



AALCO
Asian-African Legal Consultative Organization
Fifty-Seventh Annual Session
8 to 12 October 2018
Tokyo, Japan

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

1. Introduction

1.1. **38** Member States of the Asian-African Legal Consultative Organization (AALCO) participated in the Fifty-Seventh Annual Session (hereinafter “the Session”) namely, **Arab Republic of Egypt, Kingdom of Bahrain, Brunei Darussalam, Republic of Cameroon, People's Republic of China, Republic of Ghana, Republic of India, Republic of Indonesia, Republic of Iraq, Islamic Republic of Iran, Japan, Kingdom of Jordan, Republic of Kenya, State of Kuwait, Lebanon, Libya, Malaysia, Republic of Mauritius, Republic of the Union of Myanmar, Federal Democratic Republic of Nepal, Sultanate of Oman, Islamic Republic of Pakistan, State of Qatar, Republic of Korea, Kingdom of Saudi Arabia, Republic of Senegal, Singapore, Republic of South Africa, Democratic Socialist Republic of Sri Lanka,**

* The draft summary report of the Fifty-Seventh Annual Session was placed for consideration of the Member States of AALCO at the concluding session of the Fifty-Seventh Annual Session of AALCO in Tokyo, Japan on 12 October 2018. The Member States provisionally adopted the draft summary report and were requested to submit written comments on the same to the AALCO Secretariat by 12 November 2018 after which it would be finalized. All Member States were requested to submit their comments via email to as57@aalco.int or to the AALCO Secretariat at its permanent headquarters. **This final report incorporates all comments received on the draft report.**

State of Palestine, Syrian Arab Republic, United Republic of Tanzania, Kingdom of Thailand, Republic of Turkey, Republic of Uganda, United Arab Emirates and Socialist Republic of Viet Nam and Republic of Yemen.

1.2. Representatives of the following Regional Arbitration Centres of AALCO were also present: **Asian International Arbitration Centre (formerly the Kuala Lumpur Regional Centre for Arbitration) (AIAC), Cairo Regional Centre for International Commercial Arbitration (CRCICA), Regional Arbitration Centre for International Commercial Arbitration, Lagos (RCICAL), and Nairobi Centre for International Arbitration (NCIA).**

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: **Republic of Belarus, Burkina Faso, Republic of Namibia, Republic of Philippines, Russian Federation, and Republic of Tunisia.**
- II. Representatives of the following International Organizations: **African Union (AU), Hague Conference of Private International Law (HCCH), International Committee of the Red Cross (ICRC), International Humanitarian Fact Finding Commission (IHFFC), The Saudi Fund for Development, Office of the United Nations High Commissioner for Human Rights-Committee on Enforced Disappearance (OHCHR-CED).**

2. Inaugural Session

2.1. The Fifty-Seventh Annual Session of AALCO commenced on 9 October 2018.

2.2. **H.E. Ms. Christine Agimba, Deputy Solicitor General of the Republic of Kenya,** delivered a statement representing **H.E. Mr. Paul Kihara Karuiki, the Attorney-General of the Republic of Kenya as Prof. Githu Muigai then Attorney-General of the Republic of Kenya and President of the Fifty-Sixth Annual Session** had since retired from his position. She expressed her gratitude to the AALCO Member States, the Secretary-General, the Vice-President of the Fifty-Sixth Annual Session and the AALCO Secretariat for the support and cooperation extended to

him during his presidency. She thanked the government and the people of Japan for hosting the Fifty-Seventh Annual Session of AALCO. She recalled some of the endeavors undertaken by AALCO in the past year to illustrate its efforts towards fulfilling mandates entrusted upon it.

2.3. **H.E. Mr. Taro Kono, Minister for Foreign Affairs of Japan**, in his inaugural statement, welcomed all delegates to Tokyo. He pointed out that this was the fifth annual session being hosted by Japan, the second greatest number of annual sessions hosted by any Member State. He recalled the contributions of AALCO for the progressive development of international law and highlighted Japan's proactive engagement in the Organization since its establishment.

2.4. Further, he quoted H.E. Mr. Shinzo Abe, the Prime Minister of Japan and reminded the plenary of the significance of the Bandung spirit in upholding the rule of law. He also emphasized the need to sustain rule-based international mechanisms to further promote growth in Asia and Africa. Furthermore, he stressed the importance of AALCO as a forum suited for exchange of evidence of state practice and *opinio juris* and called for active participation in its discussions to ensure that views and opinions of Asia and Africa are adequately represented in the development of international law. Lastly, he announced that Japan would launch a new programme next year to support the capacity building of AALCO Member States in the area of international law, which would consist of training programmes for officials to address challenges concerning important international law issues.

2.5. In his inaugural address, **H.E. Mr. Takashi Yamashita, Minister of Justice of Japan**, emphasized the significance of the rule of law in the era of globalization. He pointed out that Goal 16 of the Sustainable Development Goals identifies the rule of law at national and international levels as the key element to achieve sustainable development and called for cooperation among the Member States of AALCO to promote it for achieving a peaceful and just global society.

2.6. He presented the engagements of Ministry of Justice of Japan in so-called "Justice Affairs Diplomacy" aimed at permeating universal values of the rule of law and protection of human rights across the globe. One of its pillars is the provision of technical assistance in the field of basic legislation and judicial systems. Another pillar involves active engagement in the United Nation's activities in the field of crime

prevention and criminal justice. Towards, that end, he highlighted that Japan would be hosting the 14th United Nations Congress on Crime Prevention and Criminal Justice in April 2020 in Kyoto.

2.7. **H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of the Asian-African Legal Consultative Organization (AALCO) (SG)**, welcomed all delegations to the Session and thanked the Government of Japan for hosting the Fifty-Seventh Annual Session while recalling the support rendered by Japan to AALCO since its establishment. The address highlighted the importance of international law in the current times and stressed its growing significance in international affairs. AALCO's role, values and contributions over the decades were also highlighted. The importance of the active participation of the Member States' in the deliberations was emphasized as being pivotal to the growth and evolution of AALCO. He also emphasized the significance of strengthening Asian-African solidarity to ensure progressive development of International Law primarily in the International Law Commission (ILC) and other forums.

2.8. **H.E. Mr. Miguel de-Serpa Soares, United Nations Under-Secretary General for Legal Affairs**, in his key note address, stated that regional organizations like AALCO are essential partners of the UN in their efforts for the progressive development of International Law. He emphasized the significance of Rule of Law in maintaining global peace and stability. His speech focused on the work of the UN in promoting Rule of Law in Asia and Africa.

2.9. **Prof. Shinichi Kitaoka, President of Japan International Cooperation Agency (JICA)**, in his remarks, highlighted Japan's historic engagement with international law and efforts in drafting civil laws and other basic laws in consonance with traditional Japanese values. Stressing the paramount importance of rule of law, he explained JICA's efforts in facilitating the introduction of civil and commercial laws in other Asian and African nations and stated that JICA would continue to promote these efforts that are directed to the attainment of peace and security.

2.10. **Prof. Masahiko Asada, President of Japanese Society of International Law**, in his remarks, explained the major works of the Society in close cooperation with the Government of Japan to promote International Law in Japan since its establishment in 1897. He further highlighted the role of the Society in addressing problems and

challenges in various branches of International Law faced by Japan and the international community.

2.11. The Vote of Thanks was delivered by **Mr. Raj Kumar Srivastava, Deputy Chief of Mission, Embassy of India, Tokyo** on behalf of **H.E. Dr. V.D. Sharma, President of the Fifty-Fifth Annual Session of AALCO**, held at **New Delhi, India**. He expressed his profound gratitude to the Government of Japan for hosting the Fifty-Seventh Annual Session of AALCO in the beautiful and vibrant city of Tokyo. He also recalled the commendable contribution of Japan to activities of AALCO, and the proactive role played by Japan in building regional cooperation amongst the Member States on matters relating to International Law. He thanked H.E. Mr. Taro Kono, Minister for Foreign Affairs of Japan and H.E. Mr. Takashi Yamashita, Minister of Justice of Japan, for sparing their valuable time to deliver inaugural addresses. He also expressed his gratitude to H.E. Mr. Paul Kihara Kariuki, the Attorney General of the Republic of Kenya representing the Presidency of the Fifty-Sixth Annual Session for his excellent conduct of the business in that session. He also took the opportunity to thank Mr. Miguel de Serpa Soares, Under Secretary-General for Legal Affairs & Legal Counsel for the United Nations for taking the time to be present at the Annual Session of AALCO.

