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Asian-African Legal Consultative Organization

Verbatim Record of Discussions

Fifty-Seventh Annual Session

8-12 October 2018
Tokyo, Japan

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

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PREFACE

Over the years, Asian-African Legal Consultative Organization (AALCO) has grown from strength to strength in advancing the cause of international law for its Member States in the true essence of the 'Bandung Spirit' that has been our motivating credo. The mission of the Organization continues to inspire each one of us as we work daily to fulfil responsibilities bestowed on us. As we conclude the Fifty-Seventh Annual Session held from 8-12 October, 2018 in Tokyo, Japan, I can say with a sense of pride that AALCO has once again lived up to its goal of facilitating the exchange of views on contemporary subjects of international law of common concern for its Member States in the highest traditions of inter-regional solidarity and friendship.

The year 2018 has been a remarkable one for international law. We in AALCO have been witness to many developments in this regard and the agenda items discussed in the Annual Session attest to this reality. Today Asia and Africa are at the forefront of developments in all areas of human endeavour, international law being no exception. AALCO seeks to channelize the immense potential offered by these two great continents in harnessing the best output for international law for the growth and development of the world community.

The Fifty-Seventh Annual Session of AALCO, like all previous sessions of AALCO, was instrumental in advancing the deliberative might of international law from the vantage point of our Member States. The Session witnessed participation from 37 Member States, representatives of 4 Regional Arbitration Centres of AALCO, Observers from 6 Non-Member States and representatives from various Intergovernmental/Specialized Agencies/Subsidiary Organs/Inter-Regional Organizations. The Fifty-Seventh Annual Session focussed on deliberations on Organizational and Substantive matters, which included Matters on the Agenda of the International Law Commission, Law of the Sea, Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine, International Trade and Investment Laws, International Law in Cyberspace and Peaceful Settlement of Disputes.

This comprehensive Verbatim Record is mandated as per the Statutory Rules of AALCO and is presented to the Member States as a full and final record of the proceedings of the Annual Session. It contains the texts of statements of the Inaugural Session, Three Meetings of Delegations of Member States, the Five General Meetings, the Summary Report of the Fifty-Seventh Annual Session and Resolutions on Organizational Matters along with the Message of Thanks on behalf of the AALCO Secretariat. Most part of the Verbatim is based on the official recordings of the proceedings during the Session.

I wish to extend my deep gratitude to the Government of Japan for their warm hospitality and commendable efforts in hosting the Annual Session. I acknowledge the strong support received by the Ministry of Foreign Affairs (MOFA), Japan and all others who were involved in making the Annual Session a grand success. We leave Japan with a sense of gratitude that will live on in our collective memories for many years to come.

In the end, I would also like to express my heartfelt appreciation to my friends and colleagues, Mr. Mohsen Baharvand, Mr. Yukihiro Takeya, Ms. Wang Liyu, the Deputy Secretaries-General for their strong and experienced support in making the Annual Session a success.

I also wish to express my deep appreciation to Mrs. Anuradha Bakshi, Deputy-Director, Mr. Mohammad Alrihieli, Senior Legal Officer, Mr. Kiran Mohan, Ms. Amrita Chakravorty, Ms. Devdatta Mukherjee, Mr. Shujoy Mazumdar, Mr. Abraham Joseph, Legal Officers along with other staff of the Secretariat for their efforts in making the Annual Session successful. We in AALCO, continue to remain, as always, in the service of our Member States.

Prof. Dr. Kennedy Gastorn
Secretary-General

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PRESIDENT	**His Excellency, Mr. Masahiro Mikami,** Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan
VICE-PRESIDENT	**His Excellency, Mr. Maneesh Gobin,** Attorney General and Minister of Justice, Human Rights and Institutional Reforms, Mauritius
SECRETARY-GENERAL	**Prof. Dr. Kennedy Gastorn**
DEPUTY SECRETARIES-GENERAL	**Mr. Mohsen Baharvand** **Mr. Yukihiro Takeya** **Ms. Wang Liyu**

III. VERBATIM RECORD OF THE INAUGURAL SESSION

III. VERBATIM RECORD OF THE INAUGURAL SESSION OF THE FIFTY-SEVENTH ANNUAL SESSION HELD ON TUESDAY, 9 OCTOBER 2018 AT 9.00 AM, AT THE TOKYO PRINCE HOTEL, TOKYO, JAPAN

(i) Introductory Remarks by Her Excellency, Christine Agimba, Deputy Solicitor General of the Republic of Kenya on behalf of H.E. Paul Kihara Kariuki, the President of the Fifty-Sixth Annual Session and the Attorney General of the Republic of Kenya

Honourable Ministers, Attorneys General, Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is a great honour to address this august gathering at this auspicious occasion of the Fifty-Seventh Annual Session of AALCO. I am also greatly honoured to inform the distinguished delegates that the Fifty-Sixth Annual Session of AALCO was held in Nairobi, Kenya last year in the month of May. The then Attorney General of Kenya, Prof. Githu Muigai of Kenya was elected the President for the Fifty-Sixth Session of the Organization. It is customary that the next session of the Organization is addressed by the current President of the AALCO.

Excellencies, at this juncture let me convey the warm greetings to this distinguished gathering from the Honourable Attorney General of Kenya, Retired Justice Paul Kihara Kariuki, who was appointed as Attorney General in March 2018, and who, regrettably, was not able to be present today due to exigencies of duty. I feel privileged to be here to represent him and to deliver the opening remarks on his behalf. Allow me, on behalf of the Attorney General, the Government of Kenya and the Kenyan delegation, I wish to extend our sincere gratitude to all the distinguished delegates from the Member States of AALCO who graced the AALCO Session in Nairobi, Kenya in May, 2017. I also wish to extend our thanks to AALCO Member States, the Secretary-General, the Vice-President of the Fifty-Sixth Session and the AALCO Secretariat for the cordial support and cooperation extended to Kenya as the President of the Fifty-Sixth Session.

On behalf of the Attorney General of Kenya, and also on behalf of the Kenyan delegation, I would also like to thank the Secretary-General of AALCO, H.E. Prof. Dr. Kennedy Gastorn and his team for the warm hospitality extended and the excellent arrangements made for this Annual Session. This is also an opportune moment to express our appreciation to the Secretary-General for his meticulous efforts and noteworthy accomplishments since his assumption of office in August 2016. His spirited leadership and his steadfast commitment towards fulfilling the mandate entrusted on him by the Member States are commendable.

Excellencies, allow me to express our profound gratitude to the Government of Japan for hosting the Fifty-Seventh Annual Session of AALCO in this beautiful city of Tokyo and for the very warm welcome extended to all delegations attending this conference in the Land of the Rising Sun. As we all are aware, AALCO's partnership with Japan is not new. Japan, as one of the founding Members of the Organization, has played a crucial role in the institutionalization of the Organization, which started off as a consultative committee in 1956. Over the years, Japan has proactively participated in substantive deliberations at AALCO, sponsored seminars and workshops, and, in addition, has wholeheartedly supported the Organization, both financially and in administrative matters. This includes regularly deputing a senior diplomat to the Secretariat of AALCO. The recognition and celebration of this unique long bond between AALCO and Japan would not be complete if it is not recalled how Mr. B. Sen, the founding Secretary-General of AALCO, on many occasions, used to fondly remember the steadfast support he received from Japan during the formative years of the Organization. As a matter of fact, he was honoured to receive the award from Japan, *The Order of the Rising Sun, Gold and Silver Star*, for his contributions to the progressive development of international law.

Excellencies, and distinguished delegates, as a consultative organization with Member States of diverse cultures and legal systems, AALCO has been entrusted with the daunting task of consolidating the position of Asian-African countries in various fields of international law. However, being guided by the mighty Bandung spirit, the Organization has unfalteringly discharged its mandate of facilitating democratization of the development and the codification of international law. Endorsing an approach, which is ambitious yet, rooted in pragmatism, the Organization has always strived to meet the aspirations and the expectations of the nations in Asian and African continents. Guided by such pragmatism, in a world order that is ever in flux, important topics/areas of contemporary relevance such as Selected Items on the Agenda of the International Law Commission; International Trade and Investment Law and Law of the Sea will be deliberated upon in the next few days. I am confident that these deliberations will contribute in enriching the discussions happening at the United Nations and other multilateral forums.

Owing to the niche that AALCO has carved out for itself in the group of intergovernmental organizations, Member States continue to attach great significance to the work of AALCO and are committed to use it as a platform for deliberations on critical legal questions of common concern. Such trust, as we all know, is not misplaced. During Kenya's tenure as President of the Fifty-Sixth Session, the plethora of activities undertaken and the events organized by the Organization vouch for its commitment towards the Member States. Such endeavours including the organization of, *inter alia,* the Kuala Lumpur International ADR Week 2017 (KLIAW 2017) held on 15 May 2017; the

7th South Asian Conference on International Humanitarian Law (IHL), held in Kathmandu, Nepal between 20-24 August, 2017; The Third Session of the China-AALCO Exchange and Research Programme in International Law, 3-24 September 2017; The Training Programme on WTO at the Institute of Legal and Judicial Training (ILKAP) held in Bangi, Malaysia between 14-16 November 2017; the International Seminar on "Responding to Large Scale Refugee Movements" organized by AALCO in collaboration with UNHCR held in New Delhi between 18-19 April 2018; the Asia Alternate Dispute Resolution (ADR) Week 2018 held in Kuala Lumpur, Malaysia between 5-7 May 2018; and the First AALCO Annual Arbitration Forum (AAAF) held in Malaysia between 21-22 July 2018. I am sure that the Secretary-General shall provide this gathering with a detailed report on the activities undertaken after the Fifty-Sixth Annual Session. Nonetheless, it is absolutely clear that AALCO's commitment in coordinating with various institutions to keep up the dialogue and consultations on contemporary issues of international law is amply portrayed in these endeavours. I hope AALCO will continue to keep up the good work.

Excellencies, AALCO's relevance to its Member States is further reinforced in its work with other important international organizations. AALCO's close cooperation with the United Nations is worthy of mention. This collaboration has provided an additional platform for AALCO Member States to participate in the interactive dialogue and thereby to contribute to the progressive development of international law. In the same spirit, AALCO follows the work of the International Law Commission and deliberates on important topics under consideration by the Commission at its Annual Sessions. The establishment of Regional Arbitration Centres in Kuala Lumpur, Cairo, Tehran, Lagos and Nairobi reflects AALCO's leaning towards strengthening the methods and methodology of alternate dispute resolution. Memoranda of Understanding between AALCO and other organizations functioning in the domain of international law, entered into frequently, renewed regularly and utilized judiciously, further add to our reliance on the *modus operandi* of AALCO. In recent times, AALCO has entered into MoUs with African Institute of International Law (AIIL) and the China Law Society.

Excellencies, to conclude, I once again thank the Secretary-General for his tireless efforts and also thank our host Government and the Japanese people for their excellent support and arrangements. I wish the incoming President and Vice-President the very best as they assume their responsibilities for the Fifty-Seventh Session, and I am confident that under your able guidance the Organization would continue to work as a platform for legal deliberations on issues of significance to Asian-African countries.

I wish all distinguished delegates and observers attending the Session a fruitful week of deliberations and a pleasant stay in Tokyo. I thank you.

Excellencies, Distinguished delegates Ladies and Gentlemen, it is indeed a privilege and honour for me to invite His Excellency, Mr. Taro Kono, Minister for Foreign Affairs of Japan to give us his inaugural address.

(ii) Inaugural Address by His Excellency, Mr. Taro Kono, Minister for Foreign Affairs of Japan

Good morning the Honourable Ministers and Attorneys General of the AALCO Members, H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO, Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Professor Shinichi Kitaoka, President of Japan International Cooperation Agency, Professor Masahiko Asada, President of Japanese Society of International Law, Distinguished Delegates,

I would like to welcome all of you to Japan, and welcome to Tokyo. It is my greatest pleasure to receive the distinguished delegates of the AALCO members to its Fifty-Seventh Annual Session. I feel privileged to be the Foreign Minister of Japan when Japan is hosting the Annual Session of AALCO for the fifth time– the second greatest number of Annual Sessions hosted by any member next only to India, the home of its Headquarters.

When AALCO was established in 1956, following the historic Bandung Conference held in the previous year, it started with 7 Asian members including Japan. When Japan first hosted the Annual Session in 1961, there were only 9 members and 2 observer States represented.

Today, the number of AALCO members stands at 47, along with 2 Permanent Observers, and this expanded membership is symbolic of the Organization's increased significance. In its more than 60 year history, AALCO has committed to follow the work of the International Law Commission and communicated the views of Asia and Africa on topics of mutual concern to the United Nations and other international organizations.

Over the years, Japan has always committed itself to contributing to the work of AALCO by sending its delegates to every Annual Session and participating proactively in discussions, by supporting the Secretariat in terms of personnel and finance, as well as by co-hosting seminars and sending experts.

When Prime Minister Abe addressed the Asian-African Summit 2015 commemorating the 60th anniversary of the Bandung Conference, he said "The wisdom of our forefathers in Bandung was that the rule of law should protect the dignity of sovereign nations, be they large or small". Where there is rule of law, there is stability, and where there is

stability, there is growth. The rule of law is also an important principle for upholding universal values such as democracy and respect for basic human rights.

Today, Asia and Africa are regarded as major growth centres of the world. This shows how much AALCO members in Asia and Africa have benefitted from a world governed by the rule of law and illustrates the need to sustain rule-based international mechanisms. The importance of the rule of law is also highlighted in Japan's foreign policy strategy to realize a free and open Indo-Pacific.

In order for international law to truly retain its universal character, Asia and Africa must continue to participate in its development. This is where AALCO has a significant role to play. AALCO is a forum suited for exchanging evidence of state practice and *opinio juris*. Active participation in its discussions can serve to ensure that the views and opinions of Asia and Africa are represented in the development of international law.

In the speech addressing Asian-African Summit 2015, Prime Minister Abe also stated that "Traction for growth is always found in people". With that in mind, I am pleased to announce that Japan is preparing to launch a new programme, starting next year, to support the capacity building of AALCO Member States in the area of international law. It will consist of training programmes for working-level officials to address challenges concerning important international law issues for AALCO Member States.

Japan will continue to promote the rule of law in the international community. I look forward to walking side-by-side with all AALCO members along this path. Thank you very much and hope you have a fruitful meeting.

President: It is now my pleasure to invite H.E. Takashi Yamashita, Minister of Justice of Japan.

(iii) Opening Statement by His Excellency Takashi Yamashita, Minister of Justice of Japan

Your Excellency, Prof. Dr. Gastorn, Secretary-General of AALCO, Honourable Ministers and Attorneys Generals, Distinguished Delegates, let me begin by extending my heartfelt welcome to you all.

Also, allow me to express my deepest appreciation to Secretary-General Gastorn and his staff for their dedicated work to prepare for this Session. I have the pleasure to host the Annual Session coming back to Tokyo after 24 years' time.

The rule of law and the universal promotion of the rule of law are values we all share. Facing the accelerated pace of globalization the rule of law and its universality an enduring and immutable principle has never been more important than now. Goal 16 of the Sustainable Development Goals seeks to establish peaceful and inclusive societies and identifies the rule of law as the key element to achieve this goal.

AALCO is the sole consultative body in the area of international law for Asian-African countries and has been constantly contributing toward the development of international law. This Session will address the prominence of the rule of law in diverse fields from oceans to cyberspace.

As I mentioned in reference to Goal 16, we have a shared commitment to "promoting the rule of law at the national and international levels". As the Justice Minister of Japan, my responsibility is to permeate the rule of law throughout Japanese society, as you all do in your societies. It is no doubt that each justice system is unique due to its cultural, legal and social background.

However, considering the universal nature of the rule of law, we must work together internationally to promote the rule of law if we are ever to achieve a peaceful and just global society.

Thus, the Ministry of Justice of Japan is engaging in so-called "Justice Affairs Diplomacy" or diplomacy in the field of justice. Let me introduce some of its key components.

Our activities of "Justice Affairs Diplomacy" are to permeate universal values of the "Rule of Law" and "Protecting Human Rights" across the globe.

One of the pillars of "Justice Affairs Diplomacy" is the provision of technical assistance in the field of basic legislation and judicial systems. We support Asian and African countries through long-standing partnership with the Japan International Cooperation Agency, JICA by drafting civil codes or other basic legislation, as well as providing training for officials and experts who implement or enforce the law.

The keys to the successful promotion of the rule of law and economic development are the adoption of basic legislation and reliance on well-trained officials with good capacity to implement it.

In the field of criminal law, Japan has supported 138 countries, including Asian and African countries for over 56 years. In the field of civil law, Japan has provided technical assistance to more than 10 countries, mostly Asian countries over 24 years.

These activities have paved the way toward building "win-win" relationships between Japan and the recipient countries as equal partners with the common value of the rule of law.
Besides, Japan is promoting international arbitration settled in Japan. This is also an undertaking of "Justice Affairs Diplomacy".

Active engagement in United Nations' activities in the field of crime prevention and criminal justice is another pillar of "Justice Affairs Diplomacy".

Japan will be hosting the 14th United Nations Congress on Crime Prevention and Criminal Justice in April 2020 in Kyoto. The UN Crime Congress is the largest and most diverse UN conference in the field of crime prevention and criminal justice. It has taken place every 5 years since 1955, bringing together delegations headed by prime ministers, justice ministers or attorneys generals from across this planet.

The discussions will identify effective measures to address the negative impacts of globalization, including measures to counter terrorism, organized crime and corruption. In this regard, I would like to bring to your attention that the overall theme of the Kyoto Congress is, "Advancing crime prevention, criminal justice and the rule of law: toward achieving the 2030 Agenda", with which effective measures to promote the rule of law will attain the highest consideration.

With that in mind, I would be grateful if you would participate actively in the Kyoto Congress.

2020 marks a major juncture in Japan with the next Olympic and Paralympic Games in Tokyo. I am looking forward to seeing you all in Kyoto with the Olympics close at hand.

In this regard, I would like to take this opportunity to announce that a side event on the Kyoto Congress is taking place today at 1:00 PM. Your participation is highly appreciated.

I would like to conclude my remarks by wishing all attendees constructive discussions over the coming three days. Also, I wish you a pleasant stay in Japan. I thank you.

President: Thank you very much your Excellency. Ladies and Gentlemen I regret to announce that unfortunately due to exigencies of duty both H.E. Mr. Taro Kono and H.E. Takashi Yamashita had to leave us at this juncture but the inaugural session will continue according to the programme. But we do thank them very much for the very insightful

inaugural addresses that they have made. So at this point I will invite H.E. Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO to make his welcome address.

(iv) Welcome Address by H.E. Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO

Your Excellency Madam Christine Agimba, Deputy Solicitor General, Republic of Kenya and the President of the Fifty-Sixth Annual Session of AALCO, Honourable Ministers and Attorneys Generals, Solicitors Generals, Excellencies, High Commissioners and Ambassadors, Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs of the United Nations, Heads of Delegations, Member States and Observers, Prof. Shinichi Kitaoka, President of the Japan International Cooperation Agency (JICA), Prof. Masahiko Asada, President of the Japanese Society of International Law, Distinguished Guests, Ladies and Gentlemen,

Madam President, Your Excellencies, it gives me immense pleasure to welcome you all at the Fifty-Seventh Annual Session of AALCO. I am also delighted to be here in Japan for the second time since I assumed the post of Secretary-General of AALCO.

This is the fifth time that Japan is hosting the Annual Session of AALCO. Japan is also one of the 7 founding members of this Organization. I therefore thank the Government of Japan for the continued support to AALCO on many fronts for the past 62 years.

I also thank all the AALCO Member States for their unwavering support to the Secretariat and AALCO in general. It is this support that has strengthened the Secretariat's resolve and channelized our efforts in making the Organization stronger with every passing year and the future bodes well for us.

Madam President, Your Excellencies, 62 years of the vibrancy of AALCO, which started with 7 Member States to the current 47 Member States, has been a true journey of friendship and solidarity embedded in the timeless values of the 1955 Bandung Conference. It has offered much valuable contribution to the progressive development of international law.

When the founding member states gathered in 1956 and created this organization, it was a very different world from what we have today. By then, majority of countries were still not independent, not members of the UN, poor and balkanized with many conflicts, and with limited understanding of the basic norms of international law.

They had limited ability to effectively question and even contribute as the basic norms which were biased against them.

Madam President, Your Excellencies, indeed on the one hand, our region is now becoming an important pole in the process of moving towards global multi-polarity by demanding more respect and equity in global affairs and contributing to the progressive development of international law.

In fact, 46 and 54 countries from Asia and Africa respectively are members of the UN, making up more than half of the total UN Membership.

However, on the other hand, there are many challenges emanating from the international law facing our region making the Afro-Asian solidarity more needed than ever. These challenges include:

- The security environment in the region is facing in severe conditions coupled with the spread of terrorism and violent extremism;
- There is a backlash to the advance of globalization and multilateralism, as a result of protectionism and inward looking tendency is rising;
- The international order based on fundamental values such as freedom, democracy, human rights and the rule of law, which have underpinned the peace, and prosperity of the world is being challenged;
- There are disagreements on the balance, if any, between economic rights vis-à-vis civil and political rights;
- If scientific predictions pertaining to climate change are anything to trust, then almost all major port cities or coastal states, small or large, rich or poor, from Accra to Dar-es Salaam to Tokyo, are likely to suffer from a sea-level-rise;
- Palestinian people are still without a sovereign state;
- Decolonization is still on the agenda of the UN. In fact, the ICJ is currently deliberating whether the decolonization process was complete or not in case of Chagos Island of Mauritius;
- International norms of Cyberspace are far from being settled and agreed. In fact, there is a growing split among states such that the "UN Group of Governmental Experts has failed to reach agreement on how international law applies to cyber operations by states";

- Unprecedented highest number of people displaced from their homes due to conflict and persecution or otherwise in the United Nations' history.

The Afro-Asian region is facing some ambivalent relationship with international law and international institutions.

Madam President, Your Excellencies, despite all the above crisis, we have no reason to lose hope. As some scholars have suggested, "While complacency would be misguided, so is despair". After all, international law is resilient as much as vigilance is needed to maintain its legitimacy.

Much of the international law remains uncontested and the above insufficiency in international law does not amount to an existential crisis.

I am also told that, the word 'crisis' has an apt translation in Chinese and Japanese languages. It combines two Chinese characters: danger and opportunity.

Let us, therefore, see the above insufficiency in international law as an opportunity to maintain the legitimacy of international law by reaffirming once again the Afro-Asian bonds in protecting fundamental values of the post war international order and UN Charter legal order necessary to promote peace, prosperity, orderly governance and friendly relations among nations.

Madam President, fortunately, solidarity between Africa and Asia is strong as both share a lot of commonalities and to a large extent still harbor old civilizations such as Egyptian, Chinese, Persian, Hindu and Islamic civilizations, just to mention the few.

It would in this context be a remiss of me for not acknowledging some champions of promoting the Afro-Asian solidarity. This includes, but is not limited to:

First, our host Government, Japan under the premier leadership of H.E. Shinzo Abe, whose initiatives such as Tokyo International Conference on African Development (TICAD) is committed to "promote the awareness of the importance of rule of law, the development of international law and the use of peaceful means in dispute settlement through capacity building and information sharing including by supporting the activities of Asian-African Legal Consultative Organization (AALCO)" and "cooperate with Asian-African Legal Consultative Organization (AALCO) to promote capacity building for legal institutions".

I look forward to work with the Government of Japan in realizing this vision.

I understand that TICAD Ministerial meeting was held a few days ago here in Tokyo, (Oct 6-7) and here in this very same venue of today, and it focused, inter alia, on Free and Open Indo-Pacific Strategy.

The second champion to be mentioned Madam President is the People's Republic of China under the visionary leadership of President H.E. Xi Jinping is promoting the solidarity and cooperation between China and Africa through the Forum on China – Africa Cooperation (FOCAC), with the just concluded grandiose September 2018 Beijing Summit.

Through promotion of FOCAC, China seeks to contribute to the creation of a community of shared future for mankind. That is a community of lasting peace, common security for all, common prosperity, open and inclusive world, and a clean and beautiful world. This is consistent with the ideals of the UN Charter.

The Third champion to be mentioned Madam President is, India's "Asia-Africa Growth Corridor (AAGC)" and 'Solar Alliance Initiative' of the Prime Minister H.E. Narendra Modi deserves to be appreciated and mentioned in this regard.

