scope of the term “other emergency in international relations” was very wide. The Contracting party having recourse to Article XXI (b) (iii) should be able to demonstrate a genuine nexus between security interests and the trade action taken”.

This captures the sentiments of how the provision has to be interpreted. In 1996, the US Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton Act) specifically targeted Cuba through economic sanctions, but also dealt with secondary sanctions. The Act was designed to tighten the 1962 embargo on Cuba. The Act extended the territorial application of the initial embargo to apply to foreign companies trading with Cuba. It permits US nationals to bring legal action against foreign companies that were dealing or trafficking in US property confiscated by Cuba (Title III). The Act also authorized US State Department to bar entry of officials and shareholder of such companies to US; it involved measures that impugn the conduct of foreign nationals unconnected with US companies or individuals. This means that internationally operating companies have to choose between Cuba and the US.

The European Union on 3 May 1996 US (DS38), initiated a complaint against the US. The EC claimed that the Act imposed trade restrictions on goods of Cuban origin, and certification that sugar or sugar products do not contain any Cuban sugar, to access US sugar quota. Basically means that while exporting chocolate, certification was required to the effect that that chocolate does not contain any sugar manufactured in Cuba. There was possible refusal of visas and the exclusion of non-US nationals from US territory.

On Secondary sanctions, there were violations of many GATT provisions, such as Articles I, III, V, XI and XIII, and GATS Articles I, III, VI, XVI and XVII were alleged. The EC also alleges that even if these measures by the US may not be in violation of specific provisions of GATT or GATS, they nevertheless nullify or impair its expected benefits under GATT 1994 and GATS and impede the attainment of the objectives of GATT 1994. The EC requested the establishment of a panel on 3 Oct 1996. According to WTO, when a State requests for establishing panel for the second time, the Panel has to be established. But it never reached to that stage. An US-EU MoU was signed in 1997, agreeing to suspend the WTO claim as long as the US agreed to not prosecute any European companies under relevant provisions of the Act. EU agreed that to condition their aid to Cuba on the implementation of democratic reforms. This allowed Clinton, as well as his successors, to successfully waive one of the provisions which are Title III. As Clinton declared in his first waiver of Title III, "I would expect to continue suspending the right to file suit so long as America's friends and allies continue their stepped-up efforts to promote a transition to democracy in Cuba."

Prof. Gandhi has already mentioned that this statute is known as "Blocking Statute". It means that if any company does not comply with statute and trade with Cuba, they will be penalized for that. Europe Council Regulation (EC) No 2271/96 of 22 November 1996 which prohibits companies in the E.U. from complying with the Cuba sanctions. The UK created an offence of complying with U.S. legislation by implementing the Extraterritorial U.S. legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996. Mexico passed a law in October 1996 aimed at neutralizing the Helms-Burton Act. The law provides for a fine of 2.2 million pesos, or \$280,254, against anyone who while in Mexican territory obeys another country's laws aimed at reducing Mexican trade or foreign investment in a third country.

To conclude, trade must take into account genuine national security concern (Article XXI). However, secondary sanctions cannot be justified under the WTO. The self-judging application of the national security exception remains a formidable bar to WTO review of the merits of these unilateral sanctions. There is indeed a danger that this provision may allow governments to protect shoe or bubble-gum industries merely by invoking the exception with not even a threshold or "reasonableness" criterion, there is a possibility of abuse. The practice till date suggests that the Member States has been reluctant to invoke this provision, because they don't want any external body to judge 'essential security interest' which purely falls under State sovereignty. Thus it is highly unlikely that the Member State would take the DSU route to test the legality of Art. XXI sanctions. Thank you.

**President:** Thank you Dr. Rajesh Babu for giving us a very informative presentation on the unilateral measures and their legality under the WTO regime. I open the floor for comments, questions, and interventions. The first delegation on my list is Japan. You have the floor, Sir.

**The Delegate of Japan:** Thank you, Madam President. My delegation wishes to touch briefly upon Japan's attitude on the question of extraterritorial application of law.

We are grateful to the AALCO Secretariat for preparing useful papers on this agenda item. We are of the view that the question of whether the sanction measures taken by States are lawful or not under international law should be considered on a case-by-case basis in accordance with the actual circumstances in question.

As the sanctions could include those applied by states in accordance with the UN Security Council resolution under Chapter VII of the UN Charter and also those which are taken by States as counter-measures against such internationally wrongful acts, fulfilling certain conditions which are stipulated in the provisions of responsibility of States for Internationally Wrongful Acts of 2001, it cannot be stated that all cases of economic sanction or extraterritorial application of national legislation of states are unlawful under international law.

However, it is to be admitted that certain unilateral economic sanction measures taken by states could include those unlawful cases of extraterritorial application of national legislation and sanction that are inconsistent with such basic principles of international law as sovereignty of other states or non-interference with internal affairs of other States. Thank you.

**President:** Thank you, Japan. The next delegation on list is India. You have the floor, Sir.

**The Delegate of Republic of India:** Thank you, Madame President. I don't know whether it is time for comments or questions or statements. I'll go with the statement first. Then I'll ask one or two questions. At the outset, on behalf of the delegation of India, let me take this opportunity to thank the Secretary-General for his very informative opening remarks as well as the panelists for their views. The Indian delegation also appreciates the Executive Summary prepared by the Secretariat on this Agenda Item. It is indeed a very thought-provoking document providing valuable inputs to Member States on this topic.

Madam President, The fundamental principle in international law is that all national legislations are *prima facie*, territorial in their application. Any unilateral extraterritorial measure based on a national law brings into sharp focus the issues concerning extraterritorial effects of such measures. State practice and doctrinal evolution in international law reflect an almost unanimous rejection of the extraterritorial application of national legislation for the purposes of creating obligations for third States. This was also echoed in panelist's remarks today. The unilateral and extraterritorial application of national laws to other States violates the fundamental principle of sovereign equality of States and the principles of respect for and dignity of national sovereignty and non-intervention in the internal affairs of other State. The unilateral and extraterritorial sanctions also impeded the full development of a country, especially adversely affecting citizens, particularly women and children.

India has consistently opposed any unilateral extraterritorial measures as it impinges upon the sovereignty of another country. These include any attempt to extend the application of a country's laws extraterritorially to other sovereign nations.

In this regard, India has always associated itself with G77 and NAM in urging the international community to adopt all necessary measures to protect sovereign rights of all states. India also opposes unilateral measures that impinge the sovereignty of other States, including the efforts to change the laws of another States.

Madam President, the delegation of India supports the draft resolution on this Agenda Item. We are particularly delighted to support Operative Paragraph 3 of the said resolution which requests the Secretariat to undertake further research in the implications of unilateral and extraterritorial sanctions on international trade and its effect on AALCO Member States.

I thank you Madam President. Before I end, I would like to ask Prof Rajesh Babu- is there any dispute on Article 20 of the GATT: the general exceptions, and Article 21: security exceptions. Was the Panel Report adopted or not, but was it given any consideration?

**President:** Thank you India.

**Dr. Rajesh Babu:** As regards dispute between Article XX and Article XXI, I am not aware if any Panel has been adopted within interpretation of Article XX. I have not missed out any provisions or cases which deal with this. One of the cases deals with section 301, relating to sanctions, but the dispute was more in the context of mandatory and discretionary legislations. Whether a provision is a discretionary one and can it be maintained, etc. so, given the time, I was trying to avoid some of the disputes of the purview of the discussion. Thank you.

**President:** Thank you. The next delegation on my list is South Africa. You have the floor, Sir.

**The Delegate of Republic of South Africa:** Thank you, Madam Chair. The Republic of South Africa only deals with sanctions in the context if the United Nations Security Council and is not qualified to address unilateral and secondary sanctions from an international law perspective.

South Africa's position in the United Nations Security Council on the issue of sanctions has been consistent:

- While recognizing that the United Nations Security Council could be called upon to impose coercive measures such as sanctions, South Africa has consistently called for these measures to be exercised with great caution; and only to support the resumption of political dialogue and negotiations to achieve a peaceful solution.
- The Security Council in voting in favour of sanctions measures needs to exercise the highest degree of scrutiny and oversight I their implementation to ensure that there are not unintended detrimental consequences on the citizens of the target state, third parties and neighboring countries.
- South Africa has cautioned against comprehensive economic sanctions, which could impose widespread suffering on ordinary people, while leaving those they target unaffected. In this regard, South Africa has been critical of efforts to use sanctions as a legitimizing platform for action against certain states.

Minister Nkoana-Mashabane answering a Parliamentary question on Iran (which has United States of America sanctions imposed against it, in addition to UNSC sanctions) in February 2012

said that “As a member of the United Nations, South Africa is obliged to implement United Nations Security Council sanctions that have been imposed on any UN Member States. The Government of South Africa does not subscribe to unilateral sanctions as an instrument of its international relations.”

**President:** Thank you South Africa. The next delegation is Democratic People’s Republic of Korea. You have the floor, Sir.

**The Delegate of Democratic People’s Republic of Korea:** Madam President, let me first thank the AALCO Secretariat and the eminent panelists for their detailed and thoughtful presentation explaining the nature and negative aspects of the US unilateral sanctions against targeted States.

Madam President, the question of extraterritorial application of national legislation is a crucial issue to be resolved for the AALCO Member States to protect and defend their sovereign rights, rights to development and rights to survival.

At present, the acts of imposing unilateral sanctions against third states and parties by invoking domestic legislation of an individual state are a flagrant violation of the Charter of the United Nations and general principles of international law and this is increasingly causing deep concern among the international community. These acts retard the socio-economic development of the target state and greatly impeded the establishment of a fair international economic order and trading regime.

It is a well known fact that my country together with Iran, Syria and other Member States 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”, and many others, all of which are unilaterally fabricated in wanton violation of general principles of international law. The scope and amount of losses that developing countries including my country have suffered during these years due to the unfair sanctions imposed by the United States 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.

However, the instead of making efforts to apologize and compensate the political and economic damages they have inflicted to those suffered due to its unfair sanctions continues to create a more negative results through imposition of its domestic laws to the third states and parties questioning their normal trading activities.

Recently, some Western countries influenced by and scared of the US high-handedness blocked sports facilities for ski ground to be used by ordinary people entering into my country. This is a clearly a flagrant violation of the UN Charter and international law and outlawed acts internationally denying the rights to development of other countries. This unfair and unlawful act is stemmed out the US hostile policy to the DPRK base on the rejection of our ideology and system chosen by our people themselves.

It is crystal clear that if this kind of acts, individual countries applying unilateral sanctions to other countries invoking domestic laws prompted for the political purpose, is left unchecked many more Asia, African countries will be the victims of such practice.

The DPRK government condemns of all forms imposed against third states parties by extraterritorial application of domestic legislation by individual states. Abusing international law and international organizations as an infringement upon the state sovereignty and strongly opposes and rejects it.

Madame President, Distinguished delegates, Appreciating that AALCO is paying a due attention to and included the issue of imposing unilateral sanctions against third states and parties extraterritorially applying the domestic laws in the agenda item, we hope that the AALCO continue to make efforts to establish international legal regime to criminalize and punish these acts of abusing international law. Thank you.

**President:** Thank you. The next delegation on the list is China. You have the floor, Madam.

**The Delegate of People's Republic of China:** Thank you Madam Chair, Distinguished Delegates, Madam Chairperson,

First of all, on behalf of the Chinese delegation, I would like to welcome the inclusion of such an important item, namely the extraterritorial application of national legislation: sanctions imposed against third parties, into our agenda, and holding a Special Half-Day Meeting for thorough discussion.

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, 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.

I also want to emphasize that such unilateral sanctions imposed against the third state, including its government, entities and citizens, which shows that the state exercise extra-territorial jurisdiction over the third state in accordance with its national legislation, and compel entities or citizens of the third state join the embargo so as to realize de facto multilateral sanctions, violates the principles of jurisdiction in international law, and infringes the sovereignty and economic interests of the third state.

Madam Chairperson, China holds the opinion that every country has the right to choose its own political, economic, social and cultural system, and any other country should not intervene by using sanctions or other compelling means. Currently, the international relations are undergoing complex and profound changes. Countries need to follow the principle of peace, development and cooperation, conduct equal-footed and mutually beneficial relations, seek common ground while shelving differences, properly resolve disputes and differences by peaceful means, and realize common development and progress.

Therefore, China always opposes any move to impose unilateral sanctions against other countries by abusing domestic legislation, and rejects further any move to impose such unilateral sanctions

against the third State. I believe that this kind of action has been, and will be opposed by the whole international community.

Madam Chairperson, China believes that AALCO may and should play a more unique role in terms of dealing with the negative impact of unilateral sanctions on international relations, and put forward a set of reasonable suggestions and recommendations in accordance with international law, which would be widely accepted by the Member States of AALCO. Thank you Madam Chairperson.

**President:** Thank you China. Iran has the floor now.

**The Delegate of Islamic Republic of Iran:** Thank you very much, Madam President. I would like to thank the Secretariat of AALCO for convening this half-day session on sanctions. And we would like also to thank the panelists for their very useful information given to us today.

Madam 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 which continues to unfold in various and new forms. This matter is 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 imposed only to punish the ordinary citizens 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.

Madam 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, 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 its 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.

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.

Madam 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.

Madam 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. This includes 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.

Madam 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.

During each session of AALCO, the delegation of the Islamic Republic of Iran underlined the fact that Iran is a victim of unilateral sanctions and extraterritorial sanctions, and of course we consider these sanctions to be unlawful.

Madam President, I would like to raise a question to Madam Vera Gowlland-Debbas. Madam, I want to ask if there is a relation between an action taken by target state and the application of the sanction during the period when a court is already examining this question. Thank you very much.

**President:** Thank you, Iran, for the question. Prof. Debbas, you have the floor.

**Professor Vera Gowlland-Debbas:** Thank you very much for your question. If I have understood your question correctly, does that question refer to what we were discussing relating to the suspension of sanctions while the court is deliberating? I would need to make a further reflection on that. But it depends, for example, in the context of provisional measures it would depend on whether the court would consider it. Remember that the provisional measures are prima facie acceptance of restriction, and the second condition is that it does not prejudice the heart of the dispute. So, it would depend on how the court would interpret this. Would the court consider, let's say, the court can call for the suspension of the sanction since a dispute settlement procedure is in place; but whether the court can also address itself to the target state and require the lifting of the action that has led to sanction. I think that in this case, the court may consider that it is really looking at the substance of the case. But I can't really give you a satisfactory answer. I think, certainly, the court can ask for the suspension of certain action while it is calling for provisional measures. It has, for example, required in the case of ongoing use of armed forces in dispute settlement, that the State respect the United Nations Charter principles and so on. Now, as far as the ILC Draft Articles are concerned, if the court were to refer to these, then certainly the court should emphasize the procedural aspects of sanctions, which requires the dispute settlement procedures be pursued in good faith. So, I have given you an unsatisfactory answer, but I certainly think there is a possibility of requesting the suspension of sanctions in the case of provisional measures. But again, we would have to study it on a case-to-case basis.

**President:** Is there any other delegation wishing to take the floor. Yes, Malaysia.

**The Delegate of Malaysia:** Thank you Madam Chair. First of all I would like to thank all the panelists and the Secretariat for elucidating on this very important topic. I don't intend to go into the details of the discussion. Only, I have a question for any of the panelists. We, as students of law, have understood that within the context of Chapter VII of the Charter, we always appreciated comprehensive measures to be within the international legal framework. However, the UN Security Council sanctions through resolutions are now extending or applicable beyond states to individuals. Is there any legal justification within the UN Charter.

**Prof. Vera Gowlland-Debbas:** Thank you. Infact, this is very significant because now UNSC sanctions are applied beyond states on individuals. There is a combination of domestic and international legal instruments to justify legally these sanctions, which is a very detailed subject for examination.

**The Delegate of Sudan:** Thank you Madam President. Sudan is badly affected by the unilateral sanctions from the United States of America since 1997. We believe that this sanctions is not even respect the general rules of international humanitarian law as it severely harm the innocent civilian people in different ways.

In Sudan, there is most high rate of plane crash because US has banned the spare parts for our planes since 1997 and this resulted in many loss of lives for Sudanese as well as foreigners. US also banned my country from importing medical equipment and this is clear violation for the right to life. Do you think these unilateral sanctions are a clear violation even for the humanitarian law and do you suggest any road map to break this evil circle?

Thank you Madam President.

**President:** Thank you very much. I would like to thank all the panelists for their very informative presentations. It is clear beyond doubt that unilateral sanctions violate basic principles of international law as mentioned under the UN Charter and any legislation are territorial in nature. I thank all the Member States also for their valuable interventions. Thank you.

**The meeting was thereafter adjourned.**

**XII. THIRD MEETING OF  
DELEGATIONS OF AALCO MEMBER  
STATES**

**XII. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS OF  
AALCO MEMBER STATES HELD ON THURSDAY,  
12 SEPTEMBER 2013 AT 09.00 AM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair**

**President:** The item on the agenda is report of work of the AALCO's Regional arbitration centres. I request Mr. Feng to introduce the report. I invite the representatives of the regional centres to come on the podium please.

**Mr. Feng Qinghu, Deputy Secretary-General, AALCO:** Thank You Madam President.

Her Excellency Madam President, His Excellency Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO; Excellencies, Ladies and Gentlemen. It is my pleasure to introduce the report of the AALCO's Regional Arbitration Centres as contained in the Secretariat Document AALCO/52/HEADQUARTERS (NEW DELHI) /2013/ORG 3 which consists of the Reports of the Directors of Tehran, Cairo and Lagos Regional Arbitration Centres. The AALCO Secretariat would be circulating the report of the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRC), which was received after the printing of this report.

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. In this regard, I take this opportunity to request the Government of Kenya to speed up the process of operationalizing the Nairobi Regional Arbitration Centre.

Madam President, The role of Regional Arbitration Centres is very significant as they mark a difference in the arbitration culture within the region. Their progress and efforts to fulfill their mandate effectively and their efficient functioning, has given them goodwill and reputation across borders. In fact, it is an honour that we have these Regional Arbitration Centres under the auspices of AALCO, as these Centres are one of the most successful ventures of the AALCO. I would like to take this opportunity to congratulate the Directors of the Regional Arbitration Centres and thank their respective Host Governments for hosting these Centres. This year, an agreement with the Government of Malaysia regarding the renewal of the Kuala Lumpur

Regional Centre for Arbitration (KLRCA) was signed. A ceremony was organized at the KLRCA Headquarters, where the agreement was signed between Malaysian Government and His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO. We wish to receive more encouragement and support throughout. AALCO holds the view that the Centres successful activities would have been impossible without the active support and cooperation of the Host Governments.

May I extend our warm welcome to the Directors of Lagos, Kuala Lumpur and Cairo Regional Arbitration Centres who are among us to present their respective reports to the Session.

Thank you Madam President.

**President:** Thank you Mr. Feng. We shall now move on to the reports of the Regional Arbitration Centres. The report of the Kuala Lumpur Regional Centre for Arbitration is first on the list. I invite Mr. Sundra Rajoo to present the report. You may take the floor sir.

**Mr. Sundra Rajoo:** Thank You Madam President, It is my pleasure to report to you about the activities of the KLRCA over the past one year. During the time covering the present report, we have witnessed a significant number of activities at the KLRCA, some of them touching our current work programme and many others relating to our future work. I will briefly touch on all of these in the course of my presentation.

I will begin with the current status of our organization and its staff. At present we employ twenty-two people, which I think is the requisite number of staff which we require for the smooth functioning of our offices. We have also made some significant changes to our staff policy guidelines, all of which has been reflected the printed report that has been distributed to you and I will not be going into the details of that over considering the economy of time.

Let me now talk about the work of the organization and the innovative products that we have started to offer at the centre, over the last one year. Firstly, we have brought out the second edition of the KLRCA Fast Track Rules, which aims at providing faster and better quality results at moderate costs. The second important change was the revisions made to the KLRCA Arbitration Rules, to bring them in line with the current commercial arbitration practices and collate the necessary internal administrative practices of the Centre. In addition to this, we have also launched the KLRCA i-Arbitration Rules, the world's first Islamic Arbitration Rules that has adopted the United Nations Commission on International Trade Law Arbitration Rules. We are also in the process of introducing a new set of Rules for sports & maritime arbitrations so that more Asians and Africans participate in the resolution of sports disputes. Another area into which we are expanding our reach is the construction industry. The Malaysian Government has enacted a fresh legislation, the Construction Industry Payment and Adjudication Act, which makes arbitration the mandatory process for dispute settlement for all disputes that arise in the course of construction activities. It is my pleasure to inform you all that we the KLRCA is the sole dispute settlement authority under that Act. In the very near future, we will be responsible for the adjudication of all disputes that arise with respect to the matters covered by that Act. When we were told that we are going to be the sole adjudication authority for CIPA, which is the Construction Industry Payment and Adjudication Act, which was gazetted last year, passed by the Parliament last year, we started road shows explaining to the public, explaining to the

stakeholders what this Act means. We have held conferences, we went around the country, in fact when the Act was going through the Parliament, and we went around the country telling them what the Act is going to do, so that everybody gets ready. We held a very big conference in October last year where there were 400 participants coming in from all over the world just to talk about how our Act is going to be in operation. And then we had various talks on the Act – one of it was “CIPA and beyond: what will happen”. We have a dedicated training programme for this too. Because we are the adjudication control authority, we had set up a five day training programme, where you become accredited as an adjudicator, there is a training house going on in Kuala Lumpur, where we have about 65 people attending. The training course is over 5 days of which 4 days is instructions, lectures, tutors and then the last day there is an examination: multiple choice and decision writing. We have trained so far about 300 plus adjudicators so that when the Act comes into being, when the minister decides, we can hit the ground running. We have also set up the infrastructure set up by the CIPA Bill, which is the Malaysian Society of Adjudicators, whose membership is open internationally. So this has been set up and now we have about a hundred and fifty members and it will grow and we think that this will be the one that will be carrying on the discourse of what adjudication in Malaysia will be, because KLRC will be the adjudication control authority, the regulatory authority, the control authority whereas I think the debate, the education and all these things should be with the society. So we have set up the society and I am the President of that society but I have told very clearly that I will be stepping down after the society has some footing, so that the private sector and public sector takes over and run the society as a counterpoise to regulatory bodies, so that get this feedback that comes through them.

On capacity building, we have done a lot of talks on ADR, in fact every week if you are on our mail list, we have an e-mail list of over 15000 e-mails. If you are on that list you will be updated of all the things that we are organizing and almost every week there will be some event, there will be talks and we have a lot of capacity building, we have a lot of training and development. We also talk to different groups such as corporate Malaysia, we also talk to people outside – this is one of things that go on every month. Every month we have at least one evening talk on different topics. In fact anyone who passes through Kuala Lumpur, we usually catch hold of him. I was just talking to Sir. Michel Wood just now, I said he was welcome to KLRC, to give a talk. We also do capacity building in terms of a structured course called the Diploma in International commercial Arbitration. We don't do the training, it is the Chartered Institute of Arbitrators, U.K. that does the training, but we bring it through the Austria branch and we have had about six of it now, since I took over as director. The Diploma is given by the Chartered Institute of Arbitrators, but we hold it in Kuala Lumpur after which there is an exam and we normally have about 24 delegates or students and they will sit through nine days of lecture and then they write their exams and for those who pass the diploma is awarded. It has been a successful course, modelled on the same diploma programme that is run by Oxford. We have managed to actually build this up through Australia. I am of the opinion that if we can get enough trainers then it can become an Asian one and not coming from Australia. But we need to get trainers and they must be prepared. What is interesting is that I can invite people from all over the world they would come, but when we try to invite Asian participants or speaker, it is so difficult to get them. I think that is one of the problems that we have – we do not have enough people prepared to give their time. The next batch of the diploma is going to start in November. We support the system of moots – one of the ways to actually teach arbitration is through moot competitions. Moot competitions are very important in that you have law students to actually deal with particular

situations. The one that is developing now is Law Asia and we are the main sponsors for the Law Asia for the last three years and the KLRCA Rules have been used as we are the headline sponsors for that. I take this as a very important thing because for a young lawyer, the first time he may come across arbitration in a realistic situation is when he prepares for the moots and then these lawyers are going to become practicing lawyers and people who become seniors, Eminent lawyers and later always remember that for arbitration there is actually an institution called the KLRCA.

I think it was reported that and I think Madam Chair and Professor Rahmat also mentioned that one of the important events this year is that AALCO and the Malaysian Government allowed me to stay on, in the sense that they renewed the KLRCA's mandate to continue to exist and great credit to His Excellency Professor Rahmat that he had put in an automatic extension clause of five years so that we will not be removed for the next five years. This means that the KLRCA would be in existence under the host country agreement for the next ten years. We work very closely with the Attorney General's Chambers and I think the AG himself went through the agreement and it is one of the good things that the period is the tenure. Owing to the commitment by the Malaysian Government for the next ten years, the KLRCA will be in existence for the next ten years. There was some ceremony for this, His Excellency Prof. Rahmat with our then Minister of law (I have a new minister of Law now, as the former Minister of Law has now become the Minister of Tourism), our former President of AALCO was there at the signing of the agreement. I have given the new Minister a briefing about the centre and she has been very responsive and keen on the centre's work and I think that we shall continue to have the wholesome support of the Malaysian Government.

Let me talk about our further plans. We need to continue to innovate, we need to continue to build our brand and keep doing things to keep our centre busy. One of our current programmes is that we will be revising all our Rules again. We are in the process of taking the feedback from the various parties and editing the Rules accordingly. One of things that we have worked on is the fast-track Rules and the i-Rules. We have internationalized the i-Rules. The fast track Rules have been made efficient so that we can deal with maritime arbitrations. We are going to launch the new Rules on the 24<sup>th</sup> of October, next month. The minister has agreed to launch the Rules. The other big project of internationalization is that we are translating our i-Rules and the main Rules into six languages including Spanish. Spanish market is one of the un-explored markets because they are so far away. When I went to Bogota I suddenly realised that they are actually by themselves and Hong Kong is trying to reach out and so KLRC will also try and reach out to them. In terms of language group, one of the fastest growing language groups in the world other than Mandarin is actually Spanish. The Latin American countries are having a lot of growing trade with Asia and so that is why we are translating into Spanish. Of course Arabic, Indonesian and other languages translation is particularly because of our i-rules. So we are internationalizing the Rules.

The Malaysian Government, as I had mentioned in my last report, has committed a vast sum of money to upgrade the facilities and provisions of the Centre and make KLRCA into an ADR hub. Towards this end we will be moving out from our existing premises into a new one. The building that has now been allotted is more than a hundred thousand square feet in size and a British Administration building that was built in 1930. So refurbishing works are currently under progress. Once completed we will have 19 hearing rooms, auditorium with state of the art



facilities and the latest upgraded facilities. It will be equivalent to any centre in the world. There will be facilities for full recording of the proceedings, translation and transcription services and more importantly we will also have storage facilities for the smooth conduct of arbitration including international telephonic and video conferencing as now it is becoming common for the proceedings to be conducted through video conferencing. The whole proceedings can be recorded and a copy of the same on a DVD can be given to the parties and we can also do a transcription if the parties need it, subject to payment. We can have the full proceedings by the end of the day or the next day itself.

We have also brought about some changes in the fee structure with some increases. It is my feeling that by this same time next year, we should be having about 250-300 cases on our docket. When I had come in it was 20 cases and now we have moved on to 100 plus cases and in two to three years we will have more than 250 cases and then that should stabilize. It depends on how early the Adjudication Act comes in. It is expected that we would get about 2000 cases under that Act and that should keep us very busy.

[Mr. Rajoo then displayed a picture of the proposed building and described its heritage value, the nature of the modifications done to it and also the features and important facilities at the building.]

By next June the building must be ready and if any of you are in Malaysia at that time, please do drop in and we would be happy to show you all around our new premises.

Thank you everyone for your attention.

**President:** Well, first of all, congratulations for winning the Global Arbitration Review Award and thank you for appraising us of all the activities that has been done to promote the work of the KL Arbitration Centre. I will now give the floor to the director, Lagos Arbitration Centre for her report.

**Mrs. Eunice Oddiri:** Madam President, His Excellency Secretary-General Professor Rahmat Mohammad, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

Our business here today, for the Regional centre for Arbitration in Lagos, is to intimate you about the Activities of the Regional Centre between October 2012.

As to our case load between these periods, we have ten new cases that got added to the existing dispute that got registered at the Centre. All of those fresh cases are still going on and relate to the banking industry, to construction, maritime arbitration, energy and power, technology and supply and joint venture agreements. One major development in one of these cases was the result of party to seek the intervention of the Law courts in Nigeria for an interpretation of the domestic arbitration clause contained the arbitration contract, from wherein the dispute arose. One of the questions that was determined by the courts was whether, given the arbitration clause as contained in the agreement between the parties and the provisions of the Regional Centre for International Commercial Arbitration Act, whether centre was the administering body or a mere forum for the purpose of arbitration. The arbitration clause, as they always do, provided that all the dispute arising out of or the interpretation of the contract which could not be settled amicably between the parties shall be referred to the Regional Centre for International Commercial Arbitration Centre, Lagos. In Court, the centre through its Counsel contended that the procedure

adopted in appointment of arbitration was in accordance with the stipulation of the agreement between the parties as contained in clause 9 of the said contract. The Lagos centre further contented in opposition to one of the parties submission that the interpretation of the said clause 9 of the contract, which constituted the arbitration agreement between the parties was indeed in issue because one of the parties contended that interpretation clause was an issue. We contented that the agreement constituted was an issue and that the courts had the jurisdiction to determine whether the arbitrators were validly appointed in accordance with the arbitration agreement and determine the role of the centre in administering the arbitration. The centre also asked the courts to determine whether an arbitration tribunal that has competence to Rule on its jurisdiction is a one recognized by the parties as validly appointed in accordance with the arbitration agreement. This may all sound very technical but the problem here was that judges went ahead and appointed arbitrators in disregard to the administration capacity of the centre and when the centre contested this, the parties went to court. One of the parties did not oppose the appointment of one arbitrator. The arbitral tribunal decided that they had jurisdiction to overrule that party. The party in his grievance now went to court to challenge the jurisdiction of the arbitration tribunal and this is what we are reporting about now. In its judgement, the court looked at the word 'refer' as contained in the arbitration clause of the said agreement and it held that by virtue of the provisions of the arbitration agreement between the parties and the Regional Centre For Arbitration at Lagos Act, and pursuant to the relevant section of Government Law of Arbitration, it held that the centre was the only body vested with powers to appoint the arbitrators and constitute the arbitral tribunal.

What we have done between Abuja, 2012 and Now in relation to arbitral events. The Centre was represented at the arbitration session of the International Bar Association Conference, which was held in Dublin in October 2012. The major focus at the arbitration session was on investment arbitration, where the collaboration between the centre, the Lagos centre and the International Centre for the Settlement of Investment Disputes was reinforced. The second event that has happened for us is that the director and the general counsel of the Lagos Centre attended the International Congress Of Maritime Arbitration (ICMA), which was held at the Pan Pacific Hotel, Vancouver from the 13<sup>th</sup> to 18<sup>th</sup> May, 2012. ICMA have provided a forum for arbitrators, national Maritime Arbitration Associations, Marine Insurers, Ship Owners, Charterers, Caroge Interest and the Legal Community from around the world to come together to exchange views and developments. The conference each year brings together some of the brightest minds in the shipping and marine industries to discuss recent developments in maritime arbitration. Speakers addressed a variety of issues from piracy to matters of security and enforcement. From the Lagos centre's perspective, at the forums, the issue of the enforcement of foreign arbitral awards in Nigeria was discussed in a paper presented wherein it was noted that Nigerian courts are arbitration friendly in the enforcement of foreign arbitral awards. Foreign parties desirous of enforcing foreign arbitral awards in Nigeria were advised to crosscheck the authenticity of any information assessed from the internet relating to the enforcement of foreign arbitral awards in Nigeria with the Lagos centre.

Another activity that occurred during this session was that the centre was represented at the 7<sup>th</sup> annual Business Law Conference of the Section on Business Law of the Nigerian Bar Association held on 17<sup>th</sup> – 19<sup>th</sup> June, 2013. The subject matter of that conference was the "legal profession in emerging economies". The Arbitration and ADR session focused on Mediation as a participatory alternative for dispute resolution. The panel of discussants dealt extensively on the

components and concepts of the process of mediation. A germane point driven home to participants was that mediation challenges the lawyers who sees justice solely through the eye of litigation and that mediation and justice are intimately linked and not opposites. Lawyers in the 21<sup>st</sup> Century Nigeria were urged to deploy the forum of alternative dispute resolution in order to enhance their clients experience of a more robust justice system.

Also of key interest at the forum was the National Alternative Dispute Resolution Regulatory Commission Bill, 2011 which is pending before the senate of the federal republic of Nigeria. The Bill seeks to establish at very high costs, the National Alternative Dispute Resolution Regulatory Commission to regulate all the processes of Alternative Dispute Resolution (ADR). The Bill also seeks to replicate the National Commission in each state of the Federation. The functions of the proposed commission have been stated to include:

1. Regulation, through the process of accreditation, all ADR bodies and institutions engaged in practice, training, education o skills acquisition in ADR mechanisms;
2. Advising the Federal and State Government on the use of ADR mechanism;
3. Developing and ADR policy for Nigeria;
4. Maintain a register of ADR bodies and institutions in Nigeria;
5. Setting and maintaining standards in the training curriculum of the ADR bodies in Nigeria and
6. Developing and constantly reviewing rules and regulations for the practice of ADR in Nigeria.

Needless to say that this has been an unwelcome development in the practice of arbitration within that region, because we do not think and we do not know there is elsewhere any practice of building commissions to regulate arbitrators, arbitration training. The Bill has hence been generally opposed by the ADR community in Nigeria.

About Collaborations, The Lagos centre in collaboration with the SETCTI provide skill acquisition and transfer in the area of arbitration and other forms of dispute resolution during several forums held for such trainings. One of the high points of the collaboration is the introduction of a new concept in ADR which is known as mediative-conciliation. Mediative-Conciliation as espoused by the Lagos Centre as it is now is a hybrid ADR process, which combines the facilitative approach of mediation with the evaluative approach of conciliation to arrive at either a consensual agreement by a neutral or an imposed decision of a neutral known as the Mediative-Conciliator. The final outcome of the process of mediative-conciliation which is a consensual agreement by the parties or a decision by the neutral is enforceable as a contract. The Centre has already added this new concept of Mediative-conciliation as one its ADR products on offer in its ADR menu.

The International Centre for the Settlement of Investment Disputes of the World Bank has collaboration with the Lagos Centre and we have assumed higher levels of interaction with then. Recently, the ICSID has been sending enquiries and also utilizing the centre in Lagos for investment arbitrations. There is now a dedicated ICSID desk at the centre in Lagos, manned by qualifies staff, conversant with investment arbitrations.

We also organized a workshop with one of our very big and key investors, the Dangote group, alongside the European Union and Delegation of German Industry and Commerce in Nigeria to

sensitize foreign investors on the benefits of using the Centre as an ADR Arbitration Centre in the region, held on 8 November, 2012.

We had some visitors too. Delegates from the Kigali International Arbitration centre in Rwanda paid a courtesy visit on the centre in Lagos on the 6<sup>th</sup> March, 2013. They were accompanied by officials of the Nigeria branch of the Chartered Institute of Arbitrators UK. They were received by the Director of the Centre. In a brief meeting at the Centre, both organizations explored ways and means of collaborating in matters of common interest to both Centres. This includes joint seminars, joint conferences, and exchange of resource persons. The possibility of signing a cooperation agreement between the Centres for mutual beneficial purposes was further discussed.

The promotional activities that we were engaged between 2012 and now the Centre co-sponsored the International Bar Association Regional Forum for Africa Session held at Munyonyo Commonwealth Resort, Kampala, Uganda on 9<sup>th</sup> & 10<sup>th</sup> August, 2012. Amongst the topics discussed were:” Building the foundation of a successful future; the Rule of Law and Economic Confidence in Africa”.

The future activities planned for the centre before the year ends and next session of AALCO are: Mock Arbitration for practitioners which has been slated for the 25<sup>th</sup> September 2013, We have the quarterly training session on arbitration for law officers and that has been scheduled for 22 to 23 October; we have a training programme on ICSD and ICSID arbitration, scheduled for 5th November 2013; we have IBA African Regional forum for Arbitration conference, to be held between 6<sup>th</sup> and 7<sup>th</sup> November, 2013 and we also have the International Arbitration Moot for Students of African Universities to be held in January 2014.

Thank You Madam.

**President:** Thank you Ma’am for providing us an update on the Lagos Centre. We can move to the next agenda item. We have two more agenda items, which will be short reports, so I propose that we finish those two agenda items and then we break.

The next item on the agenda is the report on AALCO’s Centre for Research and Training. I give the floor to Mr. Feng.

**Mr. Feng Qinghu, Deputy Secretary-General, AALCO:** Madam 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/52/NEW DELHI (HEADQUARTERS)/2013/SD/ORG.4*. In my statement I would give a brief overview of the background to the creation of the Centre for Research and Training of AALCO (the Centre) along with a brief reference to the activities that it has conducted in the period under review.

Madam President,

The Centre evolved from 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.

Madam 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, the Centre has over the years undertaken various activities, including organizing Training Programmes, Seminars and Expert Meetings.

For example, a “**Seminar on Climate Change: Post-Kyoto International Climate Policy**” was organized by the Secretariat of AALCO under the aegis of the Centre on 16 January 2013 at the premises of the Secretariat. Officials from 14 Member States of AALCO, along with a number of international law scholars from various Universities and students took part in the Seminar. This Seminar discussed almost all the aspects relating to the problem of climate change from the viewpoints of developing countries.

Similarly there was a **Legal Experts Meeting convened in order to Commemorate the 30<sup>th</sup> Anniversary of the United Nations Convention on Law of the Sea (UNCLOS)** on 5<sup>th</sup> March 2013 at the premises of the Secretariat of AALCO. The objective of the Legal Experts Meeting was to decipher the achievements of the UNCLOS and to ponder over the future issues and challenges facing the Convention. This meeting was attended by around 100 delegates that included representatives from 21 AALCO Member States, 5 non-members, academics of several prominent universities and students.

Lastly, a Special Lecture on ‘**Working of AALCO**’ was delivered by H.E. Prof Dr. Rahmat Mohamad, the Secretary- General of AALCO at the AALCO Headquarters on 28<sup>th</sup> August 2013. The programme was specially arranged for Officials from the Ministry of Foreign Affairs of Malaysia. It was attended by nearly 20 officials from the Institute of Diplomacy and Foreign Affairs, Malaysia. The lecture focused on a number of aspects related to AALCO including, its historical background, its contribution to the corpus of international law, its lineages with other intergovernmental organizations and its future trajectory.

Madame President, One of the Centre’s activities has been 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 August 2013, fifteen students from India, Malaysia and Iran have successfully completed their internship programme at the Secretariat. As the internship programme is available throughout the year in the AALCO Secretariat, the Member States are kindly requested to make use of this opportunity and thereby encourage the law students to undertake such internship programme with AALCO in New Delhi.

Madam President, As part of the Revitalization Plan of AALCO, the web-site of 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 Journal of International Law*** has received a

favourable response from Member States. We have also constituted a body for the journal, i.e. **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. It may be recalled that the third issue of the same was released on the second day of this Session.

Madame President, In the period 2013-14, the AALCO Secretariat has plans to identify new ways and means to strengthen its existing programs and to introduce new programmes into our research agenda. Some of the proposed new programs include: “A Training Programme on WTO” and Seminars organized jointly by AALCO Secretariat and Academic Institutions envisaged to be held at New Delhi in the later part of this year.

Madam 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 Centre, and to provide a sustainable financial base to the Centre to undertake its mandated activities, Member States of AALCO could consider the possibility of providing 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.

**President:** Thank You Mr. Feng. Next is the report of the Eminent Persons Group. I invite Dr. Rohan Perera, the Chairman of the EPG to present the report.

**Dr. Rohan Perera:** Thank You Madam President. I will now read out the final report of the meeting of the Eminent Persons Group.

The Third Meeting of the EPG was convened at the AALCO Headquarters on Sunday, 8<sup>th</sup> September, 2013 at 4:00 P.M. The meeting was chaired by **Dr. Rohan Perera, Sri Lanka** and attended by **H.E. Prof. Dr. Rahmat Mohamad, Secretary General, AALCO ; H.E. Dr. Abdullah Mohammed Said- Saidi, Minister of Legal Affairs of the Sultanate of Oman ; Dr. Neeru Chadha, Joint Secretary & Legal Advisor, Ministry of External Affairs, Government of India ; Mr. Narinder Singh, Member ILC, India; The three Deputy Secretaries General of AALCO, Dr. Hassan Soleimani, Dr. Fukahori & Mr. Feng Quinghu; Mr. Salim Hamed Al-Battashi, Minister Plenipotentiary, Embassy of the Sultanate of Oman, New Delhi. Mrs. Anuradha Bakshi, Principle Legal Officer, AALCO & Mr. Mahesh Menon, Legal Officer, AALCO, assisted the EPG.**

The Chairman stated that the ‘points for discussion’ which had been circulated, highlighted the important issues that had to be discussed with a view to advancing the work of the organization. (Which were also discussed and identified at the first and second meetings of the EPG) . The issues were divided into Organizational and Substantive matters to facilitate focused and structured discussions.

The Chairman drew the attention of the EPG to the need to chart out a mechanism to implement the recommendations of the EPG. The meeting decided that the Secretary General should make a separate communication to the Member States, bringing to their attention, the recommendations

made by the EPG and seek their response. In making such communication with Member States the Secretary General should identify those recommendations which could be implemented in the short, medium and long term.

## **I. Organizational Matters**

### **A. Financial Issues**

#### **(i) Secretariat proposal - Increase in annual contribution of Member States from 2014.**

The EPG took note of the Secretary General's Statement about the mandate received at the 51<sup>st</sup> Annual Session held at Abuja to study the human resources and financial situation of the organization and the sub-committee that was constituted for that purpose. The EPG further took note of the draft budget prepared for 2014 & the proposed increase in contribution of Member States, to be presented to the Annual Session. The EPG whilst recognizing the identified needs for increased contributions, taking into account in particular, the strengthening of the professional / legal staff of the secretariat and also the challenges posed by the high inflation rate in New Delhi, took the view that this issue should be the subject of careful consideration by Member States, taking into account all aspects of the matter and reach an appropriate decision

#### **(ii) Status of annual contribution of Member States.**

The EPG took note of the overall improvement in the status of annual contributions of Member States and the fact that several Member States had paid their arrears pursuant to the arduous efforts put in by the Secretary General & the Secretariat. The Secretary General reported that the financial situation of the organization was better than before, with only about thirteen Member States in arrears. He further reported that three of the Member States had requested for either a reduction or a waiver of the outstanding arrears. The EPG was of the view that such a practice would not be an appropriate one and that it would be against the interests of those Member States who made regular payment, and that it would set a bad precedent and may also result in further defaults. It was stated that it is more appropriate to grant such Members in arrears more time and the facility to pay the arrears in instalments rather than agree to any complete waiver or reductions. The EPG further recommended that a formula, providing for example, freezing of arrears and for deferred payment could be worked out. Further, feasibility of those states in arrears assisting the organization in other ways such as funding meetings/workshops needs to be explored.

### **B. Staffing Of the Secretariat.**

(i) The EPG reiterated the need for the strengthening of the professional/legal category of staff of the Secretariat in order to enable the organization to discharge its substantive responsibilities as envisaged in the Statutes and recalled its recommendation made at the 51<sup>st</sup> Abuja Session, that Member States depute officials/experts to the Secretariat who would remain on the payroll of the deputing Member States.

The EPG recognized that in order to attract the best available talent, the salary being offered must be on par with what is being offered in universities in New Delhi and that of the Government of India. The EPG also recommended that the possibility of recruiting interns from the universities be also pursued to augment the present professional staff. While noting that this

process had been initiated, the EPG underlined the importance of continuing and strengthening this practice, even though internship may be of a short-term duration.

The EPG also recommended that vacancies that have arisen out of the resignation of legal officers could be filled without delay by the Secretary General, without seeking a fresh mandate from Member States, provided that such recruitments are reported to the Member States.

The SG also informed the EPG that all the present Deputy Secretaries General were from the Asian Region and that African and Arab States need to be encouraged to depute personnel from these countries to ensure balanced regional representation. The EPG agreed that this should receive the early attention of the Member States, from the relevant regions.

(ii) The EPG also reiterated its previous recommendation on the need to depute AALCO staff members to attend the sessions of the International Law Commission with a view to strengthening the AALCO – ILC relationship. This could be on a need basis in respect of select topics of particular interest to Member States of the Asian-African region. It was also pointed out that sponsorship for this purpose could be sought from the Member States and other sources. The EPG also pointed out that several topics currently being considered by the ILC, such as immunity of State officials from foreign criminal jurisdiction, protection of victims of disasters and the formation and evidence of Customary International law, were of significant importance to the Member States who needed to be sensitized about them. The Secretariat staff who are assigned to follow the ILC session could play a vital role in this regard and also assist ILC members from the Asian-African region in the proceedings of the ILC.