3. First Meeting of the Delegations of AALCO Member States

3.1. **H.E. Ms. Chistine Agimba, Deputy Solicitor General of the Republic of Kenya on behalf of the President of Fifty-Sixth Annual Session**, called the Meeting to order. The following agenda was adopted for the Fifty-Seventh Annual Session:

3.2. Agenda

I. Organizational Matters

1. Consideration and Adoption of the Agenda and Tentative Schedule of Meetings and Events
2. Election of the President and the Vice-President
3. Admission of New Members
4. Admission of Observers
5. Opening Speech of the President of AALCO

6. Report of the Secretary-General on the Work of AALCO
7. Release of AALCO Publications
8. Presentation of Draft Budget for 2019
9. Report on the Work of the AALCO's Regional Arbitration Centres
10. Report of the Chair of the Working Group on International Law in Cyberspace
11. Venue of the Fifty-Eighth Annual Session

II. Substantive Matters

1. Topics on the Agenda of the International Law Commission
2. Law of the Sea
3. Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine
4. International Trade and Investment Laws
5. International Law in Cyberspace
6. Peaceful Settlement of Disputes (new agenda item)

III. Any Other Matter

IV. Side Events:

1. The 14th United Nations Congress on Crime Prevention and Criminal Justice in 2020 (organized by the Ministry of Justice, Japan)
2. Law of the Sea (organized by the Ministry of Foreign Affairs, Japan)
3. 20th Anniversary of the ICC Rome Statute (organized by the Ministry of Foreign Affairs, Japan)

3.3. **Admission of Observers:** Republic of Belarus, Burkina Faso, Republic of Namibia, Russian Federation, Republic of Philippines, Republic of Tunisia, African Union (AU) , Hague Conference of Private International Law (HCCH), International Committee of the Red Cross (ICRC), International Humanitarian Fact Finding Commission (IHFFC), The Saudi Fund for Development, the Office for the United Nations High Commissioner for Human Rights Committee on Enforced Disappearance (OHCHR-CED) were admitted as Observers to the Fifty-Seventh Annual Session.

3.4. **H.E. Ms. Christine Agimba, Deputy Solicitor General of the Republic of Kenya**, representing **H.E. Paul Kihara Kariuki, the Attorney-General of the Republic of Kenya and the Presidency of the Fifty-Sixth Annual Session**, invited the Member States to propose candidates for the posts of President and Vice-President of the Fifty-Seventh Annual Session of AALCO. The Head of Delegation of Islamic Republic of Iran proposed the nomination of **H.E. Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan** as the President of the Fifty-Seventh Annual Session of AALCO. The nomination was seconded by the Head of the Delegation of the **United Republic of Tanzania** and thereafter the President was unanimously elected. The Head of Delegation of Sri Lanka proposed the nomination of **H.E. Mr. Maneesh Gobin, Attorney General and Minister of Justice, Human Rights and Institutional Reforms, Republic of Mauritius** as Vice-President of the Fifty-Seventh Annual Session. The proposal was seconded by the Head of Delegation of the **Republic of Ghana** and thereafter the Vice-President was unanimously elected. Thereafter, **H.E. Ms. Christine Agimba** invited the President and Vice-President of the Fifty-Seventh Annual Session to assume their positions on the dais.

3.5. The newly-elected President **H.E. Mr. Masahiro Mikami** thanked the Member States for nominating him and congratulated the outgoing President on the success of his tenure as President. He stated that he would encourage open and interactive discussions during this session and requested delegates to focus on specific topics under the consideration of the plenary to make exchanges more meaningful. He also requested full cooperation of all delegations to efficiently cover the full agenda of the Session. Further, he expressed his appreciation to the ILC members and other guest speakers who accepted invitations of AALCO and the host government to participate in this Session. He concluded by thanking the Member States for electing him as the President of the Fifty-Seventh Annual Session.

4. First General Meeting

4.1. **Memorandum of Understanding with the International Seabed Authority (ISA): H.E. Dr. Kennedy Gastorn, Secretary General of AALCO and H.E. Mr. Michael Lodge, Secretary General, ISA** signed a Memorandum of Understanding (MoU) between the two organizations. In his remarks, **H.E. Mr. Michael Lodge**, acknowledged the support of Government of Japan in materializing this MoU and

informed the plenary of the deliberations at the Council of the ISA that led to the approval of the draft MoU within the body. The MoU is mainly concerned with raising awareness of the activities of the ISA as well as identifying opportunities for collaboration and cooperation on matters such as training and capacity building for qualified candidates from AALCO Member States through initiatives such as fellowships, workshops and seminars.

4.2. **Release of AALCO Publications:** The following AALCO publications were released: Yearbook of the Asian-African Legal Consultative Organization (2017, vol. XV); and the Newsletter.

Second Meeting of Delegations of AALCO Member States

Agenda Item: Report of the Secretary-General

4.3. The **Secretary-General** thanked the Member States for their constant support and participation in AALCO's activities. Thereafter, he summarized the activities undertaken and mandates fulfilled since the Fifty-Sixth Annual Session and made a brief presentation on the financial and administrative matters. He also outlined steps taken to revitalize and strengthen the Organization. He also put forth work plan for the year 2019-2020. He emphasized that its implementation is subject to the finances available and would require whole-hearted support of the Member States. Recognizing the significant role played by the Liaison Officers as the channel of communication between the Organization and the Member States, he stated that he would endeavour to constantly and regularly update Member States of activities and administrative matters through periodic meetings with the Liaison Officers.

Agenda Item: Discussions on the Budget for 2019

4.4. **The Deputy Secretary-General (DSG) of AALCO** briefly outlined the current financial situation of the Organization and thanked Member States who had paid their contributions, as well as those who have started paying up their arrears. Then he presented the budget for the year 2019, which is USD 631,540 that is an increase of USD 50,640 from the 2018 budget. He outlined the salient features of the budget for the year 2019, which reflected *inter alia* the implications of the implementation of the 7th Pay Commission Recommendations to the locally recruited staff of AALCO. He also

drew attention to the Secretariat's continuous commitment to take measures for cost-saving and strengthening AALCO's financial basis.

4.5. One delegation appreciated the statement made by the DSG and the documentation produced by the Secretariat on the agenda item and requested further discussions on the proposed budget.

5. Second General Meeting

5.1. At the Fifty-Seventh Annual Session of AALCO the following delegations made their general statements: **Republic of Indonesia, People's Republic of China, Islamic Republic of Iran, Japan, State of Palestine, State of Kuwait, Malaysia, United Arab Emirates, Republic of Uganda, Kingdom of Saudi Arabia, Sultanate of Oman, Federal Democratic Republic of Nepal, Republic of Korea, Democratic Socialist Republic of Sri Lanka, State of Qatar, Kingdom of Bahrain, Brunei Darussalam, Kingdom of Thailand, Republic of India, Republic of South Africa, Socialist Federal Republic of Viet Nam, Republic of Yemen, Libya, Republic of Ghana, Republic of Kenya, United Republic of Tanzania and, the Republic of Mauritius.** The Observer Non-Member States, **Philippines** and **Burkina Faso** presented their statements. The Observer International Organizations, the **International Humanitarian Fact Finding Commission (IHFFC)**, the **International Committee of the Red Cross (ICRC)**, **Office of the United Nations High Commissioner for Human Rights- Committee on Enforced Disappearance (OHCHR-CED)**, the **African Union (AU)**, the **Hague Conference on Private International Law (HCCH)** also presented their general statements.

5.2. All delegations congratulated the President and Vice-President on assuming their posts, and expressed confidence that the Annual Session would be conducted successfully under their leadership. They congratulated the AALCO Secretariat and the Secretary General for the preparations undertaken for the Fifty Seventh Annual Session. They further commended the Secretary-General for the work done by him, and the different initiatives taken in expanding the work of AALCO since he assumed office in 2016. They also expressed their appreciation for the Government of Japan for arrangements made for the Fifty Seventh Annual Session. The delegations further expressed deep appreciation on the contemporary relevance and pertinence of the Agenda items included in the Fifty-Seventh Annual Session. Inclusion of the new

Agenda Item Peaceful Settlement of Disputes was agreed, and the significance of Alternate Dispute Resolution methods was emphasized.

5.3. Many delegations remarked that the global order is in a flux, and is facing challenges such as unilateralism and protectionism. Certain international events have been threatening the world order and international law. The ideals of Rule of Law have, thus, assumed more importance than ever before. They pointed out that AALCO has, since its inception in 1956, played a significant role in promoting the rule of law in Asia and Africa. They said that the Asian and African States have made historical contributions to the development of global governance and international law, by virtue of the Bandung spirit. In order to ensure effective multilateral global governance, the need for substantive and procedural improvements in the existing regimes on trade and investment and the management of marine resources, were underlined. Several delegations also emphasized the relevance of the United Nations Charter and other relevant international instruments in promoting rule of law across the globe. They reiterated their commitment to upholding the rule of law in their national and international conduct. Few delegations also stressed the need to strengthen support to States in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building. The need for discussions on the rule of law to take into account the diversity of legal systems in the world was also highlighted.