Madam President, international law is a product of international relations, in terms of customary practices and agreements between states, as there is no single body that can legislate for the world. Therefore, the field of international law is reflective of a vibrancy that is unmatched.

Today international law is the legitimate medium for global friendship and co-operation and its expansion to hitherto unknown areas, is a development that is here to stay.

This belief in the redemptive nature of International Law is the surest test of global harmony, world peace and the sustainable development of our common resources.

AALCO should welcome this approach and urge each of our Member States to strive ahead with the same passion and enthusiasm for International Law that has all along been integral to our collective worldview.

Madam President, as the Afro-Asian region is now having more than half of the total UN Membership, the positive contribution of Asia and Africa in promoting progressive development of international law should increase to match our numbers.

Today, 13 out of current 34 members of the ILC hail from the Member States of AALCO! This is 38% of the total membership of the ILC. In fact, in general Africa and Asia has over 50% of the entire membership of ILC.

Madam President, before I conclude my welcome remarks, allow me to recall that in 1955 during Bandung Conference, peoples of Asia and Africa were more than half of the human population of the world.

It is in this context that H.E. President Sukarno of Indonesia in his opening address at Bandung Conference on 18 April 1955, stressed that:

> "We are again masters in our own house. We do not need to go to other continents to confer." "Yes, we! We, the peoples of Asia and Africa, 1,400,000,000 strong, far more than half the human population of the world, … We can demonstrate to the minority of the world which lives on the other continents that we, the majority are for peace, not for war, and that whatever strength we have will always be thrown on to the side of peace".

AALCO is the only intergovernmental legal consultative organization comprising of two continents. Its potential is unparalleled and exceptional.

Let us therefore use AALCO to have a more influential role in international law making, by promoting global governance of international order based on UN Charter and promote fundamental values such as freedom, democracy, human rights and the rule of law which have ever since underpinned the peace and prosperity of the world.

It is in this context that, we at the Secretariat have increased a number of activities in order to enhance consultations among our Member States on various international law issues of the common concern.

We have also increased interactions with the ILC as well as legal advisers of Member States of AALCO mainly working with the Sixth (Legal) Committee of the UN.

We therefore appreciate and look forward to your continued support, including in reaching out to non-member States in our region to join AALCO.

With these remarks, I wish the Annual Session a grand success and hope that each Member State actively participates in the proceedings enriching us through their deep knowledge, experience and wisdom, which as always will be the greatest learning curve for us. Thank you Madam President.

President: Thank you very much H.E. Secretary-General, it is now my pleasure to invite Mr. Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs to make a keynote address.

knowledge, experience and wisdom, which as always will be the greatest learning curve for us. Thank you Madam President.

President: Thank you very much H.E. Secretary-General, it is now my pleasure to invite Mr. Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs to make a keynote address.

(v) Keynote Address by Mr. Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs

Excellencies, Mr. Secretary-General, Ladies and Gentlemen,

I am honoured to be invited to address this Annual Session of AALCO building on its partnership with the United Nations over the years. In 2012, the world's Heads of State and Government adopted the Declaration of the High-Level Meeting on the Rule of Law, reaffirming their commitment to the rule of law and its importance to the three pillars upon which the United Nations is built: international peace and security, human rights and development. Promoting the rule of law has never been more critical to the work of the United Nations in fostering dialogue and cooperation among States.

Regional bodies, including AALCO, are essential partners for the United Nations in promoting the development of, and respect for, international law, which is the foundation for peaceful relations among States.

Member Nations of the United Nations have found it difficult to find a definition of rule of law. The rule of law, however defined, is perceived as a stabilizing influence in a world facing an increasingly complex and challenging set of realities: the scourge of war and its impact on humanity – in particular, women, the young and vulnerable; terrorism and growing extremism; climate change and natural disasters, including the recent tsunami in Indonesia, which caused horrific loss of life and suffering; growing inequality between the rich and poor; and sexual and gender based violence, exasperated by inequalities across the globe.

Rule of law activities permeate the work of the United Nations, and the Office of Legal Affairs is the lead in many of these areas. The various divisions of my Office work "upstream" in assisting Member States in developing and negotiating international law instruments, as well as "downstream" in promoting awareness and implementation of international law. Our activities include: ensuring better knowledge of and understanding of international law; encouraging greater accession to multilateral treaties; assisting the General Assembly, assisting States in their implementation of international law, through technical assistance and teaching; encouraging the peaceful settlement of disputes among

States through judicial and other means; and supporting international and hybrid criminal tribunals in the prosecution of serious international crimes.

What I would like to focus on today is our work in promoting the rule of law through international law through projects in Asia and Africa. The Programme of Assistance in the Teaching, Study and Dissemination and Wider Appreciation of International Law was established by the General Assembly which was established in 1965 to contribute to a better knowledge of international law so as to strengthen international peace and security and promote cooperation among States.

My Office implements the Programme by organizing the Regional Courses in International Law: for Africa, Asia-Pacific, and Latin America and the Caribbean.

These Regional Courses focus on core topics of international law, as well as contemporary issues of interest to the regions– for example, by promoting greater understanding of the work of the African Union and the African Union Commission on International Law, or highlighting contemporary international law issues of interest in Asia-Pacific. The Course in Addis Ababa conducted earlier this year was attended by participants from 22 African countries. It included sessions to promote greater understanding of the work of the African Union, and the African Union Commission on International Law, which will celebrate its 10th anniversary next year.

The Regional Course for Asia-Pacific conducted last year in November in Bangkok had 29 participants from 21 countries from the region and included sessions on international law in Asia-Pacific. The course will be held again in November this year also in Bangkok.

In addition the United Nations Audio-Visual Library on international law which is assessable on the World Wide Web and free of charge provides over 500 hundred lectures on diverse topics of international law by eminent legal scholars and practitioners including from Asia-Pacific and Africa. Continuous effort is made to enrich geographical and linguistic content of these lectures.

Moreover, the progressive development of international law and its codification – embodied in Article 13 of the Charter of the United Nations – are key elements to the promotion of the rule of law.

Since the general Assembly has established the International Law Commission 70 years ago, the Commission has made far-reaching achievements, but this would not have been possible without contributions from regional bodies such as AALCO, which has made significant contributions before the Commission including the Identification of

Customary International Law, the Provisional Application of Treaties, and the Protection of the Atmosphere. I can assure you that as Secretariat of the Commission, the Codification Division of my Office will certainly continue to facilitate such cooperation.

Now United Nations is far from alone in its endeavours. I am glad to witness the remarkable projects being undertaken at the regional level, including AALCO's work in organizing seminars and workshops in partnership with States and international organizations on international legal issues of importance to the region. AALCO's Centre for Research and Training is also undertaking in-depth research on the legal aspects of combatting international terrorism, an area that is of strategic concern to the United Nations and which remains for the Sixth Committee of the United Nations. Governments in the region are making important contributions as well and I welcome in this regard the technical assistance programmes initiated by our hosts for this meeting, Japan, to strengthen the legal systems of the Asian nations.

The United Nations will continue to count on these collective efforts as we work towards our collective objectives of promoting and ensuring respect for the rule of law around the world. I look forward to our discussions today and I thank you very much for your kind attention.

President: Thank you very much for those provoking thoughts. At this point let me invite Mr. Shinichi Kitaoka, President of the Japan International Cooperation Agency to make some remarks.

(vi) Remarks by Professor Shinichi Kitaoka, President of the Japan International Cooperation Agency (JICA)

Honourable Ministers and Attorneys Generals of the AALCO Members, H.E. Mr. Taro Kono, Minister of Foreign Affairs of Japan, H.E. Mr. Takashi Yamashita, Minister of Justice, Japan, H.E. Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO, Mr. Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs, Prof. Masahiko Asada, President of the Japanese Society of International Law, Distinguished Delegates,

It is a great pleasure to speak to you at the Fifty-Seventh Annual Session of AALCO.

Japan began building a modern nation 150 years ago. One of the greatest challenges of the government at the time was renegotiating with western nations treaties that included unequal provisions such as foreign extraterritorial rights and lack of tariff autonomy. As a condition for these negotiations, western nations required Japan to introduce civil and criminal laws that met international standards before accepting Japan's demand for equal

treaties. This, however, turned out to be a very difficult task. In fact, it took Japan 25 years of trial and error to establish its first Civil Code.

The initial drafting process was launched in 1871 by Shimpei Eto, the first Minister of Justice. This process turned out to be unsuccessful, and a subsequent effort was led by a foreign expert from France, named Gustave Émile Boissonade. He and his team spent approximately 10 years to come up with a new draft. A bill passed on this draft was enacted into law in 1890, but its implementation was postponed as a result of fierce national debate. Many felt that the new law would compromise Japan's societal and cultural values. This national sentiment, combined with controversy over which foreign law Japan should most closely emulate, prevented the law from ever taking effect.

These efforts were then followed by the drafting process led by a group of Japanese scholars, who studied in England, France and Germany. His team came up with an alternative draft in 1896 that better respected Japan's societal and cultural background. This version proved successful, and at last, Japan's first Civil Code came into force in 1898. It was in 1899, a year later, that the first treaty abolishing foreign extraterritorial rights was implemented.

This experience from nearly a century and a half ago has now become a precious strength of Japan. For the past 20 years, JICA has used this experience to help developing countries draft and implement their own laws. Today, the world has become more interconnected and the areas covered by international law have expanded. Efforts by developing countries to introduce new laws like civil, intellectual property, and competition laws that are in harmony with relevant international legal frameworks are ever more important. With this in mind we have been supporting China, Indonesia, Cambodia, Kenya, Mongolia, Nepal, Viet Nam and some other Asian countries, in their efforts to introduce civil and commercial laws. In doing so, we have always looked back at our own experience of trial and error and have also made sure that partner countries themselves take the driver's seat as they, not we, draft their laws and regulations.

After the Meiji Restoration, Japan embraced international law and order for a long time. However, as you may know, with the Manchurian Incident and the withdrawal from the League of Nations in the 1930s, Japan gradually turned itself into a "challenger to the international order". This was an enormous mistake. As Prime Minister Abe expressed at the 70th Anniversary of the end of the World War II, Japan, with its remorse for its past actions, is now committed to upholding and promoting the principle that any dispute must be settled peacefully and diplomatically based on respect for the rule of law and not through the use of force. Peaceful settlement of disputes should be adopted by all human beings.

This principle was adopted as the culmination of the international community's efforts to prevent similar incidents after two devastating world wars. We must not forget this, and we must cherish and adhere to this invaluable principle.

In coordination with the Ministry of Foreign Affairs, the Ministry of Justice, other ministries and agencies and the private sector, JICA will continue to promote this principle through our legal work and activities, as well as in other sectors that contribute to peace and prosperity.

I believe that the AALCO also has an important role to play in these efforts, and I look forward to seeing its presence grow on the world stage. I would like to conclude by wishing everyone a fruitful meeting. Thank you very much.

President: Thank you very much Mr. Kitaoka for sharing your reflection with us on the work of JICA in our regions. Let me now invite Mr. Masahiko Asada, President of the Japanese Society of International Law to also make some remarks.

(vii) Remarks by Professor Masahiko Asada, President of the Japanese Society of International Law

Madam President, Mr. Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen; thank you for your kind introduction. It is a great honor and privilege to be given the opportunity to address this important gathering of the Fifty-Seventh Session of the Asian-African Legal Consultative Organization in Tokyo. I would like to say a few words of welcome on this occasion.

My name is Masahiko Asada, teaching international law at Kyoto University and currently serving as the President of the Japanese Society of International Law. I was elected to the President last June, only three months ago. In sharp contrast, the Society itself has a very long history. It was established in 1897, being the oldest academic society in Japan in the field of law. Also, it is one of the oldest societies in the world in the field of international law: ten years older than the American Society of International Law.

One of the episodes that demonstrate how old the Society is that one of the objectives for which the Society was established was to study the amendments of the equal treaties that Japan concluded with the Western powers around the end of the Edo Shogun era. Another important contribution the Society made in its early years was the study it conducted in the 1920's in connection with the codification work of the League of Nations. It is said that the contribution was highly appreciated in the League.

These facts also tell how the Society has maintained its close relationship with the Government. Such relationship still remains today. The Ministry of Foreign Affairs has conducted a regular meeting with members of the Society in various settings. One of such settings in which I have been deeply involved is a study group of Japanese practice in international law, which has led to the publication of six books, dealing with recognition of States, recognition of governments, diplomatic and consular relations territory, law of treaties and war reparations, respectively. We are currently working on law of the sea.

Japan has encountered a number of difficulties during the period of 120 years since the Society was founded. Even today, Japan and the world are faced with numerous problems and challenges in international law in various fields, such as sources of law territories, jurisdiction, the law of the sea, the environment, human rights, criminal law trade, investment, dispute settlement, the use of force, collective security, international humanitarian law, etc. Some of which will be discussed during this Session of AALCO. In 2010, in the case of Whaling in the Antarctic (Australia v Japan), Japan became a party before the International Court of Justice for the first time. While the judgment rendered by the Court in 2014 was not necessarily favorable to Japan, the Government of Japan immediately announced that "Japan will abide by the Judgment of the Court as a State that places a great importance on the international legal order and the rule of law as a basis of the international community." Our Society intends to contribute toward clarifying and solving these and other problems and challenges facing Japan, the Asian African region, and the international community as a whole today.

Should you be interested in getting more information about our Society, please visit our Society's website, which was recently completely rearranged, and we are now renewing and expanding the English pages. With this, I complete a brief introduction of my Society and conclude my welcome remarks. Thank you.

President: Thank you very much Mr. Asada for sharing the work of the Japanese Society of International Law with us. Excellencies, Distinguished Delegates, to conclude the inaugural session of the Fifty-Seventh Session of AALCO allow me to invite Mr. Raj Kumar Shrivastava, the Deputy Chief of Mission of the Embassy of India here in Tokyo to give a vote of thanks.

(viii) Vote of Thanks by Mr. Raj Kumar Shrivastava, the Deputy Chief of Mission of the Embassy of India in Tokyo, on behalf of Dr. V.D. Sharma, President of the Fifty-Fifth Annual Session of AALCO and Additional Secretary and Legal Adviser, Government of India

H.E. Ms. Christine Agimba, representing the President of the Fifty-Sixth Annual Session of AALCO, H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO, H.E. Mr. Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs, Mr. Shinichi Kitaoka, President, JICA, Prof. Masahito Asada, President, Japanese Society of International Law, Honourable Ministers, Attorneys Generals, Distinguished Delegates, Ladies and Gentlemen,

It is my privilege and honour, in the capacity of India being the President of the Fifty-Fifth Annual Session of AALCO, to propose a vote of thanks at the inaugural session of the Fifty-Seventh Annual Session of AALCO. I would like, at the outset, to inform that I hold this job on behalf of Dr. V.D. Sharma, Additional Secretary and Legal Adviser, Government of India, and President of the Fifty-Fifth Annual Session of AALCO who could not come due to other engagements at the Headquarters.

The Annual Sessions of AALCO have offered a unique platform to the Asian-African States to articulate their views on a wide range of international law topics. In this process, AALCO has emerged as the only inter-governmental organization that brings together two continents of Asia and Africa in the progressive development of international law. AALCO now occupies an important position in the international legal community, as a think tank on contemporary international law issues, as an advisory body to its Member States and as an important mechanism for interregional cooperation and the exchange of information and views on important matters with an international legal dimension. It is my earnest wish that AALCO would continue to perform this role in time to come as well.

I would like to take this opportunity to thank Mr. Taro Kono, Minister of Foreign Affairs of Japan and H.E. Mr. Takashi Yamashita, Minister of Justice of Japan for sparing their invaluable time to inaugurate the Fifty-Seventh Annual Session of AALCO. Asian-African solidarity is vital for promoting friendship, peace and stability in the regions and constructive engagement with AALCO in the progressive development of international law. The presence of both Foreign Minister of Japan and Minister of Justice of Japan at the inaugural Session is testimony of the significance of AALCO in advancing the causes of the Member States in the two continents.

Excellencies, distinguished delegates, I feel pride in expressing my gratitude, on behalf of the Member States of AALCO, to the Government of Japan for hosting the Fifty-Seventh Annual Session of AALCO here at Tokyo and for the excellent arrangements made for this purpose.

I am sure of full support and cooperation to the incoming President of the Fifty-Seventh Annual Session of AALCO by all delegations, and also I am sure that we would make

good progress during his leadership. I would like to thank H.E. Prof. Githu Mugai, former Attorney General of the Republic of Kenya, and the President of the Fifty-Sixth Annual Session for his stewardship and excellent conduct of business during the Fifth-Sixth Session.

I also take this opportunity to thank H.E. Mr. Miguel de Serpa Soares, Under Secretary-General for Legal Affairs and legal Counsel of the United Nations, for sparing his invaluable time and coming all the way here to address us.

I appreciate the role played by the Secretary-General of AALCO in managing and conducting the affairs of the AALCO Secretariat. The Secretary-General, Deputy Secretaries-General, and other officials of the Secretariat should be commended for their untiring efforts in preparedness for discharging their duties in an effective manner and carrying out the mandates and the realization of the objectives of AALCO.

I also take this opportunity to thank on behalf of all delegations, the President of JICA and the Japanese Society of International Law for their remarks.

Last but not the least, I would like to thank the honourable Ministers, Attorneys General, Heads of delegations, Distinguished delegates and Observers for coming here to participate in the important deliberations. I hope that this Annual Session will continue the legacy of past Sessions and would produce tangible outcomes of our collective efforts. Thank you very much.

President: Thank you very much for the Vote of thanks on behalf of the President of the Fifty-Fifth Annual Session of AALCO. Excellencies, distinguished delegates thank you very much for your kind attention. I have been advised to inform you that we will now take a 10 minute break before we commence the next session which will be the First Meeting of the Delegations of AALCO Member States. So we would kindly request you to be back by 10.40 AM. Thank you very much.

The Meeting was thereafter adjourned.

IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS

IV. VERBATIM RECORD OF THE FIRST MEETING OF DELEGATIONS OF AALCO MEMBER STATES HELD ON TUESDAY, 9 OCTOBER 2018, AT 10.40 AM

Her Excellency, Ms. Christine Agimba, Deputy Solicitor General of the Republic of Kenya on behalf of H.E. Paul Kihara Kariuki, the President of the Fifty-Sixth Annual Session and the Attorney General of the Republic of Kenya, in the Chair.

President: I would like to call the First Meeting of Delegations of AALCO Member States to order. We will be going through some organizational, administrative and financial matters. The first item is the **"Adoption of the Provisional Agenda and Tentative Schedule of Meetings and Events".** This was circulated earlier by the Secretariat. Are there any comments with regard to the adoption of the Provisional Agenda and Tentative Schedule of Meetings and Events? If there are none, then we shall consider as adopted the Agenda and the Schedule of Meetings and Events. Thank you very much your Excellencies.

The next item is **"Admission of New Member States"**, I shall ask the Secretary-General whether there are any new Member States for Admission.

Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Madam President, Excellencies there are no new Members for Admission.

President: Thank you very much Secretary-General. The next item is "**Admission of Observers**". I shall ask the Secretary-General to let us know the list of Observers.

Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Madam President, the following are the list of Member States: Belarus; Namibia; Russia; Tunisia; Burkina Faso; and Republic of Philippines. Following are the list of Observers in the category of international organizations: Saudi Fund for Development; International Committee of the Red Cross (ICRC); International Humanitarian Fact-Finding Commission (IHFFC); the Committee on Enforced Disappearances, Office of the United Nations High Commissioner for Human Rights. Thank you.

President: That is the list of Observers. Any comments? If there are none then we shall consider the Observers as duly admitted to this Session. Thank you very much your Excellencies.

The next item on the Agenda is the **"Election of the President and the Vice-President"** for the current Fifty -Seventh Annual Session. Do we have any proposers for President? Iran you have the floor.

The Head of Delegation of the Islamic Republic of Iran: Thank you Madam President**.** It is my honour and privilege to propose **H.E. Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs of Japan** to be the President of the Fifty-Seventh Annual Session of AALCO**.** His long career as a diplomat and legal expert covers both Asia and Africa geographically as his previous positions include Director for Middle East and overseas assignments in China, Thailand, and Egypt. He has also held responsible positions in international legal affairs in the Ministry and, as Director for International Legal Affairs; he indeed attended the AALCO Annual Session which took place in Colombo, Sri Lanka in 2011. I am confident that he is well versed in the work of AALCO and is qualified to be the President. Accordingly, I am pleased to propose this versatile and legal mind for this post. I thank you Madam President.

The Head of Delegation of United Republic of Tanzania: Thank you, Madam President. We are happy to second the proposal of the Islamic Republic of Iran to propose Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs of Japan, to be the President of the Fifty-Seventh Annual Session of AALCO. Thank you Madam President.

President: Thank you very much. We will now move to the "**Election of the Vice-President**". Do we have a proposer?

The Head of Delegation of the Democratic Socialist Republic of Sri Lanka: We are pleased to propose H.E. Mr. Maneesh Gobin, the Attorney General and Minister of Justice of Human Rights and Institutional Reforms, Republic of Mauritius as the Vice-President of the Fifty-Seventh Annual Session of AALCO. The proposal was seconded by the **Head of Delegation of Republic of Ghana.**

President: Thank you very much. Let us have a round of applause for the newly elected President and Vice-President. With that I invite the President of the Fifty-Seventh Annual Session Mr. Masahiro Mikami to come and make an opening statement. The Vice-President is also invited to the dais. With that Kenya's and Thailand's job is done.

The President His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs of Japan: Honourable Ministers and Attorney Generals, Distinguished Delegates and guest speakers, good morning.

Let me begin with my gratitude to all AALCO Member States for your support and confidence in electing me as the President of the Fifty-Seventh Annual Session of

AALCO. I am indeed honoured to be given the opportunity to preside over this important meeting.

AALCO is a very unique organization that specializes in international law, covering both Asia and Africa. It is a consultative body, rather than a policy forum, and brings together legal experts to engage them in deliberations on legal issues of common interests. In order to fully take advantage of the unique character of AALCO, I have a few points to raise as President, and I hope you agree with me.

First and foremost, I would like to encourage open and interactive discussion with a good focus. To facilitate our discussion, guest speakers have been invited to provide expertise on topics. Some agenda items have been provided with some specific sub-topics. Presentations by guest speakers will also serve as guidance to the discussion. While delegates who wish to touch on other topics are free to do so, I would like to encourage delegates to try to focus on specific topics in an interactive manner as much as possible. I believe that this will make our exchanges even more meaningful. I also intend to spend sufficient time for active interventions by Members and Observers.

Second, we need to be efficient to cover a full agenda that we have before us over the next four days, and I would like to seek your cooperation in managing meetings on schedule. All of the topics on the agenda are important and thus merit inputs by each delegation and observer who wishes to do so. Therefore, I would like to ask everyone to be conscious of time to make our meetings efficient yet productive.

Last but not the least let me express my appreciation to guest speakers who have accepted our invitation to participate in this Annual Session. My gratitude also goes to the ILC Members for making themselves available for the Session.

In conclusion, let me reiterate my deep gratitude for electing me as your President. I will do my best to emulate the excellent presidency of Kenya and to contribute to the success of this meeting. Thank you. Let us start our discussion.

The Meeting was thereafter adjourned.

V. VERBATIM RECORD OF THE FIRST GENERAL MEETING

V. VERBATIM RECORD OF THE FIRST GENERAL MEETING HELD ON TUESDAY, 9 OCTOBER 2018 AT 11.20 AM

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan and the President of the Fifty-Seventh Annual Session in the Chair.

Signing of Memorandum of Understanding between AALCO and ISA

President: I now invite the distinguished delegates and observers to the First General Meeting. This segment is divided into two: first, we observe the signing ceremony of Memorandum of Understanding between the AALCO and the International Seabed Authority (ISA). The second part is a release of AALCO publications. To proceed, I invite Mr. Michael Lodge, Secretary-General of the ISA to come up to a podium for a signing ceremony of the Memorandum of Understanding (MoU).

Since the last Annual Session, consultations have taken place between the AALCO Secretariat and the International Seabed Authority (ISA) concerning possible areas of cooperation between the two organizations. As a result of those exchanges of views, it was agreed to formalize the cooperation between the two organizations in the form of a memorandum of understanding.