(iii) On the issue of “reviewing progress on improving communication with the Member States”, the Secretary General informed the EPG that the website of the Organization has been updated and improved and that through this website, the organization had sought responses of the Member States on some of the substantive matters, as well as the addresses for communication to ensure dialogue with the focal points. It was reported however that, the response of the Member States to both these matters was not forthcoming. This needs to be reiterated and followed up.

The EPG recommended in this regard that the practice adopted by the Office of the UN Legal Counsel, of preparing a list of Legal Advisors of Member States and regularly updating the list, through circulation amongst Member States, could usefully be adopted by AALCO.

### **C. Enlarging the Membership of the Organization.**

The Secretary General reported that during informal discussions, several States, such as Congo, Vietnam, Mozambique, Papua New Guinea and South Sudan had expressed their desire to be members of the Organization, however, no applications for Membership has been received so far. It was further reported that the Secretary General had suggested that these and other States become observers, initially and thereafter come forward seeking membership if they found it to be useful and in their interest.

The EPG reiterated its previous recommendation that given the substantial “diplomatic presence” in New Delhi, the Secretary General undertakes an initiative in the host State to attract wider membership. While such a process would be cost-effective, the EPG recognized that if an approach to a particular State reaches a point of maturity, the Secretary General could, at that point, undertake a visit to the State concerned with a view to finalizing the matter.



EPG also recognized that since India was assuming the Presidency of AALCO this year, the good offices of the Government of India could be utilized in this initiative to increase the membership of the organization. Towards this end, the possibility of addressing formal communication by the President of AALCO and the Secretary General respectively, to prospective members should be considered.

## **II. Substantive Matters**

(i) The Members of the EPG pointed out the need to introduce new topics of contemporary relevance and of practical benefit to Member States on the work program of AALCO. It was pointed out that topics such as current legal issues arising out of bilateral investment treaties and problems posed to Member States by inconsistent arbitral awards in investment disputes, question of piracy and current issues relating to the Law of the Sea, such as issues relating to Bio-Diversity beyond national jurisdiction were topics of contemporary relevance to the Asian and African countries. On the latter, the EPG took note of the fact that the formulation of implementing arrangements concerning biological resources beyond national jurisdiction were currently underway and that there was an imperative need to sensitize Member States of AALCO to these developments.

The EPG recommends in this regard: (i) Convening of inter-sessional meetings on specific topics, giving priority to (a) current developments in the Law relating to Foreign Investment (b) Piracy (c) Law of the Sea, paying particular attention to the ongoing initiatives on harnessing biological resources beyond areas of national jurisdiction; and (ii) Reviving the previous practice of convening special working groups on specific topics, on the sidelines of the annual session, to meet simultaneously with the plenary. These groups would report back to the plenary session on their deliberations.

In order to accommodate such new topics of current relevance, the Secretary General pointed to the need to remove some of the topics currently on the agenda of the Organization as these had ceased to be of relevance and the law pertaining to such issues had been settled. The EPG took the view that the yardstick to be applied was whether a topic had exhausted exploration of all the legal aspects and dimensions and those which did meet this yard stick should be removed. The EPG is of the view that the rationalization of the agenda was vital if the organization was to play a meaningful role and deal with issues of current relevance to Member States, which would serve to enhance the profile of the organization and in turn attract wider membership.

(ii) On the issue of “Scheduling the annual session of AALCO, the EPG reiterated its earlier recommendation concerning the advantages in convening the annual session in the early part of the year. This would *inter alia* enable the views of the Asian African States being conveyed in a timely manner to the International Law Commission, before the Commission meets in May. The Secretary General while acknowledging the advantages in scheduling the annual sessions in the early part of the year, pointed out that this was, in the final analysis, the prerogative of the host Member State and would be determined by the convenience of the host State. In this connection the EPG was of the view that all efforts should be made at the current Session to identify the host for the next annual session so that all aspects of the question of the scheduling of the session could be given due and timely consideration.

**The Meeting Was Thereafter Adjourned.**

The Meeting was reconvened on Tuesday, the 10<sup>th</sup> of September 2013, at 06: 00 PM. The meeting was chaired by Dr. Rohan Perera, Sri Lanka and attended by H.E. Prof. Dr. Rahmat Mohamad, Secretary General, AALCO ; Dr. Neeru Chadha, Joint Secretary & Legal Advisor, Ministry of External Affairs, Government of India ; Mr. Narinder Singh, Member ILC, India; Prof. Jamshed Momtaz, Former ILC Member, ILC, Leader of the Delegation of the Islamic Republic of Iran; The Deputy Secretary General of AALCO, Dr. Hassan Soleimani; Mr. Salim Hamed Al-Battashi, Minister Plenipotentiary, Embassy of the Sultanate of Oman, New Delhi. Mrs. Anuradha Bakshi, Principle Legal Officer, AALCO & Mr. Mahesh Menon, Legal Officer, AALCO, assisted the EPG.

At this resumed meeting of the EPG, further considerations were given to some of the issues, deliberated upon at the Meeting held on Sunday 8<sup>th</sup> September. The following points emerged at the end of the meeting:

### **Strengthening of AALCO – ILC relationship**

AALCO whilst pursuing new topic for inclusion on its agenda should also propose new topics to the ILC for inclusion on its long term work program. EPG noted that this matter had been brought to the attention of the Secretary General during his annual visit to Geneva to address the ILC. AALCO should focus not only on topics on the current agenda of the ILC but also work on the topics that have been completed by the ILC and is pending with the UN General Assembly for further Action.

### **Scheduling of Annual Sessions of AALCO**

With respect to the timing of the Annual Session, it was suggested that, a further possibility to hold the Annual Session after the Sessions of the ILC and before the session of the Sixth Committee, (as was the case this year), so that the views of Member States could be presented to the Sixth Committee. This would enable the ILC to take on board the views of Asian African States. These alternatives were however, as already noted, be subject to the convenience of the host States.

In this regard the timing of the AALCO Legal Advisors meeting, which is usually held in mid-October in New York needs to be carefully considered. If this meeting is scheduled for early October, before the Substantive work of the Sixth Committee Starts, this would facilitate the Asian African States in formulating their positions on the Sixth Committee agenda items.

### **Working Methods**

While reiterating the importance of holding parallel meetings or working groups on specific topics of interest to the Asian and African States, on side-lines of the annual session, on carefully selected topics, in order to derive maximum benefit, from this restructuring, it was further proposed that Member States be requested to include experts in the relevant fields as part of their delegation. It was further proposed that this practice be implemented from the next session onwards.

## **Funding**

On the Issue of alternate funding, it was proposed by the EPG that the possibility of other International Organizations, interested in the work of AALCO funding specific projects be pursued.

## **Implementation of Recommendations**

It was the view of the EPG that in order to ensure that these recommendations receive the due attention of Member States, a separate communication from the Secretary General, as discussed should be addressed to Member States seeking their early response.

Thank You Madam President.

**President:** Thank You Dr. Rohan Perera. We will now take a break and thereafter meet again in the afternoon for our concluding session.

## **VERBATIM RECORD OF THIRD GENERAL MEETING OF THE DELEGATIONS OF AALCO MEMBER STATES (COND.)**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair.**

**President:** I would request the Member States to take their seats. The First item on the agenda for this afternoon is “Adoption of message of thanks to the President of India”. I will give the floor to the Secretary-General to read the message.

**Dr. Rahmat Mohammed:** I will now read out the message to the President of India.

**“Excellency,**

On behalf of all the Delegations of the Member States and Observers attending the Fifty-Second (2013) 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 Republic of India:

“We, the participants in the Fifty-Second 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 Republic of India, for graciously helping and assisting to host the Fifty-Second Session of AALCO in this beautiful city of New Delhi. Excellency, I thank the Government of India on behalf of AALCO, and on my own behalf, for supporting in hosting this Session.

Your Excellency, we are aware that India attaches great importance to the Organization and has magnanimously contributed the headquarter buildings. India has always actively participated in the activities and work programme of the Organization, be it substantive,

administrative or financial matters, ever since the inception of AALCO as the Asian Legal Consultative Committee (ALCC) in 1956. India has always taken a 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. Amongst the many factors which paved the way for the success of the Session, one of the prime ones was the excellent cooperation from the Government of India which contributed significantly towards the excellent achievements of our deliberations.

In this beautiful city of New Delhi, famous for its picturesque juxtaposition of history and modernity, we the delegates of the Fifty-Second Annual Session of AALCO would like to place on record our sincere gratitude for the full cooperation that the Government of India has extended to AALCO and its Member States for hosting the Annual Session with warmth, graciousness and ability.

Please accept, Your Excellency, the assurances of our highest respect and consideration and may the Almighty bless the endeavours of your great country.”

**Thank You.”**

**President:** So I take it that this message has been adopted by the Member States. Thank you. We will go on to the next Agenda item, which is venue for the AALCO’s 53<sup>rd</sup> Annual Session. I open the floor for any Member State who wants to offer the hospitality for the 53<sup>rd</sup> Session. Any Asian or African State – the floor is open for offers. I am waiting to see a hand go up. We already have an offer from Palestine, but is there any other country that wants to offer the 53<sup>rd</sup> Session?

Well it seems that my efforts have not succeeded. First Failure of this meeting! Anyways, I will request the Secretary-General to keep conferring with States and see what can be done. Under the Rules the Secretariat cannot hold two consecutive Annual Sessions – the offer has to come from a Member State. So I request all the Member States to go to the Head quarters and confer with the Capital. The Secretary-General will follow up on this. Thank You.

Now we move on to the next substantive item, which is the adoption of resolutions and the summary report of the session. First we shall look at the resolutions.

Resolution 1 is Report of Secretary-General on Organizational, Administrative and Financial Matters. If any Member States have any comments or any suggestions please come forward.

Malaysia you have the floor please.

**The Delegate of Malaysia:** Thank you Madam President.

We had made a suggestion to the Secretariat to insert a clause in the resolution to express the Member States condolences to the family of late Ambassador Yamada. I wonder whether this can be inserted?

**President:** I wish to recall here that when we were discussing the ILC we had decided to put this in the resolution on ILC. I am at your disposal on whether you want to include this on both the resolutions or not.

**The Delegate of Malaysia:** Thank you Madam President. We have read the ILC resolution and we found that this was mentioned in the perambular remarks. But we wonder whether we can include it in the operative clause.

**President:** Do you have any language?

**The Delegate of Malaysia:** yes we do.

**President:** please state it.

**The Delegate of Malaysia:** Thank you Madam President. The wording is.

To insert a new clause, wherever it is fine : “Requests the Secretary-General to inscribe an official record to express Member State’s deepest condolences and to pay heartfelt tribute to the family of the late Ambassador Yamada and transmit the said record to the Government of Japan and the family of late Ambassador Yamada.

Thank You.

**President:** Thank you. I think you need to transmit the typed record to the Secretariat. I also request Member States to comment on Malaysia’s proposal. Malaysia, please read it slowly.

**The Delegate of Malaysia:**

“Requests the Secretary-General to inscribe an official record to express Member State’s deepest condolences and to pay heartfelt tribute to the family of the late Ambassador Yamada and transmit the said record to the Government of Japan and the family of late Ambassador Yamada.”

**President:** Does any member State have any views on the proposal made by Malaysia?

I don’t see anyone objecting so we can include this at an appropriate place in Resolution One.

Resolution 2 is on AALCO’s Budget for the year 2014. Any Comments? I don’t see any requests on the floor so we will consider it as adopted.

Resolution 3 is on Report on the AALCO’s Regional Arbitration Centres. No requests so we will consider it as adopted.

Resolution 4 is on Report on the Centre for Research and Training of the AALCO. No requests, so we will adopt this resolution.

No we will go on to the substantive matters. The First resolution is on the Law of the Sea, on which we had a very useful round of discussion.

Turkey has made certain suggestions and they have distributed amendments to this resolution. I would request the delegation of Turkey to take the floor and please explain the amendments.

**The Delegate of Turkey:** Thank you Madam Chairperson.

We have received instructions from our capital regarding this draft resolution. The key point of which is regarding the operative paragraph no .2. As you would be aware, Turkey has not signed the UNCLOS. My capital feels that we cannot join the consensus and have this resolution adopted with this operative paragraph no.2. Legally AALCO is not an organization where we single out or alienate Member Countries. This is a forum for cooperation. So we would feel it would be better if that paragraph is dropped.

Regarding other proposed amendments, in the secretariat draft, operative paragraph no. 3 (which is in our version operative paragraph no.2.) we have added the words, “ which are parties to UNCLOS” in the first line.

The other proposed amendments relate to the preamble : mainly third preambular paragraph : instead of the word ‘universal’, we suggest using the word “comprehensive” which better suggests the reality. Following the reference to UNCLOS, we suggest the words “and Customary International Law”.

Thank you Madam Chair.

**President:** Thank you Turkey. I will open the floor for comments from Member States on the proposal by Turkey.

Mauritius you have the floor please.

**The Delegate of Mauritius:** Thank you Madam President.

Mauritius believes that paragraph two is very important, especially regarding the issue of Piracy, on which I will come back to later. It is in favour of changing some wordings, but maintaining the paragraph, if possible. Thank you.

**President:** Thank you. India you have the floor please.

**The Delegate of Republic of India:** Thank you Madam President.

I really could not understand the reasons for Turkey having the objections to this paragraph. It says “requests AALCO Member States, not yet parties to the UNCLOS and its implementing instruments to consider the possibility of ratifying thereto”

What it says is that it is urging the States who are not parties to consider – it does not ask them to be parties, but only urging them to consider the possibility, within their policy and legal structure, the possibility of becoming a party to the UNCLOS.

I would like to make a comparison. India and several other countries – they are not parties to the ICC. Many countries have serious policy problems owing to the structure and the manner in

which the United Nations Security Council was given the authority to refer the matters, withhold, or ask them to even stop the prosecutions. That is a really politically sensitive issue. Of the five Permanent Members, three are not parties to the Rome Convention. If you read that proposal – the non-deliberated resolution on International Criminal Court, the operative paragraph says, and you may compare this to the present resolution: “encourage the Member States that are not yet parties to consider ratifying.” Here it is to *encourage* members. Whereas in UNCLOS, it is requesting them to consider the *possibility* becoming parties to UNCLOS. So we have so much of leeway here. When we don’t have a problem and China, who is also not a party to the International Criminal Court Rome Statute do not have a problem with this! Even USA, which has consistently opposed it – it was placed before the Congress, before Hilary Clinton was stepping down, five former legal advisors had made a joint request to the congress to consider ratification of the UNCLOS. Even as the United States Administration assessing that it has become a part of customary international law, except they have problems with the Sea Bed Authority. In view of all this, I request our distinguished delegate from Turkey to reconsider his proposal.

Thank you.

**President:** Thank you India. Malaysia has the floor.

**The Delegate of Malaysia:** I am sorry I did not hear the whole observation made by my colleague from Turkey, but the main contentions I understand. I can call for my colleague from Turkey to understand and appreciate that this proposal can be considered.

With regard to the Second PP, I request for the delegation of Turkey to agree to retain it because it is merely a statement of facts and so we don’t change at all the terms of the second PP, which means that we will recognize the universal character of UNCLOS.

I do appreciate Turkey’s main contention with respect to the OP2. I would like to suggest that we delete the whole phrase starting from the word “in order to boost the universality of UNCLOS”. Which means that OP2 will only read “requests AALCO Member States, not yet parties to the UNCLOS and its implementing instruments to consider the possibility of ratifying/accede thereto as it is possible.”

Thank you.

**President:** Thank you Malaysia for that proposal. Any other Member State wishing to take the floor? Pakistan you have the floor please.

**The Delegate of Pakistan:** Thank You Madam Chair. I just want to make an observation that since at this forum all decisions are required to be taken by consensus, it would be my request to the chair that Turkey proposed language may be given due consideration. Thank you.

**President:** Thank you Pakistan. Any other delegation?

Mauritius you have the floor please.

**The Delegate of Mauritius:** Thank you Madam President.

Notwithstanding our issue on paragraph two here, we wish to have another clause added if possible on the issue of piracy. I refer to the resolution on this issue at Abuja. I propose with your permission, for deliberation and consideration: “wish to reiterate with respect to the full-fledged implementation AALCO/RES/51/SP2 of 22 June 2012, that the international community will reinforce concerted action to combat the scourge of piracy at the regional and international level. Thank you.

**President:** Thank You. I did not get where do you want to introduce this paragraph - in this resolution?

**The Delegate of Mauritius:** Yes, if possible, of course.

**President:** Can you please give your proposal in writing?

**The Delegate of Mauritius:** Of course.

**President:** I would request Member States also to comment on the proposal made by Mauritius. Mauritius, I once again request you to read you proposal slowly.

**The Delegate of Mauritius:**

“We wish to reiterate with respect to the full-fledged implementation AALCO/RES/51/SP2 of 22 June 2012, that the international community will reinforce concerted action to combat the scourge of piracy at the regional and international level.

Thank you Madam President.

**President:** Now we have two proposals, one by Mauritius and one by Turkey. I have been requested by the Secretariat that we will give more time to the delegations to dwell upon these proposals. In the meanwhile we will move on to the other resolutions and then come back to this resolution. I request Member States to put your thoughts to the two proposals, so that we can take a final decision on these matters. I will go on to the next resolution:

This is on the non-deliberated item “The Status and Treatment of Refugees”, that is AALCO/RES/52/S3. I don’t see any requests so we will adopt this resolution.

The next resolution is on the “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”. I don’t see any requests from the floor. So we will adopt this resolution.

The next resolution is on a non-deliberated item, which is “Legal Protection of Migrant Workers”. I open the floor for comments on this resolution. I don’t see any requests from the floor. This resolution is adopted.

The Resolution S7 is on “International Terrorism” which is also a non-deliberated item for this session. I open the floor for comments. I don’t see any requests from the floor. So S7 is adopted.

S8 is on “Establishing Cooperation against Trafficking in Women and Children”, which is also a non-deliberated item. I don’t see any requests. Resolution S8 is adopted.



S9 is on “International Criminal Court: Recent Developments” – this is also a non-deliberated item for this session. China has the floor.

**The Delegate of People’s Republic of China:** Thank you Madam Chair. I know that this draft resolution is mainly based on the resolution of the last year and we have joined the resolution adopted last year. But we feel that now considering the resolution, we think that it can be improved. We would like to make two amendments: For the PP4 we would like to add the word “its appropriate implementation” after the word “acceptance”. The new one will read as In PP4, with the proposal of China, it would read as : “Being aware of the importance of the universal acceptance and the appropriate implementation of the Rome Statute of the ICC and in particular, the principle of complementarity.” We think that not only the acceptance but also the implementation of the Rome Statute in particular the “appropriate implementation” is very important. And the principle of complementarity, in our view is that is a matter of the implementation of the Rome Statute.

The Second Amendment proposal is for OP1. As our Indian colleagues had just pointed out, we, as non-state parties we accept the Paragraph, but if we could add “the possibility of” after the word “consider” we will feel more comfortable.

Thank you

**President:** Sorry China, we could not get your second proposal, I request you to kindly repeat it.

**The Delegate of People’s Republic of China:** the Second one is for OP1 : after “consider” and before “ratifying” we add the “possibility of”.

**President:** Thank you China. I will read for the proposal which has been made by China.

In PP4, with the proposal of China, it would read as : “Being aware of the importance of the universal acceptance and the appropriate implementation of the Rome Statute of the ICC and in particular, the principle of complementarity.

In OP1: “Encourages Member States that are not yet party to consider the possibility of ratifying/acceding to the Rome Statute and upon ratification/accession consider adopting necessary implementing legislation.”

So these are the two proposal that has been made by China. I would open the floor for comments from Member States, if any. I don’t see any objections, So we consider that we can take in the proposals made by China and we can adopt the resolution. Thank You.

Now Resolution S10, “Environment and Sustainable Development”. This was a deliberated agenda item. Qatar you have the floor please.

**The Delegate of State of Qatar:**<sup>1</sup> Thank You Madam President

I wish to point out that Qatar’s intervention on the topic of “Environment and Sustainable Development” has not been included in the Summary Report.

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<sup>1</sup> The statement was delivered in Arabic; this is the translation from the interpreter’s version.

**President:** I am given to understand that Qatar's intervention would be forming a part of the summary report. If it is not there presently then, the Member States are given one month to suggest if there are any corrections to be made in the summary report and Qatar's intervention would form a part of the summary report.

**The Delegate of State of Qatar:**<sup>2</sup> The Second intervention related to the budgeting and financial matters and it is not clear to us when the second summary report would be coming out.

**President:** It will be included in the summary report – I am given to understand by the Secretariat.

**The Delegate of State of Qatar:**<sup>3</sup> Thank You.

**President:** Thank You. Coming back to the resolutions – any other comments on the resolutions?

I see none so we would adopt resolution S10.

Resolution S11 is “Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption”, on which we had a panel discussion yesterday. Any delegation wishing to comment or any proposals on this resolution? I don't see any. So we will adopt resolution S11.

The next resolution is one the “Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law”, which is a non-deliberated item. Any comments on this resolution? I don't see any requests from the floor, so we would adopt this resolution SP12.

S13 is on “WTO as a Framework Agreement and Code of Conduct for World Trade” it is also a non-deliberated item. I don't see any requests from the floor. We would adopt this resolution.

S14 is on “Expressions of Folklore and Its International Protection”. This is also a non-deliberated agenda item. Since there are no requests from the floor we would adopt this resolution.

The next one, SP1, that is a special resolution on the Special Meeting on “Selected Items on the Agenda of the International Law Commission” I can't see any requests from the floor so we will consider it as adopted.

SP2 is on the other half-day special meeting on “Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties”. We also had a special session on this yesterday.

Sudan you have the floor please.

**The Delegate of Sudan:** Thank You.

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<sup>2</sup> The statement was delivered in Arabic; this is the translation from the interpreter's version.

<sup>3</sup> The statement was delivered in Arabic; this is the translation from the interpreter's version.

Paragraph 6 “Condemning the the imposition of restrictions against AALCO Members States” mentions several countries, the name of Sudan, which is a Member of this Organization is not mentioned. So can you please include Sudan in the list of these countries which are under imposition of American unilateral sanctions?

Thank You.

**President:** Sudan, are you referring to the PP6?

**The Delegate of Sudan:** Yes.

**President:** Ok. The proposal of Sudan is that in the PP6 along with Syrian Arab Republic, Islamic Republic of Iran, the name of Sudan should also be added since it is also subject to sanctions by the Government of the United States of America. I don't see any objections from the floor. So we will include Sedans' name in PP6.

So we adopt Resolution SP2.

We will no go back to the Law of the Sea resolution. I open the floor for comments on the two proposals made by Turkey and Mauritius.

Turkey, I would ask you to consider Malaysia's proposal where they had suggested some changes to OP2, - the deletion of the words “in order to boost the universality of UNCLOS”. Would the deletion of this paragraph be acceptable to Turkey?

**The Delegate of Turkey:** Thank you Madam Chair.

It appears that we need a bit of time with the interested parties to come up with a language which is acceptable to all. I think most countries here did not take up the floor and one country suggested we don't drop it, but that we could work on the language. Malaysia's proposal was, as you just pointed out, there and the Indian delegation which pointed out examples from the US Congress. So I suggest that the interested Member Countries' delegation and we meet informally for a short time outside some place and try to work out some language and I ask you Madam Chair to give us time so that AALCO will have a decision on the Law of the Sea this year.

**President:** Thank you so much Turkey. I think that is a very constructive proposal. Before that what I would recommend is that we also have to adopt the summary report. So I request the Member States to see whether they have any comments so that we can adopt it and then the only pending agenda for us would be the resolution on law of the sea. If turkey agrees to this then perhaps we should go ahead and adopt the report. The summary report has been distributed to the delegations. Because it is a slightly lengthy document, each Member State has about a month to go through the summary report and if they think that anything that they have stated or anything of interest to them has not been reflected properly, then they can make their recommendations and suggestions within one month and the summary report would be amended accordingly.

Since I don't see anybody requesting for the floor we would consider the summary report adopted.

I request the interested delegations to please confer with Turkey so that the an agreed text on the Resolution of Law of the Sea can be adopted. I will disperse the meeting for 15 minutes.

**The meeting was adjourned for a short while and was reconvened again fifteen minutes later.**

**President:** The PP3 would now read as “**Recognizing** the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and the customary international law relating to the management of the oceans;

Are the Member States OK with this new proposal? I don’t see any requests from the floor so I think that this is acceptable.

Then we have another PP which was a suggestion from Mauritius. We have it on the screen to: “Reiterate the importance of the need to combat piracy at the regional and international level taking into consideration AALCO Resolution AALCO/RES/51/SP 2 of 22 June 2012”. This is also acceptable to Member States.

China You have the floor.

**The Delegate of People’s Republic of China:** Thank You Madam Chair.

I want to request a clarification whether this in in the PP or the OP, because if it is in the PP, we need to change “reiterates” into “reiterating”.

**President:** China has rightly suggested that its reiterating. “Reiterates” should be reiterating. Any other comments? We can move ahead.

Now we come to the main OP2 “Requests AALCO Member States not yet parties to the UNCLOS and its implementing instruments to consider the possibility of ratifying or acceding?

Or accede thereto.

I think it must be possibility to ratify and not ratifying. “Of” then must be “to”.

Consider the possibility to ratify.

If it is “of” then it has to be “ratifying” and “acceding”.

This is just a grammatical issue and there is nothing substantive.

Consider the possibility of ratifying or acceding thereto as early as possible giving due respect to their national positions and interests.

So the new insertion is “giving due respects to their national positions and interests. This clause should also be fine.

Now instead of plural it needs to be singular.

So any comments from Member States?

Turkey you have the floor please.

**The Delegate of Turkey:** Thank you Madam Chair.

National positions and interests would be fine. I don't see a need to change it.

**President:** It's just grammatical. But if you insist, I have no problem.

**The Delegate of Turkey:** OK then. Thank You Madam.

**President:** Ok then we will retain national interests and positions.

Are there any other changes?

India. The floor is yours.

**The Delegate of India:** Can you go to that paragraph? Why there should be "thereto"? UNCLOS and its implementing instruments should be sufficient. When "its implementing instruments" comes there is no need for the expression "thereto".

**President:** Then "to" has to come – we do take the verb "requests".

**The Delegate of Republic of India:** "instruments to consider" [should be fine]. That is it.

**President:** Then there is an addition in OP3. The addition is "Urges the full and effective participation of Member States" which are parties to the UNCLOS in the work of the International Seabed Authority.

Since I don't see any request from the floors, I gather that these amendments are acceptable to the Member States.

Thank you all the interested delegations for arriving at this consensus. So with these amendments the resolution on law of the sea is adopted.

Turkey has requested for the floor – you have the floor.

**The Delegate of Turkey:** Thank You Madam and I thank the interested delegations for agreeing to this resolution. I have a statement of reservation to make and I would like the following statement to be attached to the resolution:

The Republic of Turkey dissociates itself from the references made in this resolution to the United Nations Convention on the Law of the Sea 1982. Approval of the said resolution cannot be construed as a change in the legal position of Turkey with regard to the said convention.

Thank you Madam President.

**President:** Thank You Turkey and I would request the Secretariat to take note of the statement that has just been delivered by Turkey.

With these we come to the end of the substantive work for this session. We will now convene the fourth general meeting and the concluding session of this Annual Session.

**The meeting was thereafter adjourned.**

## **XIII. FIFTH GENERAL MEETING AND CONCLUDING SESSION**

**XIII. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND  
CONCLUDING SESSION HELD ON THURSDAY, 12 SEPTEMBER 2013, AT 5.40 PM**

**Her Excellency Dr. Neeru Chadha, President of the Fifty-Second Annual Session of AALCO in the Chair.**

**President:** Now we will begin the concluding session with the vote of thanks. The first vote of thanks is by an Asian Member State and Brunei Darussalam has requested for the floor.

**The Leader of Delegation of Brunei Darussalam:** Madam President, Hon'ble Ministers, Excellencies, Ladies and Gentlemen, it is a matter of privilege to be called upon to propose a vote of thanks on behalf of the Asian Member States to His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO, the gracious host of the Fifty-Second Annual Session. This being the Headquarters session, we take this opportunity to thank the Secretary-General and his colleagues for inviting us to this beautiful city of New Delhi to attend the Fifty-Second Annual Session of AALCO. I deeply appreciate the warm hospitality accorded to us by all the officials of AALCO since our arrival in New Delhi.

Madam President, please accept our profound appreciation for the excellent manner in which you have steered the proceedings of the Fifty-Second Annual Session. As the host country of the Organization, the invaluable support rendered by the Ministry of External Affairs, Government of India towards the smooth conduct of this session is exemplary and we say a special thank you to you personally and to all the officials concerned with this event.

I would also like to extend my gratitude to the Vice-President of this Annual Session Ms. Hema Odhy for extending her support and guidance to all the delegates during the deliberations of this session.

I would once again commend the relentless efforts of the Secretary-General of AALCO for his exceptional leadership qualities and the concrete steps that he has taken in order to strengthen and revitalize the work of AALCO. I also thank each of his able Deputy Secretaries General, Dr. Soleimani, Dr. Fukahori and Mr Feng Qinghu, for their constant support throughout the session.

I am also delighted to extend my most sincere and heartfelt appreciation to the legal and administrative staff in the AALCO Secretariat for their tireless efforts during the past four days, and indeed many more days and months before, which made our work effortless. Their efficiency and professionalism must be appreciated. In the same vein I also thank the interpreters for performing their job with considerable skill and professionalism.

Finally, I would like to thank you all, Excellencies, the Ministers, Ambassadors, Heads of Delegations and all the delegates, your presence, and active participation has been invaluable and without doubt had helped make this session a success.

Thank you.

**President:** Palestine has requested for the floor, you have the floor Sir.

**The Leader of Delegation of the State of Palestine<sup>1</sup>:** Thank you Madam President. Madam President, Ladies and Gentlemen, allow me to thank India and its people for extending all technical and logistic support and services to conduct the Fifty-Second Annual Session of AALCO in the period between 9-12 September 2013. I would also like to specially thank the Secretary-General of AALCO and his Deputies as well as all the employees of AALCO and the translators for their distinguished services for the success of this Session; they spared no efforts to make sure that the Session is successful. I also thank all the participating delegations for their active participation which played a very important role towards making the Session meaningful. I also thank the crew of AALCO which made this distinguished work of organizing this session, the quality of the work was very good and I appreciate and respect you and all who have extended their support in the preparation of this Session. Thank you.

**President:** Thank you Palestine. Now Kenya has requested for the floor.

**The Leader of Delegation of Kenya:** Madam President, Hon'ble Ministers, Attorneys-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen;

It is indeed my singular pleasure to propose the vote of thanks on behalf of the African Member States to His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO who has been the host of the Fifty-Second Session and for inviting us to this historic city of New Delhi to attend this Session.

I also take this opportunity to convey our appreciation to you Madam President for the gracious way you have conducted the proceedings of this Session. As the host country of the Organization we appreciate the efforts of the Ministry of External Affairs of the Government of India towards ensuring the smooth conduct of this Session. We say a very special thank you to you personally and to your officials involved in this event.

Madam President I would also like to extend a thank you to the Vice President of this Session Ms. Hema Odhav for ably guiding all the delegations during the deliberations.

I wish to once again commend the Secretary-General of AALCO together with your Deputy Secretaries General for your leadership and for the concrete steps taken towards achieving AALCO's laudable objectives. We thank you for your support during the Session.

I also extend our appreciation to the legal and technical staff of the AALCO Secretariat for their assistance rendered here to us as this has made our work effortless. Your efficiency and professionalism is greatly appreciated. I should also thank the interpreters for performing their job with considerable skill and professionalism.

Last but not the least I would like to thank all of you Excellencies, Ministers, Attorneys General, Ambassadors, Heads of Delegations and all distinguished delegates here for your presence and active participation during the Session as without a doubt this has contributed in making this Session a success. I thank you for your kind attention.

**President:** Thank you. Qatar has the floor now.

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<sup>1</sup> The statement was delivered in Arabic; this is the translation from the interpreter's version.



**The Leader of Delegation of the State of Qatar<sup>2</sup>:** Madam President, Excellencies, and Heads of esteemed Delegations, Ladies and Gentlemen allow me to extend my thanks at the end of this international gathering which made all efforts during this period of the Session for the success of the Session by virtue of adopting important resolutions. On behalf of the State of Qatar I thank all the delegations of participating countries and extend a special thanks to AALCO Secretariat under the able leadership of Prof. Dr. Rahmat Mohamad for the distinguished work done for this Session which made the work so much easy for the Member States. I also express sincere thanks to all those who extended their cooperation for the success of this Session. At this time it is necessary to thank the republic of India and its people for holding this Session in the beautiful capital city of New Delhi. I wish the people of India and its good leadership persistent success in the future. In the end I thank all of us for having completed all our work and our joint cooperation to support our leading Organization at the global level. I pray to God to show prosperity and stability upon us and our countries. Thank you Madam President.

**President:** Any other delegation wishing to take the floor? Mauritius you have the floor.

**The Delegate of Mauritius:** Madam President, Distinguished Delegates, the Mauritius delegation would like to propose a vote of thanks and to express its deep appreciation to you Madam President, Madam Vice-President, the Secretary-General all the Deputy Secretaries General and all the legal and administrative staff of AALCO for the excellent conduct of meetings during these past four days. We had the opportunity to hear constructive deliberations and ideas especially during the two half-day meetings held during this Session with special thanks to the internationally recognized panelists and contribution of all Member States present. We hope that all deliberations would be constructively looked into by AALCO. Now we look forward to working closely with AALCO in implementing the decisions taken during this Annual Session. Thank You.

**President:** Now it is my turn. Excellencies, Hon,ble Ministers, Distinguished Delegates, Ladies and Gentlemen, before we end the Fifty-Second Annual Session of AALCO it gives me great satisfaction that during this Session which was spread over four days we were able to finish all deliberations on both Substantive and Organizational matters, in the most amicable manner displaying convergence of views and interests between the Member States of Asia and Africa. We had a very heavy agenda and despite that fact all the Member States have cooperated in completing the deliberations on all the agenda items on time. I am really grateful to all of you for your cooperation.

Congratulations are due to the AALCO Secretariat for very ably accomplishing the mandate of the Fifty-First Annual Session and for bringing out very useful publications which will add to the existing international law jurisprudence.

I want to thank Ms. Hema Odhav , the Vice-President for her support during this Session. I would not have been able to do my work without the Secretary-General because he is always available with his valuable input on all pertinent matters. The Deputy Secretaries General also deserves a special mention for their very valuable inputs. My thanks also goes to all the members of the AALCO Secretariat for the meticulous work done for preparing all the documents adopted

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<sup>2</sup> The statement was delivered in Arabic; this is the translation from the interpreter's version.

today in addition to taking care of the smallest need of each and every delegate. Mr. Secretary-General you are indeed lucky to have such a competent, efficient and hardworking staff.

I take this opportunity to thank the EPG and the various panelists for their valuable contribution. I thank the interpreters for their useful work. I also thank the observer Non-Member States, international organizations and regional arbitration centers for their participation. Once again I thank all the Member States for entrusting me with this responsibility and I assure you that during my Presidency I shall try my best to ensure that AALCO is revitalized and strengthened and will continue to work with the Secretary-General of AALCO in accomplishing this mandate. As many of you would be going back home today I wish you all a very safe journey. With those few words I formally declare the Fifty-Second Session of AALCO closed.

**The Session was thereafter adjourned.**

**XIV. TEXTS OF DOCUMENTS  
ADOPTED AT THE FIFTYSECOND  
ANNUAL SESSION**

## **A. SUMMARY REPORT**



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**AALCO**  
**Asian-African Legal Consultative Organization**  
**Fifty-Second Annual Session**  
**9 to 12 September 2013**  
**Headquarters, New Delhi, India**

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

**1. Introduction**

- 1.1 **36** Member States of the Asian-African Legal Consultative Organization (the AALCO) participated in the Fifty-Second Annual Session (hereinafter "the Session") namely, **Arab Republic of Egypt, Bangladesh, Brunei Darussalam, People's Republic of China, Republic of Cyprus, Ghana, Republic of India, Republic of Indonesia, Islamic Republic of Iran, Japan, Kenya, Democratic People's Republic of Korea, Republic of Korea, State of Kuwait, Libya, Malaysia, Mauritius, The Republic of the Union of Myanmar, Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, State of Palestine, State of Qatar, Kingdom of Saudi Arabia, Singapore, Republic of South Africa, Democratic Socialist Republic of Sri Lanka, Sudan, Syria, United Republic of Tanzania, Thailand, Turkey, Uganda, United Arab Emirates 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: Islamic Republic of Afghanistan, Republic of Fiji and Republic of Madagascar;
  - (ii) Representatives of the following International Organizations: African-Asian Rural Development Organization (AARDO); United Nations Office for Drugs and Crime (UNODC); United Nations High Commission for Refugees (UNHCR) and International Committee of the Red Cross (ICRC).

## **2. Inaugural Session**

- 2.1 The Session commenced on 9 September 2013 with the Master of Ceremonies welcoming all the Delegations to New Delhi, the Headquarters of AALCO, for the Fifty-Second Annual Session.
- 2.2 **His Excellency Prof. Dr. Rahmat Mohamad, Secretary-General of the Asian-African Legal Consultative Organization (AALCO)** welcomed all the delegates and attendees. He further welcomed His Excellency Mr. E. Ahamed, the Minister of State for External Affairs, Government of India and thanked him for sparing his valuable time amidst his busy schedule. It was stated that his presence reassured AALCO of India's prominent role in the development and continued support for the Organization since its foundation in 1956. It was pointed out that the presence of such a large number of Ministers and Attorney Generals heading the delegations signified that AALCO was important to them and he thanked them all for their gracious presence. He then stated that the Government of India has always been a generous host of AALCO by providing it with the Permanent Headquarters in the prestigious Diplomatic Enclave in Delhi and rendering financial assistance in times of need. He then recalled that this was the fourth Headquarters Annual Session that was being conducted by the AALCO Secretariat at New Delhi and stated that the government of India has always rendered all possible assistance for the smooth conduct of these Sessions and for this he stated that the Organization owed a special thanks to the Government of India.
- 2.3 Prof. Dr. Mohamad then stated that the AALCO Statutes envisaged the conduct of the Headquarters Session only in the event of none of the Member States coming forth to

host the same and he pointed out that this option was to be exercised only as a matter of last resort considering the huge financial burden on the Organization in addition to the strain on the logistics and manpower resources.

- 2.4 Prof. Dr. Mohamad pointed out that the year 2013 marked the completion of 57 years since the establishment of AALCO and recalled the important contributions made by the Organization. He asserted the continuing relevance of the Organization in the context of several of its Member States being threatened with impending attack by powerful nations without following the due process of law. He then pointed out that these situations pointed towards the basic questions concerning the nature of international law and how far states adhere to it. He then referred to the gradual growth in the membership of the Organization from seven to forty-seven over the years and the important position that the Organization occupies in the international legal community. He then highlighted the diverse functions undertaken by AALCO over the years and the role it plays in assisting the preparation of the Asian-African Countries for the Plenipotentiaries Conferences, convened to codify and develop international law. At this juncture he recalled the contributions of the Organization towards the development of the law of Sea, Convention on Diplomatic Relations and the Rome Statute of the International Criminal Court etc. Recalling the other diverse roles played by the Organization in the codification and progressive development of international law, he pointed out the need to ensure that the Organization remains on a strong ideological foundation and enjoys firm financial support. He then briefly listed the topics earmarked for deliberations and the two half day special meetings.
- 2.5 **Hon'ble Mohammed Bello Adoke SAN, Attorney General and Minister of Justice, Federal Republic of Nigeria and President of the Fifty-First Annual Session of AALCO** welcomed all the delegates and delivered the keynote Address at the Session. On behalf of his delegation, he expressed his profound gratitude to His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO and the AALCO Secretariat for extending a very warm welcome and hospitality and for the excellent arrangements made to ensure a successful Session. Particularly, he commended the Secretary-General and the Secretariat for the preparation of the documents relating to the Annual Session.
- 2.6 He extended his sincere gratitude to the honourable Ministers, Heads of Delegations, Distinguished Delegates and Observers and the Panelists for the two Half-Day's Special Meetings. The President gave an overview of the topics for deliberation during the Annual Session and stated that they were of immense significance for the Member States of AALCO and other developing countries. These included the agenda items like Environment and Sustainable Development, Law of the Sea, Challenges in Combating

Corruption, International Law Commission, Statehood of Palestine and Extra-territorial application of national legislation.

- 2.7 It was recalled that since its inception in 1956 post-Bandung Conference, which brought together the then newly independent states of Asia and Africa on a common footing, AALCO has come a long way. AALCO had received an important position among international legal community with increased membership and for its 'insightful prism' on legal issues. In relation to the work of the International Law Commission (ILC), as a member of the pre-eminent body vested with the codification and progressive development of international law, he attested the work of ILC and its contributions particularly to the Asian and African States. He stated that ILC was a forum composing members from these States, which could articulate their views & concerns, in relation to the topics on the agenda of the ILC, and became very important in the law-making process. In that regard, he stated that the contribution of Special Rapporteurs of the ILC in channelling the views of Asian-African States in compiling the views in their Reports and draft articles, were very commendable. The AALCO having been statutorily mandated to follow the work of the ILC contributes by transmitting the views of its Member States to the Commission.
- 2.8 Emphasizing on the significant role of Secretary-General in steering the activities of AALCO, the President informed the Member States about the initiatives of the Secretary-General in convening the Annual Meeting of the Legal Advisors of the Member States of AALCO at the UN Headquarters at New York. He also congratulated Dr. Roy Lee, Permanent Observer of AALCO to the United Nations, New York for the arrangements at the Legal Adviser's Meeting. The determination and shared commitment of AALCO Member States, during the meeting, despite the hurricane Sandy was very appreciable. He recalled the meeting with the Secretary-General at the Eleventh Session of the Assembly of States Parties to the International Criminal Court (ICC) in November 2012 at The Hague, Netherlands, where he delivered an important Statement clearly highlighting the concerns of the Asian-African states in relation to the work of the ICC.
- 2.9 The President acknowledged the increased activities of AALCO in the form of seminars/training programmes on a number of areas of critical concern to its Member States and commended the untiring efforts and commitment of the Secretary-General in conceptualizing and executing those programmes, despite the financial constraints. He referred to the Seminar on Climate Change and the Legal Experts Meeting to commemorate the 30<sup>th</sup> Anniversary of UNCLOS, which were convened by the AALCO Secretariat. As the President of the Fifty-First Annual Session of AALCO, he urged the Member States of AALCO who were in arrears to pay their assessed contributions within a reasonable period for facilitating AALCO to be on a sound financial footing. He wished the session very fruitful discussions.



- 2.10 The Chief Guest, **Hon. Shri. E. Ahamed, Minister of State for External Affairs, Government of India**, delivered the inaugural address. Mr. Ahamed welcomed the delegates and the attendees present on behalf of himself and the Government of India.
- 2.11 He stated that International Law no longer governed just the relations between States but that in the face of rapid globalization it was now encompassing territories that were once considered to be in the domain of the domestic laws. It was stated that there were no longer any domains of national interest untouched by international law. He said that international law has now evolved to address and govern non-state actors such as International Organizations and even individuals. He referred to the importance of International Institutions in facilitating cooperation and compliance with international law and stated that that it touched the lives of millions of people in diverse fields of human activity. He further pointed out that international law was still in the process of evolution and that it remained the only means to regulate the conduct of States and other actors and maintain international peace and security.
- 2.12 It was pointed out by him that the forestated developments accorded AALCO with an excellent opportunity to enhance its scope of activities, expand its work and contribute towards the study of international law with a focus on African and Asian problems. He further pointed out that AALCO was built on Afro-Asian solidarity and reminded the audience that it was the only Organization that brought together two continents for the progressive development of International law. He then recalled the important roles played and functions facilitated by AALCO in this context. He further stated that India has always remained on the forefront of promoting these objectives and the Organization and reaffirmed India's firm commitment to these. He commended the role played by AALCO in establishing the regional arbitration centres and the publications brought out by the Centre for Research and Training on International law.
- 2.13 The Minister expressed his best wishes for the Fifty-Second Annual Session of the Organization and stated that the range of topics on the agenda of the session were of considerable significance for the international community in general and the African and Asian States in particular. He further expressed his hopes that the deliberations at this Annual Session would contribute towards the development of law in these areas and promote the interests of the Asian and African States. He then stated that he hoped that the conference would be success and thanked the audience.
- 2.14 The President of the Fiftieth Annual Session, **Hon'ble Rauff Hakeem, and Minister of Justice, Democratic Socialist Republic of Sri Lanka** stated that he was proud for having served as President of the AALCO at its historic Fiftieth Annual Session held in 2011. He said that the Annual Sessions 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. Upholding the Organization's role in bringing together nations from the two prominent continents, for addressing international legal matters with serious implications in international relations and international law, was remarkable. On behalf of the Member States of AALCO, he thanked the Secretariat for hosting this Session and the Government of India for extending the financial support

through voluntary contribution. He extended whole-hearted support and cooperation to the incoming President. He thanked His Excellency Mr. Mohammed Bello Adoke, the President of the Fifty-First Annual Session of AALCO for successfully conducting the previous session.