5.4. Many delegations called for the attention of the Member States of AALCO to the spread of violent extremism and terrorism in Asia and Africa and reminded them of the critical role of international legal institutions and instruments in preventing and thwarting such threats. They further condemned the grave violations of international law in the occupied Palestinian territories which remain unabated. They remarked that violations of international humanitarian law and the Israel's continued occupation defy Palestine's right to self-determination. They further condemned the recognition of Al-Quds Al-Sharif (Jerusalem) as the Israeli capital and relocation of the US embassy to this city as gravely violating international law and relevant UN General Assembly and Security Council resolutions. They called upon Member States to endeavour to achieve permanent and comprehensive peace in the State of Palestine.

5.5. Several delegations spoke about the novel and transnational nature of problems being faced by Member States on the issue of international law in cyberspace. In this

regard, they stated the significance of regional bodies like AALCO has become all the more relevant to consolidate views and build consensus to ensure a more secure cyberspace.

5.6. One delegation proposed two new areas which might be of interest to Member States, namely, universal criminal jurisdiction, and the issue of effect of sea level rise on the sovereignty of states. Another delegation stressed on a rule based multilateral global order based on a vision of shared future for humankind, and the need for international consensus, collaboration and cooperation with respect to global governance reform. Another Member State announced a new capacity-building programme on international law for Member States which would consist of training programmes for officials to address challenges concerning important international law issues, starting next year.

5.7. One delegation reminisced the legacy of Nelson Mandela in the process of modern nation building and the relevance of his thoughts and principles to Rule of Law. One delegation highlighted the adverse impact of human rights and Rule of Law in areas controlled by militias. Another delegation mentioned the importance of abolishing special courts and replacing them with a single judicial authority so as to facilitate the better attainment of human rights obligations with respect to his country. Judicial co-operation with neighbouring countries was highlighted as an achievement. One delegation highlighted the strong refugee protection mechanism that exists in his country. One delegation explained their involvement in the Chagos Archipelago case before the International Court of Justice.

5.8. One Observer Non-Member State expressed its interest in becoming a full-fledged Member of AALCO. The Observer International Organizations highlighted the mandate of their respective organizations locating them within the broader context of global governance and the Rule of Law.

Agenda Item: International Law in Cyberspace

5.9. **The Secretary-General of AALCO** delivered the introductory statement on the agenda item. He listed the discussions that took place in AALCO on the topic which included three sessions and two working group meetings. The resolution adopted during the 2017 Annual Session *inter alia* directed the Rapporteur of the Open-ended Working Group on International Law in Cyberspace to prepare a Report. The Report by the

Rapporteur was sent to all Member States by the Secretariat, on which comments were received from the People's Republic of China, the Islamic Republic of Iran and Japan. Based on these comments, a revised report was submitted by the special rapporteur on which comments were received from the Islamic Republic of Pakistan.

5.10. **Mr. Abbas Bagherpour Ardekani, Head of Delegation, Islamic Republic of Iran and Chairperson of the Open-ended Working Group on International Law in Cyberspace** presented his Report on the Third Open-ended Working Group Meeting ("Meeting") held on 8th October 2018. At the outset, the Chairperson congratulated the Rapporteur for successfully summarizing the views and comments of the Member States at the previous working group meetings. The Rapporteur, in his presentation in the Meeting, acknowledged the assistance of AALCO Secretariat in preparing the Report and explained in brief the contents of his Report. He explained that People's Republic of China held the position that the proposal to adopt model provisions on cybercrimes was without prejudice to existing efforts in various other international instruments in cybercrimes. It was also suggested that AALCO may consider the adoption of a "Declaration on Principles of International Law in Cyberspace". Japan was of the view that it was premature to prepare model provisions on cybercrimes, as there was no consensus. Japan was also of the view that there should be further discussions on which terms should be included in the Declaration of Principles of International Law in Cyberspace. Islamic Republic of Iran was of the view that there ought to be further research on how existing rules and principles of international law should apply to cyberspace. India expressed that the Working Group ought to be cautious about not duplicating the work done in other forums. India was further not in favor of adopting Declaration of Principles of International Law in Cyberspace. The Republic of Korea was of the view that the discussions hitherto have not been sufficient to converge in meaningful conclusions and cautioned against duplicating the work of other forums. The Rapporteur assured that he would consider all views of Member States and come up with a revised Report. The Chairperson of the Working Group concluded that the discussions during the Working Group Meeting indicated towards the continued relevance of the topic, International Law in Cyberspace, and there is a clear consensus on the continued relevance of the Working Group, and that further in-depth discussions are required to finalize the way forward for the Working Group on this topic. While different views were expressed on the plan of work, there was a broad consensus to enhance cooperation in countering cybercrime, strengthen capacity building, and conduct research on terminology. There was also a broad agreement to

continue discussing the principles of international law in cyberspace without prejudice to the final outcome, have a concrete outcome of the Working Group Meeting, and look forward to the continued discussion on the content and the name of such final possible outcome of the working group.

5.11. The delegations of the following Member States delivered statements: **Malaysia, State of Qatar, Republic of Indonesia, Islamic Republic of Iran, Republic of India, Republic of South Africa, Republic of Kenya, People's Republic of China, Socialist Federal Republic of Viet Nam and Japan.** Additionally, the Observer Non-Member State, **the Russian Federation** also presented a statement.

5.12. All delegations thanked the Special Rapporteur for his Report and appreciated the role of AALCO in fostering discussion and deliberation on the topic "International Law in Cyberspace." The delegations noted that it was important to continue discussions over how the challenges to cyber-security could effectively be dealt with and rule of law established in the domain of cyberspace. The delegations also agreed on the need to enhance capacity building on the legal regime pertaining to cyberspace within AALCO and on sharing of best practices between the Member States. The delegations listed their respective national legislations enacted to deal with the threat of cybercrimes, in sync with the norms of international law.

5.13. One delegation struck a note of caution while agreeing with the proposal of the Special Rapporteur for the preparation of model laws on cyberspace. It was indicated that there should be no duplication of on-going work in other international fora, such as the International Expert Group (IEG) established by the Commission on Crime Prevention and Criminal Justice (CCPCJ). It was suggested that the Working Group ought to wait for the outcome of the IEG deliberations on this topic. Alternatively, the Secretariat could also hold inter-sessional meetings in future so that the Member States are better prepared for the deliberations in the IEG. Regarding the proposal pertaining to Declaration of Principles on International Law in Cyberspace, it was suggested that the Secretariat prepare a draft text in order to assist the Member States to ascertain its future acceptability. Another delegation underlined the need to protect vulnerable groups like children from being targeted in the cyberspace. Regarding the proposal by the Special Rapporteur on deepening discussions on key issues, one delegation stated that the terms ought to be decided before the Working Group Meeting by the Member States through the assistance of a background paper provided by the Secretariat. Another delegation

suggested that informal consultations could be held during this Annual Session to finalize the recommendations on the way forward of the Working Group.

5.14. One Observer Non-Member State pointed out that the general principles of international law ought to apply to the realm of cyberspace as well. Whilst pronouncing its support for the peaceful use of ICTs, the delegation called for the development of universal norms and principles for responsible behaviour of States vis-à-vis the cyberspace, and underlined the complementarity of existing general regime on international law and the proposed specialized regime on cyberspace.

5.15. The Fifty-Seventh Annual Session of AALCO takes note of the report of the Chairman of the Working Group on International Law in Cyberspace and decides:

1. that the Working Group continue to discuss the issue of international law in cyberspace with the aim to, *inter alia*, enhance cooperation in countering cybercrime, research on some key issues of international law in cyberspace, and identify areas for capacity building as appropriate;
2. that the Rapporteur prepare a report on the latest developments on international law in cyberspace; and on the special need of the Member States for international cooperation against cybercrime;
3. that the agenda item “International Law in Cyberspace” remains on the agenda of the Organization and the next Annual Session as well, and the Working Group continues its work on the subject matter;
4. that the Working Group considers having at least one meeting before or during the next Annual Session to receive the views of the Member States and enhance further consultation on the subject, subject to the availability of financial resources.

6. Third General Meeting

Agenda Item: Peaceful Settlement of Disputes

6.1. **The Deputy Secretary-General of AALCO** introduced the agenda item stating Japan’s proposal of the topic for the Fifty Seventh Annual Session. The importance of peaceful settlement of disputes was highlighted as a non-negotiable imperative and one that is essential for the peaceful existence of humankind. Concerned

with the interpretation and application of international law in the context of disputes, it was said that it undoubtedly reflected the timeless nature of international law and its legendary values. The maintenance of world peace was mentioned as a goal that was unsurpassed by any other competing value and reflective of the collective conscience of the world community occupying a position of privilege in the hierarchical structure of international law.

