Welcome Remarks of Prof. Dr. Rahmat Mohamad Delivered at the Meeting of Legal Advisors of AALCO Member States Held on 24th October 2014 at New York

H.E. Mr. Danesh Yazdi, the President of the 53rd Session of AALCO and the Deputy Foreign Minister of the Islamic Republic of Iran,

Ambassador Tuvako Manongi, Chairman, Sixth Committee,

Mr. Miguel de Serpa Soares, the UN Legal Counsel,

Excellencies,

Distinguished Panelists,

Ladies and Gentlemen,

It is my pleasure and honour to deliver this brief Address on this intellectual occasion on the topics that are found in our agenda today at this Meeting of Legal Advisors of AALCO Member States that we hold every year.

Developing Countries and International law

Historically, developing countries are not makers of international law. One area of international law where developing countries made insignificant impact is in the customary international law. It is said that in this area international law is seen to be undemocratic and imbalanced. Undemocratic because the process of law making does not allow full participation of developing countries and it also lacks of transparency process. Imbalanced because, on one side, by and large, controls the literature and discourse reflecting the political debate of one society over the other

without proper understanding of the impact on developing countries. In numerous occasions formulation of customary international law was without notice of developing countries but remain binding.

Traditional knowledge and wisdom, religious and cultural beliefs, are embodiment of old civilization; however they are not considered as corpus of customary international law despite attempts made by ICJ in their decisions. Differences in values are treated as moral dialogue rather than legal imperative.

In the light of the above, the current work of ILC on the subject of identification of customary international law must be seen to be an important step as creating a window of opportunity for developing countries to make their mark in participating meaningfully in the law- making process. Developing countries must now provide the necessary input in identifying the state practice and *opinio juris* conforming the elements of customary international law. On its part, AALCO has established Expert Group to provide the relevant input to the Special Rapporteur prior to his report in 2015.

Other equally important area of concern for developing countries is in relation to the World Trade law. Very little attempts were made to ensure eligibility of developing countries under the WTO rules to be implemented on the ground. We are in dire need to interpret legal uncertainties which are left unanswered as developing countries are in acute shortage of legal experts in this area.

Similarly, developing countries have special concerns in relation to the problem of climate change that affect them disproportionately.

So is in the case of investment concluded by government authorities and the investors in free trade agreement of bilateral and multilateral nature.

In short, participatory role of developing countries in international law-making process requires:

1) Greater understanding of different cultural and religious values and cognizance that these values are not just to be taken as moral values but having legal imperative.
2) Universal application of international law must take cognizance of respect for national sovereignty and political choice of domestic majorities.

Promoting and observing Rule of law at the international level

The importance of the promotion and observance of international law can hardly be exaggerated. The rule of law at the international level remains a critical element in observing peace and security in international affairs. The important question that needs to be addressed is: Is there International rule of law or implementation of rule of law at the international level? The challenge is how to implement the rule of law at the international level. Rule of law as it is broadly understood comprises of three elements: power of the state not to be exercised arbitrarily, implying government of laws; secondly, law must apply to the sovereign and instrument of the state or implying supremacy of law; and finally, law must apply to all persons equally or equality before the law. Extending the notion of the rule of law beyond its domestic context into an international one complicates the search on its definition.

In reality, all the above elements, if applied at the international plane pose political challenges. The creation of the UN in the modern political context reflects the functionalist approach rather than a deep understanding on rule of law.

Hence, in the context of implementing rule of law is seen as a practical tool with which protection of human right, promotion of development and sustaining peace and security are envisaged.

How do we ensure at the international level, the necessary legal force of compliance of *pacta- sunt servanda,* greater acceptance of compulsory jurisdiction of the ICJ and equality before the law requiring recognition of individuals and states as subjects of international law are implemented?

Can we agree to recognize the rule of law as a political idea at the international level rather than an assertion as a strictly legal sphere?

New Developments in International law: Theory and Practice

One of the recent developments in the field of international law relates to the phenomenon called fragmentation of international law. Fragmentation stems from a multitude of factors: the lack of centralized organs, specialization of law, different structures of legal norms, parallel regulations and others. In international legal parlance, the term has gained such prominence out of the fear that international law might lose its universal applicability, as well as its unity and coherence, through the expansion and diversification of its subject-matters, through the development of new fields in the law that go their own way, and that legal security might thereby suffer.

The problem that it poses can be summarized thus:

What are the institutions and methods by which international law attempts to reconcile necessary functional differentiation with unity and coherence?

There are two Schools of Thought here: one focuses *on the* emergence of conflicting jurisprudence, forum-shopping and the loss of legal security. Others see it more as a merely technical problem that has emerged naturally with the increase of international legal activity may be controlled by the use of technical streamlining and coordination.

Cyberspace and International law

Another important new legal challenge that the international community in general face relates to the issue of cyberspace. National laws and policies that address cyber terrorism are mainly limited to developed nations and are not cohesive in managing 21st century cyber terrorism. Given the absence of an international legal framework to address cyber-crime (except the Convention on Cyber-crime of the Council of

Europe) authorities and governments around the world face extreme challenges in finding and prosecuting those responsible for cyber terrorism.

Given the current lack of international regulation on cyber terrorist attacks, the onus is on individual countries to rely on their domestic laws to tackle legal actions.

In view of the importance of the subject, AALCO has adopted *International law in Cyberspace* as a new agenda item.

I once again take this opportunity to express my gratitude to all the eminent panellists and distinguished participants present here for sparing their valuable time to grace this important intellectual discourse.