

**ADDRESS BY PROF. DR. RAHMAT MOHAMAD ON
LEGAL ISSUES FACING THE REGIONS OF AFRICA AND ASIA
(AALCO Meeting, UN HQ, New York, Monday, 1 November 2010, 3:00 PM)**

Excellencies,

Distinguished Representatives of AALCO Member States and other States,

Ladies and Gentlemen,

At the outset, I would like to thank H. E. Amb. Ombeni Sefue, the Permanent Representative of the United Republic of Tanzania to the United Nations for very kindly and graciously agreeing to chair our meeting. H. E. Mr. Mathias M. M. Chikawe, the current President of AALCO, owing to some pressing assignments in Tanzania was unable to personally come and be with us here this afternoon. I also take this opportunity to profoundly thank and convey the deep gratitude of the Member States of AALCO to the Government and the people of Tanzania for hosting the AALCO Session in an exemplary manner. We all were deeply touched by the warmth of the hospitality and gracious manner of the Tanzanian people.

I am also very grateful to our distinguished invitees,

His Excellency Judge Hisashi Owada, President of the International Court of Justice,

Her Excellency Amb. Ms. Isabelle Picco, Chair, Sixth Committee of the UN General Assembly,

His Excellency Amb. Mr. N. Wisnumurti Chairman, International Law Commission.

Her Excellency Ms. Patricia O' Brien, Legal Counsel of the United Nations.

It is my privilege and honour to welcome you all to this meeting. The convening of this AALCO's Annual Meeting on the sidelines of the Annual Session of the United Nations General Assembly has a rich history. It is being convened since 1974 and has served as a valuable forum for discussion on legal issues of concern to the Afro-Asian States.

The Chairperson has succinctly elaborated upon the topics on the work programme of AALCO that were deliberated at the Forty-Ninth Annual Session of AALCO in Dar es Salaam. I take this opportunity to place for the kind consideration of this meeting legal issues of concern to the regions of Africa and Asia, on three topics on our work programme, namely, the International Criminal Court, World Trade Organization and Climate Change on the basis of the deliberations on these topics at Dar es Salaam.

Firstly, as regards, the International Criminal Court the deliberations were structured around the “Principle of Complementarity” and the “Crime of Aggression”. Although, there appeared to be a consensus that the principle of complementarity constituted the core principle of ICC, however, the requirement of further strengthening it was advocated. A delegation was skeptical about the impartiality of the ICC and felt that the basis on which its independence could be judged needs to be evolved. Another delegation was critical of Security Council’s referral to the ICC of the situation in Darfur. Another delegation wished for greater participation of the Asia-Pacific region in the Rome Statute to ensure global justice in the region.

As regards, the newly adopted definition of the crime of aggression, while there was general appreciation for the adoption of the definition by the Kampala Review Conference, a delegation was of the view that the definition adopted was a non-starter with loopholes and was transitory in nature. It was also pointed out that it was not the only definition for that crime, while another delegation expressed the view that it was not at all necessary to define aggression as that job could be left for judges to determine. Questions of its implementation in countries following the dualist system were also raised. Another delegation drew attention to the problems that the ICC might have in dealing with crimes where Government decided to give amnesty as the right to give amnesty was a constitutional guarantee by governments.

A delegation stated that as out of 81 member countries of the UN which had not ratified the ICC Rome Statute, 30 were AALCO Member States which roughly forms about 40% of the total number. It desired that this large group could meet to discuss common issues of concerns. To that end, it called upon the AALCO to convene jointly with the ICC a workshop especially, for non-States Parties from the AALCO Member States, to look at the

concerns of the non-States parties, to what extent their present laws were different from the provisions of the Rome Statute and how they could incorporate the provisions of the Rome Statute of the ICC into their national legislations, before ratifying the Rome Statute. It offered to host the workshop in their capital and I do hope in due course of time we would be able to realize this proposal.

On the issues relating to the WTO, it was opined by a delegation that the WTO-DSU had established itself probably as the most successful international tribunal in resolving international trade disputes. However, that was not to say that the system did not require further improvement. A delegation stated that if one had to analyse the system in the context of greater legalism the system was adopting and the evolving jurisprudence, Members should certainly explore the possibility for reforming the system for better participation especially from the perspective of developing countries.