6.2. **Mr. Miguel de Serpa Soares, United Nations Under Secretary-General for Legal Affairs**, in his address, highlighted the obligation to settle disputes under Article 33 of the UN Charter while stressing the principle of free choice that is available to States in this regard. Consent of States is also a fundamental principle which underlies the concept of peaceful settlement of disputes. The address also highlighted the need to have good faith in negotiations while highlighting Good offices and Mediation as other peaceful means of dispute settlement.

6.3. **Mr. Kimio Yakaushiji, Japanese member of the Permanent Court of Arbitration and Professor of Ritsumeikan University**, in his address, highlighted the significance of independent third- party dispute settlement mechanisms such as conciliation, arbitration and judicial settlement in the process of resolution of international disputes. The address highlighted specific illustrations of Asian and African countries resorting to international dispute settlement mechanisms while concluding with the view that third party dispute settlement is a desirable phenomenon which depends on the strong will of the States to settle disputes amicably and in conformity with principles of justice and international law.

6.4. Thereafter, the delegates of **Japan, Islamic Republic of Iran, Republic of Kenya, Republic of India, Republic of Indonesia, Libya, United Republic of Tanzania, People's Republic of China, Republic of Korea and Socialist Republic of Viet Nam** presented their views on the agenda item.

6.5. The delegations were unanimous on the contemporary relevance of the topic highlighting various domestic measures adopted by them for the peaceful settlement of disputes. While highlighting the significance of the topic, it was also noted by delegations that other principles like non-intervention, sovereign equality and employment of local remedies were also of importance in the peaceful settlement of disputes. The provisions of the UN Charter and the Manila Declaration on Peaceful

Settlement of Disputes were noted as being fundamental to the debate surrounding peaceful settlement of disputes.

7. Fourth General Meeting

Agenda Item: Law of the Sea

7.1. **The Secretary-General** introduced the agenda item. Recollecting the engagement of AALCO with this important item, he briefly highlighted the role the Organization had played during the negotiation of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), particularly in propounding the principles on the Exclusive Economic Zone (EEZ). He expressed appreciation for the achievements of the UNCLOS, ratified till date by 41 AALCO Member States. In view of the ongoing work on developing an international, legally binding treaty on marine biodiversity in areas beyond national jurisdiction (BBNJ), it was proposed that the Member States consider the need to establish a Working Group on BBNJ.

7.2. On the sub-topic “Historical development of scheme established under the UNCLOS”, three speakers expressed their views.

7.3. **Mr. Myron H. Nordquist, Professor of International Law, Centre for Oceans, Law and Policy, University of Virginia**, spoke on the history and structure of the International Tribunal for the Law of the Sea (ITLOS). He traced in detail the negotiating and drafting history of the provisions pertaining to peaceful settlement of disputes incorporated in the UNCLOS. Thereafter, he clarified that the objective of the ITLOS has been to adjudicate disputes concerning the interpretation or application of the provisions of the UNCLOS. He referred to the four means of dispute settlement available under UNCLOS, the jurisdiction of the ITLOS and the trend of dispute resolution by the ITLOS in brief.

7.4. **Mr. Alexander Proelss, Professor of Hamburg University**, spoke on the legal regime on EEZ- a regime accepted in international practice but mired in persistent challenges. Referring to cases adjudicated by the International Court of Justice (ICJ), he defined the concept of EEZ and traced the origin and evolution of the idea of EEZ. He mentioned the Latin American concept of Patrimonial Sea as well as the roles played by the 1973 Declaration of the Organization of African Unity (OAU) on Issues of the Law

of the Sea, and the Informal Castañeda Group. The major challenge, he noted, lies in drawing a fair balance between the diverging interests of the coastal States and other States. Although some guidance might be sought from Articles 79 and 211 of the UNCLOS, other options of resolution of conflicts include according of priority to coastal State once it activates its sovereign rights, shifting of burden of proof in favour of the coastal State, and resolution of conflict in a case by case basis.

7.5. **Ms. Atsuko Kanehara, Professor of the Faculty of Law Sophia University, Councilor of Headquarters for Ocean Policy of Japan**, reflected upon both the procedural and substantive aspects of the UNCLOS. First, she noted that the comprehensive nature of the UNCLOS, which the arbitral tribunal clearly declared in the South China Sea dispute, shall be maintained if the integrity of the Convention is respected. Such integrity would be ensured by a restrictive utilization of applicable laws under Article 293 in dispute settlement mechanism under Part XV of the UNCLOS. The applicable laws should not widen the jurisdiction of the competent courts and tribunals. Second, in order to usher in a possible change to the traditional idea of oceans, she enumerated two new approaches: ecosystem approach and integrated approach that have been strongly proposed for the conservation and sustainable use of the marine biological diversity beyond national jurisdiction . If these approaches are enforced, the traditional or old idea of the oceans, namely, “wide and open” oceans would be undeniably changed to the idea of oceans as “closed water tank(s).”

7.6. Thereafter, three speakers expressed their views upon the sub-topic “Frontier of the Law of the Sea” under this agenda item.

7.7. **Mr. Michael Lodge, Secretary General, International Seabed Authority (ISA)**, provided the gathering with updates on progress of work on draft mining code. He browsed through the historical timeline of the origin and evolution of the ISA and enunciated its objective of guaranteeing that the rights and interests of all seabed miners- both state-owned and private entities- are protected in a manner that benefits the humankind as a whole. He pointed out that comments are being received on the draft mining code, and that it would be opportune for the AALCO Member States to engage in the topic, to make the voices of the African-Asian States heard. Thereafter, he spoke on fast tracking the Regional Environment Management Plans (REMPs). He concluded by enumerating the difficulties enmeshed in the project of deep sea mining.

7.8. **Ms. Rena Lee, Ambassador for Oceans and Law of the Sea Issues/Special Envoy of the Minister for Foreign Affairs of Republic of Singapore, and currently serving as President of Intergovernmental Conference on BBNJ**, elucidated the concept of BBNJ, the issues under consideration, and the milestones in the process of developing an international, legally binding instrument under UNCLOS. She focused her speech on development of cooperative mechanisms, regional and sectorial, for monitoring of compliance and enforcement; and on the value of an inter-disciplinary exchange between the stakeholders. She then presented her views regarding the development of a governance infrastructure on conserving and sustainably using marine biological resources.

7.9. **Mr. Yoshihisa Shirayama, Associate Executive Director, Japan Agency for Marine-Earth Science and Technology (JAMSTEC)**, expressed his views from the standpoint of a deep sea biologist. He noted that sustainable use of ecosystem entails that the quantum of recovery be greater than the ecological footprint made. He observed that two variants of sustainability are necessary in the marine areas, viz., local and global. He suggested ways to augment the recovery capacity, and urged the gathering to ensure that the oceans are open for scientific research and that the data and research conducive to ensuring sustainable use of ecosystem be shared.

7.10. Thereafter, the following delegations made their statements on this agenda item: **Republic of Indonesia, Socialist Republic of Viet Nam, Federal Democratic Republic of Nepal, Republic of Kenya, Japan, Republic of Korea, United Republic of Tanzania, Thailand, Republic of India, Islamic Republic of Iran and People's Republic of China**. The Observer Non-Member State the **Russian Federation** also presented its statement.

7.11. Several delegations thanked the Secretariat for the briefing paper prepared on this agenda item, and the speakers for their insights on the sub-topics. The signing of the MoU with the ISA was welcomed by the delegations. Several delegations named the domestic legislations enacted in the Member States in pursuance of the mandates of the UNCLOS. All delegations agreed that the upcoming international, legally binding instrument on BBNJ is timely. It was suggested by one delegation that further clarity is required in this regard. Another delegation noted that rules on proper utilization of marine resources in the BBNJ might aid in poverty alleviation and addressing food insecurity. Yet another delegation stated the expectation of the zero draft of the

Intergovernmental Conference being prepared and circulated in the earliest, so as to facilitate further deliberations. It was urged by a few delegations that the new treaty must not undermine the existing laws and institutions.

7.12. Many delegations further agreed upon the need to combat Illegal, Unreported and Unregulated (IUU) fishing and several delegations referred to Sustainable Development Goal 14 in this context. The efforts to effectively combat IUU fishing, as one delegation noted, are often hindered by weak technical capacities and inadequate resources. Collaboration and cooperation on cross-border patrol might be necessary, as suggested by another delegation.