- 2.15 He extended deep appreciation to His Excellency Professor Dr. Rahmat Mohamad, the Secretary-General of AALCO, and the 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 and place AALCO on a sound financial footing in order to ensure the effective functioning of the Secretariat. As the President of the Fiftieth Annual Session of AALCO, he extended the gratitude on behalf of the Government and President of the Democratic Socialist Republic of Sri Lanka and its people, to the Organization for providing an opportunity to hold the presidency in the year 2011. He thanked the Honorable Ministers, distinguished delegates and observers for their active participation and hoped that the four-day session would produce tangible outcomes.

**3. First Meeting of the Delegations of AALCO Member States**

- 3.1 **His Excellency Mr. Mohammed Bello Adoke, SAN, Attorney-General and Minister of Justice, Federal Republic of Nigeria, called the Meeting to order.**

3.2 **Agenda:**

The meeting adopted the following agenda for the Fifty-Second 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. Report of the Secretary-General on the Work of AALCO
6. Proposed Budget for the Year 2014
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 on the AALCO's Centre for Research and Training (CRT)
10. Venue of the Fifty-Third Session

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

1. Law of the Sea

2. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949 – A Study on the “Statehood of Palestine under International Law” undertaken by the AALCO Secretariat

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

1. Environment and Sustainable Development
2. Challenges in Combating Corruption: Role of the UN Convention against Corruption

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

1. Special Meeting on “Selected Items on the Agenda of the International Law Commission”
2. Special Meeting on “Extra-territorial Application of National Legislation: Sanctions Imposed against Third Parties”

### **V. 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-Second 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 Fifty-First Annual Session, His Excellency Mr. Mohammed Bello Adoke, SAN, invited the Member States to propose candidates for the posts of President and the Vice-President of the Fifty-Second Annual Session of AALCO. The **Leader of the Delegation of the Japan** proposed the name of **Her Excellency Mrs. Neeru Chadha, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India** to be the **President** of the Fifty-Second Annual Session of the AALCO. The proposal was seconded by the **Leader of the Delegation of Arab Republic of Egypt**. With regard to the position of **Vice-President**, the **Deputy Leader of the Delegation of People’s**

**Republic of China** proposed the name of **Ms. Hema Odhav, First Secretary: Political (Multilateral), Republic of South Africa**. The proposal was seconded by the **Leader of Delegation of Kenya**. The Member States unanimously elected with acclamation, **Her Excellency Dr. Neeru Chadha, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India** and **Ms. Odhav**, respectively as the **President and the Vice-President of the Fifty-Second Annual Session of AALCO**.

- 3.6 The Outgoing President, **His Excellency Mr. Mohammed Bello Adoke, SAN** 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 Fifty-First 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.
- 3.7 Thereafter, the newly elected **President and the Vice-President** assumed their positions on the dais.
- 3.8 **The newly elected President of the Fifty-Second Annual Session of AALCO, Dr. (Mrs.) Neeru Chadha**, began her opening statement thanking H.E. Dr. Mohammed Bello Adoke for handing over the Presidency to her and for giving her the opportunity to preside over the work of the Fifty- Second Annual Session. She thanked him for his display of exemplary leadership on the work of AALCO and for guiding the activities of AALCO for the previous one year. She stated that with his dedication and vision, AALCO had enjoyed a successful year in achieving cooperation between Asian and African States. She stated that she was keenly looking forward to work with the Secretary - General and Secretariat of AALCO. She pointed out that AALCO was the only inter-governmental Organization that span over the two of the most populous continents of the world and that the dynamism and growing economic clout of this region gave the Organization the plenty of leverage and that this should act as an impetus for the Member States to emerge as a group in the General Assembly, International Law Commission and in other multilateral fora. She pointed out that in the forthcoming days, deliberations on a number of current and relevant matters of topical interest on international law would be made and that through this process common understandings and positions on several identified topics could be arrived at. The president closed her address wishing the annual session all success and assured the Member States every action from her end to promote the work, ideals, objectives and interests of the Organization.

#### **4 First General Meeting**

- 4.1 The Delegations from the following Member States made General Statements during the First General Meetings: **Malaysia, Kingdom of Saudi Arabia, Japan, State of Palestine, Mauritius, State of Qatar, The Republic of the Union of Myanmar, Democratic Socialist Republic of Sri Lanka, State of Kuwait , Thailand, Democratic People's Republic of Korea, Tanzania, Nepal, People's Republic of China, Republic of India, Republic of Korea, Indonesia, Bangladesh, Arab Republic of Egypt, Kenya, Nigeria, Islamic Republic of Iran & Syrian Arab Republic.** The Observer delegation from the **International Committee of the Red Cross (ICRC)** also made a general statement.
- 4.2 The delegations congratulated Her Excellency Dr. Neeru Chadha, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India on her election as President of the Fifty-Second Annual Session of the AALCO. Delegations also congratulated Her Excellency Ms. Hema Odhav, on her election as the Vice-President of the Fifty-Second Annual Session of the AALCO. The delegations also thanked the Government of India, its peoples and the AALCO Secretariat for their warm hospitality and the excellent preparations for the meeting.
- 4.3 **The Leader of the Delegation of Malaysia** noted that the Special Meeting on Wednesday will focus on three important ILC topics: 1) Protection of Persons in the Event of Disaster, 2) Immunity of State Officials from Foreign Criminal jurisdiction and 3) Formation and Evidence of Customary International Law. He encouraged AALCO's continued dedication on the topic of Environment and Sustainable Development as a matter of common concern having legal implications and mentioned that Malaysia follows with keen interest the discussions in the AALCO forum focusing on current developments in the United Nations Conference on Sustainable Development and other related Conventions such as the United Nations Framework Convention on Climate Change (UNFCCC) negotiations.
- 4.4 The Leader of the Delegation stated that Malaysia sought to steer discussions from "Environment and Sustainable Development" to the fundamentals of Environmental Protection from the legal perspective and expressed the hope that AALCO's debate on the environment may also address practical approaches toward the enhancement of legal frameworks and law enforcement. He also noted that the Attorney General's Chambers of Malaysia has embarked on a study focusing on the domestic enforcement of environmental crimes, primarily against wildlife, and has established a team to handle prosecution under the Malaysian Wildlife Conservation Act of 2010. The team, working closely with Legal Advisors at the Ministerial and State levels, was studying the adequacy of penalties and the effectiveness of the provision provided in environmental laws and will make proposals on any required legislative amendments. An online

database system on environmental crimes will also be developed to capture the statistics of all environmental crimes in Malaysia.

- 4.5 The Leader of the Delegation also mentioned that Malaysia was also looking at the viability of having a specific statute on environmental crimes, forging closer cooperation among the various enforcement agencies and promoting joint enforcement operations, training for enforcement officers on investigation and prosecution of environmental offences, and programs to enhance public awareness including judicial officers on the importance of conservation and sustainability of forests, protection of the wildlife and environment. Malaysia looks forward to any reactions from AALCO Member States and the AALCO Secretariat to Malaysia's proposal.
- 4.6 With regard to the topic of "Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption (UNCAC)" the Leader of the Delegation welcomed the conclusion of the Fourth Session of the UNCAC Implementation Review Group on 31 May 2013. He mentioned that Malaysia's Review process was conducted in February 2013 and that Malaysia has had a positive feedback from the reviewing experts from Kenya and the Philippines. The positive feedback relates to, among others, Malaysia's initiative in establishing various supervisory committees to oversee the implementation of the Malaysian Anti-Corruption Commission (MACC) Act of 2009. Malaysia has established the Anti-Corruption Advisory Board, the Special Committee on Corruption and several others aimed at ensuring the Malaysian Anti-Corruption Commission's transparency and integrity in carrying out its duties. The Leader of the Delegation was also happy to report that the United Nations Office on Drugs and Crimes (UNODC) has commended Malaysia's efforts in implementing UNCAC.
- 4.7 On the Palestine issue, the Leader of Delegation reiterated his suggestion from the Fifty-First Annual Session at AALCO to stop making rhetorical statements and come up with concrete plans to move the discussion forward. He expressed Malaysia's support for the Palestinian people and condemned the brutal and aggressive attack by Israel through Operation Pillar of Defence, against which no tangible action had been taken. The Malaysian Parliament had unanimously passed a motion on 20 November 2012 to urge the Security Council to compel Israel to immediately cease its military attacks on the Palestinian territory of Gaza. The Malaysian Parliament also called for the full withdrawal of Israel from the Palestinian Territory of Gaza and the West Bank. He also expressed Malaysia's emphasis on the elements of determination of the State of Palestine under the Montevideo Convention. The Leader of Delegation welcomed the Special Study on 'the Statehood of Palestine under International Law' conducted by the Secretariat, and posited that findings from such comprehensive legal research can then be

advanced as AALCO's view for purposes of the ongoing discussions on Palestine at the United Nations or at the regional level.

- 4.8 On the "Formation and Evidence of Customary International Law", Malaysia was of the view that progress and elaboration on new draft articles on this topic was perhaps long overdue. Malaysia agreed that an in-depth study should be conducted in relation to determining the formation and evidence of customary international law.
- 4.9 With regard to the topic of "Immunity of State Officials from Foreign Criminal Jurisdiction", the leader of the delegation maintained the view that the topic should focus on the immunities accorded under international law, in particular customary international law and not under domestic law. The Leader of Delegation also stated that Malaysia looked forward to the report of the Special Rapporteur, particularly the draft articles on the issues concerning immunity *rationae materiae*.
- 4.10 The Leader of Delegation of Malaysia took note of the "Protection of Persons in the Event of Disasters", and the provisionally adopted draft Articles 5 ter and 16 by the ILC. He further noted AALCO's observations in paragraph 132 of the Secretary-General's Report and proposed that the Secretariat should be focusing its report on the latest developments in the work of the Commission; in this case, the proposed Draft Articles 16 and 5 ter.
- 4.11 He recalled the significance of a Treaty on Mutual Legal Assistance as a tool for combating transnational crimes, including terrorism and stated that Malaysia and its ASEAN counterparts benefit from the cooperative framework of the Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLAT). He reiterated Malaysia's view that an intra-regional Asian-African legal instrument on the same matter would be beneficial as among others. Recalling resolution AALCO/RES/49 S8, he stated that Malaysia looked forward to the establishment of an open-ended Committee of Experts to conduct a study on ways to enhance mutual legal assistance in criminal matters.
- 4.12 Finally, the Leader of Delegation paid tribute to the late Ambassador Professor Chusei Yamada of Japan. On behalf of the delegation of Malaysia and on his personal behalf, he expressed condolences to the family of the late Professor Yamada and highlighted some of his inspirational achievements such as his work towards bridging the water divide between riparian aquifer nations, his work as a Special Rapporteur and helping to found the Executive Council of International Centre for Law and Legal Studies (I-CeLLS) of Malaysia.

- 4.13 **The Leader of the Delegation of Kingdom of Saudi Arabia**<sup>1</sup> stated that agenda item which was most important to them was the item of “deportation of Palestinians and other Israeli practices” and that the Kingdom of Saudi Arabia stands with truth and calls for the ending of violation of human rights and mass killing of Palestinian people that was in clear violation of human rights and all international treaties, international law and UN resolutions. The leader of the delegation also called for the agenda item to be deliberated every year.
- 4.14 On the “law of sea” the Leader of Delegation endorsed the existing law and regional and international treaties related to it. Regarding “environment and sustainable development”, the Leader of Delegation stated that his country was following the developments of that field, and supported the execution of international treaties including 3 Rio conventions that related to climate change, biodiversity and combating desertification. He stated the Kingdom of Saudi Arabia was following with due concern the desert encroachments especially in Africa and the attempt to stop the assistance of states affected by desertification. He pointed out that the Kingdom Saudi Arabia has signed and ratified around 40 regional and international agreements and treaties and protocols in this regard. An independent body was protecting environment and other one for protection of wildlife.
- 4.15 The leader of the delegation also stated that his country tries, within and outside, to contribute to efforts towards combating corruption and considers it a problem that eats away the nation and world and demands for efforts to combat it in all forms. He also stated that national strategies had been issued to combat the corruption and that a specialized national body has been created which was directly linked to the King and presided over by a minister.
- 4.16 **The Leader of the Delegation of Japan** reiterated the role of AALCO as an important forum for dialogue among its Member States for more than half a century which has been upholding and promoting the rule of law in the two great regions of Asia and Africa. He stated that rule of law was a wisdom that the mankind had acquired in order to maintain peace and stability in human societies, domestic and international. In that regard, Japan welcomed the resolution adopted by the UN General Assembly in 2012 at the high-level meeting on the rule of law, in which the Member States agreed that the rule of law was “the foundation of friendly and equitable relations between States and the basis on which just and fair societies were built”.<sup>2</sup>

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<sup>1</sup> The Statement was delivered in Arabic. This was the official version from the Arabic Interpreter.

<sup>2</sup> “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels”, A/RES/67/1,  
<[http://www.unrol.org/files/Declaration%20HLM\\_A%20RES%2067%201.pdf](http://www.unrol.org/files/Declaration%20HLM_A%20RES%2067%201.pdf)> accessed 19 August 2013.



- 4.17 The Leader of Delegation mentioned their respect for the rule of law, and its establishment and promotion in the international community was the central focus of Japanese government's policy. Therefore, Japan was committed towards resolving disputes through peaceful means in accordance with international law and had always extended their support to enable other nations to build their domestic legal systems.
- 4.18 The Leader of Delegation gave an overview of the activities of Japan in the area of promoting and strengthening the international rule of law, since the Fifty-First Annual Session of AALCO. He stated that in the area of international law-making, Japan would continue to play an active role in the development of multilateral treaties. He stated that, towards that end, signing of the Arms Trade Treaty was very significant and he recalled that Japan as one of the co-authors of the UN General Assembly Resolutions, played an active and constructive role at the negotiations. Further, he stated that entry into force of the treaty was very important, in terms of implementation, as it would be an effective legal instrument addressing the unregulated and illicit conventional arms trade which causes human sufferings throughout the world. He also added that in October 2013, Japan would host the Diplomatic Conference for the adoption and signing of the "Minamata Convention" on international management of mercury to prevent damage to health and environmental destruction.
- 4.19 Secondly, Japan's efforts were to accede to the existing treaties to which it was not yet a party, especially; the Hague Convention on the Civil Aspects of International Child Abduction, recognizing the rapid growth in the number of cases of Japanese men and women engaging in international marriages.
- 4.20 Thirdly, in terms of peaceful settlement of disputes through international judicial process; the first ICJ case in Japan's history completed its oral proceedings concerning the legality of Japan's special permit for whaling in the Antarctic. It was demonstrated that its special permit whaling was in full accordance with the International Convention for the Regulation of Whaling. Awaiting the ICJ's decision on the case, he expressed the need for States to settle disputes through international adjudication and accept the compulsory jurisdiction of the ICJ.
- 4.21 The Leader of Delegation said that AALCO has served as an important forum for strengthening and promoting the rule of law in Asia and Africa, the two growth centers of the world. As maintenance of and respect for the rule of law was essential for ensuring sustainable development and prosperity of States and regions, AALCO could and should continue to play an important role for the future of Asia and Africa. In order to achieve that goal, it was imperative to place the Organization on a sound and sustainable financial basis. To that end, He appreciated the efforts made by the Secretary-General and the Secretariat staff to not only raise awareness among the Member States of the importance of fulfilling their financial obligations, as per the "Putrajaya Declaration, 2009"; but also

to recover the arrears through flexible consultation and arrangements with the Member States and streamline their expenditure.

- 4.22 On the proposal of the Secretariat to increase AALCO's budget by 14.19% from the year 2013 budget, the Leader of Delegation said that it would require increased contribution from the Member States. In that instance, it was essential that Member States, who have not fulfilled their financial obligations under the current scale of contributions, should fulfil their obligations at the earliest. Failing which, increased contribution from Member States would lead only to a situation wherein Member States that have been fulfilling their financial obligations have to pay more, simply to cover those unfulfilled. Hence, it was not a "sound" financial basis. The Leader of Delegation said that this subject has not received much attention and it was important to deliberate upon this issue. Japan could not agree to a budgetary framework of any international Organization whose financial base rests on an assumption that it should be supported by contributions from a limited group of Member States. The Leader of Delegation thanked the Secretary-General and the Secretariat for the preparation for the session and for preparing the extensive materials on topics significant for the Member States despite their limited resource.
- 4.23 **The Leader of Delegation of the State of Palestine** stated that Palestine was a unique and overly intricate case which makes it difficult to cover all relevant issues and to pass the message across, since in Palestine there was a clash between the darkness and oppression of the occupation with the will of struggle and the determination to accomplish the Palestinian national goals. Suffering was intertwined with hope, and so was oppression with resilience, and life was born from the womb of death and bloodshed.
- 4.24 He further stated that Israel, the occupying power completely disregarded the international public opinion, and the resolutions of the UN and its international agencies which have so far well exceeded six volumes, the most recent and important of which were: the 29<sup>th</sup> November 2012 UN General Assembly Resolution recognizing Palestine as a state on the 4<sup>th</sup> June 1967 borders. The Occupying State continues also to disrespect the peace process obligations and the Oslo Accords signed between it and the Palestine Liberation Organization in September 1993 which was supposed to reach its final stage after the end of a 3-year transitional period.
- 4.25 The Palestinian territories were still under the occupation for around forty-six years and more than four thousand Palestinian prisoners were still held in Israeli jails, including children and tens of women. The occupying state continued to deny Palestinian prisoners their right to the protection accorded under the Geneva Conventions, particularly the Fourth one. In addition, the ongoing land, aerial, and naval blockade imposed against Gaza strip which had turned into the world's largest open air prison housing around 2 million inmates. The occupation, in grave violation of all human rights principles and international conventions as well as international legitimacy decisions, continued to deny

Palestinians their rights to freedom of opinion, movement and work, and carries on with the apartheid policy through the construction of the separation wall.

- 4.26 Thereafter, the Leader of Delegation listed major Israeli violations that Palestinians suffered on a daily basis including: (i) Ongoing settlement construction, settler attacks against Palestinian citizens and sabotaging and damaging their property under protection of the Israeli army; (ii) Ongoing Judaization of Jerusalem, demolition of citizens' houses, expulsion of citizens and revocation of their identities in order to drive the Palestinian population out of the city, (iii) Controlling groundwater and the amount of water allowed for Palestinians (iv) Construction of by-pass roads at the expense of Palestinian lands (v) Construction of the Apartheid wall (vi) Controlling imports and exports; (vii) House demolitions; (viii) Arrests and administrative detentions; (ix) Setting up check points at the entrances of Palestinian cities hindering the freedom of movement for Palestinians; (x) Preventing farmers from farming their lands; (xi) Isolation of Gaza strip; (xii) Killing Palestinian protestors and (xiii) Obstruction of negotiations.
- 4.27 He said that such violations were planned and systematic and reflected the Israeli inclination of not accepting the other, wherein the latest of which was the establishment of the separation wall which spanned from the north to the south of the West Bank. This construction created the conditions that would attract natural migration of the population without use of guns. He also stated that unfortunately Palestinians were destined to fight two parallel battles: the battle of liberation and the battle of building. They had bound themselves to set off the building process and establish a Palestinian state that adhered to all sublime principles including human rights and dignity, pluralism, good governance and combating corruption. But these battles would not be won without the support and backing of the international community.
- 4.28 He further stated that the international resolution of 29<sup>th</sup> November 2012 had declared that the Palestinian territory was occupied since 1967, and it was State under occupation and it had put an end to the flawed claim that it was a disputed territory. It also urgently called for the removal of Israeli settlement in the Palestinian territories.
- 4.29 The Leader of Delegation further stated that Palestine would not be reluctant to exercise its legitimate right to accede to all international conventions, treaties and UN Organizations, including the International Criminal Court, sign the ICC Rome Statute and file lawsuits before this court against Israeli political and military leaders who had committed war crimes against Palestinian people. He hoped that all the countries would follow the footsteps of the European Union in boycotting Israeli settlements products and divest from companies that work with them.

- 4.30 The Palestinian leadership truly believed that national sovereignty could not be reached without establishing the rule of law, and there would not be national independence without the independence of judiciary. Therefore, they had taken the approach of full cooperation and integration of all the components of this sector which compromised the High Judicial Council, the Ministry of Justice, the Attorney General's Office, the Palestinian Bar Association, the Independent Commission for Human Rights, representatives of law schools and representatives of Civil Society.
- 4.31 In conclusion, he said that despite the foregoing, the Palestinians hoped that with the cooperation of friendly states they would be able to promote synergies between their counterparts in the respective justice sectors, which included exchange of expertise, training courses and exposure to new models in a manner that warranted qualitative and quantitative justice advancement in harmony with modern justice standards.
- 4.32 **The Leader of the Delegation of Mauritius** stated that the achievements of AALCO were praiseworthy, despite the limited resources available. He stated that AALCO has become a recognized platform for serious discussions and engagements on a wide spectrum of issues in international law, ranging from the Law of the Sea to Human Rights.
- 4.33 The Leader of Delegation stated that as a small island developing state, the State of Mauritius was greatly concerned about the threat of piracy to regional and international security. He pointed out that piracy in the Indian Ocean region has adversely affected the economies of countries of the region and that it has disrupted international trade. It was stated that Mauritius has taken a number of measures to fight this and that these include the signing of the Djibouti Code of Conduct, Setting up a National Steering Committee on Piracy and increased surveillance of the exclusive economic zone. He then explained the other legal measures taken to combat piracy, including the enactment of new laws that are premised on the transnational dimensions of modern day piracy and the principle of universal jurisdiction. He further stated that the effective prosecution of the suspected pirates, captured in the course of operations was another important aspect of the fight against piracy. He then detailed some of the efforts taken by Mauritius with respect to this. He pointed out that owing to concerted international action, there has been a reduction in the number of successful attacks, but that the issue was not to be perceived as resolved and called for further reinforced regional and multilateral cooperation.
- 4.34 He further stated that Mauritius was making significant progress in establishing itself as a centre for international commercial arbitration, in particular as a centre of reference for the arbitration of disputes. He informed the gathering that Mauritius has signed a Host Country Agreement with the Permanent Court of Arbitration at The Hague, which has for the first time appointed a permanent representative to a different country. He informed the gathering that the Mauritian international arbitration centre was fully operational,

with rules of arbitration and conciliation published. He stated that there have been developments, which clearly demonstrate that the leading institutions in the field have recognized the importance of an increasingly regional approach to the settlement of International Disputes and the role that Mauritius could play in the region. He stated that the International Arbitration Project of Mauritius aims at ensuring that the region has its say in the process and was aimed at ensuring that international arbitration progressively becomes a part of the legal culture of Mauritius.

- 4.35 The Leader of Delegation reiterated the commitment of Mauritius to the values and ideals of the United Nations; and condemned the grave violations of human rights and the use of chemical weapons. He also expressed their strong belief that disputes were to be resolved through all inclusive democratic and peaceful processes.
- 4.36 The Leader of Delegation concluded reiterating that AALCO played a crucial role in the progressive development of International Law and its dissemination. He further pointed out that the Organization has grown to become an invaluable platform for cooperation and exchange and for building consensus in the field of international law.
- 4.37 **The Leader of the Delegation of The State of Qatar<sup>3</sup>** mentioned that since the establishment of AALCO in 1956, it has been harnessing all its efforts and potential to provide assistance to the Member States from Asian and African continents and has been playing a vital role in providing legal advice to the Member States. He also assured all of the satisfaction of Ministry of Justice of the role of AALCO in creating continued dialogue between Member States, between countries and international Organizations like UN and other regional Organizations.
- 4.38 The Leader of Delegation stated that the meeting coincides with tough conditions that the international community was going through, because of increasing tension and instability in a large number of countries in the region, and the continued suffering of the Palestinian people. The increasing rates of poverty and marginalization, unemployment and political instability and worsening economic and social conditions and desertification, resource scarcity and climate change, were other serious problems faced by many countries of the world especially Asian and African continents. He pointed out that regarding the Arab-Israeli conflict, that the Palestinian issue was a serious problem in terms of stability and peace in the Middle East and at the global level. This makes it important to quickly find an effective solution to the Palestinian issue, based on achieving comprehensive and just peace, and to stop the illegal construction of Israeli settlements, and respect of all legal rights of Palestinian people struggling for establishment of an independent State with West Jerusalem as its capital.

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<sup>3</sup> The Statement was delivered in Arabic. This was the official version from the Arabic Interpreter.

- 4.39 The leader of the delegation also stressed on the importance of international and national work regarding effective enforcement of all provisions of international conventions and treaties related to human rights, in addition to the obligation to apply international standards of human rights. He referred to the initiative of the State of Qatar for the support of development of human rights system on Arab level, and the establishment of the Arab Court of Human Rights. Qatar also hosted, in July 2013, a conference under the title of the development of the human rights system of the league of Arab States.
- 4.40 The leader of the delegation noted that the spread of corruption in all its forms was the main reason for the elimination of democracy and the squandering rule of law, as well as the loss of opportunities for development which are basic obstacle in the way of progress and stability. It was therefore important to form effective international and national mechanisms to fight it. The State of Qatar initiated the establishment of the Arab Forum for recovery of looted money, which was an institution to support efforts to recover the looted funds and assets owned by the countries of the Arab Spring.
- 4.41 The leader of the delegation noticed that Doha has hosted the Doha conference for Interfaith Dialogue during the month of April in 2013. The Ministry of Justice also presented to the League of Arab States the draft of the Model Arabic Law to prevent the defamation of religions.
- 4.42 The leader of the delegation also emphasized that the successful exploitation of natural resources and human potential and proper management, was the ultimate objective of sustainable development and that The State of Qatar hosted, in 2012, the 18<sup>th</sup> conference of parties on climate change to solve environmental problems and provide effective solutions for sustainable development.
- 4.43 **The Leader of the Delegation of The Republic of the Union of Myanmar** reaffirmed Myanmar's commitment towards AALCO and the important roles of AALCO in providing international legal assistance providing fruitful knowledge and updated experience which may also be applicable for setting up of new political fashion of Myanmar. He also stated that Myanmar was now being transformed in order to achieve the democratization system and that the legal assistance provided by the work of AALCO was invaluable contribution to establishment of the rule of law and development of the judicial sector in Myanmar.
- 4.44 The Leader of the Delegation of Myanmar also recognized piracy as a major challenge and noted Myanmar's cooperation with ASEAN partners in the common endeavour to fight piracy. He also reminded all that of Myanmar and Bangladesh consenting to institute proceedings under Part XV of the UNCLOS, before the International Tribunal for the Law of the Sea (ITLOS). He also noted that Environment and Sustainable Development and Challenges in Combating Corruption were not unfamiliar problems for

Myanmar and that the three Rio Conventions of Environment and Sustainable Development have been ratified by Myanmar. Myanmar has also ratified the UN Convention against Corruption in December 2012 and has enacted Anti-Corruption Law. The leader of the delegation finally expressed his hope that the knowledge in Combating Corruption resulting from the 52<sup>nd</sup> Session would be very useful to scrutinize the Myanmar Anti-Corruption Law to be in line with the international standard.

- 4.45 **The Leader of the Delegation of Democratic Socialist Republic of Sri Lanka** stated that it was his honour to lead the delegation of his country and he expressed his profound appreciation for Professor Rahamat Mohamed, Secretary-General of the AALCO and the Secretariat for the arrangements made by them.
- 4.46 The Leader of Delegation recalled that it was Fifty-Six years earlier that Sri Lanka had joined five other States to launch the Asian Legal Consultative Committee (ALCC) New Delhi. He noted that since then, the Organization has grown into a respected multilateral institution that made credible contributions in the development of international law reflecting the views of the Asian and African continents. He further stated that with a strong membership of 47 countries, AALCO was making its collective voice heard on a vast array of subjects that are vital for peace and progress. He pointed out that the recent annual sessions of AALCO has deliberated on topics that has had a serious bearing on world peace, sustainable development, environment, and prevention of crime and the rule of law.
- 4.47 The Leader of Delegation then referred to the words of the President of Sri Lanka, Mahindra Rajapaksa at the Fiftieth Annual Session at Colombo wherein he had pointed out the need to ensure greater effectiveness with regard to regulatory mechanisms at the international level, in respect of issues which were of immediate concern to many of our countries in Asia and Africa, such as Money laundering, gun running, Human and drug trafficking etc., which were also linked to international terrorism. He reminded the audience that there was no time to lose and that the Member States must move forward with vigour and commitment to initiate meaningful actions to combat crime and uphold the rule of law. He then urged the Member States to take the lead and urge the Secretary-General of AALCO to identify specific additional issues that need to be included in the agenda for the forthcoming sessions.
- 4.48 He pointed out that the Member States had different and contentious views about most of the items on the agenda of the Organization and that AALCO was an appropriate forum to deliberate on these issues to reach common grounds and achieve consensus.
- 4.49 He also stated that the relationship between AALCO and International Law Commission (ILC) was an important one. He stated that the current topics deliberated at the

Commission such as extradition and prosecution, protection of persons in the event of disasters and immunity of state officials from foreign criminal jurisdiction were of importance to all States. He stated that International Trade Law was always an important subject to be included for discussions and that there are vast developments in International Trade and international trade practices that requires the law to be updated at the same speed of such development.

- 4.50 Referring to the United Nations Convention on Law of the Sea, the delegate pointed out that the convention was ratified by Sri Lanka in 1994 and that Sri Lanka had made its submission to the commission in 2009 based on the Statement of Understanding. He pointed out that it was imperative that the sittings of the Commission be accelerated to dispose all pending submissions expeditiously even if that required the Commission to sit throughout the year as vital economic interests are at stake.
- 4.51 The Leader of Delegation further announced that Sri Lanka was gearing up to launch an International Arbitration Centre in Colombo in early 2014. He stated that Centre would be an independent and a professionally managed entity which would provide facilities to enable international companies to resolve any commercial-related disputes. He then called on the Member States to encourage their respective Chambers of Commerce and Industry and entrepreneurs to consider Colombo as their next destination for arbitration.
- 4.52 The Leader of Delegation then reminded the audience that in two months time, Sri Lanka would be hosting the Commonwealth Heads of Government Meeting in Colombo and that this was a prestigious occasion for Sri Lanka as this was the first major event Sri Lanka would be hosting after defeating terrorism that ravaged their country for more than three decades. He requested for the participation and cooperation of all Commonwealth States represented in AALCO to make that event a grand success.
- 4.53 The Leader of Delegation concluded his statement calling on all Member States to take all measures required to ensure the vigour and viability of AALCO and further stated that it was of vital importance that Member States of AALCO are successful in enhancing the cooperative spirit of this institution and speak with one voice to promote and safeguard the interest of the Member States.
- 4.54 **The Leader of the Delegation of the State of Kuwait<sup>4</sup>** stated that Kuwait confirms its support for the Organization since joining in 1970, in terms of regional and international action and increasing its activities through presenting legal topics of common international concern at the present time when the world was witnessing serious challenges which required concerted international efforts and joint action to strengthen

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<sup>4</sup> The Statement was delivered in Arabic. This was the official version from the Arabic Interpreter.



peace and security. He said that the State of Kuwait believes in the vital role of this Organization as well as affiliated Organizations under the umbrella of the UN, which reflect the unprecedented global support to the cause of Kuwait during the Iraqi invasion in 1990 and the pivotal role played by the United Nations Organization for the liberation of Kuwait.

- 4.55 The leader of delegation stated that Kuwait attached great importance these topics by acceding to the Convention on the Law of the Sea, which it had joined in 1986. He stated that Kuwait has international efforts aimed at enabling developing countries and least developed countries to achieve sustainable development by several means, including the initiatives by His Highness the Amir Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah in proposing the fund of decent life that was launched in the Arab Summit for the Economic, Social and Development held in Kuwait in 2009. He pointed out that in addition to the above, Kuwait had contributed US\$ 9 million to support development projects in member countries in the forum of Asia Cooperation Dialogue, which conducted its first summit in Kuwait in 2011, as well as loans to 102 countries of US\$ 17 billion to the fund for Arab economic development since its establishment in 1961. He pointed out that the State of Kuwait was also a member of the Economic and Social Council for period of 2013-2015.
- 4.56 The Leader of Delegation stated that there were increasingly urgent issues that required legal treatment because they represented flagrant violations of international law. These included deportation of Palestinian people and Israeli practices in all occupied territories that violated international law. In addition to this, the challenges in combating corruption and role of UN Convention Against Corruption and as well addressing maritime piracy and the fight against terrorism in all its forms were also issues that required attention. The leader of Delegation stated that the Organization should continue to give significance to these topics through providing legal advice and conducting seminars and workshops, organizing training programmes and preparing research studies.
- 4.57 He extended his sincere gratitude on outstanding role of the Organization since its establishment in 1956 till date through keeping up pace with international events and deferent topics of common concern between members of Organization, in this respect the State of Kuwait urged the Member States for cooperation and joint assistance in order to benefit from topics of international interest which were presented by the Organization.
- 4.58 **The Leader of the Delegation of the Kingdom of Thailand** stated that Thailand had always attached great importance to AALCO and that it continued to do so. He recalled Thailand's active participation in the deliberations and activities of the Organization over the past 50 years. He stated that forging Afro-Asian cooperation was one of the key foreign policies of Thailand. It was pointed out that through such cooperation and sharing of knowledge, Member Countries could benefit from learning from each other's

experiences. He pointed out that the Royal Thai Government had launched the ‘Thai-African Initiative’ in order to strengthen partnership between Thailand and African countries. He said that Thailand believed that there were more opportunities and potential that could be tapped between the two continents to foster trade, investment and forge deeper ties between the people. He then informed that to pursue these goals, Thailand proposed to host a High Level Dialogue between Thai and African leaders at Thailand, next year.

- 4.59 He recalled that with respect to the Law of sea, Thailand has always played a productive and active role right from the time of the negotiations. It was also pointed out that Thailand had signed the convention the same year of its adoption and that it has now become a party to the convention and was working closely to accelerate the implementation process of the UNCLOS to ensure that its implementation was undertaken in a coordinated and comprehensive manner.
- 4.60 With respect to ‘environment and sustainable development’, it was stated that Thailand has been an active participant in this field in different fora. It was also pointed out that the Millennium Development Goals (MDGs) have been an important devise for bettering the livelihoods of millions of people and The Leader of Delegation stressed on the need to exert all efforts to achieve those goals as 2015 was fast approaching. It was also pointed out that it was important that everyone prepares for the post-2015 activities, in light of the successes and lessons learned on the implementation of the MDGs.
- 4.61 The Leader of Delegation recalled Thailand’s active participation in the work of the International Law Commission and stressed the importance of the deliberations scheduled to be conducted at the present annual session for the codification and development of International Law were, in line with the interests of the Asian and African States.
- 4.62 The Leader of Delegation then stated that combating corruption was a priority agenda for Thailand and that to deal with corruption, strategy, necessary laws, measures and effective legal implementation were required at the national level and collective efforts and regional cooperation at the regional and international levels. He recalled that Thailand was a party to the UN Convention Against Corruption and has ratified the same. He then referred to the efforts undertaken by Thailand at the domestic and regional levels to pursue those ends within the ASEAN framework.
- 4.63 The Leader of Delegation then outlined the efforts undertaken by Thailand for promoting the Rule of Law and Justice: He referred to the establishment of the Thailand Institute of Justice for undertaking research, providing technical assistance and other forms of knowledge management in the areas of justice in Thailand, ASEAN and beyond. He also stated that the institute collaborated with other United Nations Institutes and that by the

end of this year, the institute and the Ministry of Justice of Thailand would host a conference on “Bangkok Dialogue on Rule of Law”.

- 4.64 The Leader of Delegation closed his speech assuring the Member States that Thailand would continue to be a strong partner of AALCO and that it stood ready to collaborate with AALCO member countries to achieve the objectives and aspirations of AALCO.
- 4.65 **The Leader of the Delegation of Democratic People’s Republic of Korea** stated that AALCO, which has been making a remarkable contribution to the codification of international law, remained the only intergovernmental forum where Member States exchanged ideas and their views on major international legal issues. It was pointed out that in this regard, AALCO played a positive role in strengthening exchange and cooperation among its Member States and in helping them understand and coordinate their stands on important global and regional legal issues. He went on to highlight the principled stand of DPRK Government on some of the issues raised at this session:
- 4.66 The Leader of Delegation stated that ,Firstly, AALCO and her Member States must pay due attention to the present day reality that the principles of international law are ignored and sovereign rights and interests of the developing countries were trampled down due to the unilateral acts of high-handedness and arbitrariness of some countries. While elaborating this he pointed out that the United States, in pursuit of its political objectives, was making interventions in internal affairs of the other sovereign states and was forcing its own values on other independent states by perusing double standards in interpretation and application of international law in an undisguised manner. These acts of high-handedness and arbitrariness, in his view, impeded not only the socio-economic development of target states but also the establishment of a fair international order. According to The Leader of Delegation, politically motivated military inventions and mass-killings of civilians in Iraq, Afghanistan and Pakistan committed by the US were examples of state terrorism and extension of high-handedness and domination which caused the vicious circle of terrorism. He also added that the recent interventionist attempts on the internal affairs of Syria outside of the UN system was clearly against the rule of international law and was clearly illegal and something that could be justified.
- 4.67 Secondly, he stated that the government of DPRK strongly opposed and rejected the act of imposing unfair sanctions and blockade on a third state by invoking domestic law and the acts exerting political and economic pressure brought on many Afro-Asian countries including the DPRK. He stated that these measures were grossly violative of the general principles of international law which stipulates respect for sovereignty of states, non-interference in internal affairs of the other, equality, reciprocity and the right to free development of the State.

- 4.68 Thirdly, as regards the issue of Palestine, he noted that Israeli inhumane practices including massive deportation of Palestinians and the establishment of Jewish settlements in the occupied Palestinian Territories were grave violations of international law particularly the fourth Geneva Convention of 1949 relating to the protection of civilians during time of war. He stated that the government of the Democratic People's Republic of Korea insists that Israel must immediately stop its acts of terror against Palestinians; withdraw from all the occupied Arab territories and that the cherished desire of the Palestine people for their own independent state must be realized at an earliest date.
- 4.69 Fourthly, he stated that in the Democratic People's Republic of Korea in the present day the Juche Idea has been thoroughly introduced in all fields of social life and rule of law highly observed. He stated that social stability and harmony were fully and legally guaranteed under the dynamic guidance of respected leader Kim Jong Un who brilliantly carries on the cause of President Kim II Sung and General Kim Jong Il.
- 4.70 Finally, he stated that the people of Democratic People's Republic of Korea were currently exerting vigorous efforts to ensure peaceful atmosphere in and around the Korean peninsula and the region and to open the hay-days for building a strong thriving State and the welfare of the people by accelerating economic construction. He stated that it was the unshakable will of our people to get a final victory by smashing any hostile forces. He stated that anti- Democratic People's Republic of Korea forces were moving into isolation and pressure and the people of the Democratic People's Republic of Korea were quite certain that the historic cause of building a thriving socialist nation and realizing national reunification would surely be accomplished.
- 4.71 The **Leader of the Delegation of Tanzania** stated that AALCO has always been dynamic in addressing current and pressing matters of international law and that the topics that were selected at the Fifty- First Annual Session of AALCO held last year were reflective of the same. She added that her delegation was looking forward to have continued discussions and deliberations on all the items forming part of the Fifty-Second Annual Session.
- 4.72 On the financial position of AALCO, she stated that it was very encouraging to see AALCO coming out of the financial crisis that it faced in 2008 by the collective commitment of the all Member States of AALCO to overcome it. She stated that the same spirit was also instrumental in revitalizing the Organization which went a long way in successfully conducting the Annual Session of the Organization since 2008. She furthermore added that all the Member States of AALCO, particularly those which were in arrears, must fulfill their financial obligations towards AALCO as the international community has started witnessing the end of the global financial crisis. In this regard she also expressed the opinion that those Member States of AALCO who were financially

capable of contributing more must consider increasing their voluntary contributions towards AALCO.

- 4.73 On the agenda item Law of the Sea, she pointed out that the escalation of piracy continued to pose major threats to regional peace and stability as well as to international shipping and trade. She noted that everyone had witnessed the extent to which piracy continued to affect trade between Africa and Asia, particularly in the Eastern African region where the scourge had developed in recent years. She was of the view that since piracy could not be solved solely through regional co-operation; she believed that AALCO must continue to address this problem from both global and regional perspectives. She also expressed her Country's commitment to fight piracy particularly in the Indian Ocean that separated Africa and Asia.
- 4.74 On the topic 'Environment and Sustainable Development', she stated that the international community shared with one another the common threats posed by global warming and climate change. For this reason, she pointed out that everyone was collectively responsible for ensuring that economic development initiatives of the Member State's did not threaten the ability of future generations to bring about their own development. In this regard, she stated that Tanzania supported both the Kyoto Protocol and Agenda 21 of the United Nations and that it was firmly committed to educating the public on environmental conservation.
- 4.75 On the topic of corruption, she stated that corruption has been the major cause of poverty in the developing world and that adopting a challenge-oriented paradigm might be the realistic approach to combating this problem.
- 4.76 As regards rule of law and good governance, she stated that the United Republic of Tanzania was currently reviewing its Constitution of fifty years to broaden the rule of law, democracy and good governance and that a Committee for overseeing the review process has been formed and that a national system approved by the Parliament was in place to guide the participation of all Tanzanians. She stated that the first draft of the Constitution was unveiled in June and that country wide all-inclusive Constitutional forums have been established to discuss the content of the draft. She added that the new Constitution focused on building good governance by revisiting the legal and institutional framework of the Country.
- 4.77 Finally she stated that the United Republic of Tanzania remained aligned to the agenda of AALCO that provides a unique platform for the Asian-African region. She also underlined the significant contributions that AALCO has made over the years in enriching the corpus of international law in diverse topics of contemporary international law.

- 4.78 **The Leader of the Delegation of Nepal** appreciated the inaugural address by Mr E. Ahamed, Minister for State for External Affairs of the Government of India and stated that his inspiring words symbolized the historic importance attached to AALCO by its Member States. He stated that the Session must be used to assess and evaluate the work of the Organization; revisit the commitments made during last fifty-one sessions; and envisage the future course of action of the Organization, which had made significant contributions to the progressive development of international law and set norms and standards in various fields of international law.
- 4.79 The Leader of the Delegation of Nepal appreciated the selection of the topic ‘Challenges in Combating Corruption: the Role of United Nations Convention against Corruption’ as an agenda item. He stated that combating corruption required international cooperation through means such as extradition, mutual legal assistance and so on. He also stated that Nepal was actively involved in the framing of the Convention against Corruption and that it was ratified by his country in 2011, and that Nepal has adopted and implemented a comprehensive strategy and action plan on the Convention against Corruption in a systematic and coordinated manner.
- 4.80 With regard to ‘Environment and Sustainable Development’, the leader of the delegation were of the opinion that it was one of the most critical issues of the present times. He stated that devastating floods, rapidly melting snow in the mountains, barren lands in the hills, rapidly depleting sources of drinking water in the plains and rising sea levels symbolized the seriousness of the problem. He stated that poverty, climate change, food and energy crisis were interlinked with the issues of environment and development. It was stated that Nepal being a least developed, land-locked and mountainous country, was trapped with triple burden.
- 4.81 The leader of the delegation also drew the attention of the international community to their commitments to Istanbul Programme of Action addressing the issues of least developed countries and the Almaty Programme of Action addressing the Special Needs of Landlocked Developing Countries.
- 4.82 **The Deputy Leader of Delegation of the People’s Republic of China** said that the Chinese Government had always attached great importance to and supported the work of AALCO, and highly appreciated the achievements made by AALCO since its establishment. As the only inter-governmental Organization in the field of legal consultation, cooperation and exchange of views among Asian-African countries, the AALCO had devoted itself to studying international law issues of common concern and provided legal assistance to its Member States. He stated that the Organization had made important contribution to facilitating the Asian-African countries’ participation in the international law practices and promoting the development and codification of international law.