Concerning the legal aspects of the Doha multilateral negotiations, currently underway, a delegation emphasized that ensuring an appropriate consideration to the developing countries was essential. However, that was a very complex issue, as there existed differences in the ability to implement obligations among the developing countries. A view was expressed that it was certainly not fair to treat equally those major emerging countries and other developing countries, particularly least developed which required special consideration. Another delegation emphasized that the Least Developed Countries, particularly, African countries have traditionally not been considered as important players who should be consulted in the negotiations. The relatively lower level of development and integration in international trade of the LDCs have impeded or limited their participation into the system. A delegation pointed out to the limited participation as panellists, limited or non-representation in the Appellate Body from LDCs and limited or non representation of LDC nationals in the WTO Secretariat.

The post-Kyoto legal framework to address the problem of climate change was the subject of intense deliberations at the Dar es Salaam Session. It was strongly felt that the problem of climate change which affects the developing countries disproportionately needs to be resolved on an equitable basis taking into account the historical responsibility of the developed countries. People from developing countries often depend heavily on their

natural environment, and will be hard hit by the effects of climate change. It is crucial to understand here that in any long-term solution to the problem of climate change developing and industrialized countries have common but differentiated responsibilities. Furthermore, it is critical for the countries of the Third World to ensure that the actions taken on climate change do not perpetuate the poverty of the developing countries and that they are in tune with ways that promote their sustainable development.

In line with this to build momentum to the Cancun Climate Change Talks, scheduled to take place later this year, to develop the post Kyoto framework, the delegations emphasized upon the need to keep the UNFCCC and Kyoto Protocol as the base for further negotiation, failing which negotiating a new text and setting out commitments would become unrealistic. Several delegations explained on the efforts taken by their respective governments in combating climate change.

A Member State, has desired that as the issue of *'piracy'*, poses a grave threat not only to the maritime environment but also to the human security, it should be deliberated upon so as to enable the complex international legal issues involved in the issue to be understood by the Member States clearly. Another Member State wishes that the AALCO should deliberate upon the *"The Legal Empowerment of the Poor"*. Another delegation has called for the inclusion of a new agenda item on: *"Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law"*. It wishes the AALCO to take up this in its Member States with a renewed thrust.

All these testify the importance that the Member States of AALCO accord to their Organization. Therefore, to relook into the vision, mission and objectives of the AALCO, Member States unanimously endorsed my proposal of constituting an Eminent Person's Group. The modalities to constitute the Group are being worked out and I am hopeful that it would be constituted soon.

Equally, important for the AALCO Member States is the necessity of having a professionally trained cadre of international lawyers to address the challenges in the globalized world. Therefore, since I assumed the office of the Secretary-General of AALCO in August 2008, constant efforts are being made in this direction. Training

programmes are being regularly organized as well as an “AALCO Lecture Series” on international legal issues has been initiated that has evoked good response from the diplomatic and academic community in New Delhi.

Very recently, from 13 to 15 October, the Ministry of Foreign Affairs of the Republic of Indonesia, the Office of Legal Affairs of the United Nations and the AALCO Secretariat organized a training programme on “Treaty Law and Practice” that was attended by 40 mid-career officials from several of our Member States in Jakarta. I take this opportunity to express my sincere gratitude to our partners for the meeting, and especially to the Legal Counsel of the UN Ms. Patricia O’ Brien for joining hands with us in this regard.

I would also like to inform that the Government of Malaysia and the AALCO Secretariat would be hosting a Workshop of Trafficking in Persons, Smuggling of Migrants and International Cooperation in Putrajaya, Malaysia from 24 to 26 November 2010.

Next year AALCO would be holding its fiftieth annual Session, that indeed would be a momentous occasion in the annals of AALCO. We are privileged that the Government of Sri Lanka has very kindly agreed to host this historic Annual Session. Sri Lanka is one of the founding Member States of AALCO and it is befitting that the Fiftieth Annual Session is going to take place in one of the founding Member State of AALCO. On behalf of the Member States and on my own behalf, I take this opportunity to sincerely thank the Government of Sri Lanka for this warm gesture.

Let me conclude by reiterating that in all these areas, AALCO does provide a window of opportunity for the Member States of Asia-Africa to come together and forge collective strategies so that their aspirations and concerns on these important international legal issues are adequately taken care of. In the forum of AALCO, its Member States could propose/find out alternative perspectives/visions on these issues which could be used by the developing countries during global negotiations. Thank you very much for your kind attention and patient hearing.