7.13. Support to the proposal of constituting a Working Group on BBNJ was expressed by some delegations. One delegation spoke about the adoption of multi-stakeholder approach to manage the coastal ecosystem. Another delegation suggested that the AALCO Secretariat develop a model agreement on the right of transit of the landlocked States, and that the Organization continue the agenda to protect and develop marine environment so that the polluter pays principle and the notion of common but differentiated responsibility are materialized as common concern. As an impetus to blue economy, one delegation apprised the gathering of an upcoming Conference the Member State shall be co-organizing. Another delegation noted that it would co-host an international maritime law seminar in November 2018 and welcomed wide participation.

7.14. One delegation from an Observer Non Member State stated that a consensus based solution must be striven for as regards the new treaty on BBNJ, and that the new instrument must not undermine existing instruments, or alter or duplicate the efforts in other fora. It was further noted that Environment Impact Assessment (EIA) ought to be performed at the national level, and indicative guidelines for that purpose could be annexed to the new treaty.

Agenda Item: Selected items on the Agenda of the International Law Commission

7.15. The **Deputy Secretary-General of AALCO** gave a brief account of the *eight* topics that had been deliberated at the seventieth session of the Commission: (1) Peremptory Norms of General International Law (*jus cogens*); (2) Succession of States in respect of State Responsibility; (3) Immunity of State Officials from Foreign

Criminal Jurisdiction; (4) Protection of the Environment in Relation to Armed Conflicts; (5) Protection of the Atmosphere; (6) Provisional Application of Treaties; (7) Identification of Customary International Law; and (8) Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties. He proposed that the Secretariat should prepare a list of topics of interest to the Asian and African regions, after consultation with Member States, to be submitted to the ILC on behalf of member states. He encouraged the delegations to present their views on agenda items of the Commission in the sixty ninth session as well.

7.16. **Mr. Eduardo Valencia-Ospina, Chairman, International Law Commission,** presented his statement as the first panellist. At the outset the honourable panellist thanked the organization for its invitation and in particular Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO, for providing him an opportunity to present the work of the International Law Commission at its seventieth session in furtherance of the long standing tradition of substantive dialogue between the two organizations. He also recalled the participation of AALCO towards the commemoration of the seventy years of the Commission, for which AALCO had organized side events in New York on the side-lines of the first half of the session. Before commencing his elaboration on the topics on the agenda of the Commission he recalled that the work of the Commission was not only restricted to producing drafts for adoption as multilateral conventions but also in other final products such as reports, draft conclusions and draft principles. He also suggested that this was partly borne out of the reluctant attitudes of States towards adopting multilateral conventions in the General Assembly. The esteemed panellist also reminded the meeting that he had the privilege of being appointed as the Special Rapporteur on the topic ‘Protection of Persons in the event of Disasters’ a topic that owes a great deal to the many positive regional developments in Asia and Africa. It was urged the by him that the distinguished legal advisers of the Asian and African States gathered in the meeting consider putting their support behind the final draft prepared by the Commission on the aforesaid topic.

7.17. Turning to the topics on the agenda of the Commission at its seventieth session, he recalled that the topic “subsequent agreements and subsequent practice in relation to the interpretation of treaties” was a product of the work of the Commission, under the leadership of Special Rapporteur, Mr. Georg Nolte, since its decision to include the topic in its agenda. He also emphasized that the draft conclusions were meant to facilitate the

work of those persons who were called upon to interpret treaties and was based on the Vienna Convention on the Law of Treaties, 1969.

7.18. As regards the topic “identification of customary international law”, for which the Special Rapporteur had been Sir Michael Wood; he emphasized that similar to the aforesaid topic concerning the interpretation of treaties the purpose of this topic was not to set forth rules aiming at the conclusion of a new convention, but to offer practical guidance on the existence of rules of customary international law. By way of a recent example he cited a precedent of England and Wales in *Freedom and Justice Party v. Secretary of State for Foreign and Commonwealth Affairs* that concerned the rules relating to the immunities of a special mission.

7.19. In relation to the topic “protection of the atmosphere”, the panellist stated that they had considered the fifth report by the Special Rapporteur Prof. Shinya Murase and were currently in the process of consultation for comments and observations from the States.

7.20. Moving to the other topics on the agenda of the Commission namely “provisional application of treaties” the consideration of the topic at the Commission was based upon the fifth report of the Special Rapporteur Ambassador Juan Manuel Gomez Robledo. The report focussed upon the practice of international organizations and addressed the topics of termination or suspension of the provisional application of a treaty as a consequence of its breach.

7.21. As regards the topic “succession of states in respect of state responsibility”, the Special Rapporteur Mr. Pavel Sturma in his third report addressed the general rules of successions and the exceptions thereto. Further as regards, the topic “immunity of state officials from foreign criminal jurisdiction” the panellist informed the meeting that deliberations on the report could not be completed as the sixth report of the Special Rapporteur, Mrs Concepcion Escobar Hernandez was only issued at the very end of the session and shall only resume in the following session. Further with respect to the topic “Peremptory Norms of International Law (*Jus Cogens*)” it was informed that the Commission had discussed the Third Report of the Special Rapporteur, Mr. Dire Tladi dealing with consequences of peremptory norms of general international law (*jus cogens*) for treaty law and for the law of state responsibility. Out of the 14 draft conclusions contained in the third report and referred to the Drafting Committee 7 of them were provisionally adopted.

7.22. By way of conclusion, the honourable panellist informed the meeting that a new topic had been included in its programme of work namely the topic “general principles of law” and Mr. Marcelo Vazquez-Bermudez was appointed as Special Rapporteur. For the information of the meeting it was also stated that two new topics were placed in the Commission long term programme of work i.e. “universal criminal jurisdiction” and “sea-level rise in relation to international law.” Thereafter the honourable panellist concluded his statement by reiterating the importance of the relationship between the Commission and AALCO and stated that experience has shown that the two organizations have benefitted greatly from each other’s regular interactions.

7.23. **Prof. Shinya Murase, Member, International Law Commission**, in his presentation, informed the Plenary that the ILC completed the first reading and adopted 12 guidelines together with their commentaries on the topic “protection of atmosphere” for which he was appointed as Special Rapporteur. It was urged by Dr. Murase that the Member States express their views on the guidelines at the Sixth Committee of the General Assembly and in the form of written comments to be submitted by 15 December 2019. Thereafter, he expressed his regret regarding an understanding that was reached in 2013 in the ILC that the topic would not interfere in the on-going political negotiations and omit dealing with certain principles that were germane to the topic such as common but differentiated responsibilities and certain chemical substances. He emphasized that, since the understanding had fully been complied with at the first reading of the topic at the Commission, in the second reading he suggested that there was no need to refer to the understanding as and in furtherance of which suggested certain changes in the guidelines to that effect and other changes as well.

7.24. Firstly, he suggested that, in the third preambular paragraph, “...a pressing concern of the international community as a whole” may to be replaced with “common concern of humankind” as this language is still in use, most recently found in the preamble of the Paris Agreement concluded in December 2015. Secondly, on Guideline 1 (b) which uses term “atmospheric pollution”, he pointed out that it refers only to “substance” as its cause. The original proposal was “substances and energy”, which was in line with the 1979 CLRTAP and 1982 UNCLOS. Energy, which include heat, light, sound and radioactive, is an important element of atmospheric pollution, and therefore, it should be mentioned in the definition.

7.25. **Dr. Marja Lehto, Member, International Law Commission**, in her presentation on the topic “protection of the environment in relation to armed conflicts”, informed the Plenary that the ILC in 2018 (i) adopted nine draft principles together with commentaries prepared by Dr. Marie Jacobsson, former Special Rapporteur on the topic and (ii) debated the first report of the new Special Rapporteur on the topic which focussed on situations of occupation respectively. Further, three new draft principles addressing the environmental obligations of an Occupying Power were provisionally adopted by the Drafting Commission.

7.26. Thereafter, she commented on two questions related to the earlier work on the topic which have been raised in the AALCO Report on the sixty-ninth session of the Commission. Firstly, she underlined that the focus of Draft Principle 6 (on the ‘protection of the environment of the indigenous peoples’) was not on indigenous peoples as such but on how the special status that has been accorded and recognized to their lands can enhance the protection of the environment in the event of an armed conflict. She added that the special relationship between indigenous peoples and their environment has been recognized in a number of international instruments.

7.27. Secondly, on an issue related to temporal approach pointed out in the AALCO Report, she clarified that the scope of the topic has not been limited to situations of armed conflict, but is broader, and covers the aftermath of armed conflict which is a critical period not only from the point of view of building a sustainable peace but also from the point of view of addressing harm caused to the environment. She stated that the temporal approach provide a useful frame for the work on the topic and has allowed the Commission to have a fresh look at the different environmental concerns and challenges that arise in relation to armed conflicts. She also emphasized that the Commission nevertheless acknowledged it was not always possible to make a strict differentiation between the phases.