- 4.83 She stated that the world was experiencing major development, transformation and readjustments and that on account of this the international system was undergoing wide, complex and profound changes. She stated that never before, were the interests of countries so interconnected, interdependent and inter-converged. According to them, the problems that called for common response were increasing, aspirations seeking win-win progress through cooperation were rising and that to promote peace, development and cooperation had become the irreversible trend of the times. She stated that during the present time, international law played an increasingly important role. She also stated that in addition to the above, issues with legal aspects in international relations were further increasing while international law was undergoing constant adjustment and evolution. According to her under such circumstances AALCO was confronted with not only more opportunities but also more challenges.
- 4.84 The Deputy Leader of Delegation appreciated the leadership of the Secretary-General and the initiatives that had been launched during his tenure including the establishment of the EPG, establishment of a database on legal experts etc. She stated that she hoped that the implementation of the above suggestions would further expand its activities.
- 4.85 Bearing in mind the challenges faced by AALCO, the Deputy Leader of Delegation made the following suggestions: (i) AALCO would continue to strengthen its capacity building and contribute further in the development of both practice and theory of international law. For this on the one hand, AALCO could closely follow major international issues and events, make in-depth analysis of the international law issues involved and facilitate exchange of views among Member States with the aim to reach consensus. On the other hand, AALCO could conduct in-depth studies on new issues, new trends and new developments in international law and conclude reports as appropriate, so as to promote its academic contribution. (ii) In order to increase its influence, AALCO could continue to strengthen close cooperation with the United Nations and its agencies by expanding forums of cooperation, improving the effectiveness thereof, and raising awareness of the views and voices of AALCO on issues of common concern to its Member States. She also expressed her hopes that AALCO would continue to improve its capacity for providing legal assistance to Member States, organize seminars and training programmes and serve as a cradle of talents on international law for the Asian and African countries.
- 4.86 She concluded her statement by stating that the People's Republic of China would always support and participate in the work of AALCO and that it would work with other Member States to make international law more inclusive in order to reflect the interests and positions of the developing countries, to make joint efforts to uphold international fairness and justice by promoting international rule of law, the values of equality, mutual trust, inclusiveness and learning and mutually beneficial cooperation.

- 4.87 **The Leader of the Delegation of India** stated that being one of the seven founding members of AALCO, India attached highest importance to AALCO and its work. Further it was stated that India was proud to be the host country of AALCO and to provide for Permanent Headquarters premises in the prestigious diplomatic area of Chanakyapuri, New Delhi. The Leader of Delegation appreciated the list of deliberated items and the topics for the two-half day special meetings, which he pointed out, were novel and relatively challenging topics of the ILC for deliberations at the Session.
- 4.88 The Leader of Delegation appreciated and complemented Sir Michael Wood for his work on customary international law. He stated that the Note prepared by the Special Rapporteur identified the issues and laid down a very ambitious schedule of work. The delegation also complemented Ms. Concepcion Escobar Hernandez, the Special Rapporteur on the topic, “Immunity of State Officials from Foreign Criminal Jurisdiction” and agreed in principle with the substance of the draft articles as proposed with a view to expand the scope of it.
- 4.89 The Leader of Delegation complemented the AALCO Secretariat for a comprehensive summary on the Special Study on the Statehood of Palestine under International Law and subscribed to that study stating that Palestine was an unfinished and long pending task of the international community. He stated that India wishes to see Palestine as a full-fledged sovereign and independent State at the UN and other fora. The next topic addressed by him was on corruption and he stated that it was a serious threat and menace to the society at large. According to him, its manifestation frustrates the effort to bring equity to all its citizens. The Leader of Delegation informed the Member States the several steps taken by the Indian government to curb this menace and reaffirmed their commitment to bring more transparency in governance. The next topic that was emphasized was on the Law of the Sea. He stated that India with its vast geography, wide coastline and numerous islands had a traditional and abiding interest in the maritime and ocean affairs. He stated that India was a party to the Law of the Sea Convention, the Implementing Agreement, and the Fish Stocks Agreement and recalled that in collaboration with the AALCO Secretariat, the Legal and Treaties Division of Ministry of External Affairs, Government of India had organized a Legal Experts Meeting to commemorate the 30<sup>th</sup> Anniversary of the United Nations Convention on the Law of the Sea on 5<sup>th</sup> March 2013 in New Delhi. He pointed out that the meeting was successful in highlighting the achievements of UNCLOS and also identifying the challenges ahead.
- 4.90 On the topic “Environment and Sustainable Development”, it was stated that India shared the common responsibility for doing things in a fair and equitable manner, but that the massive inequitable consumption of resources by a few had created a deficit when there was hardly enough for those whose needs were yet to be met. He stated that Imperative for equity had to be respected. He stated that despite their increasingly pro active



engagement on climate change issues, India had not wavered from its position that equity concerns must underlie the International Climate Change Negotiations. Henceforth, the delegation insisted that, despite a common goal of global climate stabilisation, each country had different responsibility towards addressing the problem.

- 4.91 The delegation reaffirmed the position of Government of India in supporting and collaborating with AALCO to achieve the common objectives and aspiration of AALCO.
- 4.92 **The Leader of the Delegation of the Republic of Korea** began by quoting Mahatma Gandhi's words: "We must be the change we see in the world." He then touched upon three agenda items. The first was the Law of the Sea where he recalled that it was the 30<sup>th</sup> Anniversary of UNCLOS and informed all Member States of Korea holding an International Conference at the city of Yeosu to commemorate the event with the attendance of the UN Secretary General. However, the leader of the delegation stated that substantial challenges such as threats to navigation safety, degradation of the marine environment, over-exploitation of resources etc. still lay ahead. He also stated that the only way to confront these issues was to establish more dedicated internal and external practices by adhering to the words of Gandhi that he had just quoted.
- 4.93 Regarding climate change, the leader of the delegation stated that a transition from the Kyoto Protocol to an unknown quantity was under way. Once again he reiterated that it was only by being "the change we wish to see" that the countries of the world can agree and develop a new climate change regime for post-2020 and curb ever-rising temperature.
- 4.94 Thirdly, the leader of the delegation thanked the Secretariat for bringing the anti-corruption issue to the Session. He considered it a great achievement that the countries have concluded and adopted the 'UN Convention Against Corruption' which according to him was the doorway to "become the change that we wish to see".
- 4.95 Lastly, the leader of the delegation informed all Member States that he considered economic development to be the most important issue for the world particularly for developing countries and expressed the possibility of AALCO playing a more active role in this area, perhaps by formulating soft laws in the field, for instance concerning Overseas Development Assistance.
- 4.96 **The Leader of Delegation of Bangladesh** thanked the Secretary-General for comprehensive report on the work of the Organisation since the Fifty- First session and took note of the Secretary General's presentation of some promising and relevant areas of work for the next period of the next three years. The Leader of the Delegation also extended advocacy in support of enlarging the membership of the Organisation.

- 4.97 The Leader of the Delegation stated that corruption reforms such as the Anti-Corruption Commission (ACC) have been made and that Bangladesh also voluntarily underwent the UNCAC peer review process, conducted peer reviews of two other countries and adopted a National Integrity Strategy which promoted ethical conduct, integrity, transparency and accountability. On environment and sustainable development, the leader of delegation stressed on the importance of the principles of equity and ‘common but differentiated responsibilities’ and of the three fundamental pillars of development: economic, environmental and social.
- 4.98 On social and human development, the leader of the delegation state that Bangladesh has been encouraging practical work on ‘green economy’ and underscored the need for the international legal regime to take into account the specific and differentiated needs and aspirations of countries at different stages of development. He also thanked the Secretariat for observing the 30<sup>th</sup> anniversary of UNCLOS and reaffirmed the importance of international arbitration in disputes such as the ITLOS verdict that settled the case between Bangladesh and Myanmar. The leader then reiterated Bangladesh’s concern over irregular movements at sea in the Asia Pacific region supported by transnational trafficking and smuggling networks, and called for enhanced capacity for States to comply with the international maritime.
- 4.99 On terrorism, he stated that Bangladesh maintains a zero-tolerance approach to terrorism. He pointed out that Bangladesh has taken measures such as enacting Anti-Terrorism, Anti-Money Laundering and Mutual Legal Assistance Acts. The Leader of Delegation then drew attention of the Member States to the setting up of the International Crimes Tribunals in Bangladesh and informed that the tribunals have delivered six verdicts so far. He also appreciated the Secretariat’s study on “The Statehood of Palestine under International Law” and described it as a useful contribution for addressing a critical question. Finally, The Leader of Delegation called upon Member States to make use of the services available through AALCO to build common grounds on issues that often divide the international community.
- 4.100 The **Leader of Delegation of the Arab Republic of Egypt** congratulated the President of the Fifty-Second Annual Session and pledged their full support to her mission. He further expressed their appreciation to the outgoing President of the Fifty-First Annual Session. He pointed out that since its inception, Egypt has found growing interest in the work of the Organization and its work in support of the Member States’ to meet their increasing challenges in realizing their political rights and achieving their developmental goals. He pointed out that the agenda adopted at the present session contained several items with political and developmental dimensions. He further stated that Egypt considered all the agenda items to be important ones and appreciated the efforts to follow up the work on the Law of the Sea pointing out that the Organization could provide

proposals and studies to be shared amongst the Member States on efforts to combat piracy, the Jurisdiction, and extradition & territorial disputes in the International Waters, Economic Zones and beyond.

- 4.101 The Leader of Delegation expressed support for the Statement of Palestine and called on Member States to use the study by the Member States to improve their understanding of the legal dimensions of the Palestinian issue. It was pointed out that Egypt has expressed its support for the ongoing talks between Israel and Palestine to achieve the ultimate goal of ending the Israeli Occupation and the establishment of an independent Palestinian State with East Jerusalem as its Capital. The Leader of Delegation further denounced the expansionist activities of Israel, which he termed as eroding all possibilities of a two State solution. He further denounced those recent activities of Israel with respect to the Aqsa mosque, which he pointed out, would destroy the same. In this context, the He referred to the statement of the Attorney General of Malaysia, pointing out the need to end rhetoric and extend support to those AALCO Members who has supported the Palestinian cause before the United Nations. He further appealed to the legal experts present to converse with their politicians and explain the legal dimensions of the issue to them, in order that it may be a part of the peace making process.
- 4.102 With respect to sustainable development, The Leader of Delegation pointed out that the developing world has been dealing with environment as one of the three pillars of Sustainable Development, along with Economic Development & Social Development, as indicated in the Rio Declaration. It was pointed out that, Egypt, along with the developing world has advocated the principle of “Common but differentiated responsibility” and called for more work from AALCO to support efforts for the ongoing preparations at the United Nations for Millennium Development Goals post 2015. It was also pointed out that special attention and consideration had to be given to Africa, considering the growing challenges faced by it, especially with respect to combating desertification, which erodes its resources and drives its people to migrate both internationally and locally, which in turn exerted further pressure on its resources. The Leader of Delegation also called for legal support from AALCO Members to the developing countries’ Geneva based missions in areas of development, where new challenges were arising with respect to the utilization of Genetic resources and utilization of Intellectual Property Rights in basic medicines for the poor. It was also pointed out that the developing countries, which included Egypt, had signed the United Nations Charter in the confidence that these bodies would work to foster international cooperation and would help to find ways and means for a better world through its different fora. The Leader of Delegation ended his speech rejecting all forms of unilateral action outside the United Nations, so as to realize Peace and understanding among nations.

- 4.103 **The Leader of the Delegation of the Republic of Kenya**, stated that since joining the Organization, Kenya has remained as an active participant at the annual sessions and meetings of AALCO and recalled the annual sessions that were hosted at Nairobi and that one of the previous Secretary General was a Kenyan National. She stated that AALCO provided a unique forum for the analysis of the impact of numerous contemporary legal issues and for the formulation of common positions from the standpoint of the respective countries and regions. She further emphasized on AALCO's vital role in serving as an advisory body to its Member States in the field of International Law and ensuring the articulation of the interests of the two regions before the General Assembly of the United Nations, the International Law Commission and other International Organizations.
- 4.103 The leader of the delegation then outlined the efforts taken by Kenya in combating corruption and recalled that Kenya was the first country to sign and ratify the United Nations Convention Against Corruption (UNCAC). She further stated that, in the coming year, Kenya is set to undergo a review of its implementation of the United Nations Convention against Corruption (UNCAC) in accordance with the Implementation Review Mechanism adopted by the Conference of Parties to that convention. She stated that Kenya had already put in place laws and institutions mandated by the Convention and that they would share their experiences with respect to this in the course of the present session. It was also stated that Kenya was familiar with the review mechanism, having participated in the previous reviews. It was further stated that the outcome of the UNCAC review would go a long way towards examining the strengths and weaknesses of anti-corruption laws, systems and institutions and to benchmark the same with the international standards and best practices.
- 4.104 The leader of the delegation recalled that, at the previous Annual Session, Kenya had reported a proposal to establish a regional arbitration centre and stated that the President of Kenya has assented to the law –The Nairobi Centre for International Arbitration Act, which would establish the centre. It was further stated that the objectives of the aforesaid Act was in line with AALCO's objectives of setting up regional centres for arbitration as an alternative to the existing institutions. The Leader of Delegation then highlighted some of the functions of the Centre, which included promotion and facilitation of the conduct of International Commercial Arbitrations; administration of domestic and international arbitrations and alternative dispute resolution mechanisms; ensuring that arbitration was the preferred dispute resolution process; development of rules encompassing conciliation and mediation processes; coordination and facilitation of arbitrations, in collaboration with other agencies; conduct, promote and coordinate research in collaboration with the private agencies; establishment of a library; provision of assistance, training and accreditation for mediators etc. It was also reported that the Act established an Arbitral Court that was governed by the UNCITRAL Rules. The Leader of Delegation then presented details concerning the administrative machinery and the membership of the

Tribunal. It was further stated that in moving ahead with the process of establishing the Centre, the focus, at present was on ensuring the provision of adequate budgetary allocations, identification of suitable premises etc. It was also reported that a key function of the Centre was to enter into strategic agreements with other regional and international bodies for the purposes of securing technical assistance, to enable the centre to achieve its objectives.

- 4.105 Finally, the leader of the delegation reassured the Member States that they were on the course of realizing their undertaking to establish the Nairobi Centre for International Arbitration as a regional centre for arbitration.
- 4.106 **The Leader of the Delegation of Nigeria** reiterated Nigeria's support for the United Nations in the maintenance of world peace and security and for AALCO's work in the maintenance of world peace, in Environment and Sustainable Development, the fight against corruption, Law of the Sea, and Terrorism.
- 4.107 It was recalled that at the Fifty-First Annual Session in Nigeria, international terrorism was discussed with particular reference to the experiences of, and challenges faced by, his country. It was also recalled that Nigeria enacted, in 2011, the Anti-Terrorism Act. The leader of the delegation also reiterated that the problems faced by the country were not religious, but were issues ascribed to criminal activities. He also noted that Nigeria has enacted various legislations to establish the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) to fight corruption, and that Nigeria had submitted its 2<sup>nd</sup> Periodic Review Report in 2013 to the Geneva-based Human Rights Council. He further reported that Nigeria has also enacted a Law and established an Agency for the fight against human trafficking and a law on the rights of the child to protect the child from child labour and abuse. He stated that the Law against human trafficking was presently being reviewed by the National Assembly to expand the scope of application of the law.
- 4.108 **The Leader of the Delegation of Republic of Indonesia** thanked AALCO Member States for the support of the Government of Indonesia for membership in UNCITRAL for the period 2013-2019 at the election held at the Sixty-Seventh Session of the United Nations General Assembly. The leader of the delegation then stressed on the importance of the budget in AALCO's discussions at the Fifty-Second Session and stated that Indonesia appreciated the submission of the draft budget by AALCO and that it hoped for a resolution of the budgetary issues.
- 4.109 The leader of the delegation then informed the meeting that the Government of the Republic of Indonesia held the Consultative Meeting of Like Minded Countries and Other Interested Countries on the future work of the Intergovernmental Committee on the Protection of Genetic Resources, Traditional Knowledge and Folklore (the IGC) during

2-4 September 2013 at Bali, Indonesia. The Leader of Delegation stated that Malaysia believed that the Consultative Meeting would be able to build confidence and create a common perception between the Like-Minded and Other interested countries on the future work of the IGC.

- 4.110 The leader of the delegation then congratulated Palestine for its admission to the UN General Assembly.
- 4.111 The leader of the delegation reaffirmed Indonesia's intention to actively engage in discussions on most of the deliberated items that concern Indonesia. On the selected items of the ILC, the leader of the delegation stated that the input by Member States would be significant to the ILC and that one of their best diplomats, Ambassador Nugroho Wisnumurti was elected as ILC member in 2011. Furthermore, The Leader of Delegation stated that the selected topics were all of great importance to AALCO Member States.
- 4.112 On the topic of "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties" The Leader of Delegation of Indonesia emphasized Indonesia's position where it was unable to agree on the extraterritorial application of national legislation. Indonesia was of the view that enforcement of the above has the potential to contradict the sovereignty of other States.
- 4.113 **The Leader of the Delegation of the Islamic Republic of Iran** stated that their country continued to attach high importance to AALCO and was ready to make every effort to further utilize its potential in strengthening the rule of international law. It was recalled that with a vision to support the role of the Organization and the Secretary-General in promoting the rule of law, The Ministry of Foreign Affairs had hosted a visit of H. E. Prof. Rahmat Mohamad at Tehran in April 2013 and that during the visit meetings were arranged with high ranking officials of the Ministry of Foreign Affairs and the Minister of Justice. It was also recalled that Tehran Arbitration Centre also received the Secretary-General and briefed him about their activities and the challenges.
- 4.114 The delegation fully supported the Secretariat in exerting its mandate. It was pointed out that despite every efforts, the AALCO Member States have not been very active in merging substantial common positions on many legal issues of international concern. It was pointed out that however, that does not mean that the Secretariat should fill the lacuna by "amusing itself with substantial exercises which falls exclusively with the Member States".
- 4.115 The Leader of Delegation pointed out the importance of sustaining the long tradition of the Secretary-General of AALCO attending and participating in one of the meetings of the International Law Commission. It was recalled that ILC has been in-charge of the codification and progressive development of international law, and have always been

interested to know about AALCO Member States' views on certain topics on its agenda. It was pointed out that on complicated topics of international law, it was not possible for the AALCO to merge common position, nevertheless, that the Member States efforts must use this forum for promoting active participation of the Asian and African countries in the progressive development of international law, including through exchange of views and sensitizing the Member States on issues of common concern.

- 4.116 Stressing the importance of AALCO meetings during the annual sessions of the General Assembly and the Sixth Committee in New York, The Leader of Delegation said that opening such significant meetings to all members and non-members would defy the objectives of AALCO's creation. It was pointed out that the unrelenting waves of terrorism in the region posed unprecedented threat to life and security of the people and that it was very alarming that such resorts to acts of terrorism against civilian targets have now become so pandemic in a number of countries and that innocent civilians have become the main instruments of political pressure against governments. It was recalled that these atrocities were mainly the consequence of unlawful military or other interventions by outside powers. The Leader of Delegation said that having been long standing victim of terrorism, his Government has always condemned the acts of terrorism in all its forms and manifestations, including State terrorism which unfortunately continues to spread systematic terror and violence against the targeted nations and that this was quite recently manifested when Iranian researchers fell victim to a terrorist bombing. The delegation was convinced that eliminating terrorism would hardly be achievable without sincere cooperation among States and that this would require States to avoid double standards vis-à-vis different acts of terrorism and preferential treatment to favourite terrorist groups.
- 4.117 Recalling the atrocities on innocent civilians, The Leader of Delegation observed that they were not only targeted by terrorist groups in their vicious campaign to general terror and horror, and that certain countries were routinely bombed by drones and the attackers simply justify these numerous civilian casualties as 'collateral damage'. It was stated that such kind of inhuman justification for massacring the civilians has only banalised the most serious atrocities committed by State armies under the name of combating terrorism.
- 4.118 Expressing alarm over the alleged use of chemical weapons in Syria, The Leader of Delegation said that his country had been a main victim of chemical weapons in the post-WW II era and that he deeply sympathised with the victims of such inhuman weapons banned under international law. He narrated the indescribable sufferings of the Iranian soldiers and civilians who were atrociously attacked during Saddam Hussein's regime. Further, he stated that their nation could not afford to forget either the appalling use of chemical weapons by Saddam Hussein or the late and loose reaction of the world powers

and the Security Council. He also pointed out that the use of chemical weapons as a means of warfare was troubling as they were allegedly used by non-state actors active in the Syrian conflict, namely the terrorist groups.

- 4.119 **The Leader of Delegation of Syria**<sup>5</sup> noted the growing importance of AALCO and its integral role in the international legal community, in the promotion of culture, sovereignty and respect for international law. He also stated that AALCO would contribute actively to the strengthening of the Charter of the United Nations Organization to solve all the issues faced by the world.
- 4.120 The Leader of Delegation also hoped that AALCO would enhance cooperation and coordination between countries of this Organization in international law and identify the fields of international law that are of particular interest to its Member States in order to resolve issues facing them. He also acknowledged the importance of the issues on the agenda and stated that they would require utmost cooperation and coordination from our Member States.
- 4.121 **The Observer Delegation from of The International Committee of the Red Cross (ICRC)** recalled the history of the ICRC, which was founded 150 years ago in recognition of the reality that even in armed conflict, there must be limits – which are enshrined under IHL. The Leader of Delegation stated that since Henry Dunant's account of the Battle of Solferino, the theatre of war continues to evolve but that what remains constant was ICRC's neutral, independent and impartial humanitarian approach in providing protection and assistance to victims of armed conflict and other situations of violence as seen in contexts such as Afghanistan, Colombia, Somalia and Syria.
- 4.122 The Leader of Delegation asserted that the ICRC's mandate stems from the Geneva Conventions of 1949 to contribute towards the development, implementation and promotion of IHL. It was stated that the Conventions and their Additional Protocols aimed at protecting civilians, particularly women, children and displaced persons. He invited States to contribute to the universal ratification of all IHL treaties and to secure their full and extensive implementation at the national level, through the adoption of relevant legislation and other administrative and practical measures, as well as dissemination to the Armed Forces, to prevent the breach of IHL.
- 4.123 The Leader of Delegation focused on three topics which were high on ICRC's agenda, namely 1). The ICRC project on Strengthening Legal Protection for Victims of Armed Conflict; 2). The Healthcare in Danger Campaign of the Red Cross/ Red Crescent Movement; and, 3). Sexual Violence and Armed Conflict. With regard to the first topic, he stated that 31<sup>st</sup> International Conference of the Red Cross and the Red Crescent resulted in the adoption of the Resolution which provided the basis for strengthening IHL

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<sup>5</sup>The Written Statement was transmitted to the AALCO Secretariat to be included in the Verbatim Record.



in two areas, namely i) The protection of people deprived of their freedom; and ii) Mechanisms to ensure compliance with IHL. It was recalled that the decision to devise proposals and options on : i) A periodic reporting system on IHL national compliance; ii) Thematic discussions on IHL issues; and iii) Modalities for fact-finding, were also taken.

- 4.124 With regard to the second topic, The Leader of Delegation informed the Member States that to assess the magnitude of the violence affecting health care, the ICRC has collected data in 23 countries. She stated that during the period from January 2012 to May 2013, the ICRC has recorded more than 1,200 incidents affecting the delivery of and access to health care, which was in violation of IHL. It was stated that the ICRC will coordinate a Healthcare in Danger Universal Expert Workshop on Legal Frameworks, which shall take place in Brussels during the first quarter of 2014.
- 4.125 With regard to the third topic, The Leader of Delegation pointed out the need for greater protection of men, women and children, through law and action, who are exposed to such violations owing to systematic use of torture, injury, degradation, threats, intimidation or punishment
- 4.126 Finally, The Leader of Delegation maintained that in the spirit of the Cooperation Agreement (2003) between the ICRC and AALCO Secretariat, the ICRC would continue to provide all legal and technical support necessary to the AALCO Secretariat and its Member States.

## **5 Second General Meeting**

- 5.1 ***Release of AALCO Publications:*** The Secretary-General of AALCO briefly gave a background about the Yearbook, the AALCO Journal of International Law, A study on the Statehood of Palestine under International Law, An Abstract of the Special Study on “Unilateral and Secondary Sanctions: An International Law Perspective” and Verbatim Record of the Legal Experts Meeting to Commemorate the Thirtieth Anniversary of the UNCLOS, held on 5<sup>th</sup> March 2013 at the AALCO Headquarters. Thereafter, the following AALCO publications were released by H.E. Dr. Neeru Chadha, the President of the Fifty-Second Annual Session of AALCO:

1. *Yearbook of the Asian-African Legal Consultative Organization (2012);*
2. *AALCO Journal of International Law Vol.2 Issue 1, 2013 ;*
3. *NEWSLETTER of AALCO Volume 10 (No.1 January-July) 2013;*
4. *Special Study on the Statehood of Palestine under International Law;*
5. *An Abstract of the Special Study on “Unilateral and Secondary Sanctions: An International Law Perspective”; and*
6. *Verbatim Record of the Legal Experts Meeting to Commemorate the 30<sup>th</sup> Anniversary of the UNCLOS, held on 5<sup>th</sup> March 2013, at the AALCO Headquarters*

Pursuant to the release of the Study on the Statehood of Palestine under International Law, **the Leader of Delegation of the State of Palestine** congratulated the Secretary-General of AALCO for the initiative and stated that AALCO had done a tremendous

service not only to the Palestinians but also to the international community who had the right to know the facts. Further, he stated that the work produced by AALCO was timely and was a commendable legal text that made a convincing case for Palestinian statehood which must be read by scholars, policy makers, jurists and all those who supported the just struggle of the Palestinians to liberate themselves from the stranglehold of brutal Israeli occupation.

## **Second Meeting of the Delegations of the AALCO Member States**

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

5.3 The Secretary-General at the outset thanked all the Member States for reposing trust and confidence in his ability to lead the Organization and for re-appointing him at the previous Annual Session. He further thanked the Member States of AALCO and his Excellency Mr. Mohammed Bello Adoke, Attorney-General and Minister of the Federal Republic of Nigeria; the President of the Fifty-First Annual Session of AALCO for his guidance in steering the work of the Organization over the past one year. He also thanked the other International Organizations and Academic Institutions that had collaborated with AALCO for organizing various events.

5.4 The SG then elaborated the activities undertaken by the Organization in the previous year. It was pointed out that these activities were accomplished on account of the hard work exerted by the legal staff and the optimal functioning of the Secretariat.

5.5 The SG then enlisted the activities undertaken and participated by the SG and the Secretariat Officials: The SG stated that immediately after the Annual Session he had visited the headquarters of the **African Union** to explore the possibilities of co-operation between the two Organizations. He then stated that he had addressed the **64th Session of the International Law Commission at Geneva** and that the verbatim record of the Special Half-Day meeting and the deliberations at the previous Annual Session of AALCO was circulated there for discussions. In addition to this, he stated that, the issues surrounding two of the important agenda items of the ILC, i.e. (i) Protection of Persons in the Event of Disasters and (ii) Immunity of State Officials from Foreign Criminal Jurisdiction were also presented by him. The SG and the DSG, Dr. Soleimani had participated in the Special Commission meeting on the Choice of Law in International Contracts organized by the **Hague Conference on Private International Law**. Discussions concerning future cooperation and working relationship was conducted with the Secretary-General of the Hague Conference. On Behalf of the Organization, the S.G. addressed the **11th Session of the Assembly of States Parties to the International Criminal Court** in the course of which he shared some of the concerns of the Asian – African States regarding the court and its functioning; The **Annual AALCO Meeting**

convened on the sidelines of the 67th Annual Session of the United Nations General Assembly took place at the UN Headquarters in New York. As owing to bad weather, the President and the SG could not attend the meeting and the opening Remarks were made by Dr. Roy S. Lee. The meeting dealt with issues such as “Achievements of the UNCLOS on its 30th Anniversary”, “Current Issues facing the ICC Prosecution”, “Some Thoughts on the Prevention of Genocide”, “The Contribution of the ICJ to the Law of the Sea” and the “Work of the International Criminal Court; A Seminar on **“Climate Change: Post Kyoto International Climate Policy”** was held on 16th January 2013 at AALCO Headquarters, New Delhi which drew attendees from a variety of institutions. There were two important sessions namely; (i) Science and Economics of Climate Change, and (ii) Legal and Policy Response of Climate Change and the Seminar drew a good response from Member States of AALCO; To commemorate the **30th Anniversary of the United Nations Convention on the Law of the Sea (UNCLOS)**, a Legal Experts Meeting was jointly organized by the Legal and Treaties Division, Ministry of External Affairs, Government of India and the AALCO on Tuesday, 5th March 2013 at AALCO Headquarters, New Delhi in which eminent Government officials, scholars and academics and former officials of AALCO had participated. The meeting was a success with excellent participation and response from numerous persons of repute and expertise; A paper was presented by the SG at a symposium on **“Building ASEAN Identity on a Transnational Dimension”** organized by the United Nations University (UNU, Tokyo) from 7 to 8 March 2013; A paper entitled “The International Criminal Court: Some Reflections” was presented at a symposium on “Role of Courts and Tribunals in the Changing Global Order” at **the Jawaharlal Nehru University**; A Public lecture on Transformation of ASEAN from a Non-Rule based to Rule based Charter and its implications” was delivered at the **South Asian University** ; Mr. Feng Qinghu, the Deputy-Secretary General presented a lecture on “International Criminal Law” for junior diplomats at the **Foreign Service Institute (FSI), Ministry of External Affairs**; The SG met with Secretary-General of **the Economic Cooperation Organization (ECO)**, in Tehran to promote co-operation between both the Organizations; The SG, accompanied by Mr. Feng Qinghu, the DSG, addressed the **65th session of the International Law Commission** wherein he briefed the Members of the Commission on items (i) immunity of state officials from foreign criminal jurisdiction; (ii) protection of persons in the event of disasters and (iii) formation and evidence of customary international law; **The Hague Centre for Law and Arbitration and Doshisha University Graduate School of Global Studies**, Japan jointly organized a Symposium on “Unilateral Sanctions and International Law in the Hague on 11 July 2013 and the SG made a presentation on the topic on “Unilateral Sanctions and International Law”.

- 5.6 The SG then referred to the publications brought out by AALCO in the previous year: 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. In pursuance of the mandate given in the last year, the Secretariat brought out two publications: (i) A Study on the Statehood of Palestine under International Law and (ii) Unilateral and Secondary Sanctions: An International Law Perspective.
- 5.7 The SG pointed out that the website of AALCO was now at par with that of the other international Organizations and that it follows the prevailing trends in design, style and information sharing. The SG thanked the immense technical and financial support rendered by the Kuala Lumpur Regional Centre for Arbitration towards this project.
- 5.8 The SG then outlined the steps taken to revitalize and strengthen the Organization, pursuant to the adaptation of the Putrajaya Declaration in 2009, which included – a) Capacity Building Programmes, b) initiation of AALCO Lecture Series, c) AALCO Eminent Persons Group. The SG pointed out that the Secretariat played a crucial role in strengthening the work of the Organization and that despite the severe constraints of human and financial resources; the final products are at par with the quality and quantity of any important international conference anywhere in the world. The SG then proposed to recruit at least two new legal officers in 2013 -2014 for the smooth functioning of the Organization.
- 5.9 The SG pointed out that at present all the DSGs were from the Asian Region and requested 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 to ensure a representation.
- 5.10 The SG pointed out that in order to attract the best of talent from the two regions for the professional category Staff, he proposed the offering of remuneration and other terms and conditions of services at par with other Inter-governmental Organizations and in furtherance of this proposal the SG requested the Member States to nominate legal officers from their legal ministry to provide assistance with legal research with their remuneration being borne by the sponsoring States. The SG further proposed a visiting fellowship program for senior Academics and research assistance for Post-Graduate students from the Member States.
- 5.11 On financial matters, the SG recalled the comprehensive strategy adopted at the Putrajaya Session that was held at Malaysia with respect to the ‘Revised Scale of Assessed Contribution’ of Member States. The SG stated that the financial situation of AALCO

was better than what it used to be, however it was also pointed out that in order to meet its commitments and to sustain financial stability more cooperation was required from the Member States. The SG requested the Member States to make voluntary contributions to AALCO and called for adopting innovative measures for the long run. The SG further pointed out that to avoid financial constraints in the future, a comprehensive strategy was prepared before the 2014 Budget was drafted. SG reminded the Member States that in view of the rising inflation and operational costs and the need to recruit more staff, Member States had mandated the Secretariat to explore all possibilities during framing the 2014 budget that would enable and satisfy the needs of the Member States and that the DSG, Dr. Fukahori would give a detailed report on the same in a short while.

- 5.12 The SG then gave the details of the contributions received from Member States and urged the defaulting members to make payment at the earliest. The SG also detailed the efforts taken by the Organization to collect the outstanding arrears. The SG stated that the voluntary contributions received would not be treated as a part of the regular budget and that the same would be earmarked for Special Projects. The SG further suggested that the with respect to the replenishment of the reserve fund, it was ideal that the amount kept be sufficient to meet the expenses of the Organization at least for a period of six months and that due to current financial difficulties it was difficult to reserve amounts from the contributions received from the Member States. The SG expressed the limitations of the Secretariat in pursuing these matters beyond a certain point and stated that considering the technical nature of the work of the Organization, it was difficult to gather the attention of the political circles regarding these issues.
- 5.13 On the Secretariat and Welfare measures for the Secretariat staff, the SG pointed out that three Senior Officials from AALCO Member States have been deputed by People's Republic of China, Islamic Republic of Iran and Japan on secondment. The SG then gave details of the Staffing and of the promotions made. It was stated that the AALCO Secretariat closely follows the scheme followed by the Government of India with respect to Salary and retiral benefits to its employees. It was further stated that as no pension was being paid, the only substantial amount paid to the retiring employee t was in the form of Gratuity and the amount paid by AALCO as gratuity was the same as that of the Government of India.
- 5.14 On the Plan of Action for the forthcoming year, the SG began with thanking for the support of the Member States. He then stated that as mandated by the Putrajaya Declaration on Revitalization of the Organization, the Secretariat was to present its blueprint on how to strengthen AALCO's Organizational and substantive matters and that in line with the declaration, at the Colombo Session he had presented the long, medium and short term projects that would be undertaken. It was also pointed out that the Secretariat has submitted detailed breakup of the planned projects that would be

implemented between 2014 and 2016. He then gave the details of these projects. The SG also pointed out the need to establish collaboration with other institutions, intensify the research activities, participate in international conferences, strengthen the library etc.

5.15 The SG ended his speech hoping for cooperation in these endeavours and encouragement for all future activities.

5.16 **The Delegate of Malaysia** congratulated the Secretary-General for his comprehensive presentation on the work on Organizational, Administrative and Financial Matters of AALCO. On the proposal of the Secretary-General to raise the contribution of Member States from 2014 onwards he said that as a matter of principle it was necessary to review the existing contributions and proposed that the Secretariat undertake a detailed study justifying the need for an increase and present it for consideration of the Member States at the Fifty-Third Annual Session, so that Member States could get a feedback from their capitals. He further mentioned that in any case Malaysia could not agree to the increase in the 2014 budget as any proposal for increase had to be approved by their parliament, if at all they could agree to an increase in the contribution in the year 2015. Having said that he agreed with the Leader of Delegation of Japan that merely increasing the contributions would not solve the problems of AALCO and stated that it would be unfair to Member States who paid their annual contributions regularly. The Leader of Delegation also stated that as in the past there was a proposal that Malaysia would host some AALCO programmes in its capital.

5.17 **The Delegate of Bangladesh** in response to the statement of the Secretary-General made the following observations (i) on enlargement of the membership of the Organization he suggested that it was pertinent to find out why new Members were hesitant to join AALCO despite the fact that they evinced interest in its work. He suggested that the Secretary-General could write to such Member States and seek their views on the matter; (ii) in relation to the work of AALCO he suggested that there was a need to adopt a creative approach as the present *modus operandi* was rather conservative and this in turn undermined the work of the Organization. He also suggested that there was a need to introduce changes in the current work programme and include topics such as cyber crimes; (iii) the Leader of Delegation agreed with the new work programme suggested by AALCO; (iv) He said that even though they valued the current work of AALCO in relation to the work done by other international Organizations, it was important that rather than giving summaries of the work it would be more useful if analytical inputs on various issues and positions taken by Member States could be reflected in its reports; (v) He also appreciated the initiative of the SG to convene a young jurist conference on the sidelines of the AALCO Session. He suggested that Member States could be requested to send in names of one or two young jurists to the Secretariat so that a database could be built up.

- 5.18 **The Delegate of the State of Qatar** agreed with the stance taken by Malaysia that the issue of increase in contributions should be considered at the next Annual Session.
- 5.19 **The Delegate of the Arab Republic of Egypt** appreciated the great role of the SG and the Secretariat, and after having heard the comprehensive report of the SG he sought some clarifications on the budget. He stated that while understanding that there were some economic conditions related to the host country it was a contemporary matter and there were requests from several Organizations to increase the budget although the Member States were suffering from the same difficulties, so there was a decision by all the Organizations to have zero growth in the budgets. In this regard he suggested that there were many procedures that could be taken to raise the capacity and respond to the requirements among them:- (a) reduce the expenditure and that the secretariat has to present objective recommendations in that regard; (b) reduce publications and use electronic style (soft copies) as the Organization has an effective website on the internet. He also suggested that AARDO could be consulted to find mechanisms to deal with countries (Member States) that did not fulfil their financial obligations last year.
- 5.20 **The Delegate of India** agreed that one way to reduce the financial burden on AALCO was that it could send its publications in the form of e-books. He suggested that the new topic which could be introduced on the agenda of AALCO were (i) e-commerce, (ii) alternate dispute settlement; (iii) cybercrimes and (iv) IPR. According to him introduction of such new topics could attract new membership. He pointed out that the topic of cybercrimes had various facets like cyber-attacks on infrastructure such as nuclear facilities and its consequences like counter attacks could be studied. According to him apart from this investment law was another area of growing interest. He said that currently many of the legal issues were being dealt with either by the European countries or the western powers; therefore it was timely that AALCO take up new initiatives. On the issue relating to finances he agreed that there was a need to come up with innovative approaches of raising funds for the Organization.
- 5.21 **The Delegate of Tanzania** appreciated the efforts of the Secretariat especially in establishing close working relationship with sister Organizations such as ILC, UNODC and ICC. She felt that the success of AALCO largely depended on its relationship with such Organizations. On the steps to revitalize the Organization listed at page 52 of the SG's report she agreed to the proposal that Member States could depute officials to the Secretariat who could assist it with the work of the Organization. On the issue of increasing the membership of the Organization she stated that she believed that the Member States had a role in this regard and they could appeal to Sister States in their regions to join AALCO. She also stated that the idea of the young jurists conference was attractive and suggested that AALCO could get in touch with the Law School of Tanzania in that regard.

- 5.22 **The Delegate of Japan** said that as stated by the Leader of Japan, in order for AALCO to continue to play an important role it was important that the Organization should be placed on a sound and sustainable financial basis. However, he pointed out, when many Member States were not fulfilling their financial obligations under the current scale of contributions, the proposal to increase the contribution would only lead to a situation where those Member States that had been fulfilling their financial obligations would have to pay more, simply to cover those who do not fulfil. In his view, that was not a sound practice. He explained that if the proposed budget for 2014 was applied, Japan's contribution for the year 2014 would increase approximately by 23% from the last years contributions allocated to Japan in US Dollars, and that the portion of Japan's contribution in the total amount of the proposed budget would reach 12%. He stated that though he did not intend to reopen the discussion on the budget, it would have to be discussed in the near future. He believed that the future of AALCO depends on the will of the Member States as was pointed out by the Leader of Delegation of Japan in 2010.
- 5.23 He further stated that Japan was not happy with the current level of attention given to the financial issue by Member States and that it was deplorable that only a very limited number of Member States expressed their views at the Liaison Officers meetings during the last year, despite repeated requests by the Secretariat. He added that Japan could not agree to the budgetary framework of any international Organization whose financial base rested on the assumption that it should be supported from a limited group of Member States. He requested the Member States to deal this matter with urgency and urged the Secretariat to continue to take more effective measures in recovering arrears and cutting expenditure. He once again said that Japan had seriously analysed and discussed the proposal of the Secretariat on the increase of Budget, however, they could not agree with the same.

***A Brief Summation of the Comprehensive Report for the Forthcoming 2014 AALCO Budget and Proposed Budget for the Year 2014***

- 5.24 Dr. Fukahori began his speech thanking the President of the Session and welcomed the delegates. He stated that as the Deputy Secretary General responsible for handling the financial issues and as the Acting Chairperson of the Subcommittee on financial matters, he would highlight some of the elements of the issues at hand from the comprehensive report that has been given to the Member States. He stated that the report was prepared pursuant to mandate given at the 51st Annual Session at Abuja and that the report includes all elements that related to financial and budgetary issues. Referring to the previous speech by the Delegate of Malaysia, where it was stated that the report had to be given before the annual session, the DSG pointed out that the report was presented as far back in the December of the previous year and also that three sub-committee meetings



were held at Delhi and four meetings of liaison officers were also held and the issue was discussed at all these meetings. He pointed out the needs for more specific information and instructions from the Member States on what else had to go into the report.

- 5.25 The DSG made a power point presentation to convey the content of the study and pointed out that he was covering agenda items 6 and 7 in the present speech.
- 5.26 The DSG, Dr. Fukahori, referring to his mandate, pointed out that the Member States had already taken cognizance of the loss of some of the legal officers owing to unfavorable salary conditions and the high rate of inflation in India which had affected the functioning of the Secretariat. He stated that the budget of 2014 has been prepared taking these into consideration.
- 5.27 Dr. Fukahori then demonstrated that the Consumer Price Index ( CPI ) in India was indicating a high rate of inflation and that projections indicated that it would touch about 8% the next year. He then presented a slide that demonstrated the implications of the same for the salary portion of the Secretariat. It was stated that the salary portion was the largest portion of the budget and that keeping this at about 60% would keep the finances of the Organization in a healthy condition. It was stated that however, it had touched about 75.3% in 2009 and that that year AALCO had touched a financial crisis. He reminded the delegates that it was then that the Member States had increased the contribution. According to Dr. Fukahori, if the Consumer Price Index in India would touch the projected figures for the next year, AALCO would soon return to a financial crisis or bankruptcy by 2015.
- 5.28 Dr. Fukahori then presented graphs that compared the Budget of AALCO and the CPI in India and pointed out that the graphs indicated huge gaps between the salaries paid and inflation in India. He further pointed out that AALCO staff was being underpaid for the work that they did. He also pointed out the reduction of the number of local staff, especially after the financial crisis was affecting the work of the Organization. It was pointed out that the Legal Officers had left AALCO owing to inferior conditions and that the budgetary balance was managed owing to the reduction in local staff. The DSG further pointed out that in real economic terms, the budget of AALCO had shrunk to 55.4% since 2001. He stated that since 2010, with increased contributions, the financial situation of AALCO had improved a little, but that owing to inflation in India, which has remained high, the budget portion shrank to 80% in 2012 and that it was projected to be 74.5% in 2013 and 69% in the coming year.
- 5.29 Referring to the Statements of some of the Member States about the collection of arrears, Dr. Fukahori stated that efforts were underway to collect the arrears and that some arrears have already been collected. He further stated that many countries have started paying the annual contribution, despite some amounts still being in arrears. He stated that some

other members have expressed detailed plans of the payment of arrears. It was pointed out that the Indian government had increased its budget by 240% over the previous seven years, however the AALCO increase in budget was only 20%, in the same period. He further pointed out that the Other UN Organizations and AARDO had increased its budget, in line with the CPI in India, however, AALCO has not done so. He pointed out that CPI in India was expected to rise by 16.64% over the next two years and in accordance with the Rules of AALCO, the salary of the staff would have to be increased in line with this.

- 5.30 UN Organizations in India has also had to increase contributions from Member Countries and has agreements with head quarters according to which budgetary allocations are raised in line with the rise in CPI. It was stated that containing the expenses of the Organization could be tried, however that to cover the natural increase of prices and the need to gather further human resources, a 14.1% increase in the budget was required.
- 5.31 Dr. Fukahori had also pointed out that some of the Member States had asked for a waiver or reduction of arrears and that the Member States were to make a decision about the same.
- 5.32 **The Delegate of the Republic of Korea** expressed their support for the previous statement of the delegate of Japan and pointed out at that a 14% increase in budget was difficult to gather support for. He further stated that that the presentation made by Dr. Fukahori did not reflect the exchange rate and pointed out that inclusion of the same would have made the presentation a clearer one. He also pointed out that a 14 % increase was not reflected in the assessed contribution of all Members. He also pointed out the need to accommodate the concerns of those Member States who were making significant contribution to the annual budget. He further stated that a double digit increase in budget would not be readily acceptable and that spreading this over a period of 2 or three years would be more acceptable.
- 5.33 **The Delegate of Malaysia** reiterated their statements made at the deliberations that followed the Report of the Secretary General on Organizational Matters. It was pointed out that the delegation was unable to commit payment as Parliamentary approval was necessary for this, and that the budget for 2014 had already been charted out by the Parliament. It was further pointed out that the pension scheme that was sought to be implemented for the local staff would create a financial liability of about 20,000 US dollars, which was a substantial increase and that this was to be made a part of the study conducted by the Secretariat. It was also stated that though the need for strengthening the Human Resources was understandable, innovate and creative measures had to be thought of for this, such as the proposal to place staff of secondment. It was also pointed out that the request for waiver or reduction of arrears, if allowed, would affect the financial stability of the Organization and hence alternate methods had to be considered to resolve

this issue. It was also stated that the amounts sought for covering miscellaneous expenses were not clearly explained and that clarifications were required with respect to this.