Today we are pleased to witness the signing of the MoU by AALCO Secretary-General and Mr. Michael Lodge, Secretary-General of the ISA. Now Mr. Michael Lodge and Prof. Dr. Kennedy Gastorn will sign the document.

I extend my congratulations to both the Secretary-Generals and welcome the opportunity to further strengthen the cooperation between the AALCO and the ISA. I now invite Mr. Lodge, Secretary-General of the International Seabed Authority, to make brief remarks on this occasion.

Mr. Michael Lodge, Secretary-General of the International Seabed Authority: Thank you very much Mr. President. Mr. President, Mr. Vice-President, Secretary-General, Distinguished Delegates, let me begin by thanking you very much for inviting me to participate in this Fifty-Seventh Annual Session of AALCO in order to sign this Memorandum of Understanding between the International Seabed Authority and AALCO. I also wish to thank the Government of Japan for hosting this year's Annual Session and for making the necessary arrangements for enabling delegates to attend.

Mr. President, the signing of this MoU is a significant moment for both our Organizations. I am personally delighted to having initiated discussions with AALCO in 2016 and I may say that those discussions were very much facilitated by the Japanese Government; we are in a position to sign this MoU today. I wish to express my sincere appreciation to the Secretariat of AALCO as well as my colleagues in the Authority for their excellent cooperation in preparing the draft MoU. The draft MoU was placed before the Council of the ISA for its consideration in March 2018 in accordance with Article 169 of the United Nations Convention on the Law of the Sea, related to consultation and cooperation with international organizations. I am pleased to say that it received wide spread support, the statements of support made in the Council by Algeria on behalf of the African Group, China and Japan.

The fact that AALCO has an important role to play in the work of the ISA should be obvious from the long history of engagement of AALCO in matters relating to the law of the Sea, going back to the days of the Third Conference of the Law of the Sea. Furthermore, 41 out of the 47 members of AALCO are members of the ISA. 5 Member States of AALCO are also sponsoring States for deep seabed exploration activities. I very much hope that others particularly from the African States may become sponsoring States in the future, or may otherwise become involved in the activities of the ISA. I Look forward now to implementation of this MoU which is mainly concerned with raising awareness of the activities of the Authority, 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. In this connection and as an illustration of the sort of activities that we could envisage through this cooperation I would like to take this opportunity to inform you that the Authority plans to hold a workshop for Asian Member Countries in Myanmar early in 2019, as well as a Regional Workshop in the second half of 2019 for Middle Eastern Countries in Headquarters of ESCWA in Beirut.

On AALCO's side I will encourage the organization to continue in its long tradition of contributing to the international rule of law in the oceans by actively engaging with the Authority and its Member States. Many of the topics currently under consideration by the Authority including the Developments for Regulation of the Deep Sea Mineral Exploitation as well as initiatives designed to help the Authority to meet its commitments to the Sustainable Development Goals (SDG), in particular SDG 14 can only benefit from the participation of AALCO and the support rendered by AALCO to its Member States. I thank you for this opportunity and I look forward to an excellent future relationship starting with the representation of AALCO at the 25th Anniversary of the Authority in 2019.

President: Thank you very much Mr. Lodge for your informative and encouraging statement. We are looking forward to welcoming you again as a guest speaker during the Law of the Sea session.

Release of AALCO Publications

President: Now I invite Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO to present his statement on the "Release of AALCO Publications".

H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Mr. President, Mr. Vice-President, Excellencies, the AALCO Organization has revamped and re-oriented its existing publications and made them more reader friendly, apart from enhancing the quality and content of the publication, to ensure wider and periodic dissemination about the various activities of AALCO.

This year apart from the regular publications including AALCO Journal of International Law and the Yearbook, AALCO Secretariat has revived the practice of releasing half-yearly Newsletter to brief Member States and a wider audience of its activities.

Based on the mandate received from the Member States during the Annual Session, the Secretariat is fully prepared to engage in Special Studies and publish the output for the benefit of the Member States.

These measures, it is expected, will further bolster the strong intellectual foundations of AALCO, facilitating deep and incisive scholarly contributions in cutting edge and newly emerging areas of international law.

We strive to encourage scholarship of the highest levels that can make original contributions to the subject and seek to support our working environment accordingly.

In the near future, we aspire to be one of the world's leading intellectual powerhouses in international law scholarship generating output that significantly expands the reach of the subject.

I now present the Yearbook and Newsletter for their release!

With the release of AALCO publications, the First General Meeting was adjourned.

VI. VERBATIM RECORD OF SECOND MEETING OF DELEGATIONS

VI. VERBATIM RECORD OF THE SECOND MEETING OF DELEGATIONS OF AALCO MEMBER STATES HELD ON TUESDAY, 9 OCTOBER 2018 AT 11.30 AM.

His Excellency Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan and the President of the Fifty-Seventh Annual Session in the Chair.

President: Excellencies and distinguished delegates, now we move on to the Second Meeting of Delegations of the AALCO Member States. As this is a closed meeting, I would request the Observers to kindly leave the hall and rejoin the proceedings after the lunch break. I now invite Prof. Dr. Kennedy Gastorn to make a statement on the work of the Organization contained in document "**Report of the Secretary-General on the Work of the Organization and Financial Matters of AALCO".**

Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Thank you, Mr President. Mr. Vice- President, Honourable Ministers, Excellencies, High Commissioners and Ambassadors, Heads of Delegations, Ladies and Gentlemen, let me begin by congratulating you Mr. President and the Vice-President of the Fifty-Seventh Annual Session on your elections.

The Secretariat of AALCO looks forward to your guidance and wisdom and promises to extend its full cooperation to your efforts in promoting the aims and objectives of the Organization.

I would also like to express my sincere gratitude to the President and the Vice-President of the Fifty-Sixth Annual Session of AALCO for their valuable guidance and support in fulfilling the mandate entrusted on the Organization.

Excellencies, this occasion gives me another opportunity to thank Member States for their constant support and participation in all events and programmes related to the agenda of AALCO.

Let me also thank Ambassadors/High Commissioners and the Liaison Officers in New Delhi, for their valuable inputs and support in dealing with the substantive and organizational matters.

In a special way, I would also want to thank the Republic of India for its support, as the host country of the Secretariat, as well as the United Republic of Tanzania, my home country, for the continued support to me personally and to the Secretariat.

Special thanks are also due to the Member States for paying their annual contributions in a timely manner and to those Member States who have started partial payment of their arrears.

Needless to elaborate, a robust financial situation would facilitate the Secretariat in fulfilling the mandate entrusted to it by the Member States. In this context, your co-operation in this regarded is much appreciated and we look forward to your continued support in this regard.

I would also to thank Government of the People's Republic of China for their generosity donation of office equipment this year worth US $ 63,000 and constant support it gives to the Organization.

Mr. President, as an advocate of Asian-African progress in international law, I plan to work with single-minded focus and dedication to enhance the influence of our Member States in the continuing growth and evolution of international law.

This endeavour is keeping in line with the mission of AALCO and has been fundamental to our operational philosophy.

Mr. President, Excellencies, I would now briefly highlight some of the noteworthy parts of the report, namely:

i. Consideration of the Work Programme of AALCO at the Fifty-Seventh Annual Session;
ii. Major activities undertaken since the Fifty-Sixth Annual Session;
iii. Financial situation of AALCO and administrative matters;
iv. Steps taken to revitalize and strengthen AALCO;
v. Work Plan for 2019-2020; and
vi. Concluding remarks.

A. Consideration of the Work Programme of AALCO at the Fifty-Seventh Annual Session

The work programme of AALCO is derived from the references made by Member States, decisions of Annual Sessions, suggestions received from the Member States from time to time and topics placed on the initiative by the Secretary-General.[1]

[1] Currently, there are 16 items in the Work Programme of AALCO. The complete list can be found at <http://www.aalco.int/scripts/view-posting.asp?recordid=11>

It may be recalled that since the Forty-Second Annual Session (Seoul, Republic of Korea, 2003) the Organization, has adopted a policy of rationalization of agenda items.

Mindful of this decision and based on the accumulated topics, references and suggestions of the Member States, the Secretariat prepares the yearly work programme, from which the agenda of annual sessions are drafted.

The topics that are to be deliberated in this Session are:

i. The Work of the International Law Commission;
ii. Law of the Sea;
iii. International Law in Cyberspace;
iv. International Trade and Investment Laws;[2]
v. Peaceful Settlement of Disputes;
vi. Violations of International Law in Palestine and other Occupied territories by Israel and other International Legal Issues related to the Question of Palestine.

B. Activities and Mandate undertaken since Fifty-Fifth Annual Session.

Excellencies, Distinguished Delegates, Ladies and Gentlemen, we have striven to enhance the work and visibility of the Organization through increase in a number of activities in areas of capacity building and active participation in multiple national and international forums during 2017-2018 keeping in mind the work programme of AALCO and interests of the Member States.

All activities are reflected on our website and included in my written report, which has been circulated to you.[3]

C. Financial and Administrative Matters of AALCO

Excellencies, I am pleased to inform that the financial situation in 2016 was relatively stable. In response to the resolution AALCO/RES/56/ORG 2 adopted at the Fifty-Sixth

[2] "Report on the Work of UNCITRAL and Other International Organizations in the Field of International Trade Law" and "WTO as a Framework Agreement and Code of Conduct for World Trade" will be deliberated in the session dedicated for International Trade and Investment Laws.

[3] Report (Pgs 3 to 19); AALCO's annual events and events/programmes organized/co-organized by AALCO are excluded from this analysis. *See* documents AALCO/55/HEADQUARTERS (NEW DELHI)/2016/ORG1and AALCO/56/NAIROBI/2017/ORG1 for detailed descriptions of activities during 2015-16 and 2016-17.

Annual Session, in the period between 1 January 2017 to 31 December 2017, 26 out of 47 Member States have paid their annual contribution for the year 2017.

The payment of arrears still remains an issue. However, many Member States have striven to pay their dues and I express my profound gratitude to these Member States for complying with their financial obligations.

From January 2018 to date, we have only received a total of 48% of the existing arrears.

As regards the Member States, which are yet to pay their annual contributions and/or arrears, the Secretariat, on a regular basis, informs them through their Diplomatic Missions and Liaison Officers in New Delhi the importance of fulfilling their statutory and financial obligations to the Organization.[4]

I hope that these efforts would yield results and that by the end of this year; the annual contributions for the year 2017 from these States would also be received.

I would also like to inform the Member States that continuous efforts are being made to optimize the use of both the human and material resources available within the Secretariat.

All efforts to minimize and curtail operational costs are being undertaken.

Financial auditing will be expanded to cover value for money audit and financial management system will be reinforced.

D. Steps taken to revitalize and strengthen the Asian-African Legal Consultative Organization

[Strengthening the Human Resources in the AALCO Secretariat]

Mr. President, allow me to inform you that, the role of the Secretariat in the smooth functioning of the Organization cannot be overemphasized. The Secretariat has recently recruited legal and administrative staff to augment its activities and ensure effective day-to-day functioning.

However, to effectively fulfil its mandate as given by the Member States and meaningfully expand its activities in research and capacity building, AALCO needs to

[4]It may be recalled that the Extraordinary Session held at the Headquarters on 1 December 2008, to explore ways to tide over the precarious financial situation of AALCO had approved an "Action Plan, AALCO/ES (NEW DELHI)/2008/ORG 1, from page numbers 7-9.

recruit more legal professionals to reach the sanctioned strength of ten legal officers and improve infrastructure and research facilities offered to the Secretariat staff.

AALCO, as a regional organization representing two continents, ideally should have equal representations from Asia and Africa in the top management.

I appeal to the African Member States to second at least one senior official to the Secretariat as Deputy/Assistant Secretary-General.

Likewise, I appeal to the Arab Member States to consider deputing one senior official as Assistant Secretary-General or Director to the Secretariat for primarily managing the affairs of the Arabic Division.

Such measures are likely to strengthen African and Arab perspectives on international law and practice distinguishing AALCO's unique role and position in the universe of international law and its development.

In this regard, I would like to thank the Kingdom of Saudi Arabia for seconding a diplomat to the Secretariat, Mr. Mohamed Alrihieli, in the capacity of Senior Legal Officer, who joined AALCO in March 2018.

I would also like to inform you that one of my Deputy Secretaries-General, Mr. Mohsen Baharvand, from Islamic Republic of Iran, after four years of exemplary service, is leaving us this month.

I would like to place on record my sincere appreciation for his valuable contributions to the administration and substantive issues at the Secretariat. His wisdom, insight and administrative acumen were integral to AALCO's evolution over the last few years. I equally thank the Islamic Republic of Iran for his service at AALCO.

[Increasing the Membership of AALCO]

Mr. President, currently, 47 countries are Member States of AALCO. Building upon the efforts of the distinguished predecessors, we have approached the Heads of Diplomatic Missions of several of countries in New Delhi to join AALCO.

The Secretariat has received encouraging responses from some of these States and the matter of their joining AALCO is under the active consideration of their respective Governments.

[Revision of Assessed Scales of Contributions]

The Secretariat continue preparing the review of the existing scale of contribution adopted at the last Annual Session, as per the Resolution AALCO/RES/56/ORG1 of 5 May 2017 – which "mandated the Secretariat to conduct a comprehensive review of the existing assessed scale of contributions, and make such review to be considered by the Liaison Officers, and thereafter submit a report based upon the relevant minutes of the Liaison Officers' meeting to the Annual Session for its consideration and approval".

E. Work Plan for 2019-2020

Mr. President, regarding the work plan for 2019-2020,

[Substantive Projects for AALCO]

The Secretariat has prepared a list of proposed programmes for 2019-2020. They include:

- Expert Meetings on Selected Matters of high priority to AALCO
- Attending the ILC Meeting in Geneva and Legal Advisers' Meeting in New York
- Working Group Meetings with appointed Experts (Current, ongoing and future)
- Capacity building/Workshops/ Training (in collaboration with national institutions, UN agencies, partners through MoUs)
- Expand Internship
- Create Databases and Increase Publications
- Organizing Seminars/Conferences (through co-hosting)
- AALCO Arbitration Forum (co-hosted by AALCO Arbitration Centres)
- Inter-session Meetings (on Substantive Matters)
- Annual Session (the plenary or sub-committee or working groups, supplemented by side events)

They are chosen taking into consideration the mandates received in the Annual Sessions and the capacity-building requirements of the Member States.

Mr. President, the costs of implementing some of the above programmes/events in the action plan are included in the approved budget of 2019 and proposed in the 2020 budget. They are as follows: Annual Session, Inter-session Meeting, databases and publications (under the Centre for Research and Training) and travel costs to attend those meetings.

The rest of the items such as capacity building programmes/trainings, seminars, conferences and expert meetings are not covered in the budget because of limited amount received through the annual contributions.

With increased activities at the Secretariat and enhanced work programme, the Secretariat realizes that the Member States that pay their annual contributions cannot be asked to pay more than their share, at a time some Member States are struggling to clear their arrears.

I therefore, intend to mobilize additional resources to bridge the gap through co-hosting some of the events with AALCO's Regional Arbitration Centres, partner with national institutions and international organizations having MoUs with AALCO.

I will also apply for grants from the funding organizations under the UN and national organizations, as well as seek voluntary contributions from Member States for the benefit of all Member States.

The task is not easy but with the support of the Member States, the Organization will be able to raise sufficient resources to revitalize AALCO as a preeminent legal consultative organization, ensuring that these initiatives are well known and constructively contribute to the progressive development of international law.

[Establishing Collaboration with International Organizations/ Educational Institutions]

In this context, Mr. President, we aim at further expanding the research activities in AALCO, it is envisaged that collaboration with entities like intergovernmental/international bodies, including educational institutions/universities in some of our Member States be undertaken.

[Capacity Building Programmes]

Mr. President, AALCO has been organizing capacity building programmes for the Member States in collaboration with Members States such as the 'China-AALCO Exchange Research Programme on International Law' (CAERP), and international organizations such as ICRC and UNHCR.

In this regard, I urge Member States to optimally utilize this forum to train their legal professionals in international law.

[Digitalization of Documents and Strengthening the Library]

Mr. President we have also embarked on digitalization of documents and strengthening our library. At the moment, all Reports and Verbatim Records of all AALCO Annual Sessions are now available in digitalized format on the AALCO website.

The Secretariat also plans to subscribe to online legal databases such as *Lexis Nexis*, *Westlaw* or *Hein Online* to improve research facilities within the Secretariat, subject to the availability of funds.

[Publications]

Mr. President, as I said, the Organization has revamped and re-oriented its existing publications and made them more reader friendly, apart from enhancing the quality and content of the publication, to ensure wider and periodic dissemination about the various activities of AALCO.

[Project Based Funding]

On project based funding, while maintaining that contribution from AALCO Member States as the primary source of income for AALCO, project based funding will be carefully solicited from national and international entities working on similar activities, and in areas of common concern to AALCO Member States.

Before implementing any such project from Non Member – States or international entities, Member States of AALCO shall be appropriately consulted through Liaison Officers.

[Promotion of AALCO Arbitration Centres]

Mr. President, the Secretariat seeks to promote the existing arbitration centres under the auspices of AALCO through the new initiative of AALO Annual Arbitration Fora.

I shall proactively consult Member States and take initiative towards establishment of new AALCO arbitration centres in any interested Member State especially in the South Asian region, East Asia and Southern Africa.

F. Concluding Remarks

Mr. President, Excellences, in concluding my report, I am fully aware of the responsibilities entrusted by the Member States and I am committed to deliver to the best of my abilities in furtherance of the mission and vision of the Organization.

In similar spirit, I urge all Member States to actively participate in the Organization in its collective pursuit to ensure that Asian-African voices are heard in the making of international laws and norms. Thank you Mr. President.

President: Thank you, Mr. Secretary-General, for that informative and elaborate report. I now open the floor to comments from Member States on the report just presented by the Secretary-General. Are there any delegations wishing to speak on the presentation made by the Secretary-General? As a gentle reminder for each item, those who want to make a statement are kindly requested to kindly register at the AALCO Secretariat, not only for this session but also for the following sessions. Then I will receive a list of speakers who wish to speak. As there are no delegations wishing to speak, I thank the Secretary-General for his statement.

President: Now we move on to the next item. The next item on the agenda is **"AALCO's Draft Budget for the year 2019".** I invite Mr. Yukihiro Takeya, the Deputy Secretary-General, AALCO, to make a presentation and thereafter the floor shall be open for discussion.

Mr. Yukihiro Takeya, the Deputy Secretary-General, AALCO: Thank you H. E. Mr. President, Mr. Vice-President, Distinguished Delegates, Ladies and Gentlemen, AALCO's budget for the year 2019 is contained in Document No. AALCO/57/TOKYO/2018 ORG 2.

The budget approved by the Liaison Officers for the year 2019, for submission and consideration of the Heads of Delegations during the Fifty-Seventh Annual Session, is USD 631,540 which is an increase of USD 50,640 from the 2018 budget. The Secretariat is accordingly presented the comparative statement of assessed contribution of Member States and proposed increase in contribution to the budget of AALCO for the year 2019 on pages 16 and 17 of the budget document. It reflects the necessary adjustments made under certain heads and sub-heads based on the expenses likely to be incurred. It also took into consideration the financial implications of the Indian Governments 7th Pay Commission recommendations. At the same time, the Secretariat has tried its best to reduce expenses under some heads in the spirit of strictly observing financial discipline.

With regard to the 7th Pay Commission recommendations, it is to be noted that the resolution on AALCO's Budget for the Year 2018 (AALCO/56/RES/ORG2) had mandated the Liaison Officers to review and make recommendations related to its long-term implementation and the release of arrears for the period between 1 January 2016 to 4 May 2017. Accordingly, these matters were deliberated in Liaison Officers Meetings and Informal Consultation of Liaison Officers held on 7 March 2018. It was agreed in the latter meeting that the Reserve Fund may be utilized to disburse arrears for the aforementioned period subject to its final approval at the Fifty-Seventh Annual Session.

Mr. President, in the budget proposal for the year 2019, further, it may be noted that, the budgeted amount on the head "office equipment" and "Computer and Information related

facilities" has been decreased from USD 2,000 to USD 1,000 respectively thanks to the donation from the Government of People's Republic of China. On this occasion, on behalf of the Secretariat of AALCO, I would like to express my sincere gratitude to the Government of People's Republic of China.

Last but not the least, the Secretariat would like to inform the Member States that continuous efforts are being made on optimizing the use of both the human and material resources available within the Secretariat. All efforts to minimize and curtail operational costs are also being exerted. Financial auditing will be expanded to cover value for money audit and financial management system will be reinforced. At the same time, I would like to reemphasize the Secretariat's continuing effort for strengthening its financial basis such as collecting contribution and arrears, widening membership of AALCO and so on.

The Draft resolution (AALCO/57/RES/ORG 2) is annexed to the Budget document and is also placed before the Member States for their approval. Thank you for a patient hearing.

President: Thank you very much Deputy Secretary-General Mr. Takeya for your presentation of the Draft Budget for the Year 2019. Now the Floor is Open for questions and comments. Are there any delegations wishing to speak on this draft budget? I give the floor to Japan.

The Head of the Delegation of Japan: Thank you Mr. President, since this is the first time to take the floor by this delegation we would like to congratulate you Mr. President and Vice-President on your election. You can be assured that we will make an active participation in the discussions. Now as to the Budget for 2019 we would like to thank the Secretariat for the presentation and we have some comments and we would like to continue the discussion at an appropriate venue. Thank you Mr. President.

President: Thank you Japan, is there any other delegation wishing to take the floor? I see none. May I take it that there is consensus on the draft budget, what do you think Japan?

The Head of the Delegation of Japan: Thank you Mr. President, as I said that we would like to continue the discussion at an appropriate forum in this venue. We could have it at an informal level or whatever modality, it would be acceptable. Thank you.

President: So at this point I would like to propose that we take note of the presentation by Mr. Takeya and officially adopt the resolution on the budget on the last day of this Session. Now we are very efficient and ahead of time schedule. I think we have come to the end of this session and now we can break for lunch. Please be reminded that from 1.00 PM to 2.30 PM there will be a side event on the "14th UN Conference on Crime

Prevention and Criminal Justice 2020", hosted by the Ministry of Justice of Japan. All delegates are invited to attend the event, it will be held in the Sunflower Hall.

The meeting was thereafter adjourned.

VII. VERBATIM RECORD OF THE SECOND GENERAL MEETING

VII. VERBATIM RECORD OF THE SECOND GENERAL MEETING HELD ON TUESDAY, 9 OCTOBER 2018 AT 2.30 PM

His Excellency Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, the President of the Fifty-Seventh Annual Session of AALCO in the Chair.

President: Excellencies, Distinguished Guests, Ladies and Gentlemen, now we start the Second General Meeting, which is devoted to general statements. I urge all delegation to limit their statements to 10 minutes. If the prepared statements are longer, the verbatim record of the Session will fully note their content. If the hard copy of the statement handed over to the Secretariat is in Arabic, it is appreciated that the English translation is attached as well. The theme of the general statements is "Global Governance and International Rule of Law". According to the list of speakers given to me, Indonesia will speak first, followed by People's Republic of China and Islamic Republic of Iran. So first, I would like to invite the distinguished Head of Delegation of Indonesia to the podium.

H.E. Mr. Yasonna H. Laoly, Minister of Law and Human Rights and the Head of the Delegation of the Republic of Indonesia: Mr. President, Excellencies, Ministers and Heads of Delegation, Distinguished Delegates, Ladies and Gentlemen, at the outset, allow me to congratulate you Mr. Masahiro Mikami of Japan and Minister Maneesh Gobin of Mauritius for your election as the President and Vice President of the Fifty-Seventh AALCO Meeting. We trust your wise and able leadership in guiding our deliberation of this important forum. Our appreciation goes to Kenya also, for being the President of the Fifty-Sixth Session of AALCO. I would like to convey our sincere gratitude to the Government and peoples of Japan for its warm welcome and generous hospitality afforded to the Indonesian Delegation. High appreciation should also go to the AALCO Secretariat and Organizing Committee from the host country for the excellent preparations and arrangements made for our meeting today.

We also would like to thank you all for the expressed sympathy and supports extended to us to help those who are terribly affected by the devastating earthquake and tsunami in Palu and Donggala, Sulawesi. We highly appreciate the assistance of the international community and AALCO Member States for the victims and their families to restore their lives in the aftermath of this national disaster.