7.28. Furthermore, she commented on three new draft principles (‘DP’) related to situations of occupation. As regards paragraph 1 of DP 19 which addresses the general obligations of the Occupying Power, she pointed out that this obligation must be interpreted in light of current circumstances including the importance of environmental concerns as an essential interest of all States, as stated by the ICJ, and taking into account the development on international human rights law. She also referred to the obligation in paragraph 3 of DP 19 to respect the laws and institutions of the occupied

territory concerning the protection of the environment and opined that this requirement has the potential to be an important safeguard for the environment.

7.29. As regards DP 20 which relates to the administration and use of natural resources of the occupied territory, she pointed out that the Commission agreed that the right of usufruct from which the Draft Principle derives has to be interpreted by giving due consideration to the well-established concept of sustainability and in particular in the context of the sustainable use of natural resources.

7.30. As regards DP 21 dealing with state responsibility on transboundary harm, she reported that the substance of the Draft Report met with broad agreement in the Commission. The Drafting Committee decided, however, to replace the well-known formulation referring to "other States or areas beyond national jurisdiction" with a reference to "areas beyond the occupied territory" out of the concern that, in cases of partial occupation, the rest of the occupied State's territory might otherwise not be covered.

7.31. She concluded by elaborating the future work plan of the Commission on this topic.

7.32. The following delegates presented their statements on the topics under discussion: **Japan, Republic of India, Republic of Indonesia, People's Republic of China, Islamic Republic of Iran, Republic of Korea and Socialist Republic of Viet Nam.** The following Observer Non-Member States also delivered their statement: **Republic of Belarus and the Russian Federation**

7.33. **The delegate of Japan** congratulated the International Law Commission on its 70th anniversary. Commenting on the topic Protection of the atmosphere, he acknowledged the importance of this topic and congratulated the Commission and the Rapporteur on the successful completion of the first reading of the topic and adoption of the Preamble and 12 Draft Guidelines. Three specific points on this topic were articulated. Firstly, the need to reconsider and update the 4th Preambular Paragraph of Draft Guidelines in light of the Paris Agreement in 2015 was made. Secondly, the need to reconsider Draft Guideline 1 (b) in light of the 1979 Convention on Long-Range Transboundary Air Pollution and the 1982 United Nations Convention on the Law of the Sea was mentioned. Thirdly, the need for the ILC to discuss in the second reading

all possible formulas including the deletion of the 8th Preambular Paragraph as well as in Paragraph 2 and 3 of the Draft Guidelines on “Scope of Guidelines” was emphasized. On the topic of “Immunity of State Officials from Foreign Criminal Jurisdiction”, it was highlighted that a proper balance between State sovereignty and the fight against impunity is fundamental. This balance can be achieved by a consideration of the procedural aspects of immunity. He also highlighted that sufficient State practice on the subject was not accumulated which required analysis in light of domestic systems. The delegate hoped that all draft articles would be adopted by consensus with adequate discussion which factors in the procedural aspects of immunity.

7.34. **The delegate of the Republic of India** thanked the AALCO Secretariat for its study on this subject. He congratulated the International Law Commission for its 70th Anniversary highlighting that the development of international law is an evolving process. This process requires regular studies and reviews of existing laws and the contribution of ILC in this regard is immense. Detailed written comments on select items on the ILC’s agenda will be handed over subsequently.

7.35. **The delegate of the Republic of Indonesia** thanked the Chairman and members of the International Law Commission for their dedicated work and continuing contribution to the codification and progressive development of international law. On the topic of “Immunity of State Officials from Foreign Criminal Jurisdiction”, the work of the Special Rapporteur on the Sixth Report was appreciated. He highlighted that a balance between the fight against impunity and sovereign equality was essential in the light of the possibility of prosecution of state officials in foreign countries. He mentioned that in his country, limitations and exceptions exist only in civil proceedings. On Crimes against Humanity it was mentioned that draft article 4 should be more specific and prescriptive, elaborating on all aspects of relevant preventive measures. Crimes against humanity have been criminalized domestically and the need for international cooperation in the field of extradition and mutual legal assistance through treaty mechanisms was highlighted notwithstanding the difficulties involved. The introduction of Universal Criminal Jurisdiction and Sea-Level Rise in relation to International Law as new topics was welcomed by the delegate.

7.36. **The delegate of People’s Republic of China** appreciated the achievements of the International Law Commission over the past seventy years highlighting the need to pay more attention to the needs of developing countries and the legitimate concerns of Asia and Africa. On the topic “Identification of Customary International Law”, the

delegate highlighted that a rigorous and systematic approach should be applied along with a comprehensive examination of the State practice on the subject. Selective identification and lowering of the threshold of identification is unacceptable. On the topic, “Subsequent agreement and subsequent practice in relation to the interpretation of treaties” it was noted that subsequent practice as the authentic means of treaty interpretation stipulated in paragraph 3, article 31 of the Vienna Convention on the Law of Treaties (VCLT) must be one that reflects the parties’ true and common understanding of treaty understanding. Other subsequent practice may only be a supplementary means of treaty interpretation in Article 32 of the VCLT. On the topic of peremptory norms of general international law (*jus cogens*) it was mentioned that the content and scope of *jus cogens* and the definition of “an offence prohibited by a peremptory norm of general international law (*jus cogens*)” was still vague and ambiguous. The delegate disagreed with the incorporation of any offence prohibited by *jus cogens* as exceptions to immunity *ratione materiae* as suggested by the Special Rapporteur. The draft conclusions and commentaries should be submitted to the Sixth Committee for States’ review as a package only after the whole set of draft conclusions are passed after the first reading. The Commission should improve its approach in this regard given the significance of the topic. On the topic “Immunity of State Officials from Foreign Criminal Jurisdiction”, it was mentioned that the adoption of draft Article 7 had created a huge controversy among States. It was suggested that the Commission revisit the draft article. On the Sixth Report of the Special Rapporteur on procedural issues, it was highlighted that Immunity should be considered at the state of instituting legal proceedings. Additionally, the appropriate State Organ to determine the question of immunity is a question of internal law and not international law and the Commission should not set a rule on this matter. On the topic, Protection of the Atmosphere, it was explained that clear and specific rules on the subject are yet to evolve and rules of international environmental law which are being applied in this area remain short of national practice.

7.37. **The delegate of the Islamic Republic of Iran** thanked the Secretariat for its comprehensive report on the subject. On the topic ‘Peremptory norms of International Law’ (*Jus Cogens*) it was mentioned that greater clarity on the second sentence of draft Conclusion 10 (1) was needed. There should be greater thought on the question of non-severability of treaties that violate *jus cogens* norms. Comments on draft conclusion 12, 13, 14, 15 and 17, 21, 22, 23 were expressed by the delegate. On the topic, Provisional application of Treaties, the delegate expressed his appreciation for the

fifth report of the Special Rapporteur. Comments on draft guideline 3, 4, 7 and 9 were made.

7.38. **The delegate of the Republic of Korea** thanked the speakers from the ILC and the Secretariat for the preparation of the report containing in-depth analysis and comments. On the topic of ‘Peremptory Norms of International Law’ the delegate believed that the work of the Special Rapporteur would contribute both to the better understanding of the current state of the law and its progressive development. Emphasis was placed on the need for more rigorous and thorough analysis of state practice and judicial precedents on the topic. On the topic “Protection of the Atmosphere”, it was highlighted that the topic has assumed special significance in light of transboundary air pollution including dust pollution. The importance of co-operation between States was emphasised while lauding the excellent work of the Special Rapporteur on the topic.

7.39. **The delegate of the Socialist Republic of Viet Nam** expressed his gratitude and appreciation to the work done by the AALCO Secretariat on the 69th and 70th Session of the International Law Commission. The role of the International Law Commission in the progressive development and codification of international law was appreciated. On the topic “Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties”, it was mentioned that the Special Rapporteur’s conclusion that silence by a party should not be presumed to constitute subsequent practice under Article 31, paragraph 3 (b). On the topic, “Identification of Customary International Law”, the delegate supported revisions and commended efforts of the Special Rapporteur. Opinions on draft Conclusion 4 and 8 were made. On the topic “Protection of the Atmosphere”, Prof. Murase’s work on the topic was appreciated. The importance of scientific evidence including the assistance of scientists and experts for resolving technical disputes like environmental disputes was highlighted. On the topic “Provisional Application of Treaties”, the delegate congratulated the work of the Special Rapporteur on the completion of the full draft Guidelines for the first reading of the General Assembly. It was pointed out that the Special Rapporteur and the ILC should have a careful examination whether Part V of the Vienna Convention on the Law of Treaties has a *mutatis mutandis* application to provisionally applied treaties. On the topic “Jus Cogens”, it was noted that the Special Rapporteur in future work should clarify whether draft Conclusion 13 covers all binding acts by international organizations. On the topic “Protection of the Environment in relation to Armed Conflicts” while fully supporting the continuation of the topic in the Commissions

agenda and the use of “occupying power” instead of “occupying state”, the delegate pointed out the need for further elaboration on different forms of occupation while highlighting the need for the Commission and the Special Rapporteur to explore the obligation to prevent, mitigate and control environmental damages for occupying powers.