- 5.34 The Deputy Secretary General, Dr. Fukahori responded that the details regarding the exchange rates were tabled at the liaison's meetings and that the Secretariat Report had details concerning the same. It was also stated that the exchange rates were found to be highly fluctuating and the net impact of this was a neutral one. He also stated that the proposal for allowing pension was a new one and that a comprehensive study on the same would be made.
- 5.35 After the detailed presentation made by the Deputy Secretary-General the **Secretary-General** appealed to the Member States to reconsider the proposed increase in contributions from Member States. He said that the Secretariat was duty bound to inform Member States of the financial affairs of AALCO. In this regard Dr. Fukahori had presented a scenario where if the Organization reaches a situation when it was no longer financially sustainable, what would be the fallback position? This was important for Member States to seriously consider. He felt that the best option always was to ask for an increase in contribution, but he also sought any other proposals that states could suggest.
- 5.36 The SG wondered whether the Organization could get contributions from non-state actors or private parties. He sought concrete ideas on alternate ways of funding, because he did not want the Organization to face another acute financial crisis which would call for another extraordinary meeting.
- 5.37 The SG said that although the proposed increase in the proposed budget for 2014 was 14%, he knew that most countries were not objecting to the increase but had to go through the bureaucratic process, however if the proposed increase was not accepted the Secretariat might not be able to carry out the mandate Member States had given.
- 5.38 **The Delegate of Palestine** appreciated the efforts of AALCO Secretariat for their efforts in preparing the AALCO Budget and sympathised with it for facing financial problems. However, due to the occupation and other political problems they were unable to pay their arrears and requested a waiver.
- 5.39 **The Delegate of Sudan** said that Sudan felt proud about the role played by the Organization and the services it provided to the Member States especially regarding the agenda item relating to the situation in Palestine and the unilateral laws imposed by some countries without resorting to the resolutions of international Organizations and international law, therefore Sudan would make contributions in order to come out with positive results. In reference to comments made by Palestine, especially after Palestine

has become member as observer at the UN, the delegation of Sudan supported the trend for some countries.

- 5.40 **The Delegate of Japan** thanked Dr. Fukahori for his detailed explanation on the proposed budget 2014 and the additional explanation by SG. Before coming to Delhi the Japanese delegation had a heated discussion in Tokyo with the budget authorities in the ministry. They carefully read the report of the sub-committee on the financial situation of AALCO. However at present they were not fully convinced about the proposed budget and were not convinced also by the process of the decision making on this financial matter. Dr Fukahori referred to several meetings of Liaison Officers in Delhi and understood that they received report from the Embassy that very few Member States expressed their opinion. Again, they were very concerned about the low level of attention to the financial matter by the Member States. So at that moment they were not in a position to accept this proposal. Having said that he posed a question to the Secretariat, asking it about the strategy to recover arrears and also, what was the plan in the EPG discussion on the idea that Member States or even International Organizations depute legal officers/ experts to AALCO whose salary would be paid by the Member State or International Organizations
- 5.41 **The leader of the Delegation of the State of Qatar** stated that they were in agreement with the proposal of Malaysia that that this issue could be taken up at the next session.
- 5.42 In response to the questions raised the **Secretary-General** responded that in relation to arrears the Secretariat had made it clear that there was a scheme of arrangement of negotiation with countries in arrears. The Secretariat had exhaustively explained these measures to the Member States and according to the scheme the Secretariat had done its best.
- 5.43 Turning to the second question the Secretariat had proposed if the Member States could depute their Legal Officers to the Secretariat. In this regard he once again requested Member States to send officers to the Secretariat to help it with its work.
- 5.44 In the absence of a consensus on whether or not to vote on the proposed budget, the budget for 2013 was adopted and the budget plan adopted under that year was presented for budget of 2104. As there were no objections, that decision was accepted.

## **6. Third General Meeting**

**6.1 Agenda Item: “Environment and Sustainable Development”**

- 6.2 **Dr. Yasukata Fukahori (DSG)** introduced the agenda item “Environment and Sustainable Development” as contained in AALCO/52/HEADQUARTERS (NEW DELHI)/2013/SD/ S 10. Signifying the relevance of this topic, which has been dealt by the Organization for the last 40 years, the DSG said that the contemporary focus was on three topics, namely Climate Change, Biological Diversity and Sustainable Development.
- 6.3 The year 2012 was very significant for the negotiations on climate change since many rounds of negotiations were held. The Eighteenth Session of the Conference of Parties to the UNFCCC (COP18) and the Eighth Meeting of Parties to the Kyoto Protocol (CMP 8), were held at Doha, Qatar. The international community also met at Bangkok in August 2012 and at Bonn in June and April 2013 for further negotiations.
- 6.4 The DSG stated that COP 18 took place at the background of several reports from international expert bodies highlighting the growth in emissions and the catastrophic consequences it could bring forth. The Conference intended to turn its attention to ensure transparency in measurement of emissions, reporting by countries and mitigating actions. Negotiation of a work plan to meet the 2015 deadline set by the Durban platform and the adoption of a second commitment period under the Kyoto Protocol were the other important matters on the agenda. It could be said that considerable progress was achieved at Doha by agreeing to the Doha Climate Gateway which amends the Kyoto Protocol and established a second 8-year commitment period, starting from January 2013 along with implications on non compliance. At the *Ad Hoc* working group on the Durban Platform for enhanced Action, held at Bonn between April and May, efforts were directed at achieving a draft negotiating text by 2015 at COP 20.
- 6.5 The DSG gave an outline of the UN Climate Change Conference held at Bonn in June 2013, wherein parties discussed few of the key issues such as developed country migration, guidelines for domestically supported mitigation actions, the framework for the market and non market approaches etc. Even when negotiations had achieved results on some of the concerns, the DSG noted that issues still remain unresolved. The Adoption and Ratification of the Doha Amendment remain a challenge as most of the Annex -1 Parties have been reluctant so far to adhere to the Amendment. While the negotiations at Bonn and Bangkok had focused on the Ad Hoc Working Group on Durban Platform for Enhanced Action and an ‘instrument of legal form’ replacing the Kyoto Protocol, it was asserted that any such instrument must be based on the concepts of historical accountability, common but differentiated responsibilities, justice and equity.

- 6.6 On the topic Protection of Biological Diversity, the Eleventh Meeting of the Conference of Parties to the Convention on Biological Diversity (CBD), which was held at Hyderabad, India, achieved certain goals. The developed countries has agreed to double the funding to support the conservation efforts in the developing countries along with several measures for conservation. The DSG noted that more efforts were required to streamline and implement the initiatives in order to document the wealth of traditional knowledge among the indigenous and local communities. It was also essential to take a precautionary approach while adopting biotechnological innovations.
- 6.7 Pursuing “Sustainable Development” without focusing on legal dimension was no longer a viable option for the international community. The recent sessions of the UNEP Governing Council/Global Ministerial Environmental Forum, held at Nairobi, Kenya, the international community expressed its concerns and exchanged views. The need to articulate an environmental agenda that addressed issues such as energy, employment and poverty were deliberated. Upon a recap of the RIO+20, the DSG stated that ministers recognized the need to advance towards a participatory and effective UNEP which focused on implementation. Green Economy which involved the governmental agencies, capacity building, addressing technological and financial barriers and reforming perverse subsidies that distort price signals and efficient resource allocation were all pointed out as barriers to be crossed to achieve a transformation.
- 6.8 **The Delegate of Nepal** recalled the meeting of Heads of State and Government and high-level representatives at Rio de Janeiro, Brazil, in June 2012, with the full participation of civil society, wherein Nepal renewed their commitment to sustainable development and ensured the promotion of an economically, socially and environmentally sustainable future for the planet, for present and future generations. They recognized that poverty eradication was the greatest global challenge facing the world today and an indispensable requirement for sustainable development.
- 6.9 The delegate also reaffirmed the need to achieve sustainable development by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting the integrated and sustainable management of natural resources and ecosystems. Such measures should be able to support economic, social and human development while facilitating ecosystem conservation, regeneration and restoration and resilience in the event of new and emerging challenges. The delegate emphasized on green economy for sustainable development and poverty eradication.
- 6.10 The delegate also reaffirmed their commitment to the full implementation of the Programme of Action for the Least Developed Countries for the Decade 2011–2020

(Istanbul Programme of Action); the Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, Advancing integration, implementation and coherence: assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges.

- 6.11 From the perspective of environment and sustainable development, the delegate informed that Nepal faced three special situations as a least developed country wherein poverty, geographical location of being landlocked country with no sea coast and being a mountainous country added to the disadvantages. As a result of climate change, Nepal was being affected from food and energy crises, biodiversity loss and increasing frequency and intensity of natural disasters which had added burdens of coping, particularly for vulnerable communities. There were direct links of environmental issues with poverty, climate change, loss of biodiversity and land degradation.
- 6.12 The delegate raised concern stating that the poor and mountainous countries contribute least to global warming but still were the most vulnerable to such disasters. They have least capacity to address these problems. Therefore, the global community needs to support most vulnerable and poor countries in effectively addressing the adverse impacts of climate change and for using the opportunities created by it to improve livelihoods and achieve climate-friendly development. The ability of least developed and mountainous countries were limited for addressing the financial, food and energy crisis and hence there was a need for mechanism to help these countries to improve their resilience.
- 6.13 The delegate explained how mountain systems provided ecosystem goods and services that were essential for sustaining the local, regional and global environments and the economy. About half of the global biodiversity hotspots were the mountains. However, providing these goods and services to the global community has high economic and social costs in the mountain countries. Nepal, with only 0.1 percent of the global landmass, has 2.5 percent of the global biodiversity (it has the 10<sup>th</sup> richest density of flowering plants; four percent of the global total for mammal species and 9% of the bird species) and its mountains supply water to the major Asian rivers. The opportunity costs of such natural capital had not been quantified, and the need to provide mountain people the incentives for conserving the resource has yet to enter the global debate. He enunciated that such concerns of the least developed mountain countries remain unaddressed in the green economy framework and their omission needs to be corrected by establishing global, regional, national and local mechanisms to compensate and reward mountainous communities for the services they provide.

- 6.14 Climate change being a sustainable development issue, the development of climate resilient infrastructure could provide an opportunity for mitigating the impacts of climate change, and also for promoting environmentally sound and sustainable development through the use of clean technologies. The Delegate said that Nepal has been taking various measures to meet these challenges at national level and their efforts were driven towards poverty reduction in line with Millennium Development Goals (MDGs)
- 6.15 **The Delegate of India** congratulated the DSG for his introductory remarks and thanked the AALCO Secretariat for their report on the agenda item. The delegate mentioned that one of the great achievements of Durban Conference was that the industrialized countries agreed to second “commitment period” of the Kyoto Protocol, which required them to reduce the emissions in a legally binding manner, potentially up to 2020. India was committed to pursue its social and economic development objectives in a manner that does not exceed the average per capita GHG emissions of the developed countries. It would effectively put a cap on India’s emissions, which would be lower if developed country partners chose to be more ambitious in reducing their own emissions. On the role of India at the UN Climate Change talks in Doha, the delegate reiterated its the active role in urging developed countries to commit to ambitious Carbon dioxide emission cuts and pledge money to combat the global challenge. India called on developed countries to raise their low level of ambitions under the second commitment period to a level required by science. The delegate mentioned that India shared the view of other developing countries that the Climate Change negotiations must be based on the principles of “equity” and “common but differentiated responsibility” enshrined in the UNFCCC. In terms of financing, referring to the Green Climate Fund set up after 2010 talks in Cancun, the delegate said that it was an empty shell and had no real meaningful capitalisation for fulfilling its functions of financing the needs of developing countries in order to reduce their Carbon emissions. Further, India shared the common responsibility of doing things in a fair and equitable manner but the massive inequitable consumption of resources by some has created a deficit when there was hardly enough for those whose needs were yet to be met. Imperative for equity has to be respected.
- 6.16 On the role of UNEP Governing Council, the delegate referred to the active participation of UN Members in order to ensure investment in environment and a green economy as a sound insurance policy for the future. India’s country position was to form a dialogue and discussion to concrete and tangible actions to accelerate the transition to more sustainable, inclusive and enduring economies.
- 6.17 The delegate expressed the concern of their government on the need to summon the imagination to balance the costs that would be incurred in the present with the benefits that will accrue to future generations in order to achieve the targets set in the outcome document of Rio+20.



- 6.18 Among main priorities of developing countries, poverty eradication was the most prominent, which stressed on the inability of those living at the subsistence level to bear the costs of adjustment and their livelihood consideration was important in determining the scarcity of natural resources such as land, water and forest. The severe deterioration of land and water resources had already started affecting the well-being of people living on the edges of subsistence and hence, India would not take emission reduction targets because poverty eradication and social and economic development were the first and over-riding priorities.
- 6.19 For efficient use of available natural resource, India had taken national measures in energy sector which would contribute towards sustainable development. The delegate informed about the establishment of National Green Tribunal, a fully dedicated environmental court that has a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the Polluter Pays Principle and powers to enforce the Precautionary Principle.
- 6.20 The delegate mentioned about India's National Action Plan on Climate Change which shows details of investment in special initiatives. Also, despite their increasingly proactive engagement on climate issues, India has not waived from its position that equity concerns must underlie the International Climate Negotiations. The delegate insisted that despite a common goal of global climate stabilisation, each country had to have a different responsibility to address the problem.
- 6.21 **The Delegate of State of Qatar** thanked the Almighty God for having gifted continents of Asia and Africa with outstanding and huge environmental resources and components, which comprised of world's large portion of resources. The delegate stressed that State of Qatar believed that ensuring sustainable economic and social growth would not be possible in the absence of a comprehensive environmental vision which puts preservation of the environment for future generations at the topmost priorities. The delegate mentioned about the Qatar National Vision 2030 that aimed to guide Qatar towards striking a balance between development needs and the protection of natural resources. The Qatar National Vision focused on forming legal framework and effective environmental institutions to safeguard the environmental heritage of Qatar, as well as it stressed the importance of educating citizens of their role in protecting the environment of the country, in the interest of the health and safety of their children and for the future generations of Qatar. Those aspirations relating to the economy of Qatar and its society, people and environment were dealt within the Qatar National Vision 2030.
- 6.22 **The Delegate of Kenya** narrated that the government recognized that environment and natural resources were valuable national assets which must be sustainably managed for present and future generations. The delegate stated that they continued to engage in international dialogue which aimed at addressing environmental sustainability issues through participating in meetings of the Conference of Parties for the conventions to

which they were a party. These conventions included the Convention on Biodiversity (CBD), UN Convention to Combat Desertification (UNCCD) and the UN Framework Convention on Climate Change (UNFCCC). The delegate mentioned that they were pleased to host the 27<sup>th</sup> session of the Governing Council /Global Ministerial Environment Forum held at UNEP Headquarters in Nairobi in February 2013.

- 6.23 The delegate mentioned about active participation of the Kenyan delegation at the Rio+20 Summit Conference on sustainable development which was held in 2012, wherein key decisions were adopted on environment and sustainable development. It was said that Kenya was in the process of implementation of Rio+20 outcomes.
- 6.24 The delegate highlighted the activities undertaken by the Government of Kenya in the field of international environmental laws (MEAs), like first, finalizing the Multilateral Environmental Agreements (MEAs) strategy which would assist Kenya to implement MEAs in a coordinated manner and to maximize impacts. Second, initiative to update and review National Biodiversity Strategy Action Plan (NBSAP) for the period 2010-2020. Third, the process of finalizing the assessment and documentation of the Natural capital.
- 6.25 She informed that Kenya had come up with programs and projects to mitigate and adapt to climate change. In that, Kenya had finalized the development of a climate change response strategy as well as a climate change action plan. The plan addressed the options for a low-carbon climate resilient development pathway as Kenya adapts to climate impacts and mitigates growing emissions. The country also had programs and projects to combat desertification, which include mainstreaming of targeted intervention areas in the key development plans to guarantee sustainability. It was stated by the delegate that Kenya has embraced sound management of chemicals as provided by the Multilateral Environmental Agreements (MEAs) dealing with chemicals and were also focusing on phasing out Ozone Depleting Substances (ODS). It was emphasised that inadequate financial and human resources remained a challenge in achieving sustainable environment development.
- 6.26 **The Delegate of the People's Republic of China** mentioned the close relationship between the interests of all countries and sustainable development and acknowledged the past conferences and summits' guidance. The delegate noted that climate change was one of the most prominent issues faced by the international community and that sustainable development was both the aim and the right path to an effective solution. The delegate stressed the importance of insisting the principles of equity and common but differentiated responsibilities, and also welcomed the outcomes of the Doha Conference, particularly those on the second commitment period of the Kyoto Protocol. With regard to the negotiation for a 2015 agreement for the post-2020 arrangement, the delegate

suggested that all parties work together while respecting core concerns and taking into account responsibilities of developed countries and needs of developing countries.

- 6.27 The delegate also welcomed the outcomes of the UN Conference on Sustainable Development in 2012, which builds consensus to promote global sustainable development. The delegate also urged that the Rio spirit and principles be adhered to.
- 6.28 The delegate touched on measures and policies taken by China to address the issues, such as the Twelfth Five-Year Plan which will establish the concept of green and low-carbon development and accelerate establishment of resource-saving and environment-friendly patterns on both production and consumption.
- 6.29 **The Delegate of Thailand** began by stating that for decades, His Majesty **King Bhumibol Adulyadej's** philosophy of "sufficiency economy" has been ingrained in Thailand's national development Agenda and that the country's vision has always included sustainability. The delegate mentioned that Thailand believed it essential to build on Rio+20's results. Thailand has submitted the outcome of the Summit to its Cabinet and as a result the Committee on Sustainable Development has been established; chaired by the Prime Minister of Thailand and comprised of agencies such as the Ministry of Finance, Foreign Affairs and so on. Thailand was also drafting a strategy on green growth for 2014-2015 which promotes inter alia green growth; the use of legal instruments in environmental management; readies of sectors in adapting to climate change and natural disasters. The Royal Thai Government also co-hosted the Asia-Pacific Ministerial Dialogue: from Millennium development Goals to the UN Development Agenda beyond 2015, in Bangkok.
- 6.30 The delegate stated that as a disaster-prone country, Thailand was ready to work with the international community to protect development achievements and hoped to see developed countries raise their ambition level by the year 2014 with regard to the Kyoto Protocol. The delegate also addressed water security and water-related disasters and that Thailand and the Asia-Pacific Water Forum hosted the Second Asia-Pacific Water Summit which led to the Chiang Mai Declaration.
- 6.31 The delegate also stated that the Royal Thai Government plans to co-host the Sixth Asian Ministerial Conference on Disaster Risk Reduction in June 2014 with the UNISDR, and that this would address regional and global issues as well as sharing knowledge on how to use Science, Technology and Innovation (STI) to develop early warning systems. On biological diversity the delegate stated that Thailand was drafting a nine-year strategic plan to manage biological diversity in line with its international commitments.

- 6.32 **The Delegate of the Republic of Korea** asserted that climate change was the most serious threat to the survival of the eco-system and humanity. The delegate also asserted that the principle of common but differentiated responsibility on which the UNFCCC was framed asks for greater efforts from developing countries. The system that replaces it must be flexible enough so that every country could participate.
- 6.33 The delegate thanked all the Member States for the support to Republic of Korea in hosting the Secretariat of the Green Climate Fund in 2012. The Fund's purpose was to support developing nations' adaptation and mitigation efforts and the delegate stated that all Member States would continue to support the Fund so it can be an effective system to tackle climate change.
- 6.34 **The Delegate of Japan** stated that all possible efforts must be expended in reaching agreement on the post-2020 framework and achieve the 2015 agreement. To that end, the upcoming COP 19 meeting in Warsaw, Poland would be crucial to determine the work schedule for the next 2 years and reaching a future agreement that reflected the world's real situation of greenhouse gas emissions.
- 6.35 With regard to biodiversity, the delegate stated what the COP 11 held in Hyderabad, India was successful and included agreement on the principle on the goal of Resource Mobilization of doubling international financial flows to developing countries. He also stated that mid-term review of Aichi Targets was to be conducted by 2015 and that international coordinated cooperation had to be strengthened.
- 6.36 The delegate also stated that the Rio+20 Conference highlighted the importance of green economy and integrating sustainable development goals into 2014 development goals. He also stressed the importance of developing countries transitioning to green economy and mentioned Japan's announcement of its Green Future Initiatives on the occasion of the Rio+20 Conference. Japan also wished to share its innovative concepts such as "Environmental Future City Vision" and its expertise in areas such as disaster-resilience.
- 6.37 The delegate also informed the AALCO Member States regarding Japan's high opinion of the results of the 27<sup>th</sup> Session of the UNEP Governing Council/Global Ministerial Environment Forum in February 2013 in Nairobi, Kenya.
- 6.38 **The Delegate of Malaysia** took note of the decision of COP 18 on the UN Convention on Climate change for the Ad Hoc Working Group on the Durban Platform (ADP) to streamline and complete negotiating text of a new legal instrument that would enter into force by May 2015. He underscored that the ADP was not a forum to renegotiate, rewrite or reinterpret the Convention and that the legal instrument should be entrenched in the principles of Article 3 and 4 of the Convention. He also reiterated the importance of the principles of common but differentiated responsibility and the 'four pillars' of sustainable development.

- 6.39 The delegate also said Malaysia welcomed the decision to establish a second commitment period of the Kyoto Protocol as it would give the opportunity to developed countries who have not adopted emissions reduction targets or ratified the Protocol to undertake to reduce emissions and not to shift the burden to developing countries. The delegate then proposed that AALCO streamline the Member States' views on the matter to bring it forth for future UNFCCC negotiations.
- 6.40 On access and benefit sharing, the Delegate of Malaysia acknowledged the need for an effective implementation of the Nagoya Protocol and Malaysia's enacting of national legislation to facilitate the ratification of the Protocol.
- 6.41 The delegate also mentioned the UNGA document entitled 'The future we want' as containing clear and practical implementation measures for sustainable development. The Delegate of Malaysia also recalled Malaysia's belief that initiatives at the domestic level were the key to future regional and global cooperation to achieved sustained equitable economic growth and sustainable development.
- 6.42 **The Delegate of the Democratic People's Republic of Korea** noted that the issue of climate change was a vital issue not only for the contemporary generation but also for the future of the human race as it was seriously detrimental to socio-economic development and human activities.
- 6.43 The delegate stated that under the supreme leader **Kim Jong Un**, the DPRK government strives to complete domestic laws for the protection and development of the natural environment. These include the Law on Environment Protection, the Forest Law, Law on Water Resources, Law on Protection of Useful Animals, Law on the Program of Land Development, Law on the Environment Impact Assessment, Law on Weather, and so on. He also stated that DPRK was fulfilling its obligation under relevant international treaties such as the UNFCCC, Kyoto Protocol, CBD, Vienna Convention for the Protection of the Ozone Layer and so on.
- 6.44 The delegate also mentioned the DPRK Governments focus on enhancing combustion efficiency of coal combustion facilities, purifying exhaust gas and the introduction of efficient technology and renewable energy. The delegate also noted that DPRK would continue to strengthen cooperation with all countries to build a new peaceful and prosperous world.

**Agenda Item: Law of the Sea**

- 6.45 **Mr. Feng Qinghu**, Deputy Secretary General, AALCO introduced the topic "The Law of the Sea". He stated that the report of the Secretariat contained information on the Status

of United Nations Convention on the Law of Sea (hereinafter” UNCLOS”) and its implementing Agreements; The thirtieth and thirty first Sessions of the Commission on the Limits of the Continental Shelf (CLCS); the Eighteenth Session of the International Seabed Authority (ISBA); the twenty Second Meeting of States Parties to the UNCLOS ;the meeting of the UN open-ended informal consultative process on oceans and law of the sea; and the consideration of the issue at the Sixty-Seventh Session of the United Nations General Assembly.

- 6.46 He pointed out that UNCLOS was quickly moving towards international participation and noted that 40 members of AALCO were already part of the treaty and that it could be hoped that the remaining Member States would also join soon. He pointed out that the Law of the Sea has been an important agenda item for AALCO and made reference to the work of the Organization on this subject. He then referred to the meeting of legal experts organized by AALCO this year in connection with the thirtieth anniversary of the opening for signature of the UNCLOS. He then outlined the topics discussed at that meeting.
- 6.47 Mr. Qinghu drew the attention of the audience to the judgment of the International Tribunal for the Law of the Sea regarding the *Dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*, delivered in 2012. He pointed out that this was the first delimitation case that was heard by the tribunal and that the decision signified the growing recognition of the tribunal. He stated that the judgment dealt with several novel questions concerning the law of the sea and that it was likely to be of major significance for many States with extended continental shelves.
- 6.48 He then referred to the developments at the CLCS such as the decisions to establish four new sub – commissions, the increasing workload of the CLCS and the need to streamline the work of the Commission. Referring to the developments at the ISBA, Mr. Qinghu recalled the re-election of Mr. Nii Odunton as the Secretary General and the adoption of Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese crusts in the Area.
- 6.49 Mr. Qinghu pointed out that the other critical issue faced by the International Community was the proliferation of piracy and armed attacks against ships and the need to improve domestic law enforcement to curb such incidents and building institutional capacity to bring pirates to justice. He invited AALCO members to consider enacting adequate laws to criminalize such acts along with modern procedural laws.

- 6.50 He further stated that for ensuring sustainable development of the oceans it was essential to halt pollution, protect the marine environment and preserve the marine bio-diversity. He recalled the need for global action and cooperation to achieve these ends. The concerns with respect to “the Area” beyond national jurisdiction were also pointed out. He stated that Marine Protected Areas (“MPAs”) was an important ecosystem management tool for achieving these ends. However, a universal framework for the same was yet to be put in place and he drew the attention of the Member States of AALCO to consider developing such a framework.
- 6.51 **The Delegate of the Republic of Indonesia** pointed out the importance the UNCLOS as a major international law that governs maritime issues. The delegate reiterated the firm commitment of his country and assured active participation in issues relating to the Law of the Sea. The delegate then enumerated the participations of his country in various international forums that dealt with the law of the sea. The delegate stated that the International Tribunal for the Law of the Sea was an important judicial body for the resolution of disputes and stated that the ISA had an important role in the protection of the marine environment from the negative impacts caused by exploitation in the region. The delegate further expressed support for the steps taken to ensure the effective functioning of the UN Commission on the Limits of Continental Shelf. Further, the delegate informed the other members that the United Nations Division for Ocean Affairs on the law of the Sea has partially agreed to the submission of Indonesia with respect to its continental shelf. The delegate further called on all countries to explore the sea in accordance with the applicable international law and the principle of protection of the environment for the future generations.
- 6.52 **The Delegate of Thailand** stated that the issue of ocean affairs had numerous dimensions such as maritime security, exploration, exploitation of national resources, commerce, conservation and protection of the marine environment, sustainable development of marine life, scientific research and technology development and that it was his country’s priority to ensure that all activities carried out in the oceans take into account the sensitivity and delicacy of oceanic ecosystems. The delegate expressed his country’s commitment to continue working towards the implementation of the convention and to fulfill its object and purpose. The delegate then outlined some of the efforts taken by his country to that end and stated that the necessary changes to the domestic laws would be made. The delegate further underscored the need for maritime security and stated that his country constantly supported the international community with respect to this issue and outlined some of the measures taken by his government in this regard, both at the National and Regional levels. The delegate pointed out the efforts taken and the active role played by Thailand at the International Maritime Organization and sought the support of the Member States for re-election to the governing council of the IMO at the forthcoming election. Outlining some of the efforts taken by Thailand

towards promoting maritime security and the those at promoting knowledge sharing, the delegate assured the Member States his country's support to the International Community in this matter.

- 6.53 **The Delegate of The People's Republic of China** pointed out that the previous year had marked the 30<sup>th</sup> anniversary of the UNCLOS being opened for signature and that more States had become parties to the UNCLOS. She stated that these events evidenced the potent vitality and universality of the Convention. The delegate expressed hopes that more States would accept the convention and implement the same earnestly. She pointed out that despite growth in the capacity of States to understand, use and protect oceans and the resultant challenges faced in the implementation of the law, UNCLOS remains an important basis for solving these problems and facing these challenges. She pointed out that the issues concerning the sustainable development of oceans & conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction are topics that have gained sustainable attention.
- 6.54 With respect to sustainable development of oceans, the delegate pointed out the challenges posed by growing awareness and capabilities of marine use and increase in human activities. She stated that the United Nations has launched a regular process for global reporting and assessment of the state of the marine environment and expressed satisfaction over the institution of a regular process for the same as well as the work being done to bring out an integrated global report of the state of the marine environment. It was stated that the regular process may play an important role in realizing the sustainable development of oceans and seas by providing scientific references for States to formulate ocean policies. The delegate pointed out that sustainable development can be achieved only by balancing the proper protection of the ocean and its rational utilization. It was pointed out that the capacity of states with respect to these were different and that it was the capacity of developing States- in both utilization and protection – that needs to be strengthened.
- 6.55 With respect to safety and navigation of shipping, the delegate pointed out that piracy remained a major threat to the safety of navigation and that incidents of piracy have been on the rise in Asia and Africa. The delegation stated that it was the view of China that the current rules of international law, in particular the definition of piracy and the obligation of states to establish universal jurisdiction over piracy and the obligation to provide judicial and administrative assistance covered the main aspects concerning combating piracy through international cooperation. The delegation expressed the support of his country for enhancement of international cooperation, in conformity with the rules of international law for combating piracy, ensuring maritime safety and safeguarding the interests of the international community.



- 6.56 Regarding the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, the delegation welcomed the progress achieved at the 6th meeting of the Ad-Hoc Open-ended Informal Working Group on the same. The delegation noted that since the issue at hand involved the interest of the entire international community, the proper handling of issues relating to this topic was essential for maintenance of an equitable and rational maritime order. He noted that the relevant work must hence proceed step by step and gradually, fully accommodating the legitimate needs for marine biological resources of all countries, especially that of the developing countries. He stated that capacity building of the developing countries was important in this context.
- 6.57 The delegate expressed the willingness of his country to cooperate with all parties to cope with major challenges faced by oceans, within the framework of the UNCLOS, to achieve sustainable development.
- 6.58 **The Delegate of Mauritius** referred to the dispute between Mauritius and the United Kingdom concerning the ‘marine protected area’ which the United Kingdom has purported to establish around the Chagos Archipelago. The delegate asserted that the Chagos Archipelago forms an integral part of the territory of Mauritius and that Mauritius was being prevented from exercising its sovereign rights over the Chagos Archipelago because of the unlawful control of the United Kingdom over the Archipelago. He stated that the United Kingdom had illegally excised the Chagos Archipelago from the territory of Mauritius prior to its accession to independence. The delegate informed the Member States that the Government of Mauritius had instituted arbitration proceedings under Article 287 of, and Annex VII to, UNCLOS to challenge the legality of the ‘marine protected area’ purportedly established by the United Kingdom around the Chagos Archipelago and that an Arbitral Tribunal had been set up to hear the dispute. The delegate indicated that the Tribunal had rejected the preliminary objections raised by the United Kingdom to its jurisdiction. He further stated that the case brought by Mauritius against the United Kingdom arose against the background of colonial legacy and that the Tribunal was being requested to interpret and apply UNCLOS in a way that does not perpetuate a status quo which is inconsistent with the applicable law under the Convention, including the right to self-determination and respect for the territorial integrity of a country at independence. The Delegation expressed gratitude for AALCO’s support with respect to the sovereignty of Mauritius over the Chagos Archipelago.
- 6.59 **The Delegate of the Republic of Korea** pointed out that the marine and coastal environments covered more than two-thirds of the earth’s surface and that it was an important source for ensuring sustainable development of the human society. The delegate expressed support for the “Oceans Compact” initiative announced by the Secretary General of the United Nations to set out a strategic vision for the UN system to deliver its ocean related mandates consistent with the Rio+20 outcome document “The Future We Want”. It was pointed out that the threats posed by piracy and armed robbery were serious threats and that each nation needs to step up efforts to put an end to these heinous threats. He pointed out that there was a substantial reduction in piracy related

incidents off the coast of Somalia the previous year and that the global efforts to fight piracy had reached its goals. However, pointing out some of the incidents he stated that there was still a long way to go. It was stated that to uproot piracy it was essential to end pirates getting away with impunity, that piracy needs to be made less lucrative by prosecutions and punishments of those committing acts of piracy. The delegation pointed out that his government was tackling the issue by pursuing legal action under domestic and international law.

- 6.60 **The Delegate of the Islamic Republic of Iran** pointed out that incidents of piracy in Gulf of Eden, off the coast of Somalia and in the Gulf of Guinea, continued to pose increasing challenges to maritime safety and security and that these incidents have been affected the AALCO Member States. He pointed out that on some occasions Iranian vessels had also been the target of these attacks. The delegate then outlined the efforts that were taken by Iran towards combating piracy and pointed out that the same has been recognized and commended by the international community and relevant UN bodies, including the Security Council. It was further pointed out that the problem of piracy in the Gulf of Eden and off the Coast of Somalia needs to be viewed as sign of disorder in land and not an isolated problem. He referred to the internal situation in Somalia and stated that the problem of piracy could not be resolved without a comprehensive plan for peace and stability. It was pointed out that it was also important to address the root causes of piracy – the political and economic situation of the region. The delegate stated that the crime of piracy was clearly defined in international customary law and that piracy must be fought in accordance with international law. In this context, paragraph 90 of the Resolution 66/231 of the Security Council was quoted by the delegate, which affirmed the application of international law.
- 6.61 Regarding the protection of the marine environment, the delegate noted that pollution at the seas have reached alarming levels. He referred to the problems caused by land reclamation and pointed out that the General Assembly of the United Nations have already expressed its concern over this vide Preambular Paragraph 14 of A/RES/67/78 and recalled operative paragraph 164 of that resolution which called for land reclamation activities to be carried out in a responsible manner. The delegate then expressed support for the work of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic aspects. On Marine biological diversity, the delegate stated that biological diversity beyond areas of national jurisdiction fell under the legal regime of common heritage of mankind and as such the provisions of relevant part of the UN Convention on the Law of Sea would apply to their use and conservation.

- 6.62 **The Delegate of Japan** stated that as a maritime country and from the standpoint of considering the rule of law to be essential in the international community, it valued the roles that the International Tribunal for the Law of the Sea (ITLOS) plays in the peaceful settlement of maritime disputes and the maintenance of legal order relating to the sea. The delegate noted that the number of cases being referred to the Tribunal has been on the rise, which he considered to be a reflection of the growing trust that was being placed by the International Community on the tribunal as a competent dispute settlement organ. He then referred to the judgment of the tribunal on the dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar and the request received for an advisory opinion from a Sub-Regional Fisheries Commission of West African Countries as evidence of the same. The delegate pointed out that since the establishment of the ITLOS, Japan has been fully cooperating with it and that it was the largest provider of human resources for the same. He stated that Japan would continue cooperating with ITLOS to fulfill its activities more effectively, in accordance with the expectations of the International Community. The delegation informed that at the forthcoming 24<sup>th</sup> meeting of States Parties of UNCLOS, Japan would be nominating a candidate for the election of judges to the Tribunal. The delegate pointed out that the UN Commission on the Limits of Continental Shelf has been continuously confronting serious “workload issue” caused by an increase in the number of submissions before it. He pointed out that for the 66 submissions made so far only 18 recommendations have been issued. He stated that a practical way to effectively reduce the workload was by lengthening the working period of the commission. He pointed out that Japan has been contributing to the Trust fund that was established for defraying the costs of participation of the members of the Commission from Developing States in the meetings of the commission.
- 6.63 He further pointed out that with respect to the International Sea Bed Authority, a Voluntary Trust Fund has been established for the purpose of defraying the cost of participation of the members of the Legal and Technical Commission and the Finance Committee from developing countries in the meetings of the Commission that was held at Jamaica. The delegate further recalled the financial commitment made by Japan at the 19<sup>th</sup> Session of the International Seabed Authority that was held at Kingston, Jamaica.
- 6.64 **The Delegate of Tanzania** pointed out that the importance of UNCLOS in the ocean affairs could not be overemphasized. It was pointed out that as legal experts, it was essential for the delegates present to take deliberate efforts to uphold the principles contained in the convention promoting ocean governance. The delegate stated that the Asian and African continents have witnessed achievements in the reduction of piracy but that in order to maintain this, concerted efforts in strengthening the legal frameworks and enacting legislation where there was none was required, along with strengthening relations and information sharing. The delegate called on AALCO Member States to

continue strengthening cooperation for the same. The delegate pointed out that the workload of the Commission on the Limits of Continental Shelf was growing due to the increase in the number of submissions and called on AALCO Member States to take concerted efforts to ensure the smooth functioning of the commission.

- 6.65 **The Delegate of the Republic of Kenya** recalled that Kenya was a party to the UNCLOS and that it continued to participate in international meetings with respect to this subject. The delegate stated that Kenya had recently brought into operation a law designed to curb risks posed to health, safety and the environment caused by foreign flag ships that called at its ports. The law, she stated, allowed Kenyan officials to inspect ships and pursue such action that was necessary to ensure that they posed no hazards and to detain such ships or suspend services until the compliance standards were met.
- 6.66 The delegate further stated that the issue of piracy off the Coast of Somalia remained of grave concern and that it has affected trade and commerce in the East African Region, fishing, tourism and shipping industries. The delegate welcomed the efforts of the international community to combat piracy as these efforts have had deterrent effect on piracy and armed robbery in the region, and noted that such action has yielded results and that piracy cases in the Indian Ocean has considerably fallen. she further pointed out that there were several issues that were required to be addressed by public international law such as the use of private armed security guards, the use of force and transferring of suspects for trial and imprisonment, collection of evidence at the high seas and submission in courts, extradition and jurisdictional issues. she pointed out that though under international law any State could prosecute piracy, only few states do so and that many suspected pirates were released without trial. she stated that Kenya has taken steps to prosecute or incarcerate pirates, in cooperation with other States. she further stated that Kenya was in the process of reviewing its law on piracy to include all crimes committed at the High Seas and that to this end they would seek to reflect on the best practices from States that are more advanced in this area.
- 6.67 **The Delegate of Malaysia** noted that the lack of capacity building could limit the ability of states to protect the oceans and their resources from maritime pollution, maritime safety and security and overexploitation. He stated that capacity building was necessary to ensure that the States possess economic, legal, navigational, scientific and technical skills for the full implementation of the obligations and responsibilities as provided under the UNCLOS and for this priority had to be given in strengthening the institutions and standards to enable the least developed countries to fully benefit from the UNCLOS. He stated that national and international financial institutions could be invited to examine innovative approaches to assist low income countries, whilst academic and research institutions could contribute towards institutional developments. He stated that in

addition to this, strengthening and improving standards relating to shipping, marine safety and pollution prevention requires the involvement of government as well as private actors and all stakeholders to ensure a holistic approach. The delegation took note of the concern expressed regarding the workload of the UN Commission on the Limits of Continental Shelf and that Malaysia along with Vietnam has submitted representations before that body regarding the South China Sea and that the matter as of now stood listed to be considered only in 2016/2017. The delegation then pointed out that Malaysia has joined hands with Indonesia and Singapore to undertake the appropriate measures to reinforce the safety and security in the strait of Malacca and that the introduction of the schemes of the International Maritime Organization along with the Marine Electronic Highway has significantly improved the navigational safety in the straits of Malacca. He stated these to be landmarks achievements in building cooperation between coastal States bordering a strait used for international navigation.

- 6.68 The delegation noted that the UNCLOS provides a framework and guiding principles for the development of the oceans and sustainable use of resources beyond the national jurisdiction and that in view of that the UNCLOS only provides basic principles, the provisions under Part XII of the UNCLOS emphasize the importance of cooperation between states on a global and regional basis to elaborate the rules, standards and recommend practices and procedures consistent with the UNCLOS. It was pointed out that some of the instruments formulated on this issue are the Convention on Biological Diversity, Convention on Migratory Species, United Nations Agreement for the Implementation of the provisions of United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. He further pointed out the need to improve implementation of and compliance with existing international rules and standards and that enhancing regional ties particularly through regional institutions would enable States to effectively address international concerns and emerging challenges as regards the various activities that affect the marine biodiversity in areas beyond national jurisdiction.
- 6.69 **The Delegate of India** described UNCLOS to be the key instrument governing the ocean affairs and that it lies in the interest of the international community to extend Full Corporation in efforts towards ensuring the proper management and sustainable use of ocean resources. He stated that the outcome document of the Rio+20 Summit, “The Future We Want” recognized oceans and seas as an integral part of the earth’s ecosystem. He stated that the oceans are facing numerous challenges such as illegal and unregulated fishing, deterioration of the marine environment, bio diversity loss, climate change and those relating to maritime safety and security, including acts of piracy.

- 6.70 The delegate expressed concern over piracy and armed robbery at sea, particularly of the coast of Somalia and described piracy to be a threat to the freedom of the seas, maritime trade and the security of maritime shipping and expressed support for the joint and concerted efforts by the international community for tackling this menace. He further stated that India was working on a comprehensive domestic legislation to provide the necessary legal framework within the country for prosecution of piracy related crimes. The delegate pointed out that while the oceans had the potential to contribute to energy needs, promote economic well being and reduce green house gas emissions, they also posed environmental and economic challenges, especially to developing countries.
- 6.71 It was also pointed out that the unhindered functioning of the institutions established under the UNCLOS was crucial in achieving the fair and equitable uses of oceans and their resources and the effective implementation of the provisions of the convention and expressed support for efforts towards the smooth functioning of the institutions. The delegate also stated that the fisheries sector occupied an important place in the socio-economic development of a great number of countries and expressed support for concerted efforts of the international community towards achieving sustainable fisheries, including the adoption of measures to prevent and combat illegal, unreported and unregulated fishing, by the effective adoption of the fish stocks agreement and the relevant instruments at the regional level and by preventing over-fishing. He also stated that the role of the Food and Agricultural Organization was crucial in the conservation of fisheries resources and the management and development of fisheries.

#### **Fourth General Meeting**

##### **Agenda Item: Challenges in Combating Corruption: The Role of the United Nations Convention Against Corruption**

- 6.72 **The Deputy Secretary-General Mr. Feng Qinghu** introduced the agenda item. At the outset he stated that the battle against corruption has not only become more urgent, it has also become more obvious as the extent of its reach was growingly apparent in different parts of the world. He was of the view that the far reaching consequences of corruption clearly indicate that the war against corruption cannot be fought at the national level alone and that it required international cooperation.
- 6.73 According to him, on the global scene, the UNCAC, which attempted to create global anticorruption standards and obligations, was the most comprehensive anti-corruption instrument available. He pointed out that the Convention provides the framework and tools for the States Parties to advance their work on Prevention, Criminalization, Asset Recovery and International Cooperation, as well as Technical Assistance. These five

areas were divided into separate chapters and formed the foundational pillars of the international anti-corruption regime. With 167 States Parties, the UNCAC was truly on a road to universality, he added.

- 6.74 Dwelling on the way how this issue has been taken up, he stated that corruption has been a matter of discourse within the Asian-African Legal Consultative Organization (AALCO) since 2002 and that since then the issues embedded in UNCAC has always remained as a subject of concern and discussions to AALCO and its Member States and that hence it has been deliberated frequently in a number of Annual Sessions of AALCO. He also took reference to the two Special Studies that AALCO had prepared on the subject, namely, “*Combating Corruption: A Legal Analysis*” (2005) and “*Rights and Obligations under the United Nations Convention against Corruption*” that was released in the year 2006. In this context he also pointed out that sequel to the above-mentioned Special Studies has also been prepared by the Secretariat in 2013. Commenting on the focus of this years’ meeting he pointed out that the Report the Secretariat prepared for the present Session focused on three important meetings that took place in 2012, namely the *Third Session of the Implementation Review Group of the UNCAC* that was held at Vienna from 18 to 22 June 2012, the *Sixth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery* that was held at Vienna from 30-31 August 2012 and the *First Session of the Open-ended Intergovernmental Expert Meeting on International Cooperation* that was held at Vienna from 22 to 23 October 2012. Finally he expressed his hope that the delegations would use the deliberations at the Session to chart out new ways and means of fighting corruption.
- 6.75 **Dr. Manoj Dwivedi, Director, Services and International Cooperation, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India,** began by describing India’s legal framework for fighting corruption in public services which he pointed out included several legislations such as Prevention of Corruption Act 1988 and clear and transparent policies. He also pointed out that there was also the work of Investigation and prosecution agencies in the Central Bureau of Investigation and other investigation units. They are also measures focused on the legislature and judiciary. He stated that in addition to this India had a vibrant media and society and an effective ‘ombudsman law’ to encourage voices outside the three pillars of the government.
- 6.76 Mr. Dwivedi, elaborated on fiscal regulations such as the General Financial Rules and procedures and systems and Comptrollers and Auditor Generals that oversaw the accounts of the Union and states. He stated that there was a comprehensive system of checks and balances at every level of the government. Mr. Dwivedi also mentioned that Right to Information Act 2005 marks a benchmark in transparency and accountability and

that it became operational since 12 Oct 2005. He stated that the Act provided for disclosures in respect of the functioning of the Organization of the public authorities.