My delegation would also like to thank the Secretary General, for his comprehensive report on the work of AALCO. We remain confident that AALCO will continue to play an important role in strengthening friendship and solidarity among countries in Asia and Africa to engage in positive collaborations, particularly in international law and all its aspects to achieve good global governance and effective rule of international law. We should continue to work together in making AALCO an effective forum to support the interests of its member countries.

Mr. President, I have taken note that the substantive matters under the Agenda of our Session this year are very important and relevant to the current global concerns and development. We will make our intervention on different issues when we discuss each agenda item later, but I would like to take the opportunity now to highlight some important issues of our main concerns.

On the topic of the International Law Commission (ILC)**,** we continue to place great importance to its work in the promotion of progressive development of international law and its codification. In fulfilling its mandate, the ILC should continue to take into account the rule of law as a principle of good governance and the human rights, which are fundamental to the rule of law.

We have studied thoroughly the Report of the ILC on its 70th Session, held in New York from 30 April to 1 June 2018 and in Geneva from 2 July to 10 August 2018. We will present our views and positions on different topics in a more specific forum of deliberations.

On this occasion, I just would like to welcome the inclusion of two new topics for further study and discussion by the Commission, namely: *(a) Universal criminal jurisdiction; and (b) Sea-level rise in relation to international law.*

We are all aware that the issue of universal jurisdiction is always controversial as it is considered to undermine national jurisdiction. Whether a State may exercise universal jurisdiction regarding a crime committed by a foreign national against another foreign national outside its territory, it is still very much debatable. We are of the view that national jurisdiction should be given a priority to be enforced in all circumstances, unless there are other prevailing agreements between States to do otherwise.

The topic of sea-level rise as a result of climate change has also become a global phenomenon as it will affect the maritime zone of the coastal states. The Commission should further study whether there is a need for States to develop practicable solutions in order to respond effectively to the issues prompted by sea-level rise.

As an archipelagic state, Indonesia continues to place great importance on the implementation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which has been widely accepted by States as the international law governing the ocean. Our National Ocean Policy focuses on: *a) Marine and human resources development; b) Maritime Security, Law Enforcement and Safety at Seas; c) Ocean Governance and Institutions; d) Maritime Economy Development; e) Sea space management and marine protections; f) Maritime cultures; g) Maritime Diplomacy.*

Indonesia remains steadfast in its belief that the UNCLOS is among the critical components in the attainment of the three pillars of the United Nations, namely: *peace, development, and human rights*. The Convention is also a genuine reflection of the adherence to the Rule of Law and global order. In this regard, action of all state parties with respect to the oceans must be based on the Convention.
There are a number of factors that require our attention, among others like Illegal, Unreported, and Undocumented Fishing (IUU Fishing) and the destructive fishing practices as well as marine pollution, such as oil spill and marine litter.

Our fight against IUU fishing came to a different twist when we discovered that there were over 700 foreign fishermen enslaved in vessels engage in IUU Fishing that we apprehended. On board the vessels, we also discovered many endangered species being smuggled, and many other criminal acts that fall within the context of transnational organized crime.

This transnational organized crime-related to fisheries sector have commonly occurred and significantly supported the IUU Fishing activities. It certainly demands our robust responses, since in many instances they are considered as serious crimes, according to the UN Convention against Transnational Organized Crimes, inter alia, trafficking in persons, corruption, drugs trafficking among others. By focusing on these serious crimes, we definitely will be able to weaken the IUU Fishing operation and contribute significantly to the achievement of Goal 14, which seeks to eliminate IUU Fishing by 2020.

Marine plastic debris has significant negative effects on marine biodiversity, ecosystems, animal well-being, fisheries, maritime transport, recreation and tourism, local societies and economies and human health. It can also be transboundary in nature, which underscores the need for improved communication and collaboration between Members to effectively combat marine plastic debris.

Indonesia and New Zealand as co-chairs have held the EAS Conference on Combating Marine Plastic Debris in Bali, Indonesia, on 6-7 September 2017.

We would also like to invite all AALCO Member States to take part in several meetings to be hosted by Indonesia, namely: *the Ocean Conference on 29-30 October 2018 in Bali; the Second Meeting of Archipelagic and Island State on 31 October 2 November 2018 in Manado; and Workshop on Regular Process in Indian Ocean, on 7 - 9 November 2018 in Bali.*

Mr. President, Indonesia is convinced that the Palestinian people have the right to legitimate struggle for their self-determination and independence. It remains our fervent hope that there will be a substantial breakthrough in the Palestine and Israel conflict, a breakthrough that will shed light for the Palestinian people, in their quest for independence.

AALCO should be able to support and contribute to this effort, in line with the spirit of the Asian African Conference, where many countries were freed from colonial powers and foreign occupation

In order to assist the social economic development of the Palestinian people, Indonesia has already announced US $2 million commitment for Palestinians in capacity building programs under the Conference on Cooperation among East Asian Countries for Palestinian Development (CEAPAD).

On the topic of counterterrorism, we need to continue working closely to counter violent extremism in our communities, including developing and sharing best practices in preventing and combatting terrorist propaganda, as well as building on successful diversion and rehabilitation programs, especially in prisons.

At national level, we have enacted a new Terrorism Law No. 5/2018 in May 2018, as a response to the terrorist attacks that threat our sovereignty and security. The new Law include at least eight essential elements, namely: 1) broadening of the definition of terrorism; 2) a wider authority of investigators to detain terrorist suspects up to 6 months; 3) naming of corporations as suspect in terrorism cases; 4) extending the scope offences; 5) the revocation of citizenship; 6) introduction of deradicalization and rehabilitation programs; 7) extension of detention period to 270 days for the whole legal proceedings starting from investigation to prosecution; 8) the strengthening of the National Counter Terrorism Agency and the increasing role and engagement of the TNI in Counter Terrorism.

Indonesia has also been implementing the program of deradicalization and contra-radicalization for terrorist inmates. For this purpose, our National Counter Terrorism Agency has launched a blueprint for deradicalization and established deradicalization

centre for terrorist inmates. Deradicalization program involves 7 Ministries, among others: Ministry of Law and Human Rights, Ministry of Education and Culture, Ministry of Social Affairs and Ministry of Religious Affairs.

Deradicalization program covers identification, rehabilitation, reintegration, re-education and re-socialization for terrorist inmates by empowering religious leaders, prominent civil society figures, psychologists, and victim's family, to change the mindset of the radicals.

Mr. President, distinguished delegates, we should work closely to support each other in our struggle to cope with those challenging issues. Our Annual Session this time is the right forum for us to renew our commitments to actively working toward a harmonized law amongst States of Asian and African regions. I hope we would have a fruitful deliberation and a successful outcome of our meeting this year. Thank you.

President: I thank the distinguished minister of Indonesia for his statement. The next delegation on my list is People's Republic of China. Please.

H. E. Dr. Xu Hong, Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs, Head of the Delegation of the People's Republic of China: Honorable Mr. President, Mr. Vice-President, On behalf of the Chinese delegation, I would like to congratulate you on your election as the President of the Fifty-Seventh Annual Session of Asian-Africa Legal Consultative Organization. I am confident that under your able leadership, this annual session will achieve fruitful results. I would also like to take this opportunity to thank Secretary-General Prof. Dr. Kennedy Gastorn, and all members of the Secretariat for their hard work over the past year, and to express our heartfelt gratitude to the Japanese Government for their hospitality and thoughtful arrangements for this year's annual session.

Mr. President, the theme for this year's annual session, namely, "Global Governance and International Rule of Law", is selected for the right time, and is particularly germane to promoting international law cooperation among Asian and African States at a time of fundamental change in global governance.

We are at a time of change, the international regime and world order are experiencing profound change, the world has come to a new historical moment. The rise of populism, protectionism and unilateralism, and the endless stream of global challenges pose an epochal question that has to be answered: where should the world go? As important forces in the global governance reform, we, the Asian and African States, have a responsibility to give our answers to this important question.

This delegation is of the view that the theme of our general debate gives a clear answer, that is, the reform in global governance must consistently uphold international law. International law, which is built on multilateralism, is an important tool for global governance. For the developing States, it is an important safeguard for realizing international equality and justice. The reform of global governance must always uphold the rule-based international order, preserve the core values and fundamental principles of international law, vindicate the principle of achieving shared growth through discussion and collaboration, and protect the rightful interests of the developing States.

We, the Asian and African States, should cooperate to strengthen multilateralism and international law, and become a central force in global governance reform. Asian and African States have made historical contribution to the development of global governance and international law by offering the Ten Principles of the Bandung Conference. As the reform of global governance comes to a new critical moment, we now have another important opportunity to promote the development of international law and to shape a more fair and equitable world order. In this context, it is imperative that the Asian and African States unite under a new idea, one that can bring us together to strengthen our international law cooperation and guide our joint effort for the development of international law.

Mr. President, China has put forward the idea of building a community of shared future for mankind. This idea has been included in a number of UN resolutions, including, among others, resolutions on social development, security and human rights, and is evolving into international consensus. This idea also provides a clear direction for Asian and African States to strengthen international law cooperation in the context of global governance reform.

Building a community of shared future for mankind fits squarely with the common aspirations of the people around the world. With the development of multi-polarity, economic globalization, social digitization and cultural diversification, people around the world increasingly aspire for lasting peace, common security for all, common prosperity, an open and inclusive world and a clean and beautiful world. It is the common mission for the Governments of all States to realize those aspirations, hence they should be the common objectives for international law cooperation for all States.

Building a community of shared future for mankind is premised on multilateralism and the rule-based international order. Achieving these common aspirations requires clear departure from unilateralism and protectionism, and staunch support for multilateral regimes based on the United Nations, including the multilateral trade regime based on the World Trade Organization, and support for the purposes and principles of the UN Charter. Based on these premises, all States, in building a community of shared future for

mankind, should explore the reform of global governance, and the development of international law by jointly preserving the common interests of the international community according to their respective capabilities, and realize the all-round development of their people.

Building a community of shared future for mankind is consistent with the core values of international law as well as it's the trend of its development. International law is increasingly about the common interests of the international community, examples for this trend of development include, among others the principle of common heritage of mankind, the principle of common but differentiated responsibilities and respective capabilities. As the States' interests are becoming more and more inter-connected, they share a future, hence the connotation for the common interests of the international community continues to expand. Only by preserving the common interests of the international community can States realize their individual interests. This is the essence of the idea of building a community of shared future for mankind.

The above-mentioned features of the idea of building a community of shared future for mankind matches highly with the international law values and objectives for Asian and African States. As staunch supporters of international law, the Asian and African States have consistently supported the democratization of international relations, and have supported and contributed to the development of international law, and the creation of a more fair and equitable world order. In this era of new reform in global governance, China calls on all Asian and African States to enhance international law cooperation, and ensure the right direction of the development of international law under the guidance of the idea of building a community of shared future for mankind.

Mr. President, China will put the idea of building a community of shared future for mankind into practice through participating in the reform of global governance and the development of international law. It has been clearly stated in the recent Amendment to China's Constitution that China's diplomacy will be directed at building a community of shared future for mankind. Over the past few years, China has comprehensively carried forward the Belt and Road Initiative, which has offered an important platform for practicing the idea of building a community of shared future for mankind. Recently, China successfully hosted the Summit Meeting of the Forum on China-Africa Cooperation, 53 Heads of States and Governments and the Chairman of the African Union participated in the Summit. The meeting adopted the Beijing Declaration -- Toward an Even Stronger China-Africa Community with a Shared Future. The participating States agreed that China and Africa will jointly advance the Belt and Road cooperation, deepen pragmatic cooperation in a number of areas, further strengthen the forward-looking China-Africa comprehensive strategic and cooperative partnership, and build an even stronger China-Africa community with a shared future for the benefits of

both peoples. This important event has greatly enriched the meaning of the idea of building a community of shared future for mankind.

China will remain committed to advancing international law cooperation among Asian and African States in our effort to build a community of shared future for mankind. Since the 56th annual session, China has organized the third and fourth training session under China - AALCO Exchange and Research Program on International Law, and two international symposiums themed on fighting transnational organized crimes and legal safeguards for the Belt and Road Initiative, and building a community of shared future for mankind and international law.

China will also support the AALCO secretariat in organizing a side event in Vienna on combating cybercrime during the upcoming Conference of the Parties for United Nations Convention Against Transnational Organized Crime. China will also support AALCO in organizing an international seminar in Tanzania with a focus on international investment dispute settlement mechanisms.

China will continue to make its best effort to promote international law capacity building and cooperation among Asian and African States, to allow the Asian and African States to better participate in the reform of global governance, in the development of international law. I thank you for your kind attention.

President: I thank the distinguished Head of Delegation of People's Republic of China. Now I invite the distinguished Head of Delegation of Islamic Republic of Iran. Please.

His Excellency Dr. Abbas Bagherpour Ardekani, Director-General for International Legal Affairs of The Ministry of Foreign Affairs, Head of the Delegation of the Islamic Republic of Iran:

"In the name of God, the Compassionate, the Merciful"! Mr. President, Excellency Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO, Honourable Ministers and Attorneys General, Excellencies, Distinguished Delegates, Ladies and Gentlemen, it is a great pleasure for me to address this august gathering. At the outset, I would like to extend our sincere appreciation to the Government of Japan for the excellent arrangements made and their warm welcome, which gives us a sense of having a memorable and successful session. I also thank Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO and his capable team in the Secretariat for their excellent work in preparing for this session.

My delegation also wishes to congratulate you, Mr. President, on your deserved election. We are confident that under your able stewardship, we will have fruitful deliberations in

the furtherance of AALCO's objectives. To that end, my delegation extends its full support and cooperation. My congratulation also extends to the distinguished Vice-President of this Session.

Mr. President, the founders of the United Nations, drawing lessons from the past and with the hope to save succeeding generations from the scourge of war, established an international legal order on the basis of sovereign equality of States and prohibition of the threat or use of force in international relations and opted for the path of multilateralism and peaceful settlement of disputes as a viable solution.

Multilateralism and collective security arrangements have been the major achievements of the UN system. However, these achievements are now at stake. As the United Nations Secretary-General said in the opening of the 73rd session of the UN General Assembly, "Multilateralism is under attack from many different directions precisely when we need it most... multilateralism has been in the fire".

And, needless to mention that the most threatening enemy of multilateralism is unilateralism which, as a pressing challenge for the rule of law at the international level, has been crystalized either in the form of unlawful withdrawal from international treaties and protocols, withdrawing from some important organizations and agencies, waging trade war against countries, imposition of extraterritorial illegal sanctions or any other wrongful act all of which have jeopardized the foundations of international law and international legal order.

As an alarming sign we should all care about, I should refer to the decision of current US administration withdrawing from Joint Comprehensive Plan of Action (JCPOA, also known as nuclear deal), an accord that was the culmination of more than a decade of negotiations and diplomacy and is an integral part of the Security Council resolution 2231, in which all Member States have been called upon to support its implementation, including to ensure Iran's access in areas of trade, technology, finance and energy, and refrain from actions that undermine it.

To legally and effectively counter this arrogant policy of infringement of rules of international law, the Islamic Republic of Iran filed an application together with a request for Provisional Measures to the International Court of Justice, on 16 July 2018, so as to protect its rights under the existing applicable bilateral Treaty between the two countries. Last week, the Court, the principal judicial organs of the United Nations, unanimously indicated provisional measures according to which the US shall remove impediments arising from the measures announced on 8 May 2018 to free exportation to the territory of the Islamic Republic of Iran of certain goods and services. The court's unanimous order was another clear testament of the failure of the US abide by its international

obligations. While the US is under an obligation to comply with the Order of provisional measures as indicated by the Court itself, other States are also under clear obligation to refrain from aiding and abetting the US in its unlawful measures and imposition of any impediments in relevant transactions.

Mr. President, much is being expressed about the formidable challenges presented to the global community by terrorism and extremism, and on the approaches to combat and contain these enemies of humanity. The daily terrorist attacks being committed almost everywhere and by everyone show that theses heinous nightmares are neither confined to any part of the world, nor can they be combated by selective blocks and merely through military hardware.

It should have become all too clear by now that a successful and effective fight against these phenomena calls for a comprehensive approach and a multi-pronged strategy which depends, first and foremost, on the recognition of their enabling conditions. In fact, what we are faced with is a socio-cultural problem, caused by a deeply-felt state of deprivation, alienation, and marginalization in an affluent and developed environment.

Containing, and the ultimate physical elimination, of extremist terrorist organizations on the ground is certainly required, but only as a necessary first step and only as a component of a much larger effort. We hope that AALCO will continue its role in strengthening the international legal arsenal necessary to equip Member States to support the genuine attempts to fight terrorism at a global level. On its part, the Islamic Republic of Iran is resolutely fighting terrorism while respecting the well-established principles of international law as embodied in the UN Charter namely non-intervention, sovereign equality and independence of States.

Since last year's Annual Session, we have again witnessed cowardly attempts by terrorists to target civilians in Iran. Just three weeks ago, a heinous terrorist attack was carried out in Ahvaz, a south-western city of Iran, resulting in the death and injury of innocent people including children. Such blind attacks not only left untouched the unreserved will of the Islamic Republic of Iran to fight vigorously all manifestations of terrorism, but also further rendered our nation and the Government more resolute in the fight against terrorism.

Mr. President, grave violations of international law in the occupied Palestinian territories continue persistently. The land, air and sea blockade on Gaza strip lasting for 10 years is in clear violation of international humanitarian law and the Israeli regime still defies Palestinians' right to self-determination blatantly.

The recognition of Al-Quds Al-Sharif as the Israeli capital and relocation of the US embassy to this city gravely violates international law and relevant UN General Assembly and Security Council resolutions. The international community should fulfill its responsibility in rejecting the aforesaid decision and action as its aim is to legalize the occupation and to seek to restore the right of the people of Palestine to establish their own independent Palestinian State with Al-Quds Al-Sharif as its capital.

Mr. President, turning to cyberspace, and specifically on the cybercrimes, I wish to highlight that the global nature of cybercrime continues to pose a formidable challenge to all jurisdictions. Such ever-increasing threat, which respects no border, can only be addressed through a coherent strategy relying on the role of different stakeholders within a framework of strengthened international cooperation under the auspices of the United Nations. In parallel with this necessary move, the national efforts and achievements could serve appropriately for further shaping and coordinating the international efforts. To reconnect the national efforts with those of international community, bilateral and regional legal cooperation are of high importance.

With regard to the "Development of International law in Cyberspace" as one of the considered areas, as we noted earlier, diverse issues currently under discussion ranging from internet governance to international humanitarian law and cybercrimes do remain within the ambit of the existing principles and rules of international law. Basic tenets of international law including State sovereignty, equality of States and prohibition of threat or use of force remain to be the cornerstones of any framework regulating any of the famous five domains especially cyberspace. Nonetheless, the intricacies and complexities of the Cyberspace still require further regulation at the international level, which is to be developed based on the existing principles of international law and to which, we believe, AALCO could make important contributions.

Mr. President, with these, let me conclude my Statement and hope that we will experience a fruitful and successful Session. I wish all the best for AALCO and Member States during the deliberations on the agenda items for which we have gathered here. I thank you, Mr. President.

President: I thank the distinguished Head of Delegation of the Islamic Republic of Iran. Now I invite the distinguished Head of Delegation of Japan to make his statement.

Ambassador Koji Haneda, AALCO Member of Japan and the Head of the Delegation of Japan: Honorable Ministers and Attorneys General, Mr. Masahiro Mikami, President of the 57th Annual Session, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO Distinguished delegates, it is my great pleasure to represent the hosting delegation of this Annual Session and welcome you all to Tokyo. Since I

assumed the position of AALCO Member of Japan in 2016, I have been personally committed to supporting the activities of AALCO in many ways and engaging in the decision of my government to host the 2018 Session has been the recent outcome that I feel most proud of. The hosting of this Annual Session has been made possible by a government-wide commitment including the close cooperation extended by the Ministry of Justice, which held the side-event on "The United Nations Crime Congress 2020" earlier this afternoon.

Mr. President, in recent years, the international community has been witnessing increasingly complex events and, changes in political, economic and social spheres and, in this time of turmoil, a predictable international rules-based order is called for more than ever. This is precisely why the rule of law is an important pillar of Japan's foreign policy. To ensure the rule of law, we need not only to respect and comply with existing rules but also to develop them as well as to resolve disputes based on international law. Also important is to assist efforts for building robust judicial systems in countries where legal infrastructure is still under development.

AALCO has an important role to play in all of these areas, and the agenda of this Annual Session confirms this point. Among the important agenda items we are going to discuss is "Peaceful Settlement of Disputes", a new item proposed by Japan. Peaceful settlement of disputes constitutes the core of the Rule of Law and international judicial organs and other mechanisms play critical roles in this regard. While I reserve much of my statement on this topic for the session tomorrow, I would like to take this opportunity to acknowledge that this year marks the 20th anniversary of the Rome Statute of the International Criminal Court (ICC). Japan has supported the ICC since its inception in support of its goal of fighting against impunity, and, at the same time, Japan has worked with other States Parties to make the Court function effectively so that it gains universal support of the international community. A side event on the ICC will take place on Thursday and I hope it will be an opportunity for AALCO members to understand more about the strength of the Rome Statute system.

I would also like to draw your attention to the "Law of the Sea" on the agenda. This is a traditional yet evolving topic for AALCO, and I believe the subtopics for this Annual Session reflects current interest of AALCO members Like many other members, Japan attaches great importance to the Law of the Sea and, in this vein, I look forward to examining the issue from various perspectives at the plenary meeting as well as at the side-event tomorrow, which will focus on technologies for development of mineral resources as well as conservation of environment in the international seabed.

Mr. President, turning to the national level, the rule of law cannot be sustained without robust judicial systems. In this sense, capacity-building of legal institutions and people

who use them is essential. In my statement at the last Annual Session in Nairobi, I shared with you the outcome of the TICAD VI held in the same city in the previous year, where leaders of Japan and African countries promised to "promote the awareness of the importance of Rule of Law, the development of international law and the use of peaceful means in dispute settlement through capacity building and information sharing including by supporting the activities of AALCO".

Today, I am particularly pleased to tell you that we are shaping the promise, as announced by Foreign Minister Kono this morning by preparing to launch a new capacity-building program for AALCO members in the area of international law.

Japan is also undertaking an initiative to bring international law to the grassroots by conducting Asia Cup annually in Tokyo. This is an international law moot court competition for students from Asian countries, most of them being AALCO members. Co-organized by the Japanese Society of International Law and the Ministry of Foreign Affairs, the project aims at nurturing future international lawyers and advancing the Rule of Law in Asia in the long run.

Mr. President, there is no doubt that AALCO has served as an important forum for promoting the rule of law in Asia and Africa, the two growing regions of the world. The role of AALCO can be strengthened further by working with other international institutions, and I value the leadership of Dr. Gastorn in expanding AALCO's network of cooperation with other organizations.

We just witnessed this morning the signing of a Memorandum of Understanding for cooperation between AALCO and the International Seabed Authority (ISA). As a member to both organizations, Japan has supported and facilitated the arrangement since last year, and we hope that this mechanism will contribute to enhancing AALCO's activities in maritime areas.

We also welcome that AALCO has recently revitalized its relationship with the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe, by acquiring observer status to the Committee last December. CAHDI members and observers including Japan supported AALCO in this development because we believe that cooperation between these regional organs would contribute to promoting international law across different regions.

As regards its membership, AALCO still has great potential to expand itself beyond the current level. To that end, I have great respect for the efforts made thus far by Dr. Gastorn in reaching out to non-Members and encouraging them to join the Organization. We as members also need to fulfil our responsibilities in following up these efforts on our

part. I myself have been reaching out to non-members mostly in Asia to talk to my counterparts and share with them the significance and benefits of joining AALCO

At the same time, a stable financial foundation should be ensured so that AALCO can fully play its expected role in promoting the rule of law in Asia and Africa. We have much to do in this respect including fulfilling our financial obligations. I would humbly ask all members to take this issue very seriously.

In closing, Mr. President, my delegation would like to assure you a constructive contribution during this Annual Session. There are many important international legal issues for deliberation over the next few days, and I very much look forward to engaging in discussions with other delegates. Thank you.

President: I thank the distinguished Head of Delegation of Japan. Now I invite the distinguished Head of Delegation of State of Palestine to make his statement.

His Excellency Mr. Ali Abudiak, Minister of Justice and the Head of the Delegation of the State of Palestine[5]: Mr. President, H.E. Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO Ladies and Gentlemen, Representatives of Member States of AALCO, Distinguished Guests, it is an honour to participate in this Session of this Fifty-Seventh Annual Session of the Asian-African Legal Consultative Organization (AALCO). At the outset, I convey to you the greetings of His Excellency the President of the State of Palestine and the greetings of the Palestinian Government. I would like to pay tribute to all of you, to the government of Japan for hosting the Session, to the Republic of India – the host country of the Organization, to the founding countries of the Organization and to all member states and distinguished guests. I would also like to express my thanks and appreciation to the Japanese Minister of Justice and to the Secretary-General of the Organization for their kind invitation to participate in the Fifty-Seventh session of the Organization, which was founded to strengthen the Rule of Law and uphold the rules of international law.

Distinguished Guests, in the presence of high-level dignitaries and eminent legal experts, we meet here to consider legal concepts and determinants of several international law issues on the agenda of this session. These issues are important for all countries and peoples that believe in the respect for human rights, the principles of freedom, justice and rule of law and international peace and security.

In this context, let me convey that Palestine has made a quantum leap in reviewing and updating national legislations. The government is working on updating and harmonizing

[5] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Palestinian legislations in consonance with international conventions and treaties to meet the obligations of the State of Palestine particularly after the recognition of Palestine as a non-member observer State at the United Nations in 2012 and the accession of Palestine into several international agreements, conventions and organizations. A Constitutional Court, A Supreme Criminal Court and a Juveniles Court were established recently. Electronic transactions laws as well as the cybercrimes law were promulgated. The Government is working on preparing a draft law on the right of access to information, a new draft law on arbitration and alternative dispute resolution mechanisms, a draft law on legal aid, and a draft law on family protection, in addition to a package of legislation on media. A national committee was formed to develop the judiciary and it submitted its recommendations to amend some of the legislations to His Excellency, the President in September 2018. Committees were also formed to review gender legislations and to update personal status laws.

Palestine has acceded to many international treaties and conventions and has submitted numerous reports confirming the fulfilment of the obligations under these conventions and treaties. However, the Israeli occupation limits the ability of the State of Palestine to benefit from these rights and the rights of its citizens under these conventions and treaties. The State of Palestine signed dozens of conventions, treaties and charters related to the protection of human rights, women and children, but how will we guarantee these basic rights and freedom of Palestinian people in light of the aggressions and crimes of the occupation! Regarding the Convention on the Law the Sea which is on the agenda of this Session, the President of the State of Palestine has signed this Convention, but the occupation deprives us of exercising our jurisdiction over our maritime areas as the riparian State of the Mediterranean and the occupier state continues to violate all our legitimate rights under the Convention on the Law of the Sea.

Palestine has recently acceded to thirteen conventions on international trade, the World Customs Organization (WCO) and the United Nations Industrial Development Organization (UNIDO). However, Israel continues its violations and denies Palestine of exercising its sovereignty and benefiting from the rights established by international conventions.

The legal situation in Palestine cannot be addressed without reviewing the implications of the Israeli occupation of Palestinian territories and human rights violations therein, the obstacles that the occupying power places on justice and Rule of Law, Israel's violations of the international conventions and treaties and the continuous crimes committed by the occupying forces and settler gangs against our people, our land and holy sites. Also, the status and implications of the laws approved by the Israeli Knesset, primarily, the Israeli law which allows the detention and trial of Palestinian children who are less than 14 years of age, the Regularization Bill legitimizing the settlements and to expropriate the

Palestinian owned lands and private properties, the law which allows cutting Palestinian tax revenues under the pretext that these allocations are paid for martyrs' and detainees' families, as well as other discriminatory laws need to be examined.

Israel has reached the extreme levels of extremism, racism and discrimination by issuing the so-called Nationalism and Jewish State Law, based on racial and religious discrimination, institutionalizing, and legalizing the apartheid regime, which no longer has a place in civilized world. It provides for the exclusive right of Jews and the Jewish State, undermines the two-State solution, grants the right of self-determination exclusively to Jews, and ignores the presence of the Palestinian people and their right to self-determination. It provides for the encouragement of settlements as a Jewish national value, the encouragement of Jewish emigration from the across world to Israeli settlements, and the denial of the rights of more than six million Palestinian refugees and the denial of UN resolutions that safeguard their right of return and compensation, especially General Assembly Resolution No. 194.

Moreover, the so-called nationalism law denies the rights of Palestinian Arabs who live in their own towns and villages in the occupied Palestinian territories in 1948 and are subject to the State of Israel's jurisdiction and exposes them to policies of racial, ethnic and religious discrimination and makes them subject to further pressure, oppression, marginalization and denial of their legal and human rights in order to uproot them of their lands and evacuate its inhabitants. The law violates Jerusalem and its holy sites and its original owners and stipulates that East and West Jerusalem is considered a complete and unified capital of the State of Israel in a clear denial of the rights of the people of Jerusalem and in flagrant defiance of all the UN General Assembly and the Security Council Resolutions that considered East Jerusalem an integral part of the occupied Palestinian territories in 1967 and the capital of the State of Palestine.

Israel is utilizing all its legislative, executive and judicial powers to violate the Palestinian citizens' rights and to violate the international law and international humanitarian law. Recently, the Israel Supreme Court issued a decision to demolish and evacuate Khan Al Ahmar community, to forcibly displace its residents and inhabitants and to confiscate its lands to establish the Israeli settlements in violations of human rights stipulated by international treaties and conventions and to finalize the settlement project and liquidate the Palestinian cause.

Therefore, I would like to stress that the occupation and all forms of its violations contribute in weakening the national and international justice system and the international legal and judicial cooperation, depreciation of the jurisdiction and the sovereignty of the Palestinian State, hindering fair trial, law enforcement, and the implementation of judicial rulings and violating human rights and legitimate indispensable rights of our people who

is committed to the international law, justice and international legitimacy and is fighting by all legitimate means for freedom and independence and for establishing its independent state on all Palestinian lands with Jerusalem as its capital.

The rules of international law, the Charter of the United Nations and its purposes and objectives face today the most serious challenge in the history of the United Nations. The decision of the United States' administration to move its embassy to Jerusalem has been a slap and an attack on the norms of international legitimacy, international law and UN resolutions.

We are looking forward for the deliberations on "Israel's violations of international law and its violations of the rights of our people" on the agenda of this session. We hope that AALCO will utilize its potential, expertise and close relations with the UN bodies, agencies, legal committees and specialized commissions to find legal means to implement international law and agreements, to oblige Israel to stop its violations of international law and conventions, to consider the Israeli Nation-State Law as a discriminatory law, to materialize the resolutions of the UN General Assembly and the Security Council regarding the illegality of settlements, to provide the international protection to our people, to continue supporting and funding UNRWA, to oblige the US Administration to respect its international legal obligations and to reverse its decision regarding the relocation of its embassy to Jerusalem.

The next phase strategy, as announced by the President of the State of Palestine in his speech at the United Nations, is based on the international legitimacy and the principle of reciprocity. The President reiterated the commitment of our people to peace on the basis of international law, international legitimacy principles and UN resolutions as the only reference to resolve the Palestinian cause. He stressed the absurdity of all deals and attempts to create fake alternatives to the negotiations reference in order overlook the role of the United Nations and to allow the lawlessness. He also announced that we would not accept other than the principle of reciprocity which was adopted by international and sacred laws and that parallel obligations and pledges allow for each party to meet its own commitment and obligation. The non-commitment of the US Administration and Israel to its signed international obligations and agreements abolishes our parallel commitments and obligations. It is required that the United Nations obliges the US' administration and Israel to stop its violations and to respect its obligations under international laws.

On the occasion of the twentieth anniversary of the ICC Rome Statue, I would like to extend my congratulations in the name of Palestine on the election of Nigerian Judge Chile Eboe-Osuji as the President of the ICC for a 3-year term. I also extend my congratulations on the election of six new members to the ICC for a 9-year term. I hope that President of the Court and its honorable judges will contribute to the protection of

Palestinian People from the crimes of occupation by holding Israelis accountable of their war crimes, crimes against humanity and crimes of aggression against our people.

On this occasion, I would also like to extend my congratulations on the election of five new judges to the International Court of Justice, who were elected to nine-year terms of office in 2018. I wish them success in achieving justice and restoring the standing of international law and international organizations.

Finally, I hope that this session of AALCO will have important conclusions that will contribute to enhancing the legal guarantees of protecting human rights and basic freedoms, fighting crime at national and international levels, ending all forms of discrimination and all forms of occupation and aggression, and applying rules of international law and international humanitarian law, as well as international conventions and treaties on all countries and people without exception. Thank you.

President: I thank the distinguished Head of Delegation of Palestine. Next in my list is Kuwait, followed by Malaysia. I invite the distinguished Head of Delegation of State of Kuwait to make his statement.

His Excellency Mr. Ali Al Salman, Ministry of Justice, Head of Delegation of the State of Kuwait[6]:

In the name of Allah the Most Merciful and beneficent!

H.E. Prof. Dr. Kennedy Gastorn, Secretary General of AALCO, Your Excellencies, Heads of Delegations, Ladies and Gentlemen, I extend to all of you the highest bonds of friendship and appreciation, and I wish this distinguished meeting would achieve its objectives.

Ladies and Gentlemen, there is no doubt that agenda of this session has a number of pragmatic topics of critical importance to our Member States. In this context, the State of Kuwait is fully convinced that the achievement of fair demands of the people for self-determination, giving them free choice and ensuring livelihood and peace, represent, in its essence, the pillars of civilization advocated by all religions and divine laws. This is the reason to include Palestinian issue on the agenda of the Organization since its Twenty-Seventh Session in Singapore in 1988. In this regard, we affirm that we cannot overlook the violations by Israeli occupying authorities contradicting all international norms, instruments and conventions on human rights and rights of occupied people for self-determination.

[6] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Similarly, the delegation of our country attaches a great deal of attention to the items of our agenda, the most important of which is the violation of international law in Palestine and other occupied territories by Israel and other international legal issues related to the question of Palestine. Other topics include law of the sea, peaceful settlement of disputes and also issues related to the work of the International Law Commission. With reference to peaceful settlement of disputes, we thank the Secretary-General of AALCO for his efforts to prepare the preliminary study on the peaceful settlement of the disputes upon the request of host country of this session – Japan.

To complement its efforts to maintain peace, to promote the peaceful settlement of international disputes, to expand the scope of law-enforcing authority, and to support international justice, the State of Kuwait, under the Law 13 of 2003, has acceded to the Hague Convention of October 18, 1907 along with its annex on the rules of the procedures issued in the Hague on September 19, 1900 and the rules related to the operation of the International Bureau of the Permanent Court of Arbitration in the Hague on December 8, 1990.

We also look forward to Japan hosting the 14th United Nations Congress on Crime Prevention and Criminal Justice in 2020. We reiterate our full support for the success of this Conference, where the State of Kuwait would participate as a member after his election to the Commission on Crime Prevention and Criminal Justice for the years 2019-2020.

At the end, I extend my deepest thanks and appreciation to all of you, and I hope that our distinguished Organization would achieve its ideals and noble goals. Thank you for listening attentively and May God help us explore the topics and agenda items productively. I wish you all success. May Peace, Mercy and Blessings of Allah be upon you.

President: I thank the distinguished Head of Delegation of Kuwait. Now I invite the distinguished Head of Delegation of State of Malaysia to make her statement.

Her Excellency YM Datuk Engku Nor Faizah Engku Atek, Solicitor General of Malaysia and The Head of The Delegation of Malaysia: H.E. Mr. President, H.E. Secretary-General of AALCO, Excellencies, Distinguished Delegates, Ladies and Gentlemen. On behalf of my delegation, I would like to express our heartfelt appreciation to the Government of Japan for its gracious hosting of the Fifty-Seventh Annual Session of AALCO.

Mr. President, allow me also to express my congratulations to you on your election as the President of the current Annual Session. I believe that under your skilful presidency, this Annual Session will turn out to be a success and we look forward to working with you under your leadership.

Our deepest appreciation is also due to H.E. Secretary General of AALCO, the Deputies Secretary General of AALCO and the AALCO Secretariat for organizing this year's AALCO Session and its related events. My delegation is deeply appreciative of the arrangements made for this Annual Session.

Mr. President and Distinguished Delegates, the Rule of Law was the catch phrase during Malaysia's watershed general election in May this year. The world is aware that a new Malaysia arose from the recent 14th General Election in May 2018, which saw the exercise of power by Malaysians resulting in a new government for the first time in six decades, since our independence in 1957. The newly elected government vouched to return the Rule of Law by ensuring the independence and integrity of key national institutions and government agencies.

There are many different variations and understanding for the rule of law, but the Honourable Prime Minister, Tun Dr. Mahathir Mohamed has expressly stated that the rule of law goes well beyond written law. It is about accountability, just laws, open government and access to an independent judiciary. In general terms, the people should obey the law and be ruled by it. But in political and legal theory, it has come to be read in a narrow sense that the government shall be ruled by the law and be subject to it. The ideal of the rule of law in this sense is often expressed by the phrase "government by law and not by men".[7]

In this regard, His Royal Highness Sultan Azlan Shah, the late King of Malaysia and the former Lord President of the Federal Court of Malaysia (Malaysia's apex court), had expounded that-

> "We must steadfastly keep reminding ourselves all the time that we are a government by laws and not by men. In a government of men and laws, the portion that is a government of men, like a malignant cancer, often tends to stifle the portion that is a government of laws. Any branch of the government which disregards the supremacy of the law is seen to be acting discordantly with the constitutional system from which its legitimacy is derived. The Constitution is the supreme law of the land and no one is above or beyond it. And the Court is the ultimate interpreter of the

[7] Constitutional Monarchy, Rule of Law and Good Governance (Professional Law Book Services, 2004), p. 13.

> Constitution: it is for the Court to uphold constitutional values and to enforce constitutional limitations. This is the essence of the Rule of Law."[8]

Mr. President and Distinguished Delegates, as we all know, global governance refers to "the sum of the many ways individuals and institutions, public and private manage their common affairs".[9] The term also refers to international, interstate, intergovernmental and transnational relationships as well as domestically. Global governance encompasses the totality of institutions, policies, norms, procedures and initiatives through which States and their citizens try to bring more predictability, stability and order to their responses to transnational challenges.

While developing countries must abide by or shoulder the effects of global governance rules and regulations, they have limited influence in shaping them. Malaysia supports the view of the United Nations regarding global governance, which provide for four principles that are critical to guiding the reforms of global governance and global rules. They are as follows:

(i) Common but differentiated responsibilities and respective capacities;
(ii) Subsidiarity which means that issues ought to be addressed at the lowest level capable of addressing them;
(iii) Inclusiveness, transparency, accountability; and
(iv) Responsible sovereignty:

Mr. President and Distinguished Delegates, Malaysia observes that the concept of international rule of law has three distinct approaches as follows:

(i) The first is anchored on the obligation of states to comply with their international legal obligations;
(ii) The second draws on an analogy with the domestic rule of law; and
(iii) The third begins from the observation that states invoke international law to explain and justify their policies - or another means of political legitimisation.[10]

In this regard, the conventional account of the international rule of law defines it in terms of the obligation on states to comply with their legal commitments. In other words: States are free to take on legal obligations as they see fit but once they do they are required to comply with them.

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[8] Constitutional Monarchy, Rule of Law and Good Governance (Professional Law Book Services, 2004).
[9] The Commission on Global Governance 1995, p.2.
[10] Ian Hurd, Three models of the International Rule of Law, p. 38

Accordingly, compliance is widely seen as a legal, political, and moral imperative for States. Hence the legal obligation to comply is institutionalized in the principle of *pacta sunt servanda* and in the good faith clauses that appear in many international treaties, including in the Vienna Convention on the Law of Treaties. Consequentially, moral obligation is usually assumed to lead to normatively good outcomes, at least as compared with the consequences of violation. It is also a key political obligation, in the sense that a consistent record of compliance is taken to be a marker of appropriate international behaviour-and its opposite is seen as a danger.[11]

If I may quote Madeleine Albright from her speech addressed before the Institute for International Economics, who defined rogue States as "those who, for one reason or another, do not feel that they should cooperate with the rules that have been established by other nations of the world".

Human rights, international stability, and perhaps even the progress of civilization itself are said to be dependent on compliance with international law.

Therefore, compliance to international obligation itself is not self-evident or objectively ascertainable. Indeed, it is no simple matter to determine whether the act of a state constitutes "compliance" or noncompliance with its legal obligations. To identify compliance as opposed to violation of international law requires several interpretive moves, each of which entails much controversy.

Mr. President and distinguished delegates, whenever a State is faced with the difficulties in making sense of "compliance", it would be easier to see international Rule of Law as a derivative function of the domestic Rule of Law. This is natural due to the states source of power which is domestic validation. The validation allows the State the authority to act in the international sphere.

In Malaysia, the Government is cognizant of its international obligations as the State Parties to three core conventions on human rights, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child 1989 (CRC) and Convention on the Rights of Persons with Disabilities 2006 (CRPD) and continues its commitment to ensure that the rights of Malaysian women and girls, children and persons with disabilities are safeguarded.

Although Malaysia is not a State Party to the remaining 6 international human rights instruments, the Government remains committed towards ensuring that Malaysia's legislative framework complies with the fundamental principles expounded in the core

[11] Ibid, p. 39.

Conventions. The accession to these remaining international human rights instruments can only be carried out after a clear policy direction is made followed by amendments to key provisions of the Federal Constitution of Malaysia and other domestic laws.

Therefore, as any accession to a treaty is the sovereign right of the State, Malaysia will only decide on the possible accession when the relevant policies, administrative and operational procedures as well as the domestic legal framework are in place to ensure full compliance with international obligations. To that effect, I would like to quote the Honourable Prime Minister, Tun Dr. Mahathir Mohamed who stated at the 73rd United Nations General Assembly that "... the new government of Malaysia has pledged to ratify all remaining core UN instruments related to protection of human rights. It will not be easy for us because Malaysia is multi ethnic, multi religious, multicultural and multilingual. We will accord space and time for all to deliberate and to decide freely based on democracy".

It gives me great pleasure to inform that there is an Interagency Standing Committee established to study the feasibility of Malaysia acceding to the remaining 6 human rights instruments.

Mr. President and Distinguished Delegates, Malaysia recognizes that multilateral treaties play an integral role towards the development of comprehensive international legal frameworks including by ensuring that the rule of law acts as the basis for inter-state relations, be they between developing/emerging and developed States, or States that are large and small. In this regard, Malaysia pays heed to the Preamble of the UN Charter which underlines the collective resolve of Member States "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". By embracing the multilateral treaty making process, Malaysia is indeed contributing towards the enhancement of universality in international law principles, consolidation of international consensus, establishment of accountability of States in their actions and the facilitation of the peaceful settlement of disputes.

Malaysia's participation in multilateral treaty making forums as a developing nation however, has not come without its challenges. These challenges include limitations to manpower and financial resources, and at times expertise in the relevant treaty fields or subject matters.

As a small but committed negotiating partner, Malaysia has learned to overcome some of these challenges through participation ineffective regional groupings, which have allowed for considerable influence over the multilateral negotiations in which Malaysia engages. Malaysia has also engaged in inter-regional networks involving the interaction among

different regional groups to resolve issues and further achieve like-minded positions. In addition, Malaysia continues to pursue capacity-building opportunities for its legal experts and treaty negotiators, especially in highly specialised legal areas of treaty coverage.

In terms of the substantive aspects of treaty negotiations, the interaction of multifaceted areas of law in traditional subject-matter treaties has also posed a challenge for Malaysia. The negotiation of trade and investment instruments or FTAs is a notable example on point. Malaysia recognizes that the global trade and investment regime has a profound impact on human rights, given that the promotion of economic growth in itself may not lead to the desired equitable outcomes.

Malaysia recalls General Assembly resolution 67/171, which affirms human rights as a guiding consideration for multilateral trade negotiations. The resolution calls for mainstreaming of the right to development and strengthening of the global partnership for development within international trade institutions.

Notwithstanding, trade and investment regimes have increasingly developed overlaps with non-traditional areas in trade instruments such as human rights and the environment. These added elements to trade and investment entail the consideration of how Malaysia's obligations under trade/investment law agreements might impact on its ability to fulfil other additional obligations, what measures Malaysia should be taking to ensure positive impacts and avoid negative impacts and consideration of action to mitigate those negative impacts.

Since Malaysia is currently an active negotiator and participant in upcoming Regional Trade Agreements (RTAs) and Mega Regional Trade Agreements (MRTAs) namely the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP), it is pertinent for Malaysia not only to ensure that these agreements reinforce WTO principles and safeguards, but also that they will be fair to Malaysia and its regional partners in the long term so as not to cause diversion from our own internal and domestic traders.

To this end, irrespective of the emergence of new RTAs and MRTAs Malaysia takes cognisance that the risk of trade diversion remains significant in many developing countries who have already reduced tariffs to low levels if not already to zero on a vast majority of imported goods. Malaysia also observes that internal trade diversion as opposed to diversion to third states is also a key concern, more so among the many developing and emerging economies. As such, other measures to preserve policy and regulatory space should be considered insofar as they do not undermine existing WTO obligations.

Mr. President and Distinguished Delegates, allow me to conclude by saying that Malaysia is experiencing a resurgence of the rule of law and the restoration of good governance through inclusiveness, transparency and accountability.

Accordingly, Malaysia hopes that once it has fully restored the domestic rule of law and good governance, Malaysia will be able to stand on an equal footing with the other developed countries. Similarly, AALCO should continue to ensure the international Rule of Law and global governance are not only adhered too but continuously enhanced as the voice of the legal fraternity in Africa and Asia as well as in the international fora. Thank you, Mr. President.

President: I thank the distinguished Head of Delegation of Malaysia. Next in the list is UAE. I invite the distinguished Head of Delegation of United Arab Emirates.

His Excellency Ahmed Abdulraman Aljarman, Assistant Minister for Human Rights and International Law, Ministry of Foreign Affairs and the Head of the Delegation of the United Arab Emirates[12]: H.E. Mr. Masahiro Mikami, H.E. Prof. Dr. Kennedy Gaston, Secretary-General of AALCO, Ladies and Gentlemen, we congratulate you for your assumption of the presidency of the Fifty-Seventh session of Asian-African Legal Consultative Organization (AALCO). I also take this opportunity to extend my thanks to Professor Githu Muigai, the President of Fifty-Sixth session for his brilliant management of the work of previous session. Likewise, I would thank to Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO for the steps that he has taken to promote the work of this Organization. I also appreciate the comprehensive report prepared by him which is an important milestone in the work of the organization.

Mr. President, the organization of this Session aimed at supporting and promoting the cooperation among Asian and African nations and monitoring important developments in the field of international law, including developments in cyberspace.

Given the burgeoning use of electronic transactions in social, economic and political arenas along with commercial transactions and dangers resulting from the misuse of this space, UAE has worked with a number of countries to ensure cyber security and it has promulgated a law to fight cybercrimes in 2012, which was amended in 2016. This law was backed by a number of structural policies and technical standards to enable the users of cyberspace and service providers to obtain the necessary security conditions to protect data, infrastructure and sensitive system, along with protecting the users. UAE is

[12] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

convinced that ensuring digital and IT security is the way to ensuring economic and social security.

UAE realized very early the importance of the access to the field of artificial intelligence. For this purpose, a city of technology has been established, and the application of this knowledge has been introduced in different fields of the activities, be it the development of smart government, in the field of education or in the field of industry by exploiting the potential of cyberspace. We realize the importance in the international law in order to formulate international and national legal rules to protect information and data generated as a result of using computers and websites, communication tools, especially data related to the national security of the states.

Mr. President, UAE affirms that multilateral trade and investment regime has played a very important role in opening the borders to facilitate investment and trade in the framework of rules-based system by providing a reliable and robust mechanism for the settlement of commercial disputes. UAE stresses its commitment to support World Trade Organization in order to adopt best standards and practices to pursuance of facilitating global trade.

UAE reiterates the importance of creating a world of peace and security and that would achieve prosperity and development for all peoples. My country believes that the objectives of this Organization can be achieved by taking an active and responsible role towards the global and regional issues through dialogue and participation, by promoting peaceful solution of disputes and by creating suitable environment for amicable international relations based on the principles of good neighbourliness, moderation, tolerance, renunciation of violence and extremism and non-interference in the internal affairs of the countries.

UAE expresses its deep concern regarding all forms of extremism and terrorism in the region which has now become a serious threat to international peace and security. Terrorism, apart from being a violation of human rights, threatens values and ethos of a nation, tears its social fabric and destroys its development achievements and human and cultural heritage.

We, in UAE, see that extremism and terrorism are two faces of the same coin. So we have to adopt a multi-dimensional comprehensive vision to counteract these extremist thoughts. This vision should take into its consideration the cultural and intellectual dimensions which feed these thoughts and its reasons should be diagnosed and its discourse should be dismantled. For that reason, we established a centre for fighting these thoughts and to stop its proliferation among the youth through social media. We also have launched a number of initiatives to fight extremism such as *Hedayah*, an

international centre of excellence for Countering Violent Extremism (CVE), a forum for promoting peace among Muslims.

Mr. President, the Palestinian people are still suffering from daily violation of international humanitarian law and human rights by Israel in occupied Palestinian territories. We reaffirm our country's firm stance towards Palestinian issue for achieving lasting and comprehensive solution and the establishment of an independent Palestinian state following the borders of 4 June 1967, and Jerusalem as its capital, as per the resolutions of the UN and Arab initiative of peace.

We see with great concern adverse developments over the Palestinian issue, the latest of which was USA's decision to stop its financing to The United Nations Relief and Works Agency for Palestine Refugees (UNRWA), which would complicate the issue of Palestinian refugees. We also reiterate our rejection of American decision to recognize Jerusalem as the capital of Israel and moving its embassy to that city.

UAE also stresses that peaceful means are the best way to find solutions of Libyan, Yemeni and Syrian crises in accordance with internationally recognized terms of reference, shielding the peoples of these countries from more tragedies and pain.

Mr. President, at the end, I hope that the work of this Session would conclude with success and would yield positive results. Thank you for listening attentively.

President: I thank the distinguished Head of Delegation of United Arab Emirates. Next in the list is Uganda. After this statement, I propose that we take a coffee break. Now, I invite the distinguished Head of Delegation of Uganda.

His Excellency Mr. William Byaruhanga, Attorney General and the Head of the Delegation of the Republic of Uganda: Excellencies, Leaders of delegations, Members of the AALCO Secretariat, Distinguished Ladies and Gentlemen, allow me to begin my remarks by most sincerely thanking the people and the Government of Japan for hosting this Fifty-Seventh Annual Session of the Asian-African Legal Consultative Organisation and for the warm hospitality that our delegation has been accorded since our arrival. We are extremely grateful. I take this opportunity to congratulate us on choosing an appropriate overarching theme for this session, i.e. "Global Governance and International Rule of Law" which is going to give essence to our discussions over the next five days.

Mr. President, Ladies and Gentlemen, discourse on global governance has been taking place in many forums around the globe for many years, particularly since 1995 when the world celebrated 50 years of the United Nations. The term is now widely understood to refer to not just the conventional bodies of international security and economic

management such as the UN and the World Trade Organization, but also the overlapping and interlocking of institutions found across issues and regions, and the increasing body of non-state actors, broadly termed "international civil society". It has also been defined to mean governing, without sovereign authority, relationships that transcend national frontiers; or, doing internationally what governments do at home.

On the other hand, the term "international rule of law" connotes the idea that everyone - institutions, states and individuals must abide by the law. This concept is embedded in the Charter of the United Nations whose preamble states as one of the aims of the UN "[establishing] conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." In addition, the Charter under Article 1(1) sets out as a core purpose of the UN "[the bringing] about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

Mr. President, Ladies and Gentlemen, what makes the theme for this session very appropriate (and the expected discussions timely) is the fact that presently there is an undeniably evolving international economic and political state of play that, by most accounts, represents a profound challenge to conventional thinking on and approaches to (1) international cooperation and integration; and (2) the civic culture of the state as a unitary actor on the international stage.

The world is witnessing the rebirth of unilateralism and economic nationalism; the progressive crystallization of the challenge to the legitimacy of the nation state as the custodian of the national development agenda and the embodiment of sovereignty by indefinable transnational forces; the rollback of international consensus on key issues from trade liberalization to climate change; and, the resort to unilateral measures, outside of inclusive global architectures such as the UN and the WTO, in the conduct of international affairs. In addition, the precise and practical meaning of "international rule of law" is increasingly being called into question.

Mr. President, Ladies and Gentlemen, AALCO is in a unique and privileged position to discuss, with a view to shaping or, at least, contributing to the developing discourse on the said issues. We will be advocating an interrogation of whether the trends signal a fundamental flaw in the conceptual basis of conventional thinking: or the failure of the conventional approach to deliver the common good and protect universal interests; or, merely, the return of great power political contestations.

My country is are always more than ready to be part of any discussions aimed at finding ways of restoring and strengthening the integrity of the rules-based system. My

delegation looks forward to deep, open and objective discussions around these issues during this session and the others to come. I thank you.

President: I thank the distinguished Head of Delegation of Uganda. Now we go for a coffee break.

President: I would like to resume the meeting. I invite the distinguished Head of Delegation of the Kingdom of Saudi Arabia.

His Excellency Hon. Shaikh Saad Alsaif, Deputy Minister of Justice and the Head of the Delegation of the Kingdom of Saudi Arabia[13]: H.E. President of the Fifty-Seventh Session of AALCO, H.E. Secretary-General of AALCO, H.E. Heads and Members of Delegation, Distinguished Observers, Ladies and Gentlemen,. At the outset, I would like to congratulate the president of the session and his deputy for the confidence they enjoy from the members of participating delegations and we wish them success in organizing this Session and coming out with outcomes in line with the importance of the Organization.

Ladies and Gentlemen, the agenda of the session mentions several important topics and we hope that it would receive the attention and its share of studies and discussion to achieve the desired objectives of this meeting. The Kingdom of Saudi Arabia pays close attention to the work of the AALCO, one of the most important and oldest legal organizations in the world.

Ladies and Gentlemen, Palestinian issue comes at the top of all the issues in the international arena, especially sufferings of Palestinians and violations of international law, especially the Fourth Geneva Convention of 1949. From the beginning of the Palestinian issue, the Kingdom of Saudi Arabia has stood by the Palestinian people, and in all international forums, the Kingdom supports their entitlement of self-determination and emphasizes the renunciation of violence in all its forms and mass displacement being practiced upon the Palestinian people. Ignoring its legitimate rights to self-determination and to live in peace is a clear violation of human rights and international law and UN resolutions.

Ladies and Gentlemen, another important topic is “International Law in Cyberspace”. In response to the modern technological revolution, the Kingdom of Saudi Arabia has promulgated a law to fight IT crimes penalizing wrongful practices and the attacks on the privacy by using different electronic networks and tools. The Kingdom of Saudi Arabia

[13] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

has established National Authority for Cyber Security on 23/8/2017. To ensure effective functioning of this body, it has assigned a chairperson of ministerial level to lead it.

Ladies and Gentlemen, international investment and the movement of capital have become the backbone of the commercial life. Realizing the importance of foreign investment in the Kingdom, an investment authority has been established and assigned to organize the international investment activity. It has issued a number of international investment licenses to attract investment in the Kingdom. The authority organizes investment activities in the Kingdom. In order to address the commercial disputes that may arise, special courts have been set up.

Ladies and Gentlemen, terrorism and extremism are two faces of the same coin. One of outcomes of extremism is terrorism. I would like to emphasize that the Kingdom is one of the first countries to sign on regional and international agreements to fight the terrorism. I would like to indicate that terrorism is not associated with any religion and culture It is a disgraceful behaviour rejected by all religions and cultures around the world. In this context, I would invite all to join hands to address the curse of extremism and terrorism and effectively implement international agreements to counter it, choke its resources and financing. The Kingdom has suffered from the terrorism and has made great efforts to fight it.

Sensing the danger of terrorism on the communities and nations, the Kingdom has called for the establishment of an international centre to fight terrorism in 2005. In 2011, the agreement for the establishment of UN centre for fighting terrorism has been signed and the Kingdom has supported it with 10 million USD. In 2013, it further supported it with 100 million USD.

Ladies and Gentlemen, among the agendas of the session is the Japan's proposal to enlist the topic "peaceful settlement of the disputes". We see the proposal deserves the full support and a study under the scope of international law with a special emphasis on the judicial and diplomatic ways to the peaceful settlement of disputes. The friendly ways to find solutions to disputes among the conflicting parties should not be overlooked. We, the Kingdom of Saudi Arabia, support the introduction of this topic to the agenda and support its discussion in the future Sessions too.

Ladies and Gentlemen, in the end, I would like to extend my thanks to the government of Japan for hosting this session. It deserves praise and appreciation for the efforts that it made. I would also offer my thanks to the Secretary-General of AALCO and his deputies and the Secretariat for their distinguished efforts in preparation of the events. Thank you for listening attentively.

President: I thank the distinguished Head of Delegation of Saudi Arabia. Now I invite the distinguished Head of Delegation of the Sultanate of Oman to make his statement.

His Excellency Hon. E. Abdullah Mohamed Said Al Saidi, Minister of Legal Affairs and the Head of the Delegation of the Sultanate of Oman[14]:

In the name of Allah, the Most Merciful and Beneficent!

Your Excellency Mr. President, Excellencies, Heads of Delegations, Distinguished Delegates and Observers, At the outset, I would like to congratulate the President and Vice-President on being elected to conduct the Fifty-Seventh Session of the Asian-African Legal Consultative Organization assuring you of our full support and cooperation. I also commend the seamless management of the President of the previous session and for the efforts made during his presidency.

My delegation and I are also pleased to extend our sincere greetings and appreciation to all participants who have responded to the Organization's invitation to contribute to the works of this session, enriching it with their opinions and honest visions. This would allow for the exchange of views, as well as benefit from the experiences of the States in multiple areas, which will in turn lead to further development and prosperity in our societies.

We would also like to express our deep appreciation to H.E. the Secretary-General of the Organization for his constructive efforts since presiding over the Secretariat, which we hope will continue and be supported by all Member States. I would also like to thank you, Mr. President, and the Secretariat for giving me the opportunity to share the position of the Sultanate of Oman on some of issues at hand.

Distinguished delegates, as you are well aware, the marine has always been highly important since eternity, they are not merely a means of communication, but an important natural resource and an essential element for maintaining the ecological balance of universe. This all has to be met with attention and care, as it is a responsibility shared by all States and all is to benefit without exception, particularly with the increasing frequency of global warming, accelerated exploitation of living and non-living resources, and resultant pollution to the marine environment.

The Asian-African Legal Consultative Organization has played a prominent role in this area as it has contributed to the development of the rules contained in the 1982 United Nations Convention on the Law of the Sea, mainly the provisions relating to the

[14] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Exclusive Economic Zone, Archipelagic States, and the rights of Land-Locked States. The 1982 Convention has thus become a Constitution of the seas and the general legal framework governing all uses and activities related to the sea.

As a continuation of this positive role, and in support of the international efforts and endeavours aimed at creating frameworks and systems complementary to the provisions of the 1982 Convention on the Law of the Sea, which aim to eliminate illegal, unreported and unregulated fishing, regulate exploration and exploitation activities of the natural resources in the Area, conserve the marine biological diversity beyond the limits of national jurisdiction, and prevent marine pollution, it is natural for our Organization, in accordance with its competencies, to have an active role in this regard and reflect Member States' opinions and visions on these important issues in international forums.

Nevertheless, this does not entail that Member States are spared from their roles; noting that the Sultanate of Oman attaches a great deal of importance to the environment and its elements, whatever their type, nature, utilization and preservation. To reflect upon the importance it has geared towards the environment, the Sultanate of Oman established an independent Ministry solely focused on preserving the environment, enacted the necessary legislations, participates actively in multiple international and regional Organizations, and entered into international agreements that are of relevance.

Mr. President, as is the case with the Law of the Sea, the issue of international trade and investment is not of lesser importance. We live in an age of globalization and no State can distance itself from the others, quite the opposite, dealings between countries are increasing and expanding through time. This matter is not new to our esteemed Organization, due to its transformative nature it has been present on a periodical basis, which therefore requires that our Organization re-examines the matter occasionally.

As you are aware, the multilateral international trade track had been facing some complications, especially after the halt of the Doha Round, of which its agenda have yet to be achieved, consequently, leading to the emergence of another track, namely the regional free trade agreements or between economic blocs, which will undoubtedly have an impact on the first track as well as on other States, knowing that more than half of the World Trade Organization Members are developing States. Hence, both tracks should be harmonious and complement one another; not at the expense of each other, especially in relation to that everyone desires without which international trade will not be fruitful. In recognition of this, the Sultanate of Oman – pursuant to Royal Decree 36/2017 – has ratified the Protocol to amend the Marrakesh Agreement to establish the World Trade Organization under the label "Trade Facilitation Agreement", which thus contributed to this amendment being entered into force on 22 February 2017.

When speaking on the matter of international trade and investment, intellectual property appears in the picture in a way that has become difficult to disintegrate international trade and investment from intellectual property. With regulations and legal frameworks in place that regulate and protect intellectual property in all its forms; international trade thrives and foreign investments and inventions flow into modern sectors. However, this should not be a factor to neglect some of the special requirements of least developed countries particularly those related to the health sector, and transfer of technology and knowledge. The amendment made to the TRIPS Agreement is one example in this regard, which the Sultanate of Oman also ratified pursuant to Royal Decree 35/2017. In this context, it will be essential for the Secretariat to follow developments that are taking place in this specific area due to its evolving nature as abovementioned and to allow our organization becomes close from events when they happen, which will then help it to do what is required on time.

Distinguished delegates, our esteemed Organization has consistently included in its agenda legal issues that are at the top of the international community's interest for discussion by Member States, as well as by a selection of specialists and experts. This has contributed in making our meetings more efficient and added to the intellectual and legal knowledge of the participating delegations. While highly appreciating this, we therefore believe that the matter "Peaceful Settlement of Disputes" proposed by the Government of Japan will represent a new addition to the Organization's work.

In this regard, one cannot doubt the importance of maintenance of international peace and security, denounce all that leads to fragmentation in international relations, and that the values of justice, cooperation, peaceful coexistence, and rule of law prevail instead between all nations so as not to waste resources and capacities on conflicts and disputes, but on achieving security, development and stability. This approach has long been advocated and adopted by the Sultanate of Oman in its relations and dealings with other States. The Sultanate of Oman has always asserted in international forums its support for the principles of peace, justice, tolerance, dialogue, non-interference in the internal affairs of other States and peaceful settlement of disputes, all pursuant to the principles and provisions of the Charter of the United Nations and the rules of international law. This all promotes mutual respect for the sovereignty of States, which in return preserves the security and stability of States.

As you are aware, the peaceful means to settle disputes of various kinds are multiple, as have been confirmed in a number of international instruments, most importantly, the Charter of the United Nations, to which we are all parties. The Charter requires parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution by negotiation, enquiry, meditation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements,

or other peaceful means of their own choice. The concerned parties are entitled to choose the peaceful method that is most suitable to resolve any dispute that may arise between them either bilaterally or by resorting to a third party. This is the approach we should follow, as resorting to un-peaceful means of resolving differences or disputes will only aggravate the situation and make it worse rather than offer a solution.

In order to achieve the desired benefit from presenting this matter, it might be appropriate to have further discussions on it via the exchange of views and experiences among Member States. In doing so, we must also take into consideration the current situation of the methods followed to resolve disputes in a peaceful manner in the various areas of international law and the proposals put forward internationally to develop such methods. We already appreciate the valuable role to be undoubtedly played by the Secretariat in this regard.

Mr. President, to conclude, it is a pleasure for me and my delegation to express our sincere gratitude and deep appreciation to the Secretariat staff for their constructive and ongoing efforts in the preparation and follow-up of decisions and recommendations, in particular the Secretary-General and his deputies. We would also like to extend our sincere appreciation to the Government of Japan for the warm welcome we have received and for their generous hospitality. Wishing everyone success, prosperity and global peace. Thank you. May Peace, Mercy and Blessings of Allah be upon you.

President: I thank the distinguished Head of Delegation of Sultanate of Oman for his statement. Now I invite the distinguished Head of Delegation of Nepal to make the statement. The distinguished delegate with speak in his own language but the interpretation is provided. Sir, please.

His Excellency Hon. Bhanu Bhakta Dhakal, Minister for Law, Justice and Parliamentary Affairs and the Head of the Delegation of the Federal Democratic Republic of Nepal[15]: Mr. President, Your Excellencies, Ministers and Ambassadors, Mr. Secretary-General, Distinguished Delegates, Participants and Observers, Ladies and Gentlemen, At the outset, I, on behalf of the Nepali delegation and on my own, would like to congratulate you, Mr. President, on your unanimous election to the high office of the President of the Fifty-seventh Session of the Asian-African Legal Consultative Organization. I am fully confident that your knowledge, experience, contribution and high understanding would help further strengthen and revitalize the Organization, and I wish you every success during the term of your office.

[15] English translation as provided by the delegation of Nepal.

I would also like to extend my sincere thanks and appreciation to the outgoing President Prof Githu Muigai for valuable contribution to the Organization.

I would also like to convey my warm felicitations and congratulations to Mr. Maneesh Gobin on election as the Vice-President of this Session. I would also like to commend Secretary-General and other AALCO staff for their contribution.

Mr. President**,** I really appreciate the inspiring inaugural address by H.E. Mr. Taro Kono, Minister for Foreign Affairs and H.E. Mr. Takash Yamashita Minister of Justice of Japan, Government of Japan. I have realized that his/her inspiring words have symbolized the importance attached by the Government of Japan to this Organization and provided invaluable guidance for future direction of the Organization.

Me President, AALCO is the only Organization, dealing with legal matters, that consists of member states from both Asia and Africa. AALCO has made significant contribution to the codification and progressive development of international law, by providing its opinions to the General Assembly of the United Nations and its Sixth Committee and the International Law Commission. Substantive matters on the agenda of the International Law Commission like Jus Cogens, Immunity of State Officials from Foreign Criminal Jurisdiction, Succession of States in respect of State Responsibility, etc. are now being deliberated in this Session. 1 believe that this deliberation would significantly help the Commission to materialize these issues of common concern and to develop common understanding.

Further, AALCO has played an important role in setting norms and standards in various fields of international law. In order to ensure that its members have proper laws and regulations in new and emerging areas, it has developed and disseminated model laws and agreements.
AALCO, as a major forum for Asian-African legal exchanges and cooperation, has played a vital role in strengthening regional governance and safeguarding common rights and interests of the regions, and in pursuit of independence, freedom and equality.

Mr. President, I believe that selection of "Global Governance and International Rule of Law" as a theme for General Statement is very relevant. The concept of Global Governance has been most appropriate and pertinent contemporary issue. The concept emerged as a result of increasing interdependence amongst the states. One of the major features of global governance is "diversity in international law making process". Further, global governance also brings about changes in law-enforcement processes. These changes do not only focus on absolute performance of international obligations but also emphasize on cooperative enforcement mechanisms including technical assistance and

capacity building of the state parties. Furthermore, International law complements global governance in promoting global public good, human rights and sustainable development.

Mr. President, increase in human movement and goods, service and capital flows make positive impacts on the development. However, there is a gap in regulating mechanism for the movement of migrant workers between the countries and it gives rise to weak protection of the rights of the workers. Given this situation, I believe that it is high time and opportunity for the globe to consider those international instruments so as to formally address this crucial issue.

Mr. President, high seas is one of the global commons identified by International law. Global commons have been classified as those parts of the planet to which all states have access. The landlocked countries need to be supported for their effective access to the High Seas. In this regard, I would like to make submission for serious consideration of the august gathering for effective international mechanism to ensure easy and effective access of the landlocked countries to the sea.

Similarly, I would like to stress that freedom of transit of the land locked countries to the High Seas must further be ensured having regard to the principles of the law of sea.

Mr. President, the issue of climate change under environment and sustainable development has been one of the global concerns. Rapid melting of snow, loss of biodiversity, erratic weather pattern, depletion of the source of fresh water and drought are the serious consequences of climate change in Nepal. Countries like Nepal are becoming the brunt of climate change disproportionate to the contribution to greenhouse gas.

On this occasion, I would like to emphasize that something concrete needs to be done immediately to address the loss and damage so that the people of the vulnerable countries within Asian and African regions can have easy breath. I would like to appeal for solidarity that the burden of climate change should not be shifted to the least developed countries. May climate justice prevail.

Further, problem of cyber security has emerged as yet another threat to the least developing countries including Nepal, with the rapid growth of information and technology. I am confident that this Session would develop common understanding on this matter too.

Mr. President, I would like to update this august gathering on some of the recent political developments taken place in Nepal. The Constitution of Nepal promulgated in 2015 has introduced the federal system of governance. Last year, Nepal successfully concluded

elections for federal, provincial and local levels. After conclusion of these elections, we have now stable government dedicated to development and prosperity of the people. The legislations to enforce fundamental rights guaranteed by the Constitution have also been enacted.

Mr. President, Nepal welcomes agenda selected for this session. All the agenda items including Law of the Sea, International Trade and Investment Laws, International Law in Cyberspace, Peaceful Settlement of Disputes, etc. are very timely and pertinent.

Further, I believe that this Organization would perform significant role to establish and strengthen international rule of law not only via the development of international law but also through its effective enforcement that aligns with global governance. I am confident that this session will be successful in promoting codification and progressive development of international law from the deliberations to be held in this august gathering. I would also like to assure that Nepal always supports the work of this Organization.

Mr. President, I am grateful to the Government of Japan for giving me and my delegation an opportunity to visit this beautiful capital city Tokyo upon organizing this Session, and for extending a warm and cordial hospitality to me and my delegation since our arrival here. Before concluding, I would like to appeal this august gathering for collective resolution to the common problems and for pledge to materialise common rights. Thank you.

President: I thank the distinguished Head of Delegation of Nepal. Now I invite the distinguished Head of Delegation of Republic of Korea to make her statement.

Her Excellency Ms. Jong-In Bae, Director-General, International Legal Affairs Division, Ministry of Foreign Affairs and the Head of Delegation of the Republic of Korea: Thank you, Mr. President, On behalf of the delegation of the Republic of Korea. I would like to express my sincere gratitude to the Government of Japan for hosting the Fifty-Seventh Annual Session of Asian-African Legal Consultative Organization (AALCO). Let me also express my congratulation to President and Vice-President on their elections at this Session, respectively. I also wish to take this opportunity to express my appreciation to H.E. Prof. Dr. Kennedy Gastorn the Secretary-General of AALCO, and his Secretariat for excellent preparations for this Session.

Mr. President and Distinguished Delegates, International law has become part of the very fabric of the international community. We can feel its influence in almost every aspect of daily life, from post, to aviation, to trade. It also serves as a foundation on which we make inter State transactions. Our role as legal advisors is, on the one hand, to ensure

compliance with international law, and, on the other hand, to contribute to shaping international law through constructive dialogue among states and other stake-holders of the international society.

International affairs nowadays are in a state of flux, creating a variety of challenges for us to cope with. These challenges test both our resolve to stay the course, upholding current international law for the sake of stability, and our wisdom to adjust and, if necessary, to create new rules to deal with the changing circumstances. Such rules should be universal in nature and scope. In order for them to be truly global, it is essential that the States of our two continents ensure that their creation and development reflect our practices and perspectives based on our active participation

Mr. President and distinguished delegates, in this vein, I would like to dwell upon our role in the making of international law, and, in particular, on what we can call geographical under-representation. Our Asian and African regions used to be viewed as rule- adopters rather than rule-makers. Our attitude towards international law was sometimes described as ambivalent and lukewarm. However, that era is long gone, with the ever-growing status and influence of our regions. Having said that, though, I believe that there remains some room for improvement.

First, we can make a more active contribution to the codification and progressive development of international law. It is important to remember that international law is made out of our consent and practice. It is thus imperative that each of our regions' States provides its input, especially to the deliberations of the International Law Commission (ILC). Currently only a few States in our regions submit comments to the ILC or make interventions at the United Nations Legal Committee. Although not confined to Asia and Africa, the general lack of States' participation remains a material obstacle to the work and ultimately, the legitimacy of the ILC's end-products. My delegation hopes that this forum can facilitate the exchange of views on international law-making including views on the ILC topics. Our intention here is not to replicate the UN Legal Committee, but rather to assist each other in shaping opinions based on our regional perspectives.

In this sense, in the future I also would like to see some interactive dialogues, for instance, inviting ILC members of our regions to discuss their opinions and observations. In addition to inter-governmental settings such as this, we can encourage subsidiary seminars and gathering of experts. For instance, last year, Korea hosted the annual Asian Society of International Law conference, and this November, we are holding a joint seminar with International Tribunal for the Law of the Sea (ITLOS) on the important topics of the law of the sea. My delegation would welcome the participation of any regional State officials or experts in this seminar

Second, we also need to pay attention to compliance with, and dissemination of, international law on the domestic plane. As the rules of international law have permeated all facets of our life, the issue of how we can ensure compliance with treaties, international agreements, and the numerous resolutions of international organizations presents practical challenges for us.

Equally challenging is the domestic dissemination of international law. There have been a variety of efforts at the UN level to enhance public awareness and knowledge of international law. The internet has permitted better access to those educational materials, although most of them are not in our respective languages. Aside from these UN efforts, however, my delegation believes that more needs to be done at the domestic and regional levels. Despite the growing trend of globalization, there does not seem to be a correspondingly increasing interest in international law.

My Government has been working actively to remedy this, in cooperation with academia. We have launched a moot court competition in public international law, hold an annual thesis competition for students, organize seminars and symposiums on topics of international concern, and this year we are embarking on a series of town-hall meetings with students and citizens. In the area of compliance, the Ministry of Foreign Affairs of the Republic of Korea is planning an initiative to strengthen respect for International Humanitarian Law (IHL), starting with a review of the current ratification status of IHL treaties. My delegation is willing to share our outreach programs and initiatives with the Secretariat and other interested members and also wishes to explore a joint endeavour to raise interest in and awareness of public international law.

Third, and related to the previous point, my delegation believes that this valuable setting can be useful for addressing some practical issues, which concern us all. One example would be our treaty-making procedures. Most of us are parties to the Vienna Convention on the Law of Treaties. While we share or at least converge on the general definition of what a treaty is, and the procedures for the conclusion of treaties in the international arena, we seem to have somewhat differing domestic interpretations and procedures. These differences sometimes result in discrepancies among ourselves as to what actually constitutes a treaty.

When I compare our domestic list of treaties with those of my colleagues from other countries, I sometimes find inconsistencies in the lists. Many of such discrepancies, I assume, come from the fact that we have different views on whether government agencies, other than foreign ministries, are authorized to conclude treaties. Under Korea's domestic law and practice, other government ministries may do so only exceptional cases. However, in some other States, agencies other than foreign ministries are allowed to conclude treaties. In order to deal with these inconsistencies, it would be useful to

create, and then share, a compilation of our domestic procedures and practices regarding treaties. In order to deal with these inconsistencies, it would be useful to create, and then share, a compilation of our domestic procedures and practices regarding treaties.

Excellencies and distinguished delegates, my statement today has revolved around the under-representation of regions in terms of the international legal process, and some practical ways to overcome the gap, increasing our contributions to the ILC's deliberations; sharing our experiences of compliance with and the dissemination of international law; and facilitating exchanges with academia and experts. Again, our regions are in a unique position to make an input, either through consent or through dissent, to the process of international law making, implementation and even adjudication. This annual meeting of AALCO offers us valuable opportunities to meet our counterparts from the two regions, share our common interests, and hopefully face the challenges together. My delegation is keen to contribute to contribute to the Organization's work in this regard.

On is occasion I would like to recall that "something miraculous has taken place on the Korean Peninsula," as President Moon Jae-in of Republic of Korea said in New York a couple of weeks ago. The process of working towards denuclearization and establishing peace on the Korean Peninsula is a process that also leads to building peace and cooperation in Northeast Asia. I believe that international law can play its role in this process and I would like to ask for continued support and warm attention. Once again, I would like to thank our host, Japan, and the Secretariat for all their hard work to ensure a successful meeting of the Organization. Thank you for attention.

President: Thank you, distinguished Head of the Delegation of South Korea. Now I invite distinguished Head of the Delegation of Sri Lanka.

Her Excellency Hon. Thalatha Atukorale, Minister of Justice and the Head of the Delegation of the Democratic Socialist Republic of Sri Lanka: Hon'ble Ministers, Mr. President, Mr. Secretary-General of AALCO, Excellencies, Distinguished Invitees, Ladies and Gentlemen, on behalf of the Sri Lankan delegation, I am pleased to extend my sincere congratulations to you on your election as the President of the Fifty-Seventh Session of AALCO. I would like also to convey my thanks to the Government of Japan for their warm hospitality and the excellent arrangements, and my gratitude to Prof Dr. Kennedy Gastorn, the Secretary-General, and his team at the AALCO Secretariat for the excellent preparations for this annual session.

As one of the 7 original members of this Organization I am glad to state that it is a great opportunity to share our own national experiences with other friendly members of AALCO, in particular, to strengthen the regional harmony between the two regions. With

the common aim of developing the laws and legal systems of the two continents, this is an excellent forum to share our legitimate interests and thoughts for future legal reforms. We, as member countries, and respective observers have gathered here in this beautiful and historic city of Tokyo to laud the contribution made by the AALCO for the progress and development of international law, exchanging our interests and values. There is no doubt that this kind of initiative, integration of two core regions, establishes the firm foundation for the global governance and international harmony. In the modern world, regional harmony will facilitate the good practices and methodologies to meet the national interests and to assure the wellbeing of the nations and their overall success.

Mr. President, with the recent changes in the context of the international political landscape, we have noted that there are emerging needs. We have to give broader attention to strengthen the national legal framework, which eventually leads to build friendly relations with other nations. In this nature, certainly, principles of Global Governance and International Rule of Law are nothing else but the significant results of international cooperation.

Admitting such values, as the Minister of Justice and Prison Reforms of Sri Lanka representing Sri Lankan delegation, I would like to share my country's experiences which we are enjoying in the aftermath of the internal conflict we experienced for three decades. I am very confident in stating that our national efforts through the good governance policy, undoubtedly contributes to the establishment of global governance and the international rule of law.

Mr. President, it is my pleasure to bring your notice that our present government headed by H.E. the President Maithripala Sirisena and the Hon. Prime Minister Ranil Wickremasinghe are taking every possible measure to establish good governance and the Rule of Law, giving effect to the 2015 election manifesto. This is predominantly to address international values and norms in order to establish and maintain justice, peace and harmony within the country.

As such the 19th Amendment to the Constitution is the notable legal reform made by the present Government just after it was elected in 2015. This is an important Constitutional amendment principally aimed to reduce the powers of the Executive Presidency in order to restrain the abuse and arbitrary use of power.

As a result, nine Independent Commissions were established. Amongst them, the Audit Service Commission and the National Procurement Commission were established for the first time while the Election Commission, the Public Service Commission, the National Police Commission, the Human Rights Commission of Sri Lanka, the Commission to

Investigate Allegations of Bribery and Corruption, the Finance Commission and the Delimitation Commission were infused with more power.

Mr. President, I must state before this distinguished forum that we were able to bring to light several important legal reforms within the last few years. Among the other laws, the Right to Information Act, Assistance to and Protection of Crime and Witnesses Act and National Audit Act play a significant role. At present, the Sri Lanka government is considering the drafts laws on Proceeds of Crimes, Counter Terrorism and also for the amendment to the Prisons Act. These reforms were given due consideration for the national and international practices as well.

Considering the national policy of the present government there were notable laws, which were amended. Accordingly, the Code of Criminal Procedure Act and the Civil Procedure Code with the intention of addressing the lacunae in the law can be highlighted. In addition to that, the law relating to Missing Persons and the establishment of the Office of Missing Persons, the amendments to the Bribery Act, the amendments to the Mutual Assistance in Criminal Matters Act which broaden its scope of application can be highlighted. It is pertinent to note that all these laws and amendments contribute to maintain good governance and the rule of law. I would state that there is no civilized world if there is a vacuum of good governance and the rule of law. These principles equally contribute to maintain the world order.

Especially the executive, legislature and judiciary of a country will enjoy their independence in a good governance context. I am so proud to state that we were able to build such a country and enable the people to enjoy their rights particularly right to information, right to protection and right of expression.

All Governments, its Officials, agents as well as individuals and private entities are accountable under the law in a world where good governance and the rule of law is ensured. In Sri Lanka, we have ensured judicial independence. This helps to secure and assure the sovereignty of the people to guarantee justice for all. It means that citizen are given due respect before the law and enabled to ascertain their rights.

Rule of Law assures the value and respect of humanity extending due respect to each and every State and its individuals before the law. I believe, that the manner, in which the laws and the legal systems of our countries are reorganized to serve the interests of our people, and to ensure their security and well-being, must reflect the character of our own principles. It is pertinent to note that each State is struggling to meet up with the highest benefits to its people. Thus, we believe that as a regional organization, we have an immeasurable and invaluable role in harmonizing the interests of people in very effective manner to ensure global governance and the International Rule of Law.

Mr. President, in conclusion I would like to reiterate the importance of regional initiatives in order to ensure the adoption of well-established concepts throughout our continents with the blessing of AALCO. In view of that we would be able to achieve our goals ensuring the sovereignty of individual States at the same time achieving our future development goals.

Mr. President, on behalf of the Sri Lankan delegation I hope that all our deliberations will steer to a successful conclusion. Towards this endeavor I would like to assure my delegation's fullest support for the success of this session. Thank you.

President: I thank the distinguished Head of Delegation of Sri Lanka. Now I invite the distinguished Head of Delegation of State of Qatar to make his statement.

His Excellency. Mr. Salem Rashid Almeraikh, Assistant Under Secretary, Legal Affairs, Ministry of Justice and the Head of the Delegation of the State of Qatar[16]: H.E. Secretary-General of AALCO, Members of the Organization, Ladies and Gentlemen, at the outset, I would like to convey you sincere greetings of H.E. Dr. Hassan bin Lahdan Al-Mohannadi, Minister of Justice, Qatar, and Qatari delegation participating in the Fifty-Seventh Session of the Asian- African Legal Consultative Organization (AALCO). Qatar attaches great importance to the Organization and values its leading role. We are keen to participate in all its activities and fulfil our financial obligations. Previously, Qatar has hosted the Nineteenth Session in 1987 and the Thirty-Fourth session in 1995.Allow me to offer my thanks and appreciation to the State of Japan for hosting the Fifty-Seventh Session of AALCO, for the warm welcome and hospitality and for providing Qatari delegation with all means of comfort for their stay in Japan.

Ladies and Gentlemen, this session is being held at a time when the contemporary world is characterized by overlapping or competing interests and the complexity of relations between the members of the international community along with the growing technological development, which has shown negative impacts threatening global peace and their stability. This puts great responsibility of undermining on this Organization, as it is one of the most active international organizations and enjoys great credibility in international relations. The Organization strives to strengthen Asian-African solidarity by providing advice to Member States in the field of international law.

Ladies and Gentlemen, international law had made a significant progress in the field of cyberspace, thanks to UNO and the role played by our organization (AALCO) by discussing the topic "International Law in cyberspace" in a number of sessions,

[16] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

establishing a working group and through intensive deliberations on the sovereignty of States in field of cyberspace and cybercrime.

A number of AALCO member countries have witnessed infringement on their sovereignty due to the incidents of cyberspace and cybercrimes. Qatar is one of them. It was subjected to many cyber-attacks. The website of Qatar News Agency was hacked and media statements were fabricated inviting the outrage of international community. In this context, many experts across the globe expressed their concern about the absence of credible international institutions and legislations that ensure digital security, prevent electronic piracy and prescribe punishment for the perpetrators of cross-border crimes.

Ladies and Gentlemen, American administration's decision regarding the city of Jerusalem is the violation of the rights of Palestinian people, international law and the UN Charter which prohibits the forcible seizure of the land. The decision is a threat to the peace and stability of the region and the world. It would undermine the opportunity of peace and promote violence and extremism and deepen the tensions in the region. These policies and actions targeting Palestinians and inciting the feelings of the people of the region would lead it to a very dangerous end.

Ladies and Gentlemen, in today's world, terrorism and extremism are the most dangerous challenges. The governments do not have any option but to cooperate with each other to prevent the spread of terrorism and to address its cultural, social and political roots. This is one of the topmost priorities of Qatar. The State of Qatar augmented tits international and regional efforts in this direction by implementing the measures prescribed in the UN Strategy, 2006, by executing all resolutions and measures issued by the UN Security Council to fight terrorism and its financing, and through participating in international coalitions and regional organizations, and by strengthening bilateral relations with the USA and many other countries. Further, the State of Qatar continues its regional and international efforts by chocking the financial sources of terrorism and extremism and by educating and sensitizing seven million children around the world so that they would not fall prey to ignorance and extremist thoughts.

The State of Qatar is aware of the fact that the terrorism has turned into a global threat and no community is safe from the possibility of its reaching to their doorstep. Technological advancements have contributed to the diversification of the methods of committing the crimes of terrorism and ways of financing it. So international efforts must be augmented to address the acts of terrorism and monitor suspicious financial transactions aimed at providing terrorists with resources.

Ladies and Gentlemen, despite the existence of international treaties beginning from the Convention of 1951 on the Status of Refugees to International Labor Organization's

conventions, numbers of refugees and immigrants are rising since the Word War II. Due to the crisis and uprisings, the world is witnessing mass exodus of millions of the people. The living conditions, problems of education and familial issues that follow necessitate finding effective tools to deal with these challenges. We appreciate the agreement of all the UN member counties – except two – on Global Compact for Migration which would make migration more secure and more organized. The Compact would be formally ratified during an International Conference in Morocco in the mid of December, 2018.

We call on international community to adopt a vision and a pragmatic legal framework leading to lasting peace and codification of international cooperation. We hope the countries would adopt it to achieve comprehensive protection of refugees and immigrants and support the countries that host them viewing it as common shared responsibility for all to reach a comprehensive solution to the problems of asylum and migration including preventing outbreak of conflicts; its peaceful settlement; addressing issues of displacement due to poverty, instability, marginalization and exclusion, lack of development and economic opportunity; promoting solidarity and shared responsibility in international community by striking a balance between the protection of refugees and migrants and supporting the countries of asylum and displaced persons and establishing frameworks of relocation through resettlement or other means such as family reunification, study visas programme or humanitarian visas; addressing the root causes of the large movements of refugees and migrants and assisting the active bodies, including regional institutions, the private sector.

We hope that this Conference will present an integrated vision to address the daunting challenges and major problems that have been seriously exacerbated in a way that threatens international peace and security.

Ladies and Gentlemen, at the end of my speech, allow me to offer once again my thanks and gratitude to the government of Japan for hosting as I take this opportunity to offer my regards to all the participants of this session. I wish you all the success. Thanks for listening attentively.

President: I thank the distinguished representative of Qatar. Now I invite the distinguished Head of Delegation of Kingdom of Bahrain to make his statement.

His Excellency Amb. Tawfeeq Al Mansoor, Assistant Undersecretary for Western & Afro-Asian Affairs, Ministry of Foreign Affairs and the Head of the Delegation of the Kingdom of Bahrain[17]: Excellencies, Distinguished guests, Ladies and Gentlemen, At the outset, I have the pleasure of conveying to you the greetings of His Excellency

[17] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Sheikh Khalid bin Ahmed Al-Khalifa, Minister for Foreign Affairs of Kingdom of Bahrain, and his gratitude for the kind invitation and his sincere wishes for the success of this session. I also wish to express Bahrain's appreciation to the organizers for their efforts to arrange this important annual meeting.

In particular, I would like to acknowledge Japan's outstanding efforts to host the event, which is organized at the level of the African and Asian continents. We also commend Japan's constructive contributions to deepening dialogue and joint cooperation towards the establishment of the rule of law in the international community.

I wish to applaud the continued efforts of AALCO as an intergovernmental organization promoting the Asian-African partnership in international legal matters and its role in supporting the United Nations and its various organs in strengthening the rule of law and abiding by the relevant international conventions and treaties. The Organization's legal advice and great services to Member States are highly appreciated.

The Kingdom of Bahrain joined AALCO in 1993. Since then, we share the goals and values that this Organization seeks to achieve. We commend in particular the important and numerous initiatives adopted by AALCO in critical areas of international law.

Since its inception, the Organization has been able to make valuable and effective contributions in drafting of laws on a wide-ranging scale including diplomatic law, treaty law, the law of the sea, human rights law, international humanitarian law, international criminal law and environmental law.

Its positive role is also evident in the development of bilateral co-operation among Member States in the development of legal norms to address contemporary issues of international law. It has also demonstrated its ability to take important legal actions to address crisis in Asia and Africa. Hence it is crucial for us to benefit from the potential of the Organization in solving the problems existing in the region.

The legal advice, research and studies provided by AALCO are an important reference for us to establish legal concepts that preserve the interests of member states in political and economic aspects and in the fields of international trade, environment and sustainable development.

We are fully convinced that this Organization will always remain an inspiring forum for consultation on issues of common concern and useful assistance to Member States in international law issues. It will also remain a strong platform for expression of partnership between African and Asian continents.

In this context, we believe that it is important to proactively involve in the activities and events of the Organization in order to promote further cooperation in the legal field between Asian and African countries and to achieve justice and rationality in the international political system.

We particularly welcome the new approach adopted by the Organization aimed at broadening the scope of debate and dialogue by focusing on global governance and the rule of international law. We hope that this new focus will help the Organization to achieve clear practical results, based on the firm spirit of partnership and trust among the Member States of the Organization.

Ladies and Gentlemen, today we are living in an age of complex challenges that have a negative impact on the international community. The absence of the Rule of Law, social justice and equality, as well as the spread of corruption, the escalation of extremism and violence, the persistence of terrorism and organized crimes that threaten the security and safety of societies and peoples are issues of concern to the international community.

It is the responsibility of the Member States of this Organization to cooperate to address these challenges by deepening and consolidating the concepts of global governance and the principles of international law.

The promotion and consolidation of these principles and respect for all the provisions of international conventions and treaties, as well as the commitment to the application of international human rights standards have become indispensable criteria for stability and prosperity.

Ladies and Gentlemen, the concepts of global governance and the principles of international law are a firm foundation for lasting peace, stability and development in societies. Global governance has long been associated with the values of promoting a global culture of peace based on human rights and economic prosperity.

This idea has expanded to take a different dimension in politics, economics, culture and society. The chronic crises, civil wars and the political and social turmoil that swept so many countries have changed the balance of power in the world. Also, global warming and climate change cast a terrifying shadow over the future of human life on this earth. These indicators are sweeping the world today, which requires us to adopt the idea of global governance, integration among nations to reduce the manifestations of instability and global chaos.

Governance is based on the combined ability of national governments to bring their interests closer together and strive to achieve economic prosperity, social well-being and

global economic and environmental prosperity. The basic approach to global governance rests on the respect for State sovereignty, competition, effective performance at the national and international levels and cooperation and partnership.

However, there are a number of challenges that hinder the realization of the idea of governance and the implementation of its hypothesis. The most important of these challenges is the reform of international institutions and the United Nations system and the re-institutionalization of other international organizations such as the World Trade Organization and the International Monetary Fund, which must be more transparent in the governance of their global policies. It is also important to urge the major industrialized countries, through a global consensus, to reduce their environmental pollution rates.

We believe that this Organization and its momentum can influence the manifestation and implications of the idea of global governance by mobilizing for a regional and global consensus and through direct bilateral cooperation and by presenting a master plan to get the world out of its crises. All States should be enabled to exercise their regional and international role. In the end, through high coordination and cooperation and under the umbrella of global governance, justice and equality among nations, peace and prosperity for all mankind can prevail.

Ladies and Gentlemen, the Kingdom of Bahrain look forward to the establishment by the United Nations system of new mechanisms to strengthen the rule of international law, to promote respect for the principle of sovereignty of States, non-interference in their internal affairs and a firm commitment to universal principles of human rights, peaceful coexistence and respect for others and the rejection of hatred and sectarian discrimination.

In our view, the principle of the rule of international law is linked to tow very important issues: the principle of justice advocated by humanitarian law over time, the role played by the United Nations and its competent bodies, and in particular the international judiciary developed through the International Court of Justice and international conventions, first and foremost the Charter of the United Nations ad special international conventions of human rights.

The Kingdom of Bahrain has acceded to several international conventions relating to human rights and the rule of international law. It is necessary to abide by international law in order to protect peoples from crimes against humanity and to respect the aspirations for freedom and political participation, which must be consistent with the history of each country and its development, in order to promote the requirements of stability in the world.

Ladies and Gentlemen, the Kingdom of Bahrain has been able to establish a modern state based on democratic pluralistic approach, state institutions and the rule of law, which aim to strengthen the principles of modern society organized and committed to its values in various fields as reflected in the laws of the Kingdom of Bahrain and its international obligations, including accession to the International Conventions on Human Rights and the Conventions the Elimination of All Discriminations against women, the Convention against Racial Discrimination and the Convention against Torture, as well as conventions against organized crime and terrorism.

Ladies and Gentlemen, we reiterate our conviction that the Organization has an important role in creating an ongoing dialogue between Member States and each other, as well as between those States and international organizations such as the United Nations and other regional organizations, in order to unify their visions and create understanding and cooperation in establishing the rule of international law.

In conclusion, I wish to renew Bahrain's appreciation to the Organization and its great role in spreading legal awareness at the continental level between Asia and Africa. Thank you.

President: I thank the distinguished representative of Kingdom of Bahrain. Now I invite the distinguished Head of Delegation of Brunei Darussalam to make her statement. After that, I propose that the meeting be adjourned for today. Tomorrow, we will resume general statements in the morning.

Her Excellency Ms. Datin Hasnah Ibrahim, Assistant Solicitor General and the Head of Delegation of the Brunei Darussalam: Mr. President, H.E. Mr. Masahiro Mikami**,** Mr. Vice-President, H.E. Mr. Maneesh Gobin, Secretary-General of AALCO H.E. Prof. Dr. Kennedy Garston, Honourable Ministers and Attorneys General, Deputy Secretaries-General of AALCO, Distinguished Delegates, Ladies and Gentlemen,

It is a great honour and privilege for me to join you for the first time, and to have the opportunity to address this Fifty-Seventh AALCO Annual Session. I am pleased to be back in the beautiful city of Tokyo, and my delegation and I would like to express our sincere gratitude to the Ministry of Foreign Affairs of Japan, for the excellent arrangements and kind hospitality extended to us, and for all the hard work invested in hosting and organizing this meeting.

On behalf of the Brunei Darussalam delegation, I would also like to congratulate your Excellencies Mr. President Mr. Masahiro Mikami and Vice President Mr. Maneesh Gobin on being elected to preside over this session. We are confident that the meeting will reach a successful conclusion under your wise guidance. Our heartfelt appreciation is

also extended to H.E. Prof. Dr. Kennedy Gastorn, AALCO's Secretary General and his entire team at the Secretariat for their hard work and dedication in preparing the documents for our deliberations at this session.

Our Attorney-General, Dato Paduka Hj Hairolarni bin Hj Abdul Majid, also extends his warmest regards and greetings to his AALCO colleagues, and regrets that he is not able to attend this year's annual session due to urgent prior engagements. On behalf of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, we also wish to express our deepest sympathies and condolences to the Government and people of the Republic of Indonesia, for the terrible loss of life and damage caused by the recent earthquake and tsunami in Sulawesi. Our thoughts and prayers are with the victims and their families, as we wish them well on the road to recovery.

Ladies and Gentlemen, since the turn of the century, the world has experienced periods of both global prosperity and also global uncertainty. What is clear from these cycles is that Global Governance and adherence to the International Rule of Law, play a fundamental role in generating confidence amongst the world's nations that enhances the creation of global prosperity and sustainable development.

After the Second World War, rules based multilateral agreements administered by international organisations like the United Nations, provided a foundation of stability that enabled nations to achieve greater socio-economic development and to sustain this development. This in turn has led us all towards the evolution of globalisation, multilateral trade, multilateral cooperation and the opportunity, especially for small developing countries, to participate more meaningfully and equitably in global decision-making and global value chains.

For Brunei Darussalam, rules based multilateral and regional cooperation have played a key role in defining our place amongst our international peers, and in addressing the common challenges faced by small developing nations striving to ensure the security of their people, whilst meeting the international standards and norms that are required to participate in a globalised economy.

Our membership in ASEAN and the United Nations provide the core of our commitments to the International Rule of Law and in a similar manner, our participation in other international organisations like AALCO provide us with further opportunities to contribute towards the common global goals of peace and security, sustainable development and enhancement of social welfare.

Ladies and Gentlemen, Whether we look to consider better modalities for cooperation in combating transnational crime, enhancing trade and investment or working to protect the

environment, the agenda for this Fifty-Seventh Annual Session clearly illustrates the relevance of global governance to Brunei Darussalam through rules based multilateral commitments undertaken through the UN and its various bodies, the WTO and other regional and international organisations.

In particular, we welcome the proposal by Japan to deliberate on "Peaceful Settlement of Disputes", which is central to conflict prevention and the theme of Global Governance and the International Rule of Law. The importance of peace and stability on a global level cannot be understated, especially as we contemplate the far-reaching repercussions of armed conflict upon communities around the world. We therefore support the inclusion of the agenda item and look forward to hearing members' views on the issue.

We also look forward to the "Report on Matters related to the work of the International Law Commission", and the significant role AALCO has in shaping the outcome of the Commission's work by ensuring specific interests of Asian and African developing states are represented.

The agenda item on "International Trade and Investment Law" will also help provide further insight into the possible fragmentation of global governance through the rise of Regional Trade Agreements and Mega Free Trade Agreements, and the importance of ensuring the continued relevance of the Doha Development Agenda in pursuing the WTO's objectives on trade liberalisation.

Brunei Darussalam also appreciates the efforts that AALCO has made with regard to issues on the Law of the Sea. Many developing countries rely heavily upon marine resources and the use of maritime interconnections as sources of economic growth. Maritime security threats also require concerted regional cooperation, and the newly proposed UNCLOS Treaty on Biodiversity in areas beyond national jurisdiction, will be pivotal in ensuring that developing countries are able to benefit from what is customarily accepted as "common heritage of mankind".

Ladies and Gentlemen, Brunei Darussalam views the items on our agenda to be valuable contributors to our efforts to reinforce commitment to and respect for Global Governance and the International Rule of Law. As always, we are eager to hear and learn from the positions of fellow member states on how best AALCO can continue to enhance Global Governance, and support efforts to find practical solutions to the issues discussed. In closing note, we wish all success to this meeting. Thank you.

President: Thank you, distinguished representative of Brunei Darussalam. With that, we have come to the end of today's deliberation. Let us resume tomorrow, beginning with Thailand and India.

The Meeting was adjourned thereafter.

VIII. VERBATIM RECORD OF THE SECOND GENERAL MEETING (CONTD.)

VIII. THE VERBATIM RECORD OF THE SECOND GENERAL MEETING (CONTD.) HELD ON WEDNESDAY, 10 OCTOBER 2018 AT 9.00 AM

His Excellency Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, the President of the Fifty-Seventh Annual Session of AALCO in the Chair.

President: We will continue with the "**General Statements**". First on my list is Thailand followed by India. I invite the distinguished Head of the Delegation of Thailand. After Member States, I will invite observer delegations.

Ms. Chavanart Thangsumphant, Deputy Director-General, Ministry of Foreign Affairs and the Head of the Delegation of Thailand: Mr President, Secretary-General, Distinguished Participants, at the outset, on behalf of the delegation of Thailand, I would like to congratulate you, Mr. Makami, on your election as President of the current session of AALCO. My congratulations also go to the Attorney-General of Mauritius, for being elected as Vice-President. It was indeed an honour for Thailand to have Mrs. Wilawan Mungklathanakul, then Deputy Director General, Department of Treaties and Legal Affairs, Ministry of Foreign of Thailand to serve as Vice-President of the Fifty-Sixth session of AALCO. Unfortunately, due to her new assignment as Director-General of Economic Department, Mrs Mungklathanakul could not be here today. Nonetheless, she sends her best wishes for a successful and fruitful Fifty-Seventh Session. I, indeed, cannot end my introduction without expressing my thanks and appreciation to the Government of Japan for hosting this current session of AALCO in this beautiful and vibrant city of Tokyo.

Mr. President, it was a special privilege to have the Minister of Foreign Affairs and the Minister of Justice of Japan to attend the inaugural meeting of AALCO yesterday. This indeed reflects the importance of AALCO and its role in the field of progressive development of international law. AALCO has served for more than half a century to identify common issues among Asian and African nations so that we can share our legal perspectives and that our voice is not unheard. In this regard, allow me to express my appreciation to Professor Gastorn, the Secretary-General of AALCO, and his team for their hard work and for their dedication to the organization.

Turning to the theme of AALCO this year, "Global Governance and International Rule of Law". This topic is an excellent choice and, indeed, timely, as both are important to our everyday life. In the age of globalization, interconnected as well as technologically advanced and increasingly borderless world, global governance and the international rule

of law are needed more than ever. This is all the more so in the field such as cybercrime, with its speedy attack and wide impact.

While global governance has no one single definition, it can generally be seen as a way to commonly manage our planet, using collective effort and collaboration. Starting off with common effort in the field of peace and security, as seen in the establishment of the United Nations, global governance has expanded over the years to encompass important issues such as human rights, economic, environmental protection and development. Nowadays, global governance will also be necessary for contemporary issues of the management of cyberspace. Thailand is, thus, pleased to see various topics selected for the Fifty-Seventh Session of AALCO touch upon some of these issues.

At the apex of global governance stands the United Nations, a multinational organ that oversees global activities regarding peace and security, development and human rights. This exemplar body of collective efforts in tacking issues of common interest and global concern is guided by the UN Charter, which serves as a legal framework for international cooperation. And over the years, we can see emergence of international treaties and agreements in various fields, some in support of the UN activities such as the UN Convention on the Law of the Sea and the UN Framework Convention on Climate Change, and others in support of regional activities to reflect specificities and needs of such regions. But of course, for these international treaties to work effectively, we need to observe the rule of law. It is no good if there are sets of norms but no one follows.

Mr. President, although global governance angle of law are separate concepts, they are inextricably linked. Without respecting the rule of law, global governance would be undermined. To ensure that the rule of law is respected, we need to make sure that the rule of law is respected both at the international and national levels.

At the international level, the UN remains at the forefront in promoting the respect of the rule of law through its agenda in the General Assembly. This is through deliberations of member States as well as dissemination of knowledge on international law to a wider audience. In this regard, Thailand is pleased to host a UN regional course this year, to take place in November in Bangkok.

Notable effort in the recent time is the promotion of the rule of law through Goal 16 of the 2030 Sustainable Development Goals (SDG) through which development progress can be attained in a sustainable manner, as this will help contribute towards creating fairness and justice in society. This, in turn, means better standard of living and better lives for many, especially the vulnerable and marginalized sector of the society.

At the national level, Thailand, as a middle-income development countries attaches great importance to the rule of law. As such, the rule of law has been added to our constitutions. We believe that respect of the rule of law will promote harmony in society, prosperity, democracy, and good governance. It will also help make sure that no one is left behind in terms of development progress, hence an inclusive approach.

But to be a truly inclusive approach, the understanding and appreciation of the rule of law must be engendered from within the society, and from each household. In other words, we must create a culture of lawfulness through empowering our people so that they can be mindful of their rights and duties as well as respect for those of others. In Thailand, this can be done by adapting the Sufficiency Economy philosophy of His Majesty the late King Bhumibol of Thailand which advocates moderation and discipline in our ways of living. As highlighted by the Director of Thailand Institute of Justice yesterday in the side event on the 14th UN Congress on Crime Prevention and Criminal Justice 2020, in the field of criminal justice, efforts have been made by the Thai Government to make sure that every sector of the society is involved. Through such collective efforts the safety of the people and justice can be ensured, and the developmental progress unhindered.

Mr President, to conclude, as I said earlier, the promotion of respect for the rule of law needs to be carried out at both national and international levels. Together with the ongoing progress in our respective countries, the forum such as AALCO provides an opportunity for us to deliberate and disseminate knowledge on pertinent issues international law, which will help pave the way towards progressive development of international law, global governance and the respect for the rule of law. Thank you.

President: Thank you, Madam. Now I invite the representative of India.

Mr. Mohammed Hussain K.S., Senior Legal Officer, Ministry of External Affairs, the Republic of India:

H.E. the President of AALCO; H.E. the Secretary-General of AALCO; Excellencies, Distinguished Delegates and Observers; First of all India joins other Delegations in congratulating you Mr. President Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau, MFA of Japan on your election to guide our deliberations. We are sure that your wisdom, experience and expertise will steer our deliberations to a successful conclusion. The Indian delegation takes this opportunity to also congratulate H.E. Mr. Maneesh Gobin, Attorney General and Minister of Justice of Mauritius for his election as Vice-President of this Session.

We also wish to thank the Government and People of Japan for hosting this Annual Session in this beautiful city of Tokyo. I would also like to thank them for the excellent

arrangements made for this session and for the warm hospitality extended to us. Our appreciations go to the Secretary-General, Deputy Secretary Generals, Officers and staff for the excellent preparations they have made for our Session, including the preparation of documents to help our consideration of the various items on agenda of the Session.

Mr. President, our delegation takes note of various activities/events that undertook since the Fifty-Sixth Annual Session of AALCO. To mention a few, AALCO Legal Advisors Meeting at the United Nations, New York; Constitution Day of AALCO; meetings and capacity building programmes on various branches of international law. We also take note of the Work Plan for the years 2019 -2020. We believe that the past and proposed activities of AALCO would facilitate in successfully discharging its mandate. But to successfully implement the work plan and future activities in the field of international law, AALCO needs to address issues to finance and shortage of human resources.

Indian delegation would like to reiterate that AALCO being an inter-governmental organization, the primary objective of which is to function as an advisory body to its Member States in the field of international law. We believe that AALCO has the potential to contribute more in the field of research, publications and capacity building exercises. Reasons for holding back AALCO to achieve its full potential relates to finance and shortage of human resources.

Mr. President, Indian delegation also takes this opportunity to thank the Deputy Secretary General of AALCO, Mr. Mohsen Baharvand from the Islamic Republic of Iran for his exemplary service as DSG of AALCO who will be soon leaving AALCO on completion of his term to join a new assignment.

On the theme "Global Governance and International Rule of Law", Indian delegation would like to submit the following points:

Rule of Law at national and international levels has attracted focus for past several years. Laws based on the principles of justice and fairness reduce conflict and provide for predictability of interactions, if enforced well. This is applicable both at national and international levels. While at national level, rule of law is enforced by a State by legitimate means, this dichotomy is fundamental to many of the enforcement difficulties at an international level. A related aspect is the requirement of alignment of national laws with international obligations.

At an international level, as better transport and communication technologies began to connect distant societies and economies, the international aspect of rule of law began to crystallize. In the last few decades, globalisation has picked up pace driven by technology. This continues to lead to the requirement of nation states coming together to

define rules of cooperation to prevent chaos. Today, there is a very wide range of areas where rule of law governs the actions of nation states to a large measure. Then there are emerging areas such as artificial intelligence or cyber security where the technology or activities of entities outpaces law and the situation is complicated by the involvement of non-state actors and cross border implications. We are now engaged in developing norms relating to the emerging complex areas of Marine Biodiversity Beyond National Jurisdiction (BBNJ) and Global Geospatial Information Management (GGIM).

India, with one sixth of global population, is the world's largest democracy based on rule of law and has emerged as the fastest growing large economy. In India, the independence of judiciary, legislature and executive along with a free and vibrant media and civil society with strong traditions of electoral democracy are cherished and are the basis for the rule of law in our country.

India strongly believes that cooperative and effective multilateralism is the only answer to the range of inter-connected challenges that we face in our inter-dependent world. This points to the strong need for Rule of Law at an international level.

India has always engaged actively in international efforts to develop norms, standards and laws governing global interactions across various sectors. India also believes in peaceful settlement of disputes according to laid down laws. India continues to make serious efforts to bring its national laws in consonance with its international obligations. India continues to partner fellow developing countries in capacity building efforts on aspects such as electoral practices, drafting of legislations and other law enforcement issues.

Unjust or discriminatory laws that do not balance competing interests in a fair manner, or those designed and implemented by powers that are not representative, only fuel long term conflict. Also, laws do not remain static. They continue to evolve according to changing circumstances, often brought forth by changes in society and prevailing technologies. Changes also leave many old laws and regulations redundant. Constitution of India, adopted seven decades ago, has seen over 100 amendments.

Effective multilateralism and international rule of law requires that the global governance structures should reflect contemporary realities. We hope that the international community will be able to transform the United Nations to meet the emerging global challenges of the 21st century.

Mr. President, we look forward to participate in the deliberations on the agenda items and once again thank the Government of Japan and the AALCO Secretariat for the excellent arrangements made for the Session. Thank you, Mr. President.

President: I thank the distinguished representative of India. Next, I invite the distinguished representative of South Africa.

His Excellency Adv. T. Masutha, Minister of Justice and Correctional Services and the Head of Delegation of the Republic of South Africa: President of the Fifty-Seventh AALCO Annual Session, Distinguished Delegates, On behalf of the Government of the Republic of South Africa, I have the honour to thank the Government of Japan for hosting this Fifty-Seventh Annual Session of the Asian-African Legal Consultative Organization, AALCO. We wish to thank the Government and the people of Japan for the excellent hospitality extended to us since our arrival in this beautiful country.

Mr. President, we congratulate you and the Vice President and express our confidence that the proceedings of this Fifty-Seventh Annual Session will yield positive results. In addition, we would also like to thank the Secretary General of the AALCO H. E. Prof. Dr. Kennedy Gastorn for leading the Organization into a position of influence and relevance in matters of international law. We would also like to convey our gratitude to the AALCO Secretariat and all those who were involved in the preparations for this Fifty-Seventh Annual Session.

2018 marks the completion of 61 years since the establishment of AALCO South Africa is indeed a proud member of this venerable Organization, since joining in 2004, and as such, is proud to participate in this Fifty-Seventh Annual Session. South Africa is committed to, and remains, a strong proponent of multilateralism and respect for international law, thus this year's theme "Global Governance and International Rule of Law" is relevant to South Africa in that we believe multilateral cooperation is essential to the international community's ability to respond to the challenges of globalisation.

Mr. President, South Africa acceded to and/or ratified many basic human rights instruments both in the UN and AU systems after the advent of democracy in 1994 and this has subsequently resulted in the arising of various accompanying obligations which need to be complied with, such as putting in place laws and administrative measures in accordance with the requirements of these instruments.

Because of our history, South Africa is firmly committed to the protection and promotion of human rights, not only within the country, but also on our continent and the world over. It is of particular importance to South Africa that it plays an active role in the promotion of global human rights. This is confirmed by the central objective of our foreign policy which is aimed at creating a better South Africa in a better Africa and a better and safer world. Our dedication to the promotion of human rights is entrenched in our Constitution, in the Bill of Rights, and informs our commitment to promoting peace, justice, human rights and the rule of law.

Mr. President, we take note of the Secretary-General's ongoing efforts to work in close collaboration with the United Nations and the African Union and in particular the African Union Legal Division. We would like to urge the AALCO Secretariat to continue working closely with the African Union and its Legal Division. South Africa has always been of the view that the decisions of the African Union should be taken into account within our deliberation in AALCO. The year 2018 marks the centenary of President Nelson Mandela's birth. The late President Nelson Mandela said that "never, never again shall it be that our beautiful land will experience the oppression of one by another." The centenary provides an opportunity for all of us to honour President Mandela's memory by striving to ensure his vision of human rights, equality and dignity for all humankind is realised and to celebrate his selfless role in fighting for equal rights for all South Africans.

Some Member States here present who are also Member States of the AU are aware that the AU Summit held in January 2018 adopted a declaration that would provide for the observance of the year 2018 as Nelson Mandela Centenary and which encouraged all AU Member States to observe the Nelson Mandela Centenary and to recommitting themselves to the ideals and values espoused by Nelson Mandela. A number of events were planned to celebrate his selfless role in the fight for equal rights for all. These events have taken place on the African Continent and abroad.

The many strides that we made as a country especially on the enjoyment, promotion and protection of fundamental human rights, are to some extend due to Nelson Mandela's contribution, personal drive and conviction. President Mandela is our guiding light for the type of society we are building and people we aspire to become. Madiba advocated for human rights for all and believed that to deny people their human rights is to challenge their very humanity. Human rights and reconciliation should be the glue that binds all nations of the world.

Mr. President, at this stage, allow me to impart the remarks of the South African delegation on issues to be discussed in the Agenda of this Fifty-Seventh Annual Session. The South African delegation will make interventions on some of the topics of AALCO. South Africa is committed to the advancement of the rule of law in order to ensure the realisation of the rights enshrined in the Constitution. Our courts ensure the nurturing of democratic South Africa's founding values such as human dignity, equality, and supremacy of the Constitution.

In conclusion, the South African delegation would like to express the Government of the Republic of South Africa's ongoing commitment and support to this important institution. I Thank You.

President: I thank the distinguished Head of Delegation of South Africa. Next, I invite the distinguished representative of Viet Nam.

Her Excellency Dr. Le Thi Tuyet Mai, Director General, Ministry of Foreign Affairs and the Head of Delegation of the Socialist Republic of Viet Nam: Honorable President, Distinguished Delegates, Ladies and Gentlemen, At the outset, on behalf of the delegation of Viet Nam, I would like to warmly congratulate Mr. President and Mr. Vice President. I am confident that under your able leadership and guidance, our Conference will be a success. I also would like to take this opportunity to express our deep sympathies to the Indonesian Delegation, the families of the victims and the Indonesian people for the devastating loss and damage caused by the earthquake and tsunami recently struck the Central Sulawesi.

Mr. President, my Delegation would like to share the policies and commitments of Viet Nam to foster global governance and international Rule of Law. As an active and responsible member of the international community, Viet Nam has been promoting the international rule of law at the regional and international levels. Accordingly, we have been supporting the fundamental role of international and regional organizations, on the basis of international law, especially the United Nations Charter.

At the regional level, in promoting and strengthening the important role of ASEAN, Viet Nam has been actively working together with the other ASEAN Member States to build an ASEAN Community which is politically coherent, economically integrated and socially responsible making Southeast Asia a region of peace, stability and prosperity. ASEAN Leaders re-affirm their commitments to building a rules-based regional architecture which is capable to respond collectively and constructively to global and regional issues of common concern.

At the same time, Viet Nam is strongly committed to the promoting of global Governance and International Rule of Law, Viet Nam is of the view that maintaining and promoting the international rule of law is critical to maintaining peace and security, achieving sustainable development goals. We believe that full respect for the international rule of law is a fundamental factor for the promotion of friendly cooperative relations, for peaceful resolution of international disputes for the assurance and maintenance of international peace, security and prosperity in the world, as well as for the achievement of sustainable development goals of the Agenda 2030.

In this process, Viet Nam acknowledges and emphasizes the central role of the United Nations in developing and ensuring respect of principles of international law through the process of multilateral treaties making and implementation. At the same time, Viet Nam

is committed to continuing close cooperation with the United Nations agencies, Member States as well as the international community as a whole for implementing these goals.

Viet Nam has made steps towards active participation in the codification and progressive development of international law. In May this year, Viet Nam ratified the Treaty on the Prohibition of Nuclear Weapons and thus became the 10th Member State to the Treaty. Viet Nam has been participating in the preparatory meeting and the first session of the Intergovernmental Conference on an International Legally Binding instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ).

To further the Viet Nam's active engagement with the United Nations affairs, I am pleased to inform the AALCO Annual Meeting that Viet Nam has announced its candidature for the first time to the membership of the United National Commission on International Trade Law (UNCITRAL) for the term 2019-2025, at the election scheduled in December this year. In the spirit of AALCO solidarity, we hope to receive support from AALCO Member States in this endeavour and commit ourselves to the work together with the Member States for contributing to the work of UNCITRAL for the harmonization and unification of international trade law for the objective of facilitation of trade for development.

During recent years, Viet Nam has proactively enhance its extensive integration with the global economy as well as continuously fostered trade liberalisation and development by, among others, concluding new generation free trade agreements (FTAs), including 13 bilateral FTAs and several multilateral FTAs either under the framework of ASEAN or among groups of countries such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP 11), and at the same time improving its national legal framework, strengthening cooperation with other countries in the world community in promoting the rule of law.

Last but not least, this Delegation has carefully considered the report of the Secretary-General, Prof. Dr. Kennedy Gastorn, on the work of the organization contained in document AALCO/57/TOKYO/2018 ORG1. We commend Prof. Dr. Gastorn's efforts and the organization's proactive engagement with its Member States and entities as well as emerging issues of international law as illustrated by various successful activities as mentioned in the report. In this regard, we would like to place in the record our support for the Organization's workplan for 2019-2020, in particular its direction to expand the Organization's membership and its capacity-building programmes. My Delegation also would like to express sincere thanks to Japan as the host country for the excellent hospitality and arrangement of the present Annual Session.

In conclusion, my Delegation reaffirms that in participating in the activities of AALCO, Viet Nam will work together with all AALCO Member States in promoting global governance and the international rule of law, upholding multilateralism, as well as the important role of international and regional organizations in order to achieve the Sustainable Development Goals for the benefit of all peoples. I thank you, Mr. President.

President: I thank the distinguished Head of Delegation of Viet Nam. Next, I invite the distinguished representative of Republic of Yemen.

His Excellency Hon. Almagedi Faisal Hazza, Deputy Minister of Justice and the Head of Delegation of the Republic of Yemen[18]: Mr. President, Mr. Vice President, Excellencies, Ministers and Heads of Participating Delegations, Ladies and Gentlemen,

At the outset, allow me to congratulate the President and Vice-President for their election. I offer my thanks to the Secretary-General and his team for their efforts to make this session successful. It is my pleasure to stand before you to represent my country, the Republic of Yemen, which is suffering in wake of Iranian interference in Yemen's internal affairs by supporting the Houthi movement with weapons, intelligence, and money and thus violating the principles and morals of international law and UN Security Council resolutions on Yemen.

Ladies and Gentlemen, Yemen, since the Iranian backed Houthi militia's coup against the legitimate president and government, has been going through a very tragic situation in terms of justice, freedom, rights, health, education and living.

Due to Houthi coup, one million Yemeni children are displaced; more than 16 million have no access to drinking water; equal numbers of the people are in dire need of basic health care, and 11.3 million people are at risk of starvation. Houthi militias have violated the law and destroyed the legal system. Thousands are languishing in secret prisons and the worst form of psychological and physical torture is being practiced upon them. They are not allowed to meet their kith and kin. They are not being subjected to fair trials and extrajudicial executions are often carried out. Their houses are raided. Opponents and people suspected of supporting them are arrested without any regard for law. Militias recruit children forcibly to fight their losing battles without the consent of their parents.

Despite the militias' access to all state resources in their areas of control along with the royalties imposed on traders and businessmen, they refuse to pay salaries to employees and teachers and refuse to fund public projects. On the international relations front, these militias pose a serious threat to international peace and navigation in the Red Sea and the

[18] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Bab al-Mandab Straits. In an official statement of June 30, 2017, they declared that they would turn "the Red Sea into a battle field". These militias pose serious threat to the people of Yemen, humanity, values of coexistence, and international principles and international declarations on fundamental rights and freedoms.

Ladies and Gentlemen, the support of the international community is paramount in rebuilding our judicial set-up especially to re-establish courts and judicial cadres and to rebuild the database of cases after a number of case files and archives of land and public property have been destroyed by militias. We also need to establish a joint arbitration centre between our government and your distinguished Organization, AALCO, to settle disputes and to facilitate transfer of knowledge and best practices to Yemen. This will help in improving litigation environment thus helping business environment to improve.

Ladies and Gentlemen, more than seven UN Security Council resolutions on Yemen have issued and most important among these is the resolution 2216 calling for the end of the coup and demanding the militia to hand over arms and the institutions of States. The Yemeni government offered many concessions and attended more than three rounds of negotiations, the latest of which was held in last September in Geneva, while the Houthi militia balked and refused to participate in the peace process on basis of rule of law.

Ladies and Gentlemen, as much as we