7.40. **The observer of the Republic of Belarus** commended the work of the Commission and expressed satisfaction with the reasonable conservatism demonstrated by Special Rapporteurs and the Commission in the text of the conclusions balanced by certain elements of progressive development in its commentaries. While recognizing the putative value of international case law and scholarly writings it was emphasized by the observer of the Republic of Belarus that only the representative groups of States and their practice can move these topics forward. In relation to the topic of “peremptory norms of international law (*jus cogens*)” it was stated by the observer that he regretted that the Commission did not have the time to discuss the report at length and advised that more time should be dedicated to a topic of such importance. As regards, the topic relating to the interpretation of treaties it was cautioned that interpretation should not culminate into modification of the provisions of the treaty. Further the observer of the Republic of Belarus expressed support with the ILC’s assessment of the role of the expert treaty bodies in interpretation of the treaty on the obvious understanding, that *ultra vires* decisions bear no legal significance as noted in the commentary. On the topic of “identification of customary international law” in relation to draft conclusion 15 agreement was expressed with the observation in the commentary that “states cannot be expected to react on every occasion” but the usage of the term “maintained persistently” in the text placed an unreasonable burden on the objecting State.

7.41. As regards, the topic concerning *jus cogens* a view was expressed that draft conclusions 22 and 23 dealing with exception to immunity of state officials and duty of states to prosecute certain *jus cogens* crimes were manifestly outside the scope of the topic and additionally did not reflect the *status quo*. Further, in relation to the topic “protection of the environment in relation to armed conflicts” agreement was expressed with the view that the basic institutes of the *jus in bello* are augmented by the environmental dimension. As regards, the topic “succession of states in respect of State responsibility” the paucity of state practice and its context-specific nature were recognized as difficulties in the process of identification of common patterns. A view

was also stated that the draft articles on the topic should cover both “legal” and illegal succession.

7.42. On the topic of “immunity of state officials from foreign criminal jurisdiction” the observer of the Republic of Belarus stated the position that the immunity of State officials is a fundamental rule based on the principle of sovereign equality of states and the prohibition on the use or threat of force. Further, the view was expressed in relation to “procedural guarantees” that guarantees should be express that prevent double standards, abuses and politically motivated trials. By way of conclusion, it was stated that future topic of the ILC i.e. universal criminal jurisdiction should be purely treaty based and stated that the consideration of the topic by an expert body such as the ILC can contribute to its depoliticization on the condition that views of the states are given primacy over other actors such as NGOs etc.

7.43. **The observer of the Russian Federation** commended the work of the ILC and stated that it was hard to overestimate the contribution that it has made over the years to codification and progressive development of international law. However it was stated that over the last decade the ILC had become more and more reluctant to recommend drafting of legally binding instruments and this had led to an unexpected result of courts and tribunals treating the Commissions drafts as evidence of customary international law and apply them directly. It was advised on behalf of the delegation that the ILC demonstrate reasonable conservatism in this regard and in its work generally.

7.44. Moving on to the topics on the agenda of the ILC at its last session with respect to the topic “immunity of state officials from foreign criminal jurisdiction” the observer stated with regret that the exceptions became a subject for consideration by the ILC before the procedural aspects of immunity. It was emphasized that immunity is a topic of a procedural nature and formulating procedural rules of application of immunity could remove a number of concerns that were raised in favour of the need to have exception to immunity. The observer also expressed his view that immunity *rationae personae* was not limited to the so called “troika” but was also extended to other high officials. In light of these observations the observer of the Russian Federation called upon the Members of the AALO to oppose the rule on exceptions to immunity of state officials and express their positions in the Sixth Committee of the UN General Assembly.

7.45. Similarly with respect to the topic “peremptory norms of international law (“jus cogens”) although he supported the view of the Commission to base its work on the Vienna Convention on the Law of Treaties, 1969 he considered the questions related to criminal responsibility to be outside the scope of the topic. Further, it was stated that the Russian Federation did not support attempts to include topics that gave rise to theoretical discussions such as *jus cogens* and *erga omnes* and their relation with the UN Security Council resolutions.

Agenda item: Report of the Regional Arbitration Centres

7.46. The **Deputy Secretary General of AALCO** presented the introductory statement on the subject that gave brief overview of the evolution of the Regional Arbitration centres of AALCO. He congratulated the Government of Japan, and urged the centres to strengthen cooperation and coordination among them to better cater to burgeoning demand for institutionalised ADR in developing economies of Asia and Africa.

7.47. This was followed by presentations made by the directors of the following arbitration centres:

Asian International Arbitration Centre (AIAC), Cairo Regional Centre for International Commercial Arbitration (CRCICA), Regional Centre for International Commercial Arbitration Lagos (RCICAL), Nairobi Centre for International Arbitration (NCIA), and their presentations outlined the activities of the centres for the year 2017-2018.

Agenda item: International Trade and Investment Law

7.48. **The Deputy Secretary-General of AALCO**, delivered the introductory statement on the subject. She explained in brief how AALCO had dealt with the topics International Trade and Investment law since the time of its inception. She remarked that even though a number of relevant developments have taken place in the areas of international trade and investment law, due to constraints of time the following issues would be discussed in the session: a) Regional Trade Agreements and effect on WTO, b) Intellectual Property and the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, and c) AALCO’s Regional Arbitration Centres. She further

informed that with the objective of improving the investment climate within Member States and to raise the profile of Asian-African States as investment destinations, AALCO is organizing a seminar on reviewing reforms to the international investment regime and to the investor-state dispute settlement mechanism from from 19-21 November 2018, at Arusha, Tanzania.

7.49. The first speaker, **Amb. Dr. Hussein A. Hassouna, Member, ILC** in his statement on impact of regional trade agreements on the World Trade Organization (WTO), spoke about how the shift towards regional trading is changing the landscape of international trade. He stated that the proliferation in regional trade agreements coincides with the diminishing success of multilateral trade negotiations. On the question of whether regional trade agreements constitute building blocks or stumbling blocks to multilateral trade, he stated that a way forward would entail actions by both multilateral and regional trading systems. The regional trade agreements must firstly ensure that they complement WTO's multilateral trading system, and secondly, that they should work to make their agreements open to accession by third parties. Thus, the task before the international community is to maximize the benefits of each system and to harmonize them together.

7.50. The second speaker, **Amb. Hong Thao Nguyen, Member, ILC** in his presentation on perspective of the Intellectual Property (IP) and the Agreement on Trade Related Aspects of IPR (TRIPS), firstly talked about the TRIPS Agreement as being a "package deal" with "minimum standards" for the availability, scope, and use of seven forms of intellectual property. He focused on three important matters in connection of the amendment of the TRIPS Agreement: (i) Extending the transitional period of implementation of the TRIPS Agreement; (ii) the relation between the TRIPS Agreement and the Convention on Biodiversity (CBD); and (iii) E-commerce. Regarding extending the transitional period of implementation of the TRIPS Agreement, he stated that there is still conflicting interests between developed and developing countries on protection of IPR, as developing States want to easily access new inventions and patents for public interest. Regarding the TRIPS Agreement and CBD, he stated that the TRIPS Agreement has not yet settled the conflict between IPRs and obligations in the CBD. Regarding E-commerce he stated that one of the shortcomings of the TRIPS Agreement is that it does not deal with several new developments, such as the Internet, digital copyright issues and e-commerce.

7.51. The third speaker, **Datuk Prof. Sundra Rajoo, Director of AIAC**, remarked in brief on the five arbitration centres established under the auspices of AALCO. He emphasized that the five Arbitration Centres stand united by the ideals of friendship and collaboration, and the ideals of AALCO, of promoting trade and investment in the AALCO region. He noted that the centres would be an important step towards the achievement of equilibrium between the industrialized and developing countries with regard to arbitration. He thereafter spoke in brief on the Asian International Arbitration Centre, which was founded in 1978, and was the first of its kind established under the auspices of AALCO. He stated that since the establishment of AIAC, there has been a massive increase in inward foreign direct investment into Asia. Africa has also enjoyed very impressive growth rates in terms of FDI. This tremendous growth has contributed to the prosperity in the region. He further remarked all the five countries in which AALCO Arbitration Centres are located are the Model law countries. This ensures investor confidence in such countries as arbitral seats, and in the region as a whole. All five AALCO Arbitration Centres are helping build capacity in Alternate Dispute Resolution (ADR) in the region. He concluded his remarks by stating that owing to the importance of the Regional Arbitration Centres in the region, effective collaboration between them is likely to assume even more significance in the future.

7.52. Thereafter, the delegates from **Republic of Uganda, Kingdom of Thailand, People's Republic of China, Malaysia, Japan, Republic of Indonesia, United Republic of Tanzania**, and the Observer Non-Member State, **the Russian Federation** also presented its views on the agenda item.

7.53. Several delegations pointed out that regional trade agreements (RTAs) conforming to the WTO principles constitute the gradual building blocks for multilateral liberalization in trade, and supported the integration of regional economies through RTAs.

7.54. Some delegations enumerated the national laws enacted and implemented pursuant to WTO obligations.

7.55. One delegation suggested measures to reduce treaty shopping and methods to modernize International Investment Agreements, to ensure sustainability. Another delegation sought clarification from the Secretariat on the types of joint activities and consultations to be held between the Regional Arbitration Centres and the aims intended

for such activities so as to avoid duplication of activities and efficient use of resources. As regards the issue of harmonization of the global intellectual property system, one delegation highlighted the role that negotiations may still play. Another delegation, while emphasizing on the importance of capacity building programs on trade and investment law, mentioned the upcoming seminar on reviewing reforms to the international investment regime and to the investor-state dispute settlement mechanism from 19-21 November 2018, at Arusha, United Republic of Tanzania. One Observer Non-Member State called for adoption of efficient and innovative solutions to combat the criticisms against the procedural elements of the existing framework on alternative dispute resolution.

Agenda Item: Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine

7.56. **The Secretary-General AALCO** introduced the agenda item which was included as such in the agenda of AALCO in the year 1988 on the recommendations of the Islamic Republic of Iran, and highlighted the illegal military occupation of Palestinian territories and the human rights abuses perpetrated on the people of Palestine by Israel, the occupying power. He recalled the consistent assertions of the international community as regards the application of International Humanitarian Law to the conflict and reiterated that 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.

7.57. He stated that the brief prepared by the Secretariat on this topic for this year largely focused on the legal status of Jerusalem. He further recalled the Special Study prepared by the Secretariat entitled “The Legality of Israel’s Prolonged Occupation of Palestinian Territories and its Colonial Practices Therein”, as a result of the mandate received by it from the Fifty-Fifth Annual Session held in New Delhi in 2016. He recommended that the Secretariat may undertake a “Special Study” on the continued violations of international law in Palestinian territories covering the legal status of Jerusalem among other critical issues with an aim to more clarity and aid Member States in their efforts to find long-lasting solution to the dispute.

7.58. The following delegates presented their statements on the topics under discussion: **State of Palestine, State of Qatar, State of Libya, Republic of Indonesia, Islamic Republic of Iran, Socialist Republic of Viet Nam, People's Republic of China and Malaysia.**

7.59. All delegations acknowledged the continuing grave violations of international law in the occupied Palestinian territories, recognizing the right of self-determination of the Palestinian people. Several delegations condemned Israel's continued aggression in the occupied territories, especially in the West Bank, including East Jerusalem, and the Gaza strip.

7.60. Many delegations supported the establishment of an independent State of Palestine with full sovereignty, with East Jerusalem as its capital, under the Two-State solution based on the UN resolutions, and the boundary established before June 1967. Many delegations raised objections on the unilateral measures to alter the legal status of Al-Quds Al-Sharif, which goes against numerous Security Council and General Assembly resolutions. Some delegations also recalled the applicability of the Fourth Geneva Convention in this regard. Several delegations supported the Middle-East peace process, recognizing the establishment of an independent Palestinian State as an integral part of it.

7.61. Several delegations welcomed the proposal made by the AALCO Secretariat to undertake a "Special Study" on the legal status of al-Quds al-Sharif to further expound on the topic. One delegation, however, cautioned against the duplication of work already done under the previous Studies by the Secretariat on the issue of Palestine. It requested the Secretariat to provide a clear outline on the scope of the Special Study, so as to facilitate inputs from Member States in this regard.

7.62. One delegation condemned the Jewish Nation-State Law, recently approved by the Knesset. The law for the first time enshrines Israel as "the national home of the Jewish people". Denying the connection of the Palestinian people to their historic homeland, the law grants the right to self-determination exclusively to Jews in Israel, discriminating against Arab citizens who constitute 20% of the population of Israel.

7.63. Another delegation made a four point proposal for the settlement of Palestinian issue, including a political settlement based on the Two-State solution, upholding a

common security concept, coordinating efforts of the international community, an approach to promote peace through development.

7.64. Some delegations further stated the contributions made by them to assist the socio-economic development of the Palestinian people.

8. Fifth General Meeting and Concluding Session

Adoption of Message of Thanks to the Prime Minister of Japan

Excellency, On behalf of all the Delegations of the Member States and Observers attending the Fifty-Seventh (2018) Annual Session of the Asian-African Legal Consultative Organization (AALCO), I would like to extend the following vote of thanks as a token of our heartfelt gratitude and admiration for the Government and People of Japan.

“We, the participants in the Fifty-Seventh Annual Session of the Asian-African Legal Consultative Organization, would like to take this opportunity to convey our profound gratitude and respect to Your Excellency, and your esteemed Government and the people of Japan, for graciously hosting the Fifty-Seventh Session of AALCO in this vibrant city of Tokyo. Excellency, I thank the Hon’ble Prime Minister of Japan, Mr. Shinzō Abe and the Government of Japan on behalf of AALCO, and on my behalf, for successfully hosting this Session and for the warm hospitality extended to all delegates.

Your Excellency, as a founding member of the Asian Legal Consultative Committee (ALCC) as it was called then in 1956, it is important to point out that Japan has played a key role in the institutionalization of the Organization that has since then grown a great deal in members and in influence. Japan has always attached great importance to the Organization and has participated and contributed generously for the activities and work programme of the Organization. In this regard, it is important to note that Japan has also regularly deputed a Senior Diplomat as a Deputy Secretary-General to the Organization. Japan has always taken a keen interest in the deliberations during the Annual Sessions and has undertaken great steps to strengthen the agenda and the role of the Organization in the international community.

Your Excellency would be pleased to know that a spirit of constructive dialogue, consultation, and cooperation amongst attending delegations marked this Session, thus enabling us to take crucial decisions on organizational as well as substantive legal matters. Indeed, the full support extended by the Host Government was crucial in the success of this Session.”

8.1. Once again, we the delegates of the Fifty-Seventh Annual Session of AALCO would extend our sincere gratitude to the Government of Japan for graciously hosting the Annual Session and making it a memorable event in the vibrant and historic city of Tokyo.

8.2. Your Excellency, please accept the assurances of our highest respect and consideration and may the Almighty God bless the endeavours of this great nation.” Thank you.

Venue of AALCO’s Fifty-Eight Annual Session

8.3. The President informed the meeting that no final decisions had been reached regarding the Venue of the Fifty-Eight Annual Session of AALCO.

Side Events

8.4. The following side events were held on the sidelines of the Fifty-Seventh Annual Session of AALCO.

- a) The 14th United Nations Congress on Crime Prevention and Criminal Justice in 2020 hosted by Ministry of Justice, Japan.
- b) Law of the Sea hosted by the Ministry of Foreign Affairs, Japan.
- c) Twentieth Anniversary of ICC Rome Statute hosted by the Ministry of Foreign Affairs, Japan.

Adoption of Resolutions

8.5. The following resolutions were adopted in the fifth general meetings of the delegations:

- 1) AALCO/RES/57/ORG1
Report of the Secretary-General on Organizational, Administrative and Financial Matters
- 2) AALCO/RES/57/ORG2
AALCO's Budget for the Year 2019.
- 3) AALCO/RES/57/ORG3
Report on the AALCO's Regional Centres for Arbitration.

Consideration of the Summary Report

8.6. The draft summary report of the Fifty-Seventh Annual Session was placed for consideration of the Member States. The Member States provisionally adopted the draft summary report and thereafter they were requested to send in their written comments on the same to the secretariat latest by 12 November 2018 after which it would be finalized.

8.7. Vote of thanks was proposed by some Member States.

8.8. **H.E. Mr. Masahiro Mikami**, the President of the Fifty-Seventh Annual Session, delivered the concluding remarks.

The Fifty-Seventh Annual Session was thereafter adjourned.