- 6.77 The primary challenges facing India, according to Mr. Dwivedi, were gaps in policies and deficiencies in implementation. He stated that these challenges were being addressed through a strong Public Services Delivery and Grievance Redressal system that provided efficient, accountable, and transparent and time bound delivery of Public Services. He stated that The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011” had also been introduced in Parliament to meet required standards and that many provincial/local Governments in India have already passed Public Services Delivery Guarantee Acts.
- 6.78 He stated that procurement has always been a challenging area as far as corruption was concerned and that this required streamlined guidelines and administrative measures. He stated that they were further been strengthened through by giving legal backing through legislation on Public Procurement (The Public Procurement Bill, 2012) which was presently under consideration of the Parliament. The challenges in area of Money laundering have been addressed through an amendment in the Money Laundering Act, 2002. The Prevention of Money Laundering (Amendment) Bill was introduced in the Indian Parliament on December 27, 2011 and was in line with the standards set by the Financial Action Task Force (FATF).He stated that In August 2010 the Union Cabinet of India had approved Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, which afforded protection to whistleblowers. He also stated that a Bill titled Judicial Standards and Accountability Bill, 2010 was under consideration of the Parliament and that the Bill provided for measures to address issues of misconduct in Judiciary, strengthening accountability and ensuring transparency in functioning of judiciary.
- 6.79 Mr. Dwivedi noted that India had ratified the UNCAC on May 2011 and that a review would be undertaken in 2013-14. He also noted that India supported the Siemens integrity initiative and the cooperation of Dept of Personnel and Training. He stated that conflict of interest in Public service was being closely examined for suitable policy measures to restrict conflicts that hamper public service as per the UNCAC provisions. He also stated that India has supported Academic Initiatives in field of preventing corruption and that India was in agreement with the International Anti Corruption Academy (IACA) for collaborative efforts in the form of training, education and research in areas relating to anti-corruption. He pointed out that recently, an officer from India was sponsored for a course conducted by IACA and that India has also reviewed Korea under the UNCAC.



- 6.80 Mr. Dwivedi, identified that the key points for future developments in India with respect to the UNCAC included mapping of Indian legal provisions with UNCAC Articles, correlating with data and good practices relevant to various articles of UNCAC, identifying gaps and addressing them by way of fresh legislations, amendments etc., and Participating in Review Group and Working Group Meetings at various levels and leaning from experience sharing.
- 6.81 **Mr. Kenichi Kiyono, Deputy Director of United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, (UNAFEI), Tokyo** gave a very comprehensive and lucid presentation on various issues surrounding corruption and the efforts of his Organization to tackle these problems. Initially he focused his presentation on the importance of capacity building of Criminal Justice Officials and on the punishment of offenders, which according to Mr. Kiyono was the most important and expensive aspect of Anti-Corruption regimes. Mr. Kiyono made reference to the fact that Singapore spent approximate 70-80% of its budget for anti-corruption measures on punishment efforts. Mr. Kiyono also stressed on the importance of top to bottom Organizational enforcement of anti-corruption measures and that it was equally important to take action against both high-level as well as low-level officials who are guilty of corruption or embezzlement or fraud. Mr Kiyono identified the important aspects of anti-corruption action to be criminalization, investigation tools and methods, protection of witnesses and whistle blowers, asset recovery and confiscation, international and internal cooperation, and the integrity of criminal justice officials. In this regard he stated that no corruption was too big and no corruption was too small. The need to tackle all acts and forms of corruption was described by him thus.
- 6.82 Mr. Kiyono provided detailed information about UNAFEI's activities and training programs offered by UNAFEI on combating corruption. Mr. Kiyono informed the meeting that UNAFEI was an international training and research institute for criminal matters established in 1962 on agreement between the UN and Japan. UNAFEI has a faculty of 9 professors comprising of members of the legal profession as well as persons and police officers. It also offered 5-week training programs and regional programs. Some of the corruption-relevant themes included offender treatment and criminal justice. The regional programs included Good Governance Seminar for Southeast Asian Countries, Seminar on Criminal Justice for Central Asian Countries, Training Course on Treatment of Juvenile in Kenya etc.. He also discussed the three principles of UNAFEI Training Programs: Practical approach, integrated approach and Comparative approach.
- 6.83 Mr. Kiyono also pointed out the practice of having sample lectures at UNAFEI with examples. Such lectures covered the length and breadth of effective crime-prevention including best-practices in legal, enforcement, education, prevention and political spheres. Mr. Kinoyo, in particular gave the example of Visiting Expert's Lecture, by Mr.

Tony Kwok Manwai, who had discussed effective deterrence through effective complaint system, quick response, zero tolerance, proactive approach, professional investigation and prosecution, effective disciplinary procedures, and publicity on successful cases. Mr. Kwok also stressed on some success factors for effective investigations, like- attracting quality complaints, interview technique, proactive investigation – entrapment, whistleblower & witness protection, financial investigation, international cooperation, etc. The expert lecture also discussed the independence and the manner of appointment of anti-corruption agencies; and the authorities with power of prosecution in some states.

- 6.84 He dwelled on some international alliances to deal with this subject, like the UNCAC, International Association of Anti-corruption Authorities, OECD Convention on Foreign Bribery, APEC Anti Corruption & Transparency Expert Taskforce, ADB/OECD anti-corruption initiatives for Asia & the Pacific, The African Union Convention on Prevention & combating corruption.
- 6.85 Mr. Kwok's expert lecture, as was pointed out by Mr. Kinoyo, discussed some of the best practices and successful systems in order to examine their greater application. The topic of investigative practices- the prerequisites of an effective investigation, understanding the process of corruption, investigation techniques- was also discussed in the expert lecture. Mr. Kinoyo also discussed the Japanese Corruption Enforcement Framework and the independence of prosecutors, their typical process of investigation, etc.
- 6.86 He concluded his speech by suggesting that punishment of corrupt officials was most important, which can be achieved through strong political will and capacity building of criminal justice officials, Criminalisation, Protection of witnesses and whistleblowers, Confiscation of proceeds of crime and through international Cooperation.
- 6.87 **Mr. Nimesh Jani, Regional Anti-Corruption Advisor, United Nations Office on Drugs and Crimes (UNODC)**, at the outset stated that the Organization he represents, namely the UNODC was the guardian of the United Nations Convention against Corruption (UNCAC) and that this makes it the global leader in the fight against corruption and international crimes. He pointed out that the mandate of the UNODC was to assist the State Parties to the UNCAC to address issues relating to drugs, crimes and terrorism. In the rest of his presentation he outlined a number of challenges facing the international community in its fight against corruption.
- 6.88 The first in his view was as regards mobilizing the political will necessary to make a dent on corruption. While highlighting the difficulties existing in this area, he noted that the very fact that UNCAC has been ratified by 160 States showed the seriousness of the State Parties against corruption. However, unless effective steps were taken to implement the UNCAC domestically, this would remain merely a piece of paper, he added.

- 6.89 The second in his view was mobilizing the necessary resources to tackle the issue of corruption. Urging the Donor States to contribute generously towards the Least Development Countries in their fight against corruption, he pointed out that resources were needed in a number of areas including the resources to be allocated to judiciary, police, and other institutions engaged in fighting corruption.
- 6.90 The third challenge, in his view related to the legal framework. Explaining this he stated that legal frameworks needed to have provisions for dealing with a number of issues such as the giving and taking of bribery, bribery in the public sector, witness protection system, public procurement and others. In his view addressing these issues are critical since gaps in legal framework could translate itself into gaps in protection.
- 6.91 The fourth challenge in his view related to systemic weaknesses. He was of the firm opinion that we need to have a clean and quick system to be able to address the problem of corruption. The elements that are part of these systems, in his view included uncorrupted police investigation, prosecutors and judiciary.
- 6.92 The fifth challenge in his opinion was technology. Explaining this, he stated that technology remains a boon in the fight against corruption in that it could facilitate in the increasing capacity of investigators to prosecute criminals. On the other hand, he pointed out that technology also could be used by the organized criminals so as to escape the clutches of the prosecutors and investigators making it difficult for States to make a significant dent on corruption.
- 6.93 The final challenge in his opinion related to international criminality. He pointed out that even as the world has become smaller; it was so for organized criminals as well. This was because criminals did not respect national boundaries and that a large quantum of money could be transferred by them in a matter of few minutes.
- 6.94 While pointing out the role of UNCAC in the fight against corruption, he mentioned that it rested on four pillars, viz., Prevention, Criminalization, International Cooperation and Asset Recovery. On the Implementation Review Mechanism, he stated that it was a peer-review mechanism that did was not intended to be a finger-pointing exercise. This mechanism, he said, would go a long way in enabling the 167 States Parties to exchange their good practices in the area of anti-corruption and this in turn could be enlightening for many State Parties to the UNCAC, he explained.
- 6.95 **Prof. Charles Samford Director, Institute for Ethics, Governance and Law, Griffith University, Australia**<sup>6</sup> in his paper stated that corruption and integrity were conceptually linked and centred on the uses and abuses of power, which had to be minimised by appropriate governance and integrity measures. In his view, the corrupt are attracted to

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<sup>6</sup> Prof. Charles Sampford was not present at the meeting. However his statement was read out.

*ungoverned power*, which was used for personal gain. In his paper, he pointed out that there were two forms of abuse- the *unipolar corruption*, where the power holder uses the power directly in his interest, like- stealing entrusted money; and the *bipolar corruption* when the exercise of public power was for the benefit of another who rewards the power holder for the abuse- recognized as *bribery*.

- 6.96 According to him, human imagination and innovation have given us new forms of social organisation, from the hunting party to the sovereign state, to the global corporation, joint stock companies and international NGOs- that brought people together people, power and resources, which also generated new ways of abusing institutional power. His paper stated that the history of corruption coincided with the history of institutional innovation, starting from the ancient abuses of priestly, gubernatorial and military power to state capture. In late Republican Rome, he pointed out, provincial governorships were known to amass personal fortunes through corruption; in medieval times, the Church claimed the power to provide salvation and eternal life and the 17<sup>th</sup> century sovereign states created new forms of corruption for bureaucrats and generals.
- 6.97 He was of the view that all institutions concentrate power, people and resources, which could be used for harming the same people, by, for instance, securing bribes through their coercive power. His paper stated that the banks which concentrate the resources of their shareholders, depositors and others to ensure liquidity in the system could use the same resources for high-risk transactions. Hence, the solutions to governance problems such as corruption needed to recognise and integrate the insights of law, ethics, politics and economics. He was of the view that this history of institutional power and its abuse had led to the development of anti-corruption measures in the national systems and international collaboration.
- 6.98 In his paper, he pointed out that there was also a collaboration of the corrupt in national and emerging global corruption systems- institutional corruption, which had a variety of institutional solutions like- the creation of a combination of state institutions and agencies (courts, police, prosecutors, DPP), state watchdogs (ombudsman, auditor general, parliamentary committees), NGOs, etc- which has become the preferred model for governance reform within national jurisdictions. However, according to his paper, a more popular system was Pope's "national integrity system" widely promoted as TI, a term used to describe the relatively well-integrated and developed governance systems found in some Western jurisdictions, and advocated for others; and which provided "*insurance against corruption*". In his paper, it he stated that *Integrity* measures utilized money and talent, and though they made decision process slow, they ensured better decisions and avoided corrupt practices. In his view, reducing temptation and opportunity, and increasing the likelihood of being discovered would reduce the risk of abuse of power.

- 6.99 His paper pointed out that that since the 1990s, there has been considerable international collaboration to strengthen the national integrity systems such as the UNCAC, G-20 initiatives, UN Global Impact, UN Principles of Responsible Investments, the Earth Charter, Extractive Industries Transparency Initiative etc. However, it was stated that the strength of the “national corruptions system” was much more and was more organized than the national integrity systems. His paper stated that that there was a growth of power beyond nation states, with the flow of money, goods, people and ideas across borders, which gave rise to global corruption systems, and a series of problems due to globalisation. He said that much could be seen from the melting Greenland glaciers to the financial meltdown of Wall Street. For these reasons, in his paper he urged the delegates to be concerned about the forms of powers that were increasingly beyond state regulation like organized crime, transport and shipping using flags of convenience, banks and financial institutions, private military companies, surveillance by states across borders etc.
- 6.100 The remedy, the paper stated, lay in the development of global integrity systems, which was proposed by Prof Ramesh Thakur, a UN Assistant Secretary General who works with Kofi Annan on UN reforms. Unfortunately, the paper stated , governance experts were not well-equipped to handle global problems and multi-disciplinary, multi-country, multi-cultural approach research teams were required to frame a global integrity system. In his statement he urged AALCO Member States to work with each other and study and compare national integrity and corruption systems and examine the most effective mechanisms for the same.
6. 101 **The Delegate of Japan** stated that his delegation shared the view of other States that international cooperation on combating corruption needed to be further promoted by the combined efforts of the international community as a whole and that the UNCAC remained a central and most important vehicle for undertaking such international cooperation. On the technical assistance activities undertaken by Japan, he pointed out that Japan has been carrying out Official Development Programme to the developing countries that desired such assistance either bilaterally or through appropriate international Organizations. He also added that Japan has been providing such assistance programmes for capacity building in cooperation with UNODC for the countries in Southeast Asia to help them ratify/implement the UNCAC. As regards Japan’s position vis-à-vis UNCAC, he clarified that the Japanese Diet has already approved the Convention and that the necessary domestic legislation has been under consideration by the Govt for submission to the Diet.

6. 102 **The Delegate of The State of Qatar**<sup>7</sup> at the outset stated corruption besides being a global issue also affects some countries more severely. Corruption he pointed out, posed serious threats to the very stability and security of our societies and countries and throws open numerous complications in successfully implementing the various regional and international anti-corruption instruments including the UNCAC, the Arab Convention on Combating Corruption and the African Convention existing in this area. He came up with a number of suggestions to tackle the problems posed by corruption.
6. 103 According to him, the first thing that was to be done was to criminalize all acts and forms of corruption by adopting appropriate national legislations regarding them. He also mentioned that to the extent the existing laws are inadequate in dealing with various forms of corruption, they needed to be reviewed so as to make them more effective. The second thing, in his view related to the need to create and develop adequate, effective and autonomous national institutions to tackle the problem of corruption. He was of the firm view that efforts to eradicate corruption would not succeed without the existence of effective domestic institutions.
6. 104 The third thing in his view was the need to adopt effective anti-corruption strategies not only domestically but also globally. He was of the view that clear and coordinated strategies have not been adopted at the global level which has affected the efforts of the international community in its fight against corruption. The fourth thing that was required to be done related to the need to prevent and eradicate the creation of safe havens for the stolen money.
6. 105 The fifth thing that was required to make a significant dent on the problem of corruption related to international cooperation. He pointed out that there was every need for all the countries of the world to cooperate with each other in their fight against corruption. Cooperation was very much needed in relation to the prosecution of perpetrators of corruption and the judicial process. These in his view would go a long way in bringing the perpetrators of corruption to book both globally and domestically.
- 6.106 Lastly while emphasizing on the need to give the necessary technical assistance that many countries needed in their efforts to fight corruption effectively, he stressed on the need to use the Implementation Review Mechanism that was adopted at the 3<sup>rd</sup> Conference of State Parties to the UNCAC held in 2009 at Doha, with a view to optimize the benefits available under this mechanism to advance the fight against corruption.
- 6.107 **The Delegate of Thailand** stated that corruption has caused a tremendous degradation to the stability and security of his Country in several areas, and that the United Nation Convention against Corruption 2003 had been initiated, for this reason, as a tool for States Parties to protect, prevent and prosecute all forms of malfeasance. In his view, in

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<sup>7</sup> The Statement was delivered in Arabic. This was an unofficial translation.

order to eradicate corruption, which had links with other forms of crimes such as organized crime, economic crime; as well as money laundering, all state parties had to actively take part in the mechanism for the review of the implementation of UNCAC through the conference of State Parties.

- 6.108 Spelling out the position of Thailand in relation to UNCAC, he underlined the measures that Thailand had taken, which included the ratification of UNCAC on March 1, 2011, the drafting of a Draft Penal Code Amendment B.E by its Ministry of Justice, Identifying the meaning of foreign public officer and officer of public international Organization as well as offences relating to them, the appropriateness of the statute of limitation of penalty in relation to the current situation and determining the issue of asset recovery. The Delegate further added that a National Counter Corruption Commission (NCCC) has been constituted to investigate corruption offences conducted by politicians and high ranking government officials and a similar body, namely the Office of Public Sector Anti-Corruption Commission (PACC) had been created for trying lower ranking officials, under the Ministry of Justice. Besides these, the Cabinet had made a resolution that every government sector must set up Centre for Anti-corruption within its Secretariat Office, he clarified.
- 6.109 Besides these, issues like the credibility of the witness, protection of witness and victim as well as the driving force for whistle-blower protection, non-acceptance by Thai Courts of execution of civil law suit by foreign judgment relating to asset recovery, lack mechanism for compensation of damage to another state etc - were matters of concern for Thailand. The Delegate also called for the creation of close partnerships with international bodies and conferences such as the United Nations, APEC, ADB, OECD, World Bank etc. In this regard, he cited the example of Thailand's Anti-Money Laundering Office which has bilateral agreement with several countries for the exchange of financial intelligence. He also referred to the Treaty on Mutual Legal Assistance in Criminal Matters or ASEAN MLAT, 2004 and described it as an to be an important instrument in facilitating international cooperation. He was of the view that the international community must work together and take measures in preventing, criminalizing and strengthening international law enforcement.
- 6.110 **The Delegate of People's Republic of China** at the outset stated that UNCAC was the most authoritative and influential international legal instrument in the field of anti-corruption and that the Asian and African countries have always attached great importance to the Convention, and accordingly have taken an active part in the Mechanism for Implementation review. Recalling the adoption of review mechanism, She pointed out that for the effective implementation of UNCAC, the 3<sup>rd</sup> Conference of States parties to the Convention, 2009 had established the Mechanism for the Review of

Implementation which has been in operation since 2010. She was of the view that though the Mechanisms operated well, there were still some problems:

- 6.111 Firstly, she stated that the principle of sovereign equality and non-intervention in domestic affairs should be adhered to. According to the rules of the Mechanism, a State under review has the right to take decisions on such issues as the involvement of private sectors on the self-assessment checklist, whether or not to permit a country visit and to publicise a country review report. “We should work jointly to maintain these rules which guarantee the state sovereignty”, She stated.
- 6.112 Secondly, only States could be contracting Parties, and the Mechanism was a “peer review” process. This principle has been included in the Terms of Reference through consensus. Although, NGOs and groups outside the public sector does not have a direct involvement under the Mechanism, they can help their respective countries in combating corruption, and an appropriate channel for NGOs to follow the status of the Mechanism was adopted by the 4<sup>th</sup> Conference of States.
- 6.113 According to her, asset-recovery was a unique legal framework in UNCAC, and she urged countries to overcome the obstacles arising from the difference of various legal systems, to prevent criminals from transferring proceeds of crime. She also brought to the attention of the Member States of AALCO that China was willing to enhance cooperation on extradition and mutual legal assistance with Asian-African countries, the legal basis for which has been provided under the UNCAC. In this regard, she added that China was looking forward to coordinate with the Asian-African countries at the 5<sup>th</sup> Conference of States Parties to the Convention that stands scheduled to be convened in November 2013 in Panama, to promote the implementation of the Convention and the development of the Mechanism of Implementation Review.
- 6.114 **The Delegate of Republic of South Africa** at the outset stated that corruption which was a global challenge, posed numerous challenges to the international community of states. This included the potential of corruption to undermine growth and development, its ability to divert limited resources from important development programmes, thus exacerbating poverty, inequality and under-development. In his view therefore, combating the scourge of corruption remained one of the key elements to ensuring delivery of the Millennium Development Goals, and this in turn required collective responsibility and action as States Parties to the United Nations Convention against Corruption. The UNCAC provided Member States to develop and align their legislation with UNCAC provisions, and provide for criminal justice, security and development, he added.



- 6.115 Then he went on to list out South Africa's efforts at the international, regional and national levels in the area of anti-corruption: This included South Africa's Ratification of the UNCAC on 22 November 2004 and participation in the negotiations for the establishment of the Implementation Review Mechanism. He pointed out that South Africa has enacted the Prevention and Combating of Corrupt Activities Act, 2004; and the Criminal Procedure Act, 1977 in an effort to comply with the reporting obligations of the Convention.
- 6.116 As regards the Implementing Review Mechanism of the UNCAC, he explained that in 2011, the experts from South Africa and Slovenia participated in the review of Morocco on the implementation of the Convention, while in 2012 South Africa was reviewed by experts from Mali and Senegal. He also added that at the regional level South Africa was Party to the following anti-corruption instruments: the Southern African Development Community (SADC) Protocol against Corruption, the African Union (AU) Convention on Preventing and Combating Corruption, and the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 6.117 Outlining the efforts that were taken at the national level, he drew attention to the launching of a multi-stakeholder National Anti-Corruption Forum (NACF) that brought the public and private sectors and the civil society for a programme of action for combating corruption. An Anti-Corruption Bureau (ACB) to deal with corruption within the public service, was also in the pipeline, he explained.
- 6.118 On the challenges facing anti-corruption efforts, he pointed out that the issue of a common definition of corruption was one of them. This in his view was important as more often than not States Parties tended to adopt a politically generalized interpretative stance. This compromised of international cooperation, criminalization of corrupt activities, as well as mutual legal assistance; and countries took the pretext of sovereignty, internal security and other considerations to block the review mechanism. In his view challenges like these could impede institutions, including Government, from tackling corruption effectively.
- 6.119 **The Delegate of the Islamic Republic of Iran** noted that corruption which was a global phenomenon which undermined the rule of law and which adversely affected the fabric of societies has left no country or territory untouched. In this context, the UN Convention Against Corruption (UNCAC) had become the milestone in our cooperation and the high number of accession by States indicate the hope and confidence the international community has made vis-a-vis the Convention.

- 6.120 The delegate stated that the Islamic Republic of Iran as a responsible party to the Convention has spared no efforts in implementing the Convention by adopting wide ranging measures including preventive, legislative, law enforcement and judicial measures as well as contributing to activities of the Conference of States Parties of the Convention, in order to review and promote its implementation. He stated that they are looking forward to the convening of the Fifth Session of the Conference of the States Parties to the Convention in November 2013 in Panama, he added.
- 6.121 The delegate noted that The UNCAC has rightly put ‘Asset Recovery’ as a fundamental principle of the Convention and has obliged states Parties to afford one another the widest measure of cooperation and assistance to recover assets derived from corruption and return them to the original owners. However, according to the delegate of Iran, the facts on the ground are rather bleak, since only a very tiny part, if anything, of the stolen assets has been returned to the States of origin after a highly cumbersome legal and administrative process. A number of legal and technical hurdles, bank secrecy being almost always at the top of them, are often cited as the reasons for lack of productive cooperation in this area, let alone the political considerations and biases which in fact are the main causes for lack of cooperation. The delegate thus stressed the need to develop genuine political will on the part of all stakeholders, especially the destination countries in this case, to extend sincere cooperation for tracking, locating and recovering the stolen assets and returning them to their owners.
- 6.122 **The Delegate of Indonesia** noted that corruption was a common problem for AALCO states and one of the development obstacles of Indonesia and stressed on the need for robust law enforcement. The delegate stressed on the importance of the recovery of stolen assets and its complex and time-consuming nature. He stated that this aspect would be made easier by the sharing of information and techniques among States, as well as cooperation to return both the criminal and stolen funds to the original country.
- 6.123 The delegate also noted that Indonesia has ratified UNCAC and the UN Convention Against Transnational Organized Crime and that it actively participated in UNCAC and IAACA related meetings such as Implementation Review Group, Working Group on Prevention of Corruption, Working Group on Asset Recovery and Conference of the State Parties. He stated that Indonesia also concluded and ratified treaties on extradition with Malaysia, Thailand, China, India and Vietnam among others as well as Mutual Legal Assistance Treaty within framework of ASEAN under ASEAN MLA and that the Attorney General’s Office has also succeeded to recover USD 840 Billion.
- 6.124 The delegate of Indonesia also stated that internationally, in 2012, Indonesia participated in Implementation Review Group, the 3rd Session of Open-ended Intergovernmental Working Group on the Prevention of Corruption, the 6th Session of Open-ended

International Working Group on Asset Recovery, and the G20 Working Group on Anti-Corruption.

- 6.125 **The Delegate of Tanzania** at the outset mentioned that Tanzania was closely following up on the global processes against corruption and that it has ratified the UNCAC and enacted a number of legislations in the area of anti-corruption. In his view, corruption hampers both- sustainable development, with a disproportionate impact on poor communities, as well as the private sector, distorting economic growth and competition.
- 6.126 Outlining the efforts of Tanzania domestically in its fight against corruption, he made reference to the Public resolve by the President of Tanzania, Jakaya Mrisho Kikwete, during the inauguration of 2005-2010 Parliament, to deal with the issue of corruption in the country; the adoption of National Anti-Corruption Strategy and Action Plan, which embarked on a number of radical reforms including privatisation and liberalisation of economy, and restructuring and improving the efficiency of the public service delivery; the enactment of anti-corruption legislations like the Leadership Code of Ethics, and a Presidential Commission of Inquiry Against Corruption. He also mentioned Tanzania's NACSAP II plan, launched on December 10, 2006 which aimed at complimenting and integrating anti-corruption measures and encouraged strategic partnership between the Anti-Corruption bodies of the National Government, the private sector, civil society and media in enhancing good governance in Tanzania.
- 6.127 **The Delegate of Malaysia** at the outset, stated that Malaysia as a Party to the UNCAC believed that its effective implementation would help the global community to combat corruption. The delegate outlined the anti-corruption measures that Malaysia has taken domestically, fulfilling its obligations under the UNCAC, primarily through the Malaysian Anti-Corruption Commission Act 2009 which established the Malaysian Anti-Corruption Commission ("MACC"). The MACC was established in order to enhance effectiveness and efficiency of its anti-corruption efforts, he added. He stated that that Malaysia remained faithful in fulfilling its obligations under the UNCAC, could be understood from its involvement in the UNCAC Implementation Review Process both as a reviewing expert, having reviewed Iraq in 2011 along with Jordan and as the State reviewed, recently in February 2013 by Kenya and the Philippines and receiving positive feedbacks from the reviewing experts who welcomed the initiative of establishing various supervisory committees to oversee the implementation of the MACC Act 2009 as a means to foster the involvement of all stakeholders in the prevention and fight against corruption, he explained.
- 6.128 With respect to reduction of secrecy and improvement of transparency, he stated that Malaysia has established the Anti-Corruption Advisory Board, the Special Committee on Corruption, the Complaints Committee, the Operations Review Panel and the Consultation and Corruption Prevention Panel- who reported to Parliament as well as to

the Prime Minister on the activities and performance of the MACC on a quarterly and annual basis with their advice, commented and made recommendations as regards the further improvement of the Commission in its mission in combating and preventing corruption and about abuse of powers and other related malpractice in the public as well as the private sectors. In addition to that, he pointed out that the MACC has also taken to publishing the details of persons convicted under the MACC Act 2009 in a 'name and shame' database available on its website, he elaborated.

- 6.129 As regards the asset recovery provisions of UNCAC, the delegate noted that asset recovery formed part of one of the most important component of the UNCAC. In this regard, he pointed out , the MACC Act 2009 provided for asset recovery in domestic cases. And that the Mutual Assistance in Criminal Matters Act 2002 (MACMA) provided assistance in asset recovery where the assets have been transferred abroad.
- 6.130 On international cooperation, the delegate pointed out that Malaysia has in place Extradition Act 1992 and Mutual Legal Assistance in Criminal Matters Act 2002, through which several bilateral agreements had been entered into. He stated that as a country which has been actively implementing the UNCAC, the delegate called upon all the Member States of AALCO to consider ratifying/acceding to the UNCAC. Finally, Malaysia also supported the proposal for the Secretariat of AALCO to consider the possibility of holding training programmes/expert meetings/seminars with relevant international Organizations working in this area on the various issues of concern under the UNCAC.
- 6.131 **The Delegate of India** at the outset stated that AALCO, being perhaps the only inter-governmental Organization that embraces two most populous continents of the world Asia and Africa, gave its Member States a lot of leverage and hence should be used in a collective manner to engage as a Group in forums such as the UN General Assembly, International Law Commission and in other multilateral fora.
- 6.132 In his view, corruption, which was a complex socio-economic and cultural phenomena, has an effect particularly on the economy of a developing country, as it hampers socio-economic development, negatively impacting the basic institutions of the country and hindering investment. Furthermore, it also diverted funds for the development and hurt the poor and undermined the government's ability to provide basic services. The fight against corruption called for innovative and localized solutions, as well as the support of the global community.
- 6.133 Outlining the efforts of the Government of India in the area of anti-corruption, he stated that it took several steps and legislative measures in the recent past to facilitate efforts to secure effective international co-operation in tackling trans-border corruption. This included: the ratification of the United Nations Convention against Corruption in May,

2011 (which entered into force in June 2011), the introduction of “The Prevention of Bribery of Foreign Public Officials and Officials of Public international Organizations Bill, 2011” in the Indian Parliament.

- 6.134 He also made reference to the initiation of necessary amendments in the Indian Penal Code, in consultation with the State Governments, as regards private sector bribery; the Lokpal and Lokayukta Bill, aimed at bringing an ombudsman type body in India to eradicate corruption among public functionaries; the introduction of the “Judicial Standards Accountability Bill, 2011”, a mechanism for enquiring into complaints against judges of higher courts and the introduction of “The Public Interest Disclosure and Protection to Persons Making Disclosure Bill” i.e., Whistle Blower’s Bill in the Parliament, to protect honest officials from undue harassment and to establish a mechanism for receiving complaints that related to allegations of corruption against any public servant. Finally he also brought attention to the fact that India was making preparations to be reviewed as part of the peer review mechanism of the UNCAC scheduled to be held in 2014.
- 6.135 **The Delegate of Republic of Korea** stated that corruption not only served as an obstacle to robust economic growth but it also stifled rule of law and fair competition in the market economy. He was of the view that the UNCAC represented an important milestone in the battle against corruption.
- 6.136 While stating that as a party to the UNCAC, Republic of Korea has been actively cooperating and coordinating with the international community and that it has put in place a robust domestic legal system to fight corruption and to implement the provisions of the UNCAC he added in this regard, implementing the provisions of UNCAC held the key to make a significant dent on corruption. On the Implementing Review Mechanism, he pointed out that Republic of Korea was reviewed in 2012 and was a reviewer in the year 2013.
- 6.137 Finally he also informed the delegates that his Country has been running joint anti-corruption programmes with Indonesia, Thailand and Mongolia based on the MOUs concluded with these countries.
- 6.138 **The Delegate of Nepal** at the outset stated that corruption posed the most serious threat to sustaining democracy and ensuring good governance and rule of law and has affected the South Asia region, particularly, Nepal. In his view, the link between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering, represented a serious concern of international community, and was a transnational phenomenon. This in turn required a multidisciplinary approach and international cooperation to prevent and control corruption effectively.

- 6.139 On the United Nations Conventions Against Corruption (UNCAC), he stated that this was only legally binding universal anti-corruption instrument covering five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. He pointed out that the UNCAC also dealt with different forms of corruption, such as trading in influence, abuse of power, and various acts of corruption in the private sector; and required States to take policy, legislative, institutional and others administrative measures in the domestic spheres and extradition, mutual legal assistance, transfer of sentenced persons, asset recovery, confiscation, return and disposal of assets, and exchange of information through international cooperation.
- 6.140 Outlining the measures Nepal has taken in the area of anti-corruption, he stated that Nepal, which was actively involved in the framing of the Convention had ratified the same on 23 February 2011, and had adopted a comprehensive Strategy and Action Plan in 2012 to facilitate the implementation of the Convention. Pointing out the institutional mechanism that Nepal has established domestically, he then referred to the creation of an impartial and autonomous *Commission on Investigation of Abuse of Authority* which functions as an independent body to prevent and prosecute corruption. He also stated that A National Vigilance Centre, under the supervision of the Office of the Prime Minister and Council of Ministers and an independent, impartial and autonomous Auditor General to control and identify financial irregularities has also been established. He also made reference to the establishment of the Public Procurement Monitoring Office.
- 6.141 As regards the legislative measures taken by Nepal, he referred to the adoption of a number of laws to tackle the menace, which included the Corruption Control Act 2002, Commission on Investigation of Abuse of Authority Act 1991, Public Procurement Act, 2007, Bank and Financial Institutions Act, 2007, Good Governance (Management and Operation) Act, 2007, Financial Procedures Act, 1999, Special Court Act, 2002, Money Laundering Act, 2008, Extradition Ordinance, 2012 and Mutual Legal Assistance Ordinance, 2012. Finally he also proposed that AALCO Secretariat develop a model instrument to combat corruption.
- 6.142 **The Delegate of Kenya** at the outset stated that the fact that being a Party to the UNCAC has encouraged Kenya to adopt the best practices in the fight against corruption and to develop the relevant policies, and legislation, and to establish appropriate Agencies. Outlining the anti-corruption efforts of her country, she pointed out that the Constitution of Kenya, promulgated in 2010, entrenches Kenya's commitment to fight against corruption and that Article 79 provided for the establishment of an Independent Ethics and Anti-corruption Commission. The delegate further added that Chapter Six of the Constitution, which was dedicated to issues of Leadership and Integrity, has created benchmarks to ensure that public officers, especially State officers, uphold the highest

standards of ethics, integrity and conduct. She also made reference to the legislation that Kenyan Parliament had enacted with a view to implementing the provisions of the Constitution : the Leadership and Integrity Act, 2012, the Ethics and Anti-Corruption Commission Act, 2011, the Commission on Administrative Justice Act, 2011. She clarified that all of these legislations set out an enabling institutional and legal framework to combat corruption and promote good governance in Kenya. She also added that the establishment of the Ethics and Anti-Corruption Commission, the Commission on Administrative Justice, and the reform of a number of institutions such as the Office of the Director of Public Prosecutions, and the Judiciary were some of the other measures that was taken by Kenya to strengthen the implementation of the anti-corruption laws and policies that the Government has put in place over the past ten years. She also brought attention to the fact that the Government of Kenya was working to ensure that the following laws are reviewed to address any gaps and weaknesses and to enhance their capacity to deal with the challenges the country has been facing in the fight against corruption: the Anti-Corruption and Economic Crimes Act (Cap. 65); the Public Officer Ethics Act (Cap. 183); the Ethics and Anti-Corruption Commission Act, 2011; the Leadership and Integrity Act, 2012; the Proceeds of Crime and Anti-Money Laundering Act, 2009, and the Mutual Legal Assistance Act, 2010.

**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**

***A Study on the “Statehood of Palestine under International Law” undertaken by the AALCO Secretariat***

- 6.143 **H.E. Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO** introduced the topic. He pointed out that issue has been on the agenda of the Organization since the year 1988 and over the past twenty-five years the Organization has devoted its attention to the numerous legal issues that touch the situation in the Middle East. He then referred to the mandate that was given at the Fifty First annual session of the Organization - to make a study concerning the legal requirements and principles that would determine the status of Palestine as a “State”, taking into account the relevant international law principles and stated that in tune with that mandate the secretariat has prepared a study on the “Statehood of Palestine under International Law”. He then referred to the contents of the study.
- 6.144 Dr. Mohamad stated that the illegal military occupation of Palestinian territories and the human rights abuses perpetrated on the people of Palestine has been continuing now for more than four decades in flagrant violation of the binding resolutions of the Security

Council and the General Assembly. It was pointed out that even as peace talks have resumed after a significant length of time, Israel was continuing to pursue its expansionist policies. He then point out that time and again the international community has continuously asserted the illegal nature of these acts and the other acts that are in the nature of collective punishments. He also referred to the judgment of the International Court of Justice in *The Wall case* and the documentation of the human rights abuses in the OPT by the Special Committee appointed by the United Nations.

- 6.145 Dr. Mohamad Stated pointed out the importance of pursuing legal remedies to redress this situation and that the attempts made by Palestine to pursue action at the International Criminal Court had to be viewed in this context. However that the prosecutor had refused to take action for the reason that it doubted whether Palestine was a “State” was also pointed out. He then referred to the special study conducted by the Organization on the “Statehood of Palestine” and stated that there were compelling reasons to conclude that Palestine does satisfy the international requirements for Statehood: that it had a territory (though disputed in its extent), that it had a permanent population, that it had a government and has proved the ability to enter into relations with other States. The then stated that despite these criteria, Statehood was intimately connected to recognition and that Palestine has been recognized by the vast majority of the Member States of the UN. He also referred to the right of the Palestinian People’s right to self-determination in this context. He pointed out that the study prepared by the secretariat had covered these issues. He then drew the framework for deliberations: the violations of international law, particularly international human rights law and humanitarian law committed by the Israel in the Occupied Palestinian Territory (OPT); the role of the International Criminal Court in redressing these violations and the role of the international community to pressurize Israel to comply with its international obligations.
- 6.146 **The Delegate of the State of Palestine** made a statement welcoming the study conducted by the Secretariat and outlined the concerns and the views of his country on this issue. He reiterated the importance of the publication, which according to him, would be a legal reference point of use at the global level and stated that all attempts would be put in to translate and publish the book in different languages. Expressing sympathy for AALCOs financial conditions, the delegation however requested for a waiver of the arrears for Palestine and stated that necessary actions would be taken on the coming years to clear of the arrears in the coming years.
- 6.147 **The Delegate of Japan** appreciated the new publication released by the Secretariat “A study on the Statehood of Palestine under International Law”. He said that so far they had not had an opportunity to go through the same, however he felt it should be a useful study relevant to the agenda item Deportation of Palestinians and other Israeli practices which had been discussed by the Organization since 1989. He stated that the question was



inseparably linked to the overall situation in the region. Japan he said had been supporting the efforts to seek the realization of lasting peace in the Middle East based on a two-state solution in which Israel and a future independent Palestinian State coexist in peace and for that it was necessary that direct negotiations resume between both the parties. Japan's basic position had always been that on the basis of UN Security Council resolutions 242 and 338 Israel should withdraw from the area it had occupied in 1967, Palestinian people's right to self-determination including establishment of an independent state should be recognized and that peace should be realized. On its part Japan would continue its efforts to push forward the peace process from political and economic side. He recounted the initiatives taken by Japan in that regard. In conclusion he deplored Israel's construction of further settlement activities which clearly went against the efforts of the parties involved to resume the peace process, and strongly called on Israel not to implement this plan. In conclusion he mentioned that Japan had voted in favour of the UNGA resolution granting non-member observer state status to Palestine which was adopted last year.

- 6.148 **The Delegate of the Islamic Republic of Iran** expressed the sincere appreciation of his delegation to the Secretariat for the special study on the "Statehood of Palestine under International Law". He pointed out that the question of Palestine has been one of the main challenges facing the International Community for over 60 years and that the crisis in the region was as a result of the Zionist occupation Palestine and that ignoring the legitimate right of the Palestinian people to self-determination would hinder the steps towards a just solution of the question.
- 6.149 The delegation condemned the Israeli Authorities for breach of International Human Rights and Humanitarian Law, some of which amounted to war crimes and pointed out reports by International Organizations that detailed the magnitude of these atrocities. He also referred to the recent proliferation of such incidents. The delegate stated that Iran had always approved the firm position of AALCO over the years in condemning Israel's violations of international law in the Occupied Territories. The delegation stated that these violations must not be allowed to go unpunished and affirmed the application of the Geneva Convention in the Occupied Territories. The delegation called on the Member States to respond to this situation and ensure that all were equal before the law. The delegation further called on the Israel to comply with the judgment of the ICJ in *The Wall Case*. Affirming the right of the Palestinian people to exercise sovereignty over their occupied territory, it was pointed out that the ICJ had held that the existence of Palestinian people was no longer an issue and had affirmed their right to self determination. Welcoming the decision of the United Nations General Assembly in 2012 to upgrade the Status of Palestine within the Organization as an "observer", the need to further help the Palestinians remove the obstacles to the exercise of their right to Self Determination.

- 6.150 **The Delegate of Indonesia** congratulated the Palestinian delegation for their upgraded status in the United Nations and complimented all the Member States for their effort and support to Palestine. The historic decision by the general Assembly to accord non-member Observer State status to Palestine was a strong testament to the support of the majority of UN Member States in supporting the struggle of Palestine to exercise its right to self-determination. He felt however that this support would have to continue till it got full statehood, in line with the principles outlined in relevant Security Council resolutions, the Road Map of the Quartet and the Arab Peace initiative. Indonesia ardently supported the two-state solution based on the conviction that an independent state of Palestine with rights and responsibilities would contribute to achieving a just, lasting and comprehensive peace in the Middle East.
- 6.151 **The Delegate of Mauritius** reiterated their deep commitment, consistent and unwavering support to the Palestinian people in the pursuit of their legitimate aspirations for freedom and equality as a sovereign member of the family of nations. He reaffirmed unequivocal solidarity with the Government and people of Palestine. He expressed his concern that the perennial question of Palestine remained unresolved and the Palestinians could not exercise their inalienable rights, including the right to self-determination without interference and the right to national independence sovereignty and sustainable development. In this respect he saluted the Palestinian leadership for submitting an application to the UN General Assembly, for the statehood of Palestine. Mauritius fully supported this initiative as they were convinced that full membership would correct an injustice that had lasted more than six decades and would result to a comprehensive, lasting and just resolution of the Israeli-Palestinian conflict.
- 6.152 **The Delegate of the Arab Republic of Egypt** stated that Egypt appreciates AALCO for its comprehensive study on the Palestinian issue, particularly because it provides a legal perspective to countries that have not yet decided to support the Palestinian State. He stated that Egypt supports the honorable Minister of Justice of Palestine's statements on Israeli practices concerning human rights and the Al-Aqsa Mosque. He stated that Egypt would continue to support the Palestinian people in their aspirations towards an independent state along the borders decided in June 1967 with Jerusalem as its capital. He denounced the Israeli settlements and the storming of the Al-Aqsa Mosque and urged AALCO Member States to continue rejecting Israel's decision to expand settlements and its punishing of the Palestinian people for their bid for international legitimacy in the United Nations.

- 6.153 **The Delegate of the Republic of South Africa** condemned the deportation of people by force and the disregard of international law especially with regard to the ongoing issue of the Palestinian Occupied Territories. The Government of South Africa noted with concern that since 1967 Israel had deported 1,522 Palestinian from the occupied territories. The delegate agreed that the continued illegal occupation of Palestinian territory was an obstacle to negotiations for peace and contrary to international law; this view was articulated in all interactions with the Israeli government, which regarded the area it occupied in June 1964 as “disputed territory”. He stated that South Africa remained deeply concerned about Israeli settlement expansion, especially in East Jerusalem. The South African Government had called on Israel to abandon all settlement activities and shared the view that a two-state solution to the conflict was under increasing threat as Israeli settlement activity in the West Bank continues to make the separation of both people into two states increasingly difficult. Thereafter he recounted that various for a including the NAM Ministerial meeting in Sharm El Sheikh, Egypt on 10 May 2012 where South Africa had demonstrated its unwavering commitment to the call for a Palestinian State. It had also called for the lifting of the on-going Israeli blockade in Gaza as it amounted to collective punishment of the population of the enclave. He further added that South Africa did not support the Israeli practices relating to the detention of Palestinian children, the arbitrary use of administrative detention against Palestinians, the demolition of Palestinian homes, and other illegal Israeli practices. In conclusion he said that since 1994, successive governments had expressed strong support in regional and international forums for the Palestinian cause within the framework of a viable two-state solution.
- 6.154 **The Delegate of India** welcomed the special study conducted by the Secretariat. He stated that the issue was still to be resolved. He pointed out that the Palestine borders are well defined, that the people of Palestine have the right to Self-Determination.<sup>8</sup>
- 6.155 **The Delegate of People's Republic of China** expressed their appreciation for the special study conducted by the Secretariat and expressed firm support for the Palestinian Cause for Statehood with the 1967 borders and for membership in the United Nations and other International Organizations. Recalling that China has rendered to the Palestinian cause over the years, the delegate assured the Member States that her country would continue to play and active role in supporting the issue.

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

- 7.1 In conjunction with the Fifty-Second Annual Session of AALCO a Half-Day Special Meeting was held on “Selected Items on the Agenda of the International Law

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<sup>8</sup> The Detailed report of the Statement will be made a part of the Final Summary Report.

Commission”. The meeting deliberated upon three important topics, namely: (i) “Protection of Persons in the Event of Disasters”, and (ii) “Immunity of State Officials from Foreign Criminal Jurisdiction” and (iii) Formation and Evidence of Customary International Law”.

- 7.2 **Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO** introduced the agenda item and on behalf of the Organization, the SG paid tribute to late Ambassador Chusei Yamada and commemorated in grief, his contributions in the field of International Law as distinguished Member of the ILC from Japan and as Special Rapporteur on the topic “Shared Natural Resources”.
- 7.3 The SG reaffirmed the longstanding relationship between AALCO and the ILC. Considering the importance of the work of ILC, the AALCO had been statutorily mandated by its Member States to follow and exchange the views of its Member States on the agenda items of the ILC. It was reiterated that customarily, both the Organizations has been mutually represented at each other at their respective annual sessions. The SG mentioned that he had addressed the sixty-fifth session of ILC, on behalf of the AALCO, briefed the Commission about AALCO’s comments and observations on specific agenda items of ILC.
- 7.4 The Panelists for this special session, Sir Michael Wood, Member of the ILC and Special Rapporteur for the agenda item “Formation and Evidence of Customary International Law”; Mr. Narinder Singh, Member of the ILC from India who has served as former President of AALCO; and Dr. A. Rohan Perera, the member of the Commission from Sri Lanka and the Chairman of the Eminent Persons Group (EPG) of AALCO; were welcomed to the special half-day meeting. Briefly, he stated that the deliberations at the sixty-fifth session of the Commission focused on seven topics listed on the agenda of the ILC; namely, (i) Subsequent agreements and subsequent practice in relation to the interpretation of treaties, (ii) Provisional application of treaties, (iii) Most-Favoured Nation clause, and (iv) Obligation to Extradite or Prosecute (*aut dedere aut judicare*). However, with a view to have a focused deliberation on the work of the ILC; it was decided that the Special Meeting on “Selected Items on the Agenda of the International Law Commission” would be on three important topics of ILC: namely, (1) Protection of persons in the event of disasters; (2) Immunity of State officials from foreign criminal jurisdiction; and (3) Formation and evidence of customary international law.
- 7.5 The summary of the work of ILC on its agenda items, was pointed out. The topic “Treaties over Time” was changed to “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and the Commission considered the first report and dealt with (i) general rule and means of treaty interpretation, (ii) Subsequent agreements and subsequent practice as means of interpretation, (iii) Definition of

subsequent agreement and subsequent practice as means of treaty interpretation, and (iv) Attribution of treaty-related practice to a State.

- 7.6 On “Provisional Application of Treaties”, the SG stated that the Commission considered the Memorandum of the Secretariat and the First Report of the Special Rapporteur. The report discussed the procedural history of the “provisional application of treaties”, Raison d’être of provisional application of treaties; Shift from provisional “entry into force” to provisional “application”; legal basis for provisional application; Provisional application of part of a treaty; Conditionality, Juridical nature of provisional application Termination of provisional application. The focus of the study would be on Article 25 of the Vienna Convention on the Law of Treaties, 1969. The principal legal issues that arise in the context of the provisional application of treaties by virtue of doctrinal approaches to the topic would review the existing State practice.
- 7.7 The SG while referring to the topic “Most Favoured Nation”, stated that the Study Group on “Most-Favoured Nation clause” had working paper entitled “A BIT on Mixed Tribunals: Legal Character of Investment Dispute Settlements” by Mr. Shinya Murase. The catalogue of the provision was prepared by Mr. Donald McRea and Dr. A. Rohan Perera. The Study Group traced the contemporary practice and jurisprudence relevant to the interpretation of MFN clauses. In that connection, it had before it recent awards and dissenting and separate opinions addressing the issues under consideration by the Study Group.
- 7.8 The Report of the Working Group on “Obligation to Extradite or Prosecute (*aut dedere aut judicare*)”, consisted of detailed discussion of recent ICJ decision on Obligation to Extradite or Prosecute (2012) (Belgium v. Senegal). The decision was helpful in elucidating: Basic elements of the obligation to extradite or prosecute to be included in national legislation, Establishment of the necessary jurisdiction, Obligation to investigate, Obligation to prosecute, Obligation to extradite, and Consequences of non-compliance with the obligation to extradite or prosecute.
- 7.9 A Brief outline of the agenda items for the focused deliberation at the Special Half-Day Meeting was provided: (i) protection of persons in the event of disasters; (ii) immunity of State Officials from foreign criminal jurisdiction; and (iii) formation and evidence of customary international law. On “Protection of Persons in the Event of Disasters”, the Commission considered the sixth report of the Special Rapporteur Mr. Eduardo Valencia-Ospina. The report discussed about the historical development of concept of disaster risk reduction, prevention as a principle of international law tracing from human rights law and environmental law; international cooperation on prevention as dealt under bilateral and multilateral instruments; national policy and legislative framework on prevention,

mitigation and preparedness; and proposal to include draft Article 16 on ‘duty to prevent’ and draft Article 5 *ter* on ‘Cooperation for disaster risk reduction’.

- 7.10 As regards the topic “Immunity of State officials from foreign criminal jurisdiction”, the Commission considered the second report which dealt with the Scope of the topic and the draft articles; the concepts of immunity and jurisdiction; the distinction between immunity *rationae personae* and immunity *rationae materiae*; and, the normative elements of immunity *rationae personae*. Moreover, three draft Articles 1, 3 and 4 on ‘scope of the present draft articles’, ‘persons enjoying immunity *rationae personae*’, and ‘scope of immunity *rationae personae*’, was adopted by the Commission.
- 7.11 On the topic “Formation and Evidence of Customary International Law”, he referred to two main documents which were considered by the Commission. First, the memorandum of the Secretariat on “elements in the previous work of the International Law Commission that could be particularly relevant to the topic Formation and Evidence of Customary Evidence of International Law; and second, First Report of the Special Rapporteur Mr. Michael Wood on the subject of Formation and evidence of Customary Evidence of International Law. The First report on the topic explained the scope and outcome of the topic which addresses whether to cover *jus cogens*; customary international law as source of international law under Article 38 of the Statute of the International Court of Justice. Also, reference was made to materials that would be considered during the study which focuses on (i) Approach of States and other intergovernmental actors, (ii) Case law of the International Court of Justice, (iii) Case law of other courts and tribunals, (iv) work of other bodies, and (v) Writings.
- 7.12 The SG explained the Comments of AALCO Secretariat on the focused agenda items: The concept of prevention as referred under ‘protection of persons in the event of disasters’ was a definitive concept in international law and a possible measure to reduce the disaster risk. However, he pointed out, pre-disaster preparedness even at the presence of national legislations and authorities would be very limited due to shortage of funding disaster management which remained a challenge for many of the developing countries. It would be more relevant to deal with technology transfer in terms of addressing post-disaster relief and rescue operations within the country. He stated that AALCO Secretariat was of the view that duty to offer assistance, previously discussed in the fifth report on this subject, must not be compulsory but voluntary and must respect the principle of non-intervention in the internal affairs of the state by assistance offering state.
- 7.13 With regard to applicability of *immunity rationae personae* beyond *Troika*, he stated that there was a need to identify a clear criterion in establishing such practice and also to consider the suggestion of enhancing cooperation between States in matters relating to

invocation of immunity between the State exercising jurisdiction and the State of the official, in respect of the Troika as well as others. According to him the view of AALCO Secretariat conformed to the view of the Special Rapporteur to the extent that in the absence of compelling arguments to the contrary, the status quo with regard to the extension of protection offered by *immunity rationae personae* being limited to the “troika” be maintained.

- 7.14 He stated that the topic “Formation and Evidence of Customary International Law” was very significant to AALCO Member States and that for deriving the ‘attitude of states and international Organizations’, the Asian-African States must transmit their position on the same to the Commission. He stated that those approaches and materials would be very essential to evolve evidentiary practices on customary international law from the developing country’s perspective and such comments and country positions would contribute towards established state practices under international law. He also said that it is the strong view of the AALCO Secretariat that resolutions of International Organizations, especially AALCO, form part of customary international law and that the statements presented at forums such as AALCO, depict the ‘state practice’ which should also be regarded as contributing to customary international law. The SG thanked the panellists for their participation and forthcoming presentations.
- 7.15 **Sir. Michael Wood, Member of the International Law Commission and Special Rapporteur to the topic “Formation and Evidence of Customary International Law”** made a presentation about the work of the International Law Commission with respect to this issue; the progress achieved ; and highlighted some of the important issues left for consideration.
- 7.16 Sir Michael Wood Thanked the Secretary-General for inviting him for the special half-day meeting on ILC. The panellist recalled the significant role played by the AALCO in the formative years of negotiations of the UNCLOS, law of state immunities and law of treaties. The panellist referred to the United Nations Convention on the Jurisdictional Immunities of States and Their Property, 2004, which one such significant contribution from the research and work of Special Rapporteurs from Asian Member State of AALCO, especially the work of Special Rapporteur Late Amb. Chusie Yamada from Japan. He briefly narrated the Draft Articles on Expulsion of aliens and the Guide to Practice on Reservations to Treaties wherein comments of Member States were pertinent and requested by the Commission.
- 7.17 The topic **Subsequent agreements and subsequent practice in relation to the interpretation of treaties** dealt with an important aspect of treaty interpretation. It covered subsequent agreements and subsequent practice both under article 31.3(a) and (b) (‘authentic interpretation’) and under article 32 VCLT (‘supplementary means of interpretation’). Five draft conclusions were adopted in 2013, with detailed

commentaries. They were largely introductory but include some interesting points - For example - one issue addressed was the role of subsequent agreements and practice in relation to 'evolutionary' interpretation. He pointed out that On the topic there has not yet been great progress, though interesting discussion on the first report by the Special Rapporteur were held. The Commission added the topic **Protection of the environment in relation to armed conflict** to its current work programme, and appointed Ms Jacobsson as Special Rapporteur. The Commission added the topic **Protection of the atmosphere** to its current work programme, and appointed Professor Shinya Murase of Japan as Special Rapporteur.

- 7.18 On the topic **Obligation to extradite or prosecute (*aut dedere aut judicare*)**, a working group under Ambassador Kriangsak Kittichaiserie continued its consultations on where to go on this topic and that a rather detailed report was annexed to the ILC's report, in the hope of eliciting reactions in the Sixth Committee on the future of the topic. The report described how the topic has developed, and analysed the ICJ judgment of 20 July 2012 (*Belgium v. Senegal*). He said that it does not deal with the question whether the obligation to extradite or prosecute was, already a rule of customary international law, at least in relation to certain crimes.
- 7.19 On **"Immunity of State officials from foreign criminal jurisdiction"**, stressed on the practical importance of the law on special missions, both under the 1969 New York Convention and under customary international law. He said that there have been a number of recent cases in this field, including one in the English High Court which confirmed the customary law status of the immunity of persons on special missions.<sup>9</sup> This was of practical importance because it meant that senior officials may enjoy personal immunity from foreign criminal jurisdiction even if they do not fall into that narrow circle of high State officials who enjoyed immunity *ratione personae* by virtue of their office. On the Commission's work on this topic, the endorsement in draft article 3 of the so-called 'troika' (Heads of State, Heads of Government and Ministers for Foreign Affairs) stated that Troika enjoyed immunity *ratione personae*. He pointed out that that was a compromise, as there remained one or two members of the Commission who thought foreign ministers should have such immunity (and that the ICJ was wrong in the *Arrest Warrant* case. Certain other members expressed concern that it should not be regarded as confined to the three (but include, for example, Defence Ministers and Ministers of Commerce and International Trade).
- 7.20 On **"Protection of Persons in the Event of Disasters"**, the Special Rapporteur, Valencia-Ospina, produced a lengthy sixth report on disaster risk reduction. It dealt with the need to take steps to avert disasters before they occur, and to make preparations so

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<sup>9</sup> *Khurts Bat* 2011.



that they can be dealt with as effectively as possible if and when they do occur. The report contained a great deal of information, and drew on a wealth of texts and documents.

- 7.21 On **Formation and evidence of customary international law**, he said that there was an agreement that the outcome of the Commission's work on that topic should be practical. He noted that "The aim [was] to provide guidance for anyone, and particularly those not expert in the field of public international law, faced with the task of determining whether or not a rule of customary international law exists." He stated that it seemed to be widely accepted that it was not the Commission's task to seek to resolve purely theoretical disputes about the basis of customary law and the various approaches to be found in the literature as to its formation and identification. He quoted the ILC Secretariat memorandum : "we are looking at the approach to the identification of the rules of customary international law and the process leading to their formation."<sup>10</sup> The Commission decided that they should not deal with *jus cogens* within the present topic.
- 7.22 Among other things the report dealt with the relationship between customary international law and other sources of international law. The relationship between customary international law and treaties was a matter of great practical importance for the topic. It was a reasonably well-understood question, on which there was a wealth of case-law and writings. Less obvious, less studied, perhaps less well understood was the relationship between customary international law and general principles of law within the meaning of Article 38.1(c) of the ICJ Statute. The report sets out at some length, with examples, the range of materials that the Commission may need to take into account in the course of our work. He stated that while illustrating their richness and diversity, it also tries to highlight the general approach to the formation and evidence of customary international law which they reveal and that it was noteworthy that virtually all of the materials stressed the need for both State practice and *opinio juris*. The International Court of Justice, in particular, "has clearly and constantly held [...] that customary international law was formed through State practice accompanied by *opinio juris*."<sup>11</sup> He stated that if one studied the case-law of the International Court of Justice, in particular the *North Sea*, *Nicaragua*, and *Germany v. Italy* cases, it was clear that the Court viewed the two elements, State practice and *opinio juris*, as essential for the formation of a rule of customary international law.
- 7.23 The panellist referred to the importance of AALCO Member States in framing approaches at the ILC to ensure that the voice of Asian and African States would be heard loud and clear in the progressive development and codification of international law and that an important part of this was the contribution of Commission members from AALCO Member States, and the contribution of AALCO Member States themselves to the work of the Commission. The Asian and African members of the Commission had

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<sup>10</sup> Para. 12.

<sup>11</sup> Report, para. 55

undoubtedly made, he pointed out, and continued to make, a valuable contribution to the work of the Commission. He stated that their presence was essential if the Commission was to be truly representative.

- 7.24 **Mr. Narinder Singh, Member of the International Law Commission from India,** began by noting the importance of the ‘United Nations Convention on Jurisdictional Immunity of States and their Property’. Mr. Singh also noted that this Convention was adopted after extensive negotiation both in the ILC and the Sixth Committee of the UN and that AALCO contributed extensively in both forums. He mentioned that India had signed but not ratified the Convention, but also that India has already applied many of the provisions in practice and that Indian Courts have considered provisions of the Convention while arriving at decisions.
- 7.25 Mr. Singh stated that under the law in India any person wishing to file suit against Government officials or property needed Government permission to do so. While considering whether to grant or deny such permission, the Indian government looked at practices around the world. Courts have agreed that trends in International Law must be considered when deciding whether to grant permission and thus the Courts have examined in detail the provisions of the Convention. Mr. Singh hoped that all the AALCO states would ratify the Convention.
- 7.26 With respect to other relevant ILC topics such as reservation to treaties, draft articles to state responsibility and so on, Mr. Singh recommended that States should submit comments wherever necessary and participate actively in discussions.
- 7.27 Coming to the topics under consideration, Mr. Singh noted the politically important subject of “Immunity of state officials from foreign criminal jurisdiction”. He noted that the divergent opinions within the ILC and some members highlighted the issue of impunity for serious crimes and advocated restricted application of immunity to higher officials, while other members have emphasized that the basic purpose of immunity was to provide adequate independence to high officials for them to perform their functions. They also referred to historical practice to justify immunities. The ILC has agreed that the ‘troika’ enjoys full immunity (both *rationae materiae* and *personae*). Mr. Singh also noted that some have questioned personal immunity granted to Ministers for Foreign Affairs on the ground that complete immunity can only apply to the Heads of State and Heads of Government. Others have looked at classification based on function rather than post.
- 7.28 Mr. Singh then moved on to the topic of “protection of persons in the event of disasters”. He noted that in the draft articles that have been adopted, the ILC has recognized the concerns of members and Sixth Committee States. Particularly they have asserted that the State on whose territory the disaster occurred was the State which must decide on the course of action to deal with the after-effects and assistance to victims. The Articles also

recognized that it was the affected State that decides whether it needs assistance from foreign States as well as the nature and extent of this assistance.

- 7.29 **Dr. Rohan Perera, Former Member, ILC, Sri Lanka**, spoke about an important agenda item of the International Law Commission, relevant to African and Asian States, namely, the ‘Immunity of State Officials from Foreign Criminal Jurisdiction’. He pointed out that the former Special Rapporteur had put in a considerable amount of work concerning the general orientation of this complex and sensitive topic. He further pointed out that the States have responded highlighting the need for a cautious approach and the need to approach the topic from a *Lex Lata* perspective and maintain the distinction between codifying the *Lex Lata* and making proposals for the progressive development of the law – *Lege Ferenda*. Referring to the work of the current Special Rapporteur, he pointed out that at present there were 6 draft Articles and it was important to clarify the scope of the topic and the draft articles. He also pointed out that the most important contribution so far was the distinction made between *Immunity Rationae Personae* and *Immunity Rationae Materiae* as a frame of reference, the efforts made to identify the normative content of the each of these kinds immunity and the establish the legal regime applicable to them. Referring to Draft Article 3, which defines these two, Dr. Perera pointed out that *Immunity Rationae Personae* applied to functionaries who represented State in its international relations and *Immunity Rationae Materiae* applied to the Acts that they performed in the discharge of their mandate, described as “Official Acts”. He stated that significant efforts were required and was being put in to identify the scope of persons who could invite personal immunity. He pointed out that based on the *Arrest Warrant Case* and *Case Concerning Certain Mutual Assistance In Criminal Matters Case* the Special Rapporteur has concluded that personal immunity applied to the *Troika*, in recognition of their functions as representing the State as this was what promotes and facilitates international relations. Dr. Perera then referred the reasons given by the Special Rapporteur in reaching this conclusion. With respect to the issue of extension of *Immunity Rationae Personae* beyond *Troika*, it was pointed out by him that the Special Rapporteur had observed that creating an exclusive list of such “other officials” was not possible and that this would be determined by the government or legal department of each State. However, he noted that the Commission, in its previous sessions had noted that current international relations have undergone a fundamental change and now involves actions of functionaries other than the Finance Minister. He pointed out that, the commission was however, also aware of the need to avoid a large scale expansion of the eligible categories, as this would then create a zone of impunity under the cover of immunity. The commission was, according to him, moving towards identifying and defining the applicable criteria, based on which the “other categories” could be determined. The criteria for this are that the representation of State in international relations must be an indispensable part of the duties of the functionary. He also pointed

out the need for further clarification of the principles of functional necessity & representative character of the official duty and exercise of powers intrinsic to the State.

- 7.30 In the ensuing deliberations the delegations from **Islamic Republic of Iran, India, Japan, Thailand, Malaysia, South Africa and People's Republic of China** made their statements and raised questions to the panellists, which was followed by their answers.

**Second Half-Day Special Meeting on “Extraterritorial Application of National Legislations: Sanctions Imposed against Third Parties” Jointly Organized by the Government of India and the AALCO**

***Abstract of the Special Study on “Unilateral and Secondary Sanctions: An International Law Perspective”***

- 8.1 A Half-Day Special Meeting on “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” in conjunction with the Fifty-Second Annual Session of AALCO was organized by the AALCO Secretariat. The distinguished panellist for the Half-Day Special Meeting were Dr. A. Rohan Perera, Former Member of International Law Commission from Sri Lanka; Prof. Vera Gowlland-Debbas, Professor of International Law, Geneva Institute of International Studies, Geneva; Prof. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies, Jindal Global Law School; and Dr. R. Rajesh Babu, Associate Professor, Indian Institute of Management-Calcutta (IIM-C).
- 8.2 **Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO (SG)** welcomed everyone to the Special Half-Day Meeting on the topic of “Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties” which was organized by the AALCO in collaboration with the Government of India. The SG formally welcomed and thanked all the panelists for taking time from their busy schedule to be a part of the discussion. He said that the agenda item entitled, “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” was first placed on the provisional agenda of the Thirty-Sixth Session at Tehran, 1997, following a reference made by the Government of the Islamic Republic of Iran. Thereafter, the item had been considered at the successive sessions of the Organization. At the Fifty-First Annual Session of AALCO (Abuja, Nigeria) vide resolution AALCO/RES/51/S 6, the Secretariat was mandated to undertake a Special Study on the ‘legal implications of the application of unilateral sanctions on third parties’. The SG informed that the Secretariat was proud to announce that the Study, entitled **“Unilateral and Secondary Sanctions: An International Law Perspective”**, has been completed and would be released soon. An executive summary of the Study, as well as the contents page of the Study, have been distributed.

- 8.3 The SG stressed that the topic unilateral sanctions was of particular importance to AALCO as few of its Member States have been the targets of unilateral sanctions in the recent past. Indeed, the topic was also of great relevance to the wider community of developing nations and the community finds itself the target of such sanctions.
- 8.4 He explained that term ‘Sanction’, in international affairs meant a penalty imposed against a nation to coerce it into compliance with international law or to compel an alteration in its policies in some other respect. Legitimacy of sanctions under international law was applicable only to ‘multilateral sanctions’, which were applied as per Chapter VII of the Charter of the United Nations. The Security Council was vested with the ‘primary responsibility’ for maintenance of international peace and security under the UN Charter.
- 8.5 On the other hand, unilateral sanctions often refer to economic measures taken by one State to compel a change in policy in another State. The most widely used forms of economic pressure are trade sanctions in the form of embargoes and/or boycotts, and the interruption of financial and investment flows between sender and target countries. However, while the common conception of unilateral sanctions was as a tactic by which a State refuses to maintain trade relations with a country whose policies it disagreed with, or with whom it had a dispute, these unilateral sanctions also gave rise to secondary sanctions. These secondary sanctions were imposed against third parties, either States or non-State entities, who were outside the jurisdiction of the sanctioning State, in order to prevent them from trading with the ‘target State’. Essentially, this result in the sanctioning State enforcing its own domestically enacted legislations against entities those are outside of its territory and jurisdiction, thus resulting in a violation of some of the most basic principles of international law.
- 8.6 The SG briefly introduced the Study conducted by the AALCO Secretariat that dealt in detail with the violation of international law by Unilateral and Secondary Sanctions and these violations which could be broadly divided into 4 areas. The first chapter provides the genesis of the subject within AALCO; how sanctions have been listed under international law; and the political economy of sanctions regime. It also briefly describes the concepts like extraterritorial jurisdiction, unilateral sanctions, secondary sanctions and collective or multilateral sanctions.
- 8.7 Chapter 2 argues that Unilateral and Secondary Sanctions are impermissible under International Law. The foundational principles that regulated and governed international relations were stated in Charter of the United Nations and the 1970 Declaration of Friendly Relations and Cooperation among States. These included the principle of sovereign equality of states, principle of non-use of force, the principle of self-

determination of people, the principle of non-intervention into the internal and external affairs States, the principle of peaceful settlement of international disputes, the principle of cooperation among states, and the principle of fulfilling in good faith obligations assumed under international law.

- 8.8 He said that Chapter 3 attempted to highlight the adverse effects of financial sanctions that are imposed against financial institutions especially the Central Bank of an economy, which hampered the effective functioning of these institutions in developing countries. The role played by the central banks in achieving development in developing countries was very pivotal. The central bank had a crucial function towards developing the banking and financial system of the country in order for ensuring well-organised money and capital markets within the economies. The main contention was that since Central Bank had major role and function in regulating financial system of the country, they should be granted immunity and their properties shall not be attached.
- 8.9 Explaining about Chapter 4, which attempts to elaborate on the adverse effects and the illegality of unilateral and secondary sanctions in the context of the international trade agreements and freedom of trade and navigation, he highlighted the core principles which were violated. The SG stated that the violation of the core principles of international trade law vis-à-vis multilateral trade agreements and bilateral trade treaties which analyzes the impact of the secondary sanctions on third parties on a country-specific basis. The Chapter suggests possible measures for the developing countries against the imposition of unilateral and secondary sanctions; in other words, the possible legal options for the third countries to respond to the Secondary Sanctions.
- 8.10 Chapter 5 focused on the list of recognized human rights that were adversely affected by sanctions and was limited to some of the more pertinent rights, particularly in view of the fact that the targeted states were developing and third-world states. The rights discussed would include: the right to self-determination; the right to development; and, the right to life, with particular attention paid to the right to food and the right to health and medicine. While a classification of the importance of rights was obviously not possible, these particular rights were chosen for their relevance to the developing world and because of the massive problems caused by their violation.
- 8.11 Response of the international community being an important aspect, he said Chapter 6 addressed the issue. The chapter would deal with the opinions voiced by some of the international Organizations, as well as their Member States in the forum provided by the Organization through resolutions and statements of the Organizations. These include the United Nations General Assembly (UNGA), the Asian-African Legal Consultative Organization (AALCO), the Group of 77 (G-77), and the Non-Aligned Movement (NAM); which form part of in-depth analysis for evolving evidentiary customary international law.

- 8.12 By way of conclusion, the SG reiterated that the Study contends that unilateral and secondary sanctions were against international rule of law and promotes self-interest. Unilateral and secondary sanctions affect trade relations of the target country as well as its trading partners; affect the economic and banking system besides inflicting suffering and deprivation of basic human rights on innocent civilian population of the target countries. These sanctions disrupt international trade and navigation and were impermissible and unjustifiable under international law.
- 8.13 Further, apart from theoretical discussions in the Study regarding international law and unilateral sanctions, illustrations of the practical aspects and real-world consequences of unilateral sanctions regimes would be done through the use of the case study of certain countries who have been the targets of sanctions; primarily Iran.
- 8.14 The SG said that he has been able to highlight the salient points relating to AALCO's Special Study and that had given a brief overview of some of the pertinent issues relating the topic of "Extraterritorial Application Of National Legislation: Sanctions Imposed Against Third Parties" in an effort to set the stage for the discussion that were to follow.
- 8.15 **Dr. Rohan Perera, Former Member, International Law Commission, Sri Lanka,** made a presentation outlining some of the important concerns for Asian and African States with respect to this topic. The distinguished panelist referred to the topic of unilateral sanctions from an international law perspective. Dr. Perera said that only multilateral sanctions were permitted under international law under Chapter VII of the Charter of the UN. However, unilateral sanctions were impermissible under international law because it violated basic principles of international law that included the principle of sovereign equality of states, principle of non-use of force, the principle of self-determination of people, the principle of non-intervention into the internal and external affairs States, the principle of peaceful settlement of international disputes, the principle of cooperation among states, and the principle of fulfilling in good faith obligations assumed under international law. Moreover, the law relating to state responsibility was also very crucial for the study on this subject. Henceforth, the he appreciate the initiatives of the Secretary-General and the Secretariat for undertaking the study which he highlighted would be very significant in the field of international law.
- 8.16 **Prof. Vera Gowlland-Debbas, Professor of International Law, Geneva Institute of International Studies, Geneva**
- 8.17 The distinguished panelist made a presentation on "Sanctions and State Responsibility". The Panelist focused her presentation on individual state accountability for the imposition of economic measures in particular, though not solely, under international human rights law. She examined this in light of the relationship between unilateral measures and collective measures. The Speaker noted that unilateral measures have been regulated

through prior conditioning or subsequent control by international institutions, as for example trade measures under the law of the WTO or the European Union. Also, under the general law of state responsibility as codified by the ILC in its Articles, a series of constraints have been placed on the procedural and substantive aspects of countermeasures.

- 8.18 The Speaker recalled the US's long history of the use of economic sanctions as a tool of foreign policy going back to the 19th century. Therefore most US Sanctions are not an invocation of the 1945 US United Nations Participation Act which authorizes the US's executive to carry out Security Council sanctions adopted on the basis of a determination of a threat to the peace. US Sanctions are also far more comprehensive than sanctions mandated by the UN Security Council. For instance US sanctions mandate sanctions on Iran's energy and general financial sector, which the Security Council sanctions do not.
- 8.19 The speaker stressed that justifiable countermeasures need to meet certain conditions laid down in the ILC Articles particularly. 1) It is an injured state taking proportional countermeasures (unilateral sanctions) in response to a prior internationally wrongful act; 2) it was taking action on behalf of another state in a matter where it has a legal interest in compliance; or, 3) it was enforcing obligations protecting general or collective interests.
- 8.20 Prof. Gowlland-Debbas also spoke of the development of constraints on collective measures, especially in the light of more value-oriented international law, which has seen the emergence of the concept of obligations protecting the fundamental interests of the international community and individual human rights law gaining centre stage. The speaker also mentioned that recent reform proposals emphasized links between collective security and respect for human rights and mentioned that sanctions measures should be terminated once their objectives have been achieved. Targeted sanctions also raise due process questions as, when enforced against individuals, function as penalties without any mechanism for review. Prof. Gowlland-Debbas also asserted that no sanction can violate peremptory norms of general international law. However, the shift in focus from comprehensive to targeted sanctions along with the institution of an ombudsman for individuals on black lists addresses some of these problems.
- 8.21 Finally, the panelist, addressed state responsibility in the enforcement of collective sanctions and asserted that the UN Secretariat has said that Member States are responsible for the way that they enforce sanctions. However, Prof. Gowlland-Debbas reiterated that it was important to hold Member States responsible, either individually or jointly with the UN for conduct flowing from a decision of the UN Security Council in order to provide some remedy for victims.



- 8.22 Prof. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies, Jindal Global Law School, presented a paper entitled “**Implications of unilateral and secondary sanction on financial institutions: An international law perspective.**” He noted that since ancient times States have deployed economic sanction as a weapon of international diplomacy to bring change in the attitude of sanctioned state. He pointed out that the United States has unilateral sanctions programs relating to several countries and regions, including those in the African and Asian regions. he noted that sanctions range from embargos on trade and financial sanctions to penalizing the leadership and close associates of enemy regimes and specific measures imposed on designated terrorist, drug trafficking and weapons proliferating States and entities. While most of these sanctions are *primary* sanctions, i.e. restrictions placed on citizen companies or individuals from doing business with certain specified countries or groups, Secondary sanctions, such as secondary trade boycotts and foreign company divestment, involve additional economic restrictions designed to inhibit non-U.S. citizens and companies abroad from doing business with a target of primary U.S. sanctions. Such sanctions, he pointed out, are broadly claimed to be illegally extraterritorial in their purpose and effects.
- 8.23 He then referred to the protests raised by EU against the sanctions imposed by the United States on Iran, Cuba and Libya, owing to their trade interests being affected and the firm commitments made by EU to ensure “free movement of capital” and reduction of trade barriers. He also referred to the *Siberian Pipelines Case*, wherein the European Union sought to resist secondary sanctions imposed by the United States, prohibiting United States Companies from financing or providing technical assistance for building a pipeline from the former Soviet Union to Western Europe. In this case, he pointed out, following protests from the European Union, and the refusal of a Dutch Court to enforce the sanctions against a Dutch subsidiary of a United States Company, the latter retracted the application of sanctions.
- 8.24 Dr. Gandhi then made a brief description of the Iran and Libya Sanctions Act and the responses of the major trading partners of the United States to the Act – that the Act was “extraterritorially” illegal. He then pointed out the larger political costs incurred by pursuing such sanctions. He stated that the political controversy about secondary sanctions was complicated by questions about their legality under international law and that the majority view was that secondary sanctions are an impermissible “extraterritorial” extension of U.S. jurisdiction that impinges on the rights of neutral states to regulate their own citizens and companies. He then outlined some of the major academic responses that regarded sanctions as illegal and as an intrusion upon the sovereignty of the neutral State. Dr. Gandhi then outlined the sanctions imposed by United States against Iran’s banks, throttling its smooth functioning. Referring to the complicated and frequently changing ambit of sanctions related measures, he pointed out

that the complex U.S. framework for secondary sanctions was no longer properly understood as sanctions “against” Iran, but as U.S. sanctions against third-country companies that does business with Iran.

- 8.25 He then referred to some of the instances of judicial scrutiny of these measures by courts outside the United States. Some judgments of the General Court of the European Union annulling the entry of Iranian Banks in EU Sanctions list for the reason that there was insufficient evidence to impose sanctions and for not affording those banks an opportunity to be heard. He also noted that neither the Council nor the Commission invoked confidentiality reasons for not presenting evidence against the banks. He also discussed the proceedings of a similar nature before the Supreme Court of the United Kingdom.
- 8.26 Summing up, he stated that the law was very clear that unilateral secondary sanctions targeting financial institutions are violative of international law as it interfered with sovereignty of State and illegally extraterritorial in purpose and effect. He further pointed out that it affected the free movement of capital and that they were impermissible under International law and that the recent judgment of the Courts in the United Kingdom and Europe pointed towards the lack of transparency in the processes by which sanctions are imposed.
- 8.27 **Dr. R. Rajesh Babu, Associate Professor, Indian Institute of Management-Calcutta (IIM-C)** delivered a presentation entitled “Unilateral Sanctions in International Trade Law”. He reiterated that the WTO was founded on the bedrock of the principle of non-discrimination. This includes the MFN status, restraint from imposing higher tariffs and so on. Therefore, any unilateral sanction was in direct conflict with the non-discrimination principle. The WTO itself can only impose sanctions after authorization by the Dispute Settlement Body (DSB). These sanctions must meet requirements of temporariness, prospectiveness and proportionality. However the WTO, under Article XX, does provide for permissible restrictions in order to protect public health, the environment, public morals or the conservation of exhaustible natural resources. The chapeau to this was that such measures cannot be arbitrarily discriminatory or a disguised restriction on international trade.
- 8.28 Dr. Rajesh Babu also discussed the two Tuna-Dolphin cases between US and Mexico, where one of the key questions was whether one country can dictate environmental regulation terms to another i.e. extraterritorial application of national laws. While the first case, which was decided in 1991, rejected extraterritorial measures completely, the second case in 1994 did not reject extraterritoriality outright but preferred to fit it into a narrow interpretation with respect to Art XX. Dr Babu also discussed the Shrimp-Turtle cases between the US and India, Malaysia, Pakistan and Thailand. In this instance, the

US was found to have violated the chapeau to the exceptions under Art XX. Dr. Babu also maintained that the threshold for Article XX was high.

- 8.29 Dr. Babu also discussed Art. XXI and posited that there was no chapeau for national security exceptions. The scope of Art XXI was examined through the lens of the US-Nicaragua case of 1985 where the ICJ noted that there should be a genuine nexus between security interests and trade action taken.
- 8.30 Dr. Babu then discussed the US's Libertad Act, which imposed sanctions against Cuba, and the Helms-Burton Act, which imposed sanctions against Iran. These legislations instituted primary and secondary sanctions wherein the Acts extended the territorial application of the embargos to apply to foreign companies trading with Cuba. And allows US nationals to bring legal action against foreign companies and forced internationally operating companies to choose between the US and the targeted country. The European Council in 1996 initiated a complaint against the US claiming *inter alia* that the secondary sanctions were violations of GATT Articles I, III, V, XI and XIII. The EC eventually suspended their complaint as long as European companies were not prosecuted under the Helms-Burton Act. Dr. Babu explained the "Blocking Statute" enacted by the European Council, which prohibited EU companies from complying with the US sanctions. Similarly UK and Mexico also passed legislations that made complying with the sanctioning acts illegal.
- 8.31 In conclusion, Dr. Babu asserted that while trade must take into account genuine national security concerns, secondary sanctions cannot be justified under the WTO. The self-judging application of the national security exception remains a formidable bar to WTO review of the merits of these unilateral sanctions. He stated that there was indeed a danger that this provision may allow governments industries merely by invoking the exception without a threshold or "reasonableness" criterion. The practice till date suggest that the Member States has been reluctant to invoke this provision, because they don't want any external body to judge 'essential security interest' which purely falls under State Sovereignty.
- 8.32 After the presentations by the Panellists, the Delegations from **Japan, India, Republic of South Africa, Democratic People's Republic of Korea, People's Republic of China, the Islamic Republic of Iran, Malaysia and Sudan** made statements, which were followed by a brief question and answer session.

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

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

- 9.1 **Mr. Feng Qinghu, Deputy Secretary-General of AALCO** introduced the agenda item “AALCO’s Regional Arbitration Centres” as contained in the Secretariat Document AALCO/52/HEADQUARTERS (NEW DELHI) /2013/ORG 3 which consists of the Reports of the Directors of Tehran, Cairo and Lagos Regional Arbitration Centres. The AALCO Secretariat would be circulating the report of the Director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA), which was received after the printing of the report.
- 9.2 The DSG said that AALCO’s association with commercial arbitration and alternate dispute resolution dates 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. The DSG recalled that the 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.
- 9.3 Therefore, in accordance 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.
- 9.4 The DSG appreciated the role of Regional Arbitration Centres as very significant since they mark a difference in the arbitration culture within these regions. The DSG emphasized that 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 AALCO. The DSG congratulated the Directors of the Regional Arbitration Centres and thanked their respective Host Governments for hosting these Centres. He highlighted that in the year 2013, an agreement with the Government of Malaysia was signed regarding the renewal of the Kuala Lumpur Regional Centre for Arbitration (KLRCA). A ceremony was organized at the KLRCA Headquarters, where the agreement was signed between Malaysian Government and His Excellency Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO. The DSG urged Member States to continue their continued support to the Centres; and for their successful activities which would be impossible without the active support and cooperation of the Host Governments.

- 9.5 **Mr. Sundra Rajoo, Director, Kuala Lumpur Regional Centre for Arbitration (KLRC)** made a power point presentation outlining the activities undertaken by the KLRC the previous year. Mr. Rajoo stated in his report that the staff number of KLRC was twenty two, which according to him was the ideal number of staff required for the efficient working of the Organization. Mr. Rajoo then drew the attention of the Member States to some of the new Staff Policy guidelines that were issued in the year 2012. Mr. Rajoo then presented the details concerning the number of matters, the categories and the policies of the Organization that applied to each of these categories.
- 9.6 Mr. Rajoo then presented the details concerning the innovative products that were offered by KLRC in the year 2012: First on the list was the KLRC Fast Track Rules, 2<sup>nd</sup> Edition, which aimed at providing faster and better quality results at moderate costs. He then outlined some of the key features of the Rules. The second important change was the revisions made to the KLRC Arbitration Rules, to bring them in line with the current commercial arbitration practices and collate the necessary internal administrative practices of the Centre. The Centre also launched the KLRC i-Arbitration Rules, the world's first Islamic Arbitration Rules that adopted the United Nations Commission on International Trade Law Arbitration Rules. He then pointed out that KLRC was in the process of introducing a new set of Rules for sports & maritime arbitrations.
- 9.7 Mr. Rajoo then outlined the efforts of the Centre with respect to Capacity Building and Knowledge Transfer on ADR among the legal fraternity. He stated that road shows were held around the country to raise awareness about the Construction Industry Payment and Adjudication Act, 2012, along with free public talks and lectures on the same. He also outlined the other measures taken for raising awareness amongst the public, government servants and persons belonging to the legal fraternity. The numerous seminars and conferences organized by the KLRC or in which the KLRC had participated was also enumerated.
- 9.8 Mr. Rajoo then outlined the strategic partnerships that were forged by KLRC with academic institutions, international Organizations, chambers of commerce, Law firms and other international arbitral institutions. He also pointed out that partnerships have been forged with the International Council of Arbitration for Sport, and outlined the activities proposed to be undertaken jointly by the two Organizations. Mr. Rajoo informed the Member States that the Malaysian Government was in negotiations with the Permanent Court of Arbitration at The Hague for KLRC to be an alternative hearing centre for the PCA in the region. He then stated that a diploma course on international commercial arbitration was offered by the KLRC and that it had evoked good response with participants from numerous countries. He then outlined the co-operation agreements entered into between KLRC and other academic and professional institutions for promoting teaching and research.

- 9.9 Mr. Rajoo informed the audience that the Malaysian Government had approved the budget for the renovation works of a heritage building that was to be converted as the new premises of the KLRCA. He also presented before the audience the details regarding the progress of constructions and stated that the new premises were expected to be completed by 2014.
- 9.10 **Mrs. Eunice Oddiri, Director, Regional Centre for International Commercial Arbitration-Lagos (RCICAL), Federal Republic of Nigeria** outlined the activities and functions undertaken by the RCICAL the previous year. She stated that ten new cases, relating to banking, construction, maritime, energy/power, technology, supply and joint venture agreements were added to the existing work load of the Centre. She then referred to a litigation between one of the parties to an arbitration and the Centre, before the Nigerian Courts regarding the construction of a clause in the arbitration agreement with respect to the appointment of arbitrators and the decision of the Nigerian Court therein that the Centre was the only body that had the jurisdiction to appoint and constitute the Arbitral Tribunal. Mrs. Oddiri then outlined the progress of various matters before the tribunal.
- 9.11 Mrs. Oddiri then outlined the participation of the Centre in various Arbitration Related Events held at Dublin, Vancouver etc. She also outlined the various measures taken to improve associations with the Nigerian legal fraternity and some of the proposed Nigerian Laws which were to be of interest to the Centre. Mrs. Oddiri also outlined the various collaborative ventures entered into with professional & academic institutions, both local and international to improve the services offered by the Centre. It was also stated that the Centre was now offering Mediative-Conciliatio, a new hybrid form of ADR to potential clients.
- 9.12 Mrs. Oddiri also outlined the Promotional activities undertaken by the Centre and the proposed future activities of the Centre, such as Mock Arbitration for Practitioners, Quality Training Session on Arbitration for Law officers and Conferences on Arbitration at the regional level, to be held at different countries.
- 9.13 The Report of the Tehran Regional Arbitration Centre (TRAC) and the Cairo Regional Centre for International Commercial Arbitration (CRCIA) have been presented in AALCO/52/HEADQUARTERS SESSION (NEW DELHI)/2013/ORG 3.

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

- 9.14 **Mr. Feng Qinghu, 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 account of the establishment of the CRT. The CRT, which has become 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 2012. 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. Particularly he drew attention to the "Seminar on Climate Change: Post-Kyoto International Climate Policy", (16 January 2013), Legal Experts Meeting convened in order to Commemorate the 30<sup>th</sup> Anniversary of the United Nations Convention on Law of the Sea (UNCLOS) (15 March 2013). He also drew attention to the Special Lecture on 'Working of AALCO' that delivered by H.E. Prof Dr. Rahmat Mohamad, the Secretary-General of AALCO at the AALCO Headquarters on 28<sup>th</sup> August 2013. The programme had been specially arranged for officials from the Ministry of Foreign Affairs of Malaysia, he explained.

- 9.15 While noting that the web-site of AALCO (as part of the Revitalization Plan of AALCO) has been upgraded significantly in recent months, he noted that in the period 2013-14, the AALCO Secretariat has got plans to identify new ways and means to strengthen its existing programs and to introduce new programmes into AALCO's research agenda.

**Report of the Secretary -General on the recommendation of the Eminent Persons Group (EPG)**

- 9.16 H.E. Dr. Rahmat Mohamad presented the report of the recommendations of the Eminent Persons Group. The 3<sup>rd</sup> Meeting of the EPG had taken place on the 8<sup>th</sup> of September and Tuesday the 10<sup>th</sup> of September. The Secretary General read out the important recommendations made by the EPG concerning the Organizational and Substantive matters of AALCO along with recommendations concerning matters such as increase in the Membership of the Organization, Strengthening the AALCO – ILC relationship and Scheduling of the Annual Sessions of AALCO.
- 9.17 One of the important recommendations made was concerning modalities to implement the decisions of the EPG. It was recommended that the Secretary General was to separately communicate the recommendations of the EPG to the Member States and seek their responses. The Secretary General informed the Member States that the recommendations of the EPG would be communicated to them separately and called on Member States to respond to these recommendations.

**Adoption of Message of Thanks to the President of India**

- 9.18 The Secretary-General on behalf of the Member States of AALCO read out the Message of Thanks to the President of India. The same was unanimously adopted.

**“Excellency,**

On behalf of all the Delegations of the Member States and Observers attending the Fifty-Second (2013) 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 Republic of India:

“We, the participants in the Fifty-Second 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 Republic of India, for graciously helping and assisting to host the Fifty-Second Session of AALCO in this beautiful city of New Delhi. Excellency, I thank the Government of India on behalf of AALCO, and on my own behalf, for supporting in hosting this Session.

Your Excellency, we are aware that India attaches great importance to the Organization and has magnanimously contributed the headquarter buildings. India has always actively participated in the activities and work programme of the Organization, be it substantive, administrative or financial matters, ever since the inception of AALCO as the Asian Legal Consultative Committee (ALCC) in 1956. India has always taken a 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. Amongst the many factors which paved the way for the success of the Session, one of the prime ones was the excellent cooperation from the Government of India which contributed significantly towards the excellent achievements of our deliberations.

In this beautiful city of New Delhi, famous for its picturesque juxtaposition of history and modernity, we the delegates of the Fifty-Second Annual Session of AALCO would like to place on record our sincere gratitude for the full cooperation that the Government of India has extended to AALCO and its Member States for hosting the Annual Session with warmth, graciousness and ability.



Please accept, Your Excellency, the assurances of our highest respect and consideration and may the Almighty bless the endeavours of your great country.”

**Thank You.”**

**Venue of AALCO’s Fifty-Third Annual Session**

- 9.19 The President of the Session invited Member States to come forward to host the next Annual Session. However, in the absence of no Member State coming forward to host the Session, the President requested the Secretary General to confer with the liaison officers with respect to this issue and decide on the venue for the next year. The President pointed out that as per Statutory Rule 10 (2) of the AALCO Statute, the Secretariat was prohibited from hosting two consecutive Annual Sessions and hence it was necessary that one of the Member States host the next Annual Session. The President further requested the delegates to get in touch with their capitals and inform them about this issue.

**Adoption of Resolutions and Summary Report of the Session**

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

**Organizational Matters**

- |              |   |
|--------------|---|
| RES/52/ORG 1 | Report of Secretary-General on Organizational, Administrative and Financial Matters |
| RES/52/ORG 2 | AALCO's Budget for the Year 2014  |
| RES/52/ORG 3 | Report on the AALCO’s Regional Arbitration Centres                                  |
| RES/52/ORG 4 | Report on the Centre for Research and Training of the AALCO                         |

**Substantive Matters**

- |            |  |
|------------|--|
| RES/52/S 2 | Law of the Sea ( <i>Deliberated</i> )  |
|            | Suggestions and a reservation to the resolution pertaining to the “Law of the Sea” were forwarded <i>inter alia</i> by the Government of Turkey, which have been duly reflected in the text of the resolution. |
| RES/52/S 3 | The Status and Treatment of Refugees. ( <i>Non Deliberated</i> )   |

RES/52/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 ( <i>Deliberated</i> )
RES/52/S 5	Legal Protection of Migrant Workers. ( <i>Non Deliberated</i> )
RES/52/S 7	International Terrorism ( <i>Non Deliberated</i> )
RES/52/S 8	Establishing Cooperation against Trafficking in Women and Children ( <i>Non Deliberated</i> )
RES/52/S 9	International Criminal Court: Recent Developments ( <i>Non Deliberated</i> )
RES/52/S 10	Environment and Sustainable Development ( <i>Deliberated</i> )
RES/52/S 11	Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption ( <i>Deliberated</i> )
RES/52/S 12	Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law ( <i>Deliberated</i> )
RES/52/S 13	WTO as a Framework Agreement and Code of Conduct for World Trade( <i>Non Deliberated</i> )
RES/52/S 14	Expressions of Folklore and its International Protection ( <i>Non Deliberated</i> )
RES/52/SP 1	Resolution on the Special Meeting on “Selected Items on the Agenda of the International Law Commission” ( <i>Deliberated</i> )
RES/52/SP 2	Resolution on the Special Meeting on “Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties” ( <i>Deliberated</i> )

### **Consideration of the Summary Report**

- 9.21 The Draft Summary Report of the Fifty-Second Annual Session of AALCO was placed for consideration of the Member States. The Member States Adopted the Summary Report. 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 finalised.

### **Fifth and Concluding Session**

- 9.22 A vote of thanks was proposed by the following Member States: The Delegations from **Brunei Darussalam, The State of Palestine, Kenya, State of Qatar and Mauritius** expressed their gratitude and thanked the President, the Vice – President, The Secretary - General and the Secretariat for the smooth conduct and efforts taken for the Organization of the Fifty-Second Annual Session.
- 9.23 **Dr. Neeru Chadha**, The President of the Fifty-Second Annual Session thanked the delegates of the Member States who had attended the Session. She expressed her happiness that the deliberations over both the substantive and Organizational matters could be completed in the most amicable manner, displaying convergence of views and interest between the Member States of Asia and Africa. She pointed out that this was achieved despite having a heavy agenda. She further congratulated the AALCO Secretariat for the able accomplishment of the mandate of the Fifty-First Session and for bringing out useful publications. She further thanked the Vice-President, Ms. Hema Odhav for her support and the Secretary General for his inputs in all pertinent matters. The President also thanked all members of the AALCO Secretariat for the meticulous work done for the preparations of all the documents adopted and for taking care of the needs of the delegates. She stated that the Secretary-General was lucky to have such efficient and hardworking officers and staff. She also thanked the Deputy Secretaries-General for their inputs. The President further thanked the EPG and the various panellists for their inputs and comments and the observers non-Member States, the International Organizations and the Regional Arbitration Centres for their participation. The President once again thanked the Member States for having entrusted her with that responsibility and assured them the best of her efforts to ensure that AALCO was revitalized and strengthened and that she would work with the Secretary General in order to accomplish that mandate. She then declared the Fifty-Second Annual Session as closed.

**The Fifty-Second Annual Session was thereafter adjourned.**

## **B. RESOLUTIONS**

**AALCO/RES/52/ORG 1  
12 SEPTEMBER 2013**

**REPORT OF THE SECRETARY-GENERAL ON ORGANIZATIONAL,  
ADMINISTRATIVE AND FINANCIAL MATTERS**

*The Asian-African Legal Consultative Organization at its Fifty-Second 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 Doc. No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/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 Fifty-First Annual Session held in Abuja, Federal Republic of Nigeria, from 18-22 June 2012;

**Also appreciating** the continued practice towards the rationalization of its work programme, including consideration of the agenda items during its annual sessions;

**Reiterating** the mandate 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;

**Also welcoming** the continuous support and generous voluntary contribution made by the Government of India, the host of AALCO towards the partial cost incurred for hosting the Fifty-Second Annual Session:

**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. **Further** extends the mandate of the Sub-Committee of Liaison Officers of Member States on the AALCO Secretariat's Human Resources and Financial Matters;
4. **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-Third Session of the Organization;
5. **Encourages** Member States to make voluntary contributions to support the capacity building activities under the approved work programme of the Organization; and
6. **Requests** the Secretary General to inscribe an official record to express Member State's deepest condolences and pay heartfelt tribute to the family of the late Ambassador Yamada and transmit the same record to the Government of Japan and family of the late Ambassador Yamada.
7. **Further requests** the Secretary-General to report on the activities of the Organization at its Fifty-Third Annual Session.

**AALCO/52/RES/ORG 2**

**12 SEPTEMBER 2013**

**AALCO'S BUDGET FOR THE YEAR 2014**

***The Asian-African Legal Consultative Organization at its Fifty-Second Session***

**Having heard** with appreciation the introductory statement of the Secretary- General on the Proposed Budget for the Year 2014 as contained in Secretariat Document No. AALCO/52/NEW DELHI (HEADQUARTERS)/2013/ORG 2;

**Taking note** of the comments of the Member States on the Proposed Budget;

**Noting further** the Proposed Budget for the year 2014 was placed before the 318<sup>th</sup> and 319<sup>th</sup> Meetings of the Liaison Officers held on 11 December 2012 and 2 April 2013 respectively, at the Headquarters, New Delhi; and adopted at the 320<sup>th</sup> Meeting of the Liaison Officers held on 22 May 2013, and submitted to the Fifty-Second Annual Session for final approval;

**Considering** that the Proposed Budget for the year 2014 is a budget depending on the actual contributions to be received from Member States having financial constraints in their national budgets;

**Noting with** appreciation the part arrears paid by the Government of Iraq & Libya 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. **Decides** the Budget for the year 2014 as approved as the Budget for the year 2013.
2. **Requests** Member States who have not paid their annual contribution for the year 2013, 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-Third Annual Session.



**AALCO/RES/52/ORG 3**

**12 SEPTEMBER 2013**

**REPORT ON AALCO'S REGIONAL CENTRES FOR ARBITRATION**

***The Asian-African Legal Consultative Organization at its Fifty-Second Session***

**Considering** the Report on AALCO's Regional Centres for Arbitration contained in Document No. AALCO/52/HEADQUARTERS SESSION (NEW DELHI)/2013/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. **Urges** the Regional Arbitration Centres to consider, among themselves, the formation of a common system both administratively and financially between the Centres and common standards 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; and
5. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.

**AALCO/ RES/52/ORG 4  
12 SEPTEMBER 2013**

**REPORT ON THE CENTRE FOR RESEARCH AND TRAINING OF THE  
AALCO**

***The Asian-African Legal Consultative Organization at its Fifty-Second Session***

**Having considered** the Secretariat Report on the Centre for Research and Training (CRT) of the AALCO, contained in Document No. AALCO/52/ HEADQUARTERS (NEW DELHI)/2013/ 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. **Also directs** the Secretariat to work towards the realization of its proposal for the training of officials of AALCO Member States;
6. **Requests** the Member States to provide the Secretariat with specific topics for conducting in-depth research studies; and
7. **Decides** to place this item on the provisional agenda of its Fifty-Third Session.

**AALCO/ RES/52/S 2  
12 SEPTEMBER 2013**

**THE LAW OF THE SEA**

*(Deliberated)*

*The Asian-African Legal Consultative Organization at its Fifty-Second Session,*

**Considering** the Secretariat Document No.AALCO/52/HEADQUARTERS (NEW DELHI) / 2011/S 2;

**Noting** with appreciation the introductory remarks of the Deputy Secretary-General;

**Recognizing** the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and the customary international law relating to the management of the oceans;

**Noting with appreciation** the world wide celebration to commemorate the thirtieth anniversary of the UNCLOS in 2012 and the important initiatives adopted thereafter, including UNGA Resolutions 66/288 entitled “The Future We Want” and 67/78 entitled “Ocean and Law of the Sea”, and the Oceans Compact initiative of the UN Secretary General, as noted in the UN GA Resolution 67/78.

**Also noting with appreciation** the convening and outcome of the successful “Legal Experts Meeting to Commemorate the 30<sup>th</sup> Anniversary of UNCLOS” jointly organized by the AALCO Secretariat and the Legal and Treaties Division, Ministry of External Affairs, Government of India, held at the AALCO Headquarters on 5<sup>th</sup> March 2013;

**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;

**Reiterating** the importance of the need to combat piracy at the regional and international level taking into consideration AALCO Resolution AALCO/RES/51/SP 2 of 22 June 2012

**Taking note** of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

**Welcoming** the active role being played by the International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters:

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind.
2. **Requests** AALCO Member States not yet parties to the UNCLOS and its implementing instruments to consider the possibility of ratifying or acceding thereto as early as possible giving due respect to their national interests and positions. .
3. **Urges** the full and effective participation of its Member States, which are parties to the UNCLOS, 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.
4. **Requests** the Secretariat of AALCO to assist the capacity building of Member States within the field of law of the sea through varied ways such as joint training programmes with States and inter-governmental organizations, and calls upon its Member States to offer all possible support and assistance.
5. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.

To the above Resolution, the delegation of The Republic of Turkey made the following Reservation:

"The Republic of Turkey dissociates itself from the references made in this Resolution to the United Nations Convention on the Law of the Sea, 1982. Approval of this Resolution cannot be construed as a change in the legal position of Turkey with respect to the said Convention."

**AALCO/RES/52/S 3  
12 SEPTEMBER 2013**

**THE STATUS AND TREATMENT OF REFUGEES  
(Non-Deliberated)**

***The Asian-African Legal Consultative Organization at its Fifty-Second Session***

**Considering** the Secretariat Document No. AALCO/52/ HEADQUARTERS (NEW DELHI)/2013/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 that it has made towards the protection of refugees and internally displaced persons, since the establishment of the UNHCR;

**Recognizing** the landmark achievement of the coming into force of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the “Kampala Convention”;

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 implement fully the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, as well as other relevant international and regional instruments, including the 1954 Convention on the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the Kampala Convention.
3. **Directs** the Secretariat to explore, in the near future, the possibility of organizing a joint seminar or workshop in collaboration with the UNHCR with the aim of 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-Third Annual Session.

**AALCO/RES/52/S 4  
12 SEPTEMBER 2013**

**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-Second Session,*

**Having considered** the AALCO publication entitled “A Study on The Statehood of Palestine under International Law” prepared by the Secretariat;

**Noting with** appreciation the introductory remarks of the 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, RES/50/S 4 of 1 July 2011, and RES/51/S 4 of 22 June 2012;

**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;

**Also welcoming** the decision of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) dated 31 October 2011 on admission of Palestine as a Member State and the decision of the General Assembly to accord to Palestine non-member observer State status in the United Nations vide its resolution 67/L. 28 dated 26 November 2012;

**Condemning** Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of human rights and the Fourth Geneva Convention of 1949;

**Stressing** the need to compliance with existing Israeli – Palestinian agreements concluded in order to reach a final settlement;

**Being concerned** about the continuing dangerous deterioration of the situation in the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, the continuous deportation of Palestinians from their homeland, and the continuing serious and systematic violation of human rights of the Palestinian people by Israel, the occupying power, including that arising from the excessive use of force, the use of collective punishment, the occupation and closure of areas, the confiscation of land, the

establishment and expansion of settlements, the construction of a wall in the occupied Palestinian Territories, the destruction of property and infrastructure, use of prohibited weapons and all other actions designed to change the legal status, geographic composition of the Occupied Palestinian Territories, including East Jerusalem and Gaza strip, and about war crimes and crimes against humanity committed in these territories, and calling for the implementation of the relevant United Nations resolutions on the humanitarian situation of the Palestinian people;

**Recalling** the Advisory Opinion rendered by the International Court of Justice in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and related General Assembly Resolution (A/RES/ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006), as well as the United Nations initiative of establishment of a Register of Damage arising from the construction of the separation wall;

**Being deeply concerned** about the tenacity of Israel in proceeding with the construction of wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, which is contrary to international law;

**Acknowledging with deep concern** that the Security Council is still unable to adopt a resolution stipulating the illegality of the Israeli expansionist wall;

**Expressing** its support to the Arab Peace Initiative for resolving the issue of Palestine and the Middle East, adopted by the 14<sup>th</sup> Arab Summit held in Beirut (Lebanon) on 28 March 2002 and reaffirmed in the 19<sup>th</sup> Summit Conference of the League of Arab States, Riyadh, 28-29 March 2007 as well as other peace initiatives, including the Quartet Road Map;

**Taking note** of conclusions and outcomes of all events held at both regional and international levels aiming at the achievement of a just, durable and comprehensive solution of the question of Palestine;

**Affirming** that a comprehensive, just and durable solution can only be achieved by ending the occupation in pursuance of the Charter of the United Nations, existing

agreement between the parties and the relevant Security Council and General Assembly resolutions, which will allow all the countries of the region to live in peace, security and harmony:

1. **Appreciates** the initiative of the Secretariat for bringing out the AALCO publication “A Study on The Statehood of Palestine under International Law”.
2. **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.
3. **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.
4. **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.
5. **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.
6. **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.

7. **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.
8. **Further Demands** that Israel comply with its legal obligations as mentioned in the Advisory Opinion rendered by the International Court of Justice in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and related General Assembly Resolution (A/RES/ES-10/15 of 20<sup>th</sup> July 2004).
9. **Strongly demands** that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory.
10. **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.
11. **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.
12. **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.
13. **Directs** the Secretariat to closely follow the developments in occupied territories from the view point of relevant legal aspects.
14. **Decides** to place the item on the provisional agenda of the Fifty-Third Annual Session.

**AALCO/RES/52/S 5**  
**12 September 2013**

**LEGAL PROTECTION OF MIGRANT WORKERS**  
*(Non-Deliberated)*

*The Asian-African Legal Consultative Organization at its Fifty-Second Session*

**Having considered** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/ 2013 /S 5;

**Recognizing** the obligation of all States to promote and protect basic human rights and fundamental freedoms for all migrants and their families regardless of their migratory condition as provided for in various international legal instruments including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990);

**Acknowledging** the important nexus between international migration and development and the need to deal with the challenges and opportunities that migration presents to countries of origin, transit and destination, and recognizing that migration brings benefits as well as challenges to the global community;

**Acknowledging further** the important contribution provided by migrants and migration to development, as well as the complex interrelationship between migration and development;

**Welcoming** the forthcoming High Level Dialogue on International Migration and Development to be held at the United Nations General Assembly on 3-4 October 2013 and the high level and broad participation that provides an opportunity to address constructively the multidimensional aspects of international 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. Reaffirms** the resolve to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and members of their families;
- 3. Encourages** Member States that have not yet done so to consider ratifying/acceding to the relevant international legal instruments on the situation of migrant workers, particularly the ICMW 1990; and

4. **Decides** to place this item on the provisional agenda of its Fifty-Third Annual Session.

**AALCO/RES/52/S 7  
12 SEPTEMBER 2013**

**INTERNATIONAL TERRORISM  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Session,*

**Having Considered** the Secretariat Document No. AALCO/52/ HEADQUARTERS (NEW DELHI)/2013/S 7;

**Recalling** the relevant international instruments, where applicable, and resolutions of the United Nations General Assembly and the Security Council relating to measures to eliminate international terrorism and the efforts to prevent, combat and eliminate terrorism;

**Taking note** of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly of the United Nations by its resolution 51/210 of 17 December 1996 to elaborate a Comprehensive Convention on International Terrorism 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 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, and
6. **Decides** to place the item on the provisional agenda of its Fifty-Third Annual Session.



AALCO/RES/52/S 8  
12 SEPTEMBER 2013

**RESOLUTION ON ESTABLISHING COOPERATION AGAINST  
TRAFFICKING IN WOMEN AND CHILDREN  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Annual Session*

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS SESSION (NEW DELHI)/2013/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 various forms of trafficking in persons, especially women and children;

**Acknowledging** with appreciation that some Member States have submitted to the AALCO Secretariat their national legislations and other relevant information related to the topic, and urges other Member States to do the same:

1. **Encourages** the Member States which are not yet party to consider ratifying/acceding to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000;
2. **Directs** the Secretariat to follow and report on the developments in this regard, including the work undertaken by other fora;
3. **Mandates** the Secretary-General to constitute an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States for their further consideration;

4. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.

**AALCO/RES/52/S 9  
12 SEPTEMBER 2013**

**INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Session*

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/S 9;

**Taking note** of the progress in cases before the International Criminal Court (ICC);

**Also taking note** of the deliberations and decisions of the Eleventh Session of the Assembly of States Parties to the Rome Statute of the ICC;

**Being aware** of the importance of the universal acceptance and the proper implementation of the Rome Statute of the ICC and in particular, the principle of complementarity.

1. **Encourages** Member States that are not yet party to consider the possibility of 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 Twelfth 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-Third 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 of 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-Third Annual Session.

**AALCO/RES/52/S 10  
12 SEPTEMBER 2013**

**ENVIRONMENT AND SUSTAINABLE DEVELOPMENT  
(Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Annual Session,*

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/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.

**Recognizing** the importance of the on-going ADP negotiations for stronger international cooperation on climate change for the period beyond 2012;

**Considering** the Doha Climate Gateway adopted at the United Nations Climate Change Conference held at Doha, Qatar in December 2012 .

**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 negotiations in the ADP and consider ratifying the Doha Amendment to the Kyoto Protocol agreeing for 8-year commitment period since January 2013.
2. **Directs** the Secretariat to follow the Climate Change negotiations and Durban Outcome processes for stronger international legal instrument on climate change for the period beyond 2012.
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-Third Annual Session.

**AALCO/ RES/ 52/ S 11  
12 SEPTEMBER 2013**

**CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED  
NATIONS CONVENTION AGAINST CORRUPTION**

*(Deliberated)*

*The Asian-African Legal Consultative Organization at its Fifty-Second Session,*

**Having considered** the Secretariat document contained in No. AALCO/52/ HEADQUARTERS /2013/ 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;

**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 and 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;
- 2. Takes note with appreciation** the work of the Working Group on Asset Recovery at its six inter-sessional meetings;
- 3. 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;
- 4. Strongly encourages** the Member States of AALCO to afford one another the widest measure of support, including training, exchange of relevant experience and specialized knowledge to facilitate international cooperation in line with the relevant UNCAC's provisions;

5. **Requests** the Secretariat of AALCO to consider the possibility of holding training programmes/expert meetings/seminars with relevant international organizations working in this area on the various issues of concern obtaining under the UNCAC;
6. **Decides** to place this item on the provisional agenda at its Fifty-Third Annual Session.

**AALCO/RES/52/SD 12  
12 SEPTEMBER 2013**

**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-Second Annual Session***

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS SESSION (NEW DELHI)/2013/SD 12,

**Being aware** of the Finalized version of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement and recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2012, at its forty-fifth 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 Draft Principles on the Operation of Close-out Netting Provisions;

**Also welcoming** the preliminary endorsement of the “Draft Hague Principles on the Choice of Law in International Contracts “expecting adoption of the “Hague principals on the choice of Law International contact” at the future session of the council on Geneva/Affairs and policy of the Hague Conference of International/Private Law;

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. **Urges** Member States to consider adopting, ratifying or acceding to the instruments prepared by the UNCITRAL, and other International Organizations, including the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010;



3. **Urges** AALCO Member States to continue to participate actively in the relevant meetings and processes of UNCITRAL and other international organizations which address international trade law matters; and
4. **Decides** to place this item on the provisional agenda of the Fifty-Third Session.

**AALCO/ RES/52/S 13  
12 September 2013**

**WTO AS A FRAMEWORK AGREEMENT AND CODE OF  
CONDUCT FOR WORLD TRADE  
(Non- Deliberated)**

***The Asian-African Legal Consultative Organization at its Fifty-Second Session***

**Having considered** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/S13;

**Recognizing** the importance and complexities of issues involved in the successful conclusion of the WTO Doha Development Agenda;

**Hoping** that the Doha Round of Negotiations would conclude successfully;

1. **Encourages** Member States to successfully complete negotiations mandated under the Doha Development Agenda, respecting fully the development component of the mandate ;
2. **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;
3. **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,
4. **Decides** to place this item on the provisional agenda of its Fifty-Third Annual Session.

**AALCO/RES/52/S 14  
12 SEPTEMBER 2013**

**EXPRESSIONS OF FOLKLORE AND ITS INTERNATIONAL PROTECTION  
(Non-Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Annual Session,*

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/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 revised draft forwarded by the IGC to WIPO General Assembly would be able to adopt the 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 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-Third Annual Session.

AALCO/RES/52/SP 2  
12 SEPTEMBER 2013

**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-Second Session,*

**Having considered** the Secretariat Document No. AALCO/52/HEADQUARTERS SESSION (NEW DELHI)/2013/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 India, International Law Commission (ILC) and AALCO held on 11<sup>th</sup> September 2013 at New Delhi, India;

**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;

**Specially** noting the long standing contribution and dedication of the late Ambassador Chusei Yamada, former member of ILC and AALCO;

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-Second Annual Session, and

4. **Decides** to place the item on the provisional agenda of the Fifty-Third Annual Session.

**AALCO/RES/52/SP 2  
12 SEPTEMBER 2013**

**RESOLUTION ON HALF-DAY SPECIAL MEETING ON  
“EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION:  
SANCTIONS IMPOSED AGAINST THIRD PARTIES”  
(Deliberated)**

*The Asian-African Legal Consultative Organization at its Fifty-Second Session,*

**Having considered** the AALCO publication entitled “Unilateral and Secondary Sanctions: An International Law Perspective” prepared by the Secretariat;

**Noting** with appreciation the introductory remarks of the Secretary-General and the views expressed by the Chairperson and the Panelists and the statements of the Member States during the Half-Day Special Meeting on “Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties” jointly organized by the Government of India and AALCO and held on 11<sup>th</sup> September 2013 at New Delhi, India;

**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, RES/50/S 6 of 1 July 2011, and RES/51/S 6 of 22 June 2012 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, Islamic Republic of Iran and Sudan 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. **Appreciates** the initiative of the Secretariat for bringing out the AALCO publication “Unilateral and Secondary Sanctions: An International Law Perspective”.
2. **Directs** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States.
3. **Also Directs** the Secretariat to further research on the implications of unilateral and extraterritorial sanctions on international trade and its effect on AALCO Member States.
4. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject, and
5. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.

## **XV.LIST OF PARTICIPANTS**



**LIST OF PARTICIPANTS AT THE 52<sup>ND</sup> ANNUAL SESSION OF AALCO  
HELD FROM 09-12 SEPTEMBER 2013 AT  
NEW DELHI (HEAD QUARTERS), REPUBLIC OF INDIA**

1. Arab Republic of Egypt

H.E. Mr. Khaled Aly El Bakly  
Ambassador of the Arab Republic of Egypt  
New Delhi.

Mr. Wael Fathy Baiowmy Ahmed  
First Secretary  
Embassy of the Arab Republic of Egypt
2. Bangladesh

Mr. Shah Ahmed Shafi  
Counsellor (Political)  
Bangladesh High Commission, New Delhi

Mr. Faiyaz Murshid Kazi  
Director (United Nations)  
Ministry of Foreign Affairs  
Dhaka, Bangladesh.
3. Brunei Darussalam

Ms. Alice Khan binti Ahmad Khan  
Legal Draftsman

Mr. Liyon Mohammad  
Legal Counsel

Ms. Aimi-Athirah Awang  
Legal Officer

Mr. Ali-Azri Alipah  
Second Secretary, Brunei Darussalam
4. People's Republic of China

H.E. Wei Wei,  
Ambassador of China to India  
(Leader of the delegation)

Ms Guo Xiaomei,  
Counselor of the Department of Treaty and  
Law, Ministry of Foreign Affairs, People's  
Rep. of China

Ms Tian Ni,  
First Secretary of the Department of  
Treaty and Law, Ministry of Foreign  
Affairs, People's Rep. of China

Mr Sun Yitao,  
Attache  
Department of Treaty and Law  
Ministry of Foreign Affairs, People's Rep.  
of China

Mr Huang Wenfeng,  
Attache  
Chinese Embassy in New Delhi (India)

5. Republic of Cyprus

H.E. Mrs. Maria Michail  
High Commissioner for Cyprus to India

Ms. Rona Marie Panteli  
Deputy High Commissioner  
Republic of Cyprus

6. Ghana

H.E. Mr. Robert Tachie-Menson  
High Commissioner for Ghana, New Delhi

H.E. Mrs. Alice Aku Otuteye  
Deputy High Commissioner of Ghana to  
India

Mrs. Jennifer Lartey  
Minister Counsellor/Head of Chancery  
Liaison Officer to AALCO.

7. India

Shri Pinak Ranjan Chakravarty  
Secretary (ER)  
Ministry of External Affairs, India

Dr. (Mrs.) Neeru Chadha  
Joint Secretary (L&T).

Ministry of External Affairs,  
Government of India, New Delhi.

Dr. Pradeep Kumar Choudhary  
Director (L&T),  
Ministry of External Affairs  
Government of India, New Delhi.

Mr. Koteswara Rao  
Director (L&T)  
Ministry of External Affairs  
Government of India, New Delhi.

Dr. Kajal Bhat  
Legal Officer (L&T)  
Ministry of External Affairs  
Government of India, New Delhi.

Mr. Mohammed Hussain K.S.  
Legal Officer (L&T)  
Ministry of External Affairs  
Government of India, New Delhi.

#### 8. Republic of Indonesia

H.E. Mr. Rizali W. Indrakesuma  
Ambassador of Indonesia to India  
New Delhi.

Mr. Edy Wardoyo  
Counsellor (P)  
Embassy of Indonesia, New Delhi.

Mr. Firman Priambodo  
Official of Ministry of Foreign Affairs,  
Indonesia.

Dr. (Mr.) Asep N. Mulyana  
Official of Attorney General  
Indonesia

Mr. Kamari  
Official of Ministry of Politic, Law and  
Security  
Indonesia

Dr. Muhammad Idris Sihite  
Official of Attorney General, Indonesia

Mr. Noviyanti Nurmala  
Third Secretary,  
Embassy of Indonesia, New Delhi.

Ms. Nenda Inasa Fadhillah  
Attache  
Official of Ministry of Foreign Affairs,  
Indonesia.

Mr. Evren Gilbert  
Official of Ministry of Law and Human  
Rights

Mr. Khairuddin Siregar  
Embassy Staff of Indonesian Embassy, New  
Delhi

9. Islamic Republic of Iran

H.E. Dr. Alireza Jahangiri  
Director General for International Legal  
Affairs, Ministry of Foreign Affairs,  
Islamic Republic of Iran

Prof. Jamshid Momtaz  
Legal Adviser of the Ministry of Foreign  
Affairs,  
Islamic Republic of Iran

Mrs. Asiyeh Abbasi  
Legal Expert of Treaties and Public  
International Law Department, Ministry of  
Foreign Affairs,  
Islamic Republic of Iran

Mr. Mohammad Hossein Shojaes  
Deputy Chief of Mission  
Embassy of the Islamic Republic of Iran  
New Delhi.

10. Japan

Mr. Yasuji Ishigaki  
Ambassador, Special Assistant to the  
Minister for Foreign Affairs, Japan

Mr. Takero Aoyama  
Counsel for International Legal Affairs,  
Ministry of Foreign Affairs, Japan

Mr. Motoyasu Yamada  
Official,  
International Legal Affairs Division,  
Ministry of Foreign Affairs, Japan

Mr. Kenichi Kiyono  
Deputy Director,  
UN Asia and Far East Institute for the  
Prevention of Crime and the Treatment of  
Offenders

Ms. Yumiko Tanabe  
Liaison Officer to AALCO  
Third Secretary, Japan Embassy, New Delhi.

#### 11. Republic of Kenya

Ms. Christine Agimba  
Deputy Solicitor General,  
Office of Attorney General and Department  
of Justice  
Republic of Kenya

Her Excellency  
Mrs. Florence Weche  
High Commissioner for Kenya, New Delhi

Ms. Christine Kanini Lleli  
State Counsel  
Treaties & Agreements Department

Mr. Judith Ngunia  
Counsellor  
Kenya High Commission, New Delhi

Mr. Nasser Okoth Opilo  
First Secretary (Political)  
Kenya High Commission, New Delhi.

#### 12. DPR Korea

H.E. Mr. Kyong Pak Son  
Ambassador Extraordinary &  
Plenipotentiary

DPR Korea in New Delhi, India

Mr. Myong Chol Kim,  
Section Chief of the  
Treaty & Law Department  
Ministry of Foreign Affairs  
DPR Korea

Mr. Yong Su Kim,  
Senior Officer,  
Treaty & Law Department  
Ministry of Foreign Affairs, DPRKorea

Mr. Song Guk Ryang  
Counsellor  
Embassy of the DPR Korea, New Delhi.

13. Republic of Korea

Mr. Sungmog Hong  
Ambassador  
Legal Advisor  
Ministry of Foreign Affairs, Republic of  
Korea

Ms. Eunhye Joo  
Second Secretary  
International Legal Affairs Division  
Ministry of Foreign Affairs, Seoul, Republic  
of Korea

14. State of Kuwait

H.E. Mr. Sami Mohammad Al-Sulaiman  
Ambassador of the State of Kuwait to India

Mr. Abdullah A. Al Fahad  
Liaison Officer and Third Secretary of the  
Embassy of the State of Kuwait to AALCO

15. Libya

Mr. Abdul Karim A.M. Alghita  
Second Secretary at the Foreign Ministry  
Libya

Mr. Al Taher A.A. Al Muntaser  
Second Secretary,

Ministry of External Affairs  
Member, Libya

Mr. Nuri Abdalla Abdulati  
Prosecutor, Libya

Mr. Mohammad Rhayim Khalifa  
Second Secretary, Embassy of Libya.

16. Malaysia

YBhg. Tan Sri Abdul Gani Patail  
Attorney General of Malaysia (Head of  
Delegation)

YBhg. Datuk Azailiza Mohd Ahad,  
Deputy Solicitor General 1  
Attorney General's Chambers, Malaysia

Encik Mohd Radzi Harun  
Head of International Affairs Division  
Attorney General's Chambers, Malaysia

Encik Saifulrijal Azhari  
Senior Federal Counsel  
Attorney General's Chambers, Malaysia

Mr. Ahmad Hashim Bin Mahmood  
Counsellor  
Malaysia High Commission, New Delhi.

Co. Dzulkafli Musraffa  
Defence Adviser  
Malaysia High Commission, New Delhi.

Mr. Muhammad Hatta Bin Kassim  
Counsellor (Immigration & Consular)

Mrs. Suhaila Binti Wahab  
Second Secretary (Economic Affairs)  
Malaysia High Commission, New Delhi.

Mr. Mohamed Ariff Bin Mohamed Ali  
Second Secretary (Political)  
Malaysian Liaison Officer for AALCO.

17. Mauritius

H.E. Dr. A.K. Jagessur, GOSK  
High Commissioner  
Mauritius High Commission, New Delhi.

Mr. J. Nayeck  
Deputy High Commissioner  
Mauritius High Commission, New Delhi.

Mr. J. Pillay  
Second Secretary  
Mauritius High Commission, New Delhi.

Mr. Seetaram M. Seegobind Maha Rana  
Pratapsingh  
Senior State Counsel, State Law Officer  
Republic of Mauritius.

18. Union of Myanmar

U (Mr.) Tha Aung Nyun  
Director General  
Counsellor and Legal Affairs Department  
Ministry of Foreign Affairs

U (Mr.) Ba Hla Aye  
Minister Counsellor  
Embassy of the Republic of the Union of  
Myanmar, New Delhi

Daw (Dr.) Thi Da Oo  
Deputy Director  
Union Attorney General's Office

Dr. Htoo Maung  
Deputy Director  
Consular and Legal Affairs Department  
Ministry of Foreign Affairs

U (Mr.) Aung Kyaw Moe  
Counsellor  
Embassy of the Republic of the Union of  
Myanmar, New Delhi.

19. Nepal

Dr. Narendra Man Shrestha



Joint Secretary  
Ministry of Law, Justice , Constituent  
Assembly and Parliamentary Affairs,  
Kathmandu.

Mr. Koshal Chandra Subedi,  
Under Secretary  
Ministry of Law, Justice, Constituent  
Assembly and Parliamentary Affairs,  
Kathmandu

Mr. Surendra Thapa  
Secondary Secretary  
Embassy of Nepal, New Delhi.

20. Federal Republic of Nigeria

Hon'ble Mr. Mohammed Bello ADOKE,  
SAN,CFR- HAGF & Minister of Justice  
Federal Ministry of Justice  
Abuja, Nigeria

Professor Peter Akper – SAN-Senior Special  
Assistant  
to HAGF, Federal Ministry of Nigeria

Mr. Moses Reul Kpana  
Director,  
(International & Comparative Law Dept.),  
Nigeria.

Mr. Williams Macaulay Udo  
Chief State Counsel, Nigeria

Mr. Musa Abdullahi HAGF  
Chief Detail, Nigeria.

Mr. Abubakar Sheikh Lemu  
Minister (Political)  
Federal Republic of Nigeria.

21. Sultanate of Oman

H.E. Dr. Abdullah Mohammed Said Al-  
Saidi  
Minister of Legal Affairs (Head of  
delegation), Sultanate of Oman

Mr. Salim Hamed Al-Battashi  
Minister Plenipotentiary  
Head of Mission (Member),  
Embassy of the Sultanate of Oman, New  
Delhi

Mr. Saif Bin Nasser Al-Humaidi  
(Member)  
Sultanate of Oman

Mr. Ali Bin Abdullah Al-Saidi  
(Member)  
Sultanate of Oman

Mr. Ahmad Bin Al-Waleed Bin Zaher Al-  
Hinai  
(Member), Sultanate of Oman

## 22. Pakistan

Mrs. Ayesha A. Ahsan  
Counsellor  
High Commission of Pakistan, New Delhi.

Mr. Saima Sayed  
First Secretary  
High Commission of Pakistan, New Delhi.

## 23. State of Palestine

Advocate Ali Muhanna  
Hon'ble Minister of Justice  
Ministry of Justice of the Government of  
Palestine, Palestine.

Mr. Zuhair H. Zaid  
Minister/Deputy Chief of Mission  
Embassy of the State of Palestine, New  
Delhi.

Mr. Saleh Asad Saleh Mohammad  
Minister  
Embassy of the State of Palestine, New  
Delhi.

24. State of Qatar

Mr. Ibrahim Moussa S. Al-Hitmi  
Assistant Under Secretary for Legal Affairs  
(Head of Delegation), State of Qatar

Ms. Fawziya Edress S. Al-Sulaiti  
Charge d'Affaires  
Embassy of the State Qatar, New Delhi

Mr. Abdul Aziz Mustafa Noor  
Director  
Office of the Asstt. Under Secretary  
Legal Affairs (Member), State of Qatar

Mr. Abdul Rahman Saad Al-Kuwari  
Legal Researcher, Department of  
International Cooperation and Agreements  
(Member), State of Qatar

25. Kingdom of Saudi Arabia

Hon'ble Shaikh Abdillateef Bin Abdul  
Rahman S. Al Harthy  
Deputy Minister of Justice (Head of the  
Delegation)  
Kingdom of Saudi Arabia

H.E. Dr. Saud Mohammed A. Al-Sati  
Ambassador of the Royal Embassy of Saudi  
Arabia, New Delhi

Mr. Mohammed A. Al-Ghamdi  
Attache  
Royal Embassy of Saudi Arabia, New Delhi

Mr. Ahmad Bin Ibraheem Al-Yousef  
Director General of the Directorate General  
of International Cooperation at the Ministry  
of Justice),  
Kingdom of Saudi Arabia

Mr. Osama J. Algahtani  
Kingdom of Saudi Arabia

Mr. Naseer Bin Mubarak Al-Mubarak  
International Cooperation at the Ministry of  
Interior,  
Kingdom of Saudi Arabia

Mr. Abdul Majeed Bin Musleh Al Lehyani  
Ministry of Foreign Affairs,  
Kingdom of Saudi Arabia

Mr. Yazeed Bin Saud Al Moaiquil  
Translator from the Directorate General of  
International Cooperation at the Ministry of  
Justice.  
Kingdom of Saudi Arabia

Mr. Abdullah Sultan Al Masbahi  
Coordinator of the Delegation at the  
Ministry of Justice.  
Kingdom of Saudi Arabia

Mr. Turki Bin Thawab Al Subaie  
Secretary to the Hon'ble Deputy Minister  
Kingdom of Saudi Arabia

26. Singapore

Mr. Thuan Kuan Lim  
High Commissioner for Singapore, New  
Delhi

Mr. Darrel Chua  
First Secretary (Political)  
High Commission of Singapore, New Delhi

27. Republic of South Africa

Ms. Hema Odhav  
First Secretary (Multilateral Relations)

Mr. Mangaliso Maseko  
Alternate Member  
Department of Justice, Pretoria, Republic of  
South Africa.

28. Sri Lanka

Hon'ble Rauff Hakeem

Minister of Justice of Sri Lanka,  
Ministry of Justice  
Superior Courts Complex, Colombo 12, Sri  
Lanka

Mr. Suhada Gamalath  
President's Counsel  
Additional Solicitor General  
Attorney General's Department

Ms. Pradeepa Mahishini Colonne  
Deputy High Commissioner  
Sri Lanka High Commission, New Delhi

Mrs. Nelum Mayadunne  
Deputy Legal Adviser  
Ministry of External Affairs, Sri Lanka

Mrs. Lakshmi Gunasekara  
Additional Secretary  
Ministry of Justice, Sri Lanka

Mr. M.H.M. Salman  
Attorney at Law,  
Ministry of Justice, Sri Lanka

29. Sudan

H.E. Dr. Hassan Essa Hassan El-Talib  
Ambassador of Sudan to India

Dr. Osama Mahmoud  
Head of the Department  
International Law, Ministry of Justice  
Republic of the Sudan

Mr. Ahmed Abdelwahid  
Deputy Head of Mission

Mr. Asim Mustafa Ali Nugud  
Second Secretary (Economic)

30. Syria

Mr. Wael Deirki  
Minister Counsellor, Embassy of Syria,  
New Delhi.

31. Republic of Tanzania

Hon. Angellah Jasmine Kairuki (MP)  
Deputy Minister of Constitutional and Legal  
Affairs  
Tanzania.

H.E. Eng. John W.H. Kijazi  
High Commissioner for Tanzania, New  
Delhi.

Mr. Nixon Ndege Mtibwa  
Director  
Constitutional and Human Rights Division

Mrs. Badriya R. Kiondo  
Minister & Head of Chancery  
Tanzania High Commission, New Delhi.

Ms. Mercy Ezekiel  
Senior Legal Officer

Mr. Richard Alex Maridadi  
Legal Officer  
Ministry of Foreign Affairs and  
International Cooperation

Mr. Griffin Venance Mwakapeja  
PA to the Deputy Minister (Constitutional &  
Legal Affairs),  
Tanzania.

32. Thailand

Mr. Voradet Viravakin  
Director General  
Department of Treaties and Legal Affairs  
Ministry of Foreign Affairs, Thailand

Mr. Pasit Asawawattanaporn  
Legal Advisor  
Ministry of Justice, Thailand

Ms. Jamchurie Sitivannaruk  
Deputy Director General of Public  
Prosecution  
Official Training Institute, Thailand

Dr. Tull Traisorat  
Director  
Division of International Law Development  
Department of Treaties and Legal Affairs  
Ministry of Foreign Affairs, Thailand.

Mr. Krittakorn Rungpontavewat  
Public Prosecutor of International Affairs  
Department  
Thailand

Ms. Nawarat Narkvichit  
International Affairs Officer  
Professional Level  
Office of the Permanent Secretary  
Ministry of Justice, Thailand.

33. Turkey

H.E.Dr.Burak Akcapar,  
Ambassador of Turkey, New Delhi

Mr. Levent Ugurlu,  
Alternate Member, Turkey

34. Uganda

Ms. Carol Lwabi  
First Secretary  
Uganda High Commission, New Delhi

United Arab Emirates Mr. Shaikh Saoud Ali  
Al Mualla  
Third Secretary,  
Embassy of United Arab Emirates

Mr. Hassab Al Gadir  
Administrative Officer  
United Arab Emirates, New Delhi.

35. Republic of Yemen

Mr. Jamal Abdulla Al-Haj  
Deputy Chief of Mission, New Delhi

Mr. Tariq Izzaldeen Hassan Al-Mouthen  
First Secretary, New Delhi

## **ORGANIZATIONS:**

1. UNODC

Mr. Nimesh Jani  
Regional Anti-corruption Adviser  
UNODC

2. AARDO

Eng. Wassfi Hassan El-Sreihin,  
Secretary General  
AARDO

3. ICRC

Ms. Mary Werntz  
Head of Regional Delegation, New Delhi.

Mr. Charles Sabga, Regional Legal Adviser  
New Delhi.

Ms. Supriya Rao, Legal Adviser, ICRC

Mr. Marel Resich, Head of Communication

4. Japan International Cooperation  
Agency (JICA)

Mr. Taisuke WATANABE,  
Senior Representative, JICA.

5. UNHCR

Mr. Hans Schodder

Ms. Kiran Kaur

Ms. Ipshita Sengupta

6. ISIL

Mr. Narinder Singh  
Secretary General, ISIL.



### **ARBITRATION CENTERS:**

KL Regional Centre for Arbitration

Prof. Datuk Sundra Rajoo  
Director, Kuala Lumpur Centre

Regional Commercial Arbitration Centre  
Lagos

Mrs. Eunice Oddiri  
Director

Mr. Emmanuel Dike  
Member

### **PANELISTS**

1. Ms. Vera Gowlland Debbas  
Prof. at Graduate University, Geneva.
2. Mr. Rohan Perera – Chairman-AALCO-EPG  
Former Legal Advisor to the Ministry of Foreign Affairs,  
Sri Lanka. Former Member of ILC
3. Dr. R Rajesh Babu  
Associate Professor of Law  
IIM Calcutta.
4. Sir Michael Wood  
Member ILC
5. Mr. Nimesh Jani  
Regional Anti-corruption Adviser  
UNODC

6. Mr. Manoj Dwivedi,  
Director, Services and International Cooperation,  
Department of Personnel and Training, Ministry of Personnel,  
Public Grievances and Pension, Government of India
7. Mr. Kenichi Kiyono,  
Deputy Director of United Nations Asia and Far East Institute for the Prevention of  
Crime and the Treatment of Offenders, (UNAFEI), Tokyo
8. Prof. Charles Samford Director, Institute for Ethics, Governance and Law, Griffith  
University, Australia.<sup>1</sup>
9. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies,  
Jindal Global Law School, Sonapat, Haryana

#### **NON- MEMBERS**

Islamic Republic of Afghanistan

H.E. Mr. Freshta Rohani Popal,  
Third Secretary,  
Embassy of Islamic Republic of Afghanistan  
New Delhi

Rep. of Fiji

H.E. Mr. Yogesh J.Karan,  
High Commissioner, Republic of Fiji, New Delhi.

Mr. Alivereti Naioko  
Second Secretary  
Republic of Fiji, New Delhi.

Republic of Madagascar

Mr. Aimee R. Rakotoson  
Minister Counsellor, Republic of Madagascar, New  
Delhi.

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<sup>1</sup> Prof. Samford was not present at the meeting in person, however a paper prepared by him was read out at the meeting.

## **AALCO SECRETARIAT**

Prof. Dr. Rahmat Mohamad,  
Secretary General, AALCO

Dr. Hassan Soleimani,  
Deputy Secretary General

Dr. Yasukata FUKAHORI,  
Deputy Secretary General

Mr. Feng Qinghu,  
Deputy Secretary General

Mrs. Anuradha Bakshi, Principal Legal Officer

Mr. S. Pandiaraj, Senior Legal Officer

Ms. Shannu Narayan, Legal Officer

Mr. V. Parthan, Legal Officer

Mr. Mahesh Menon, Legal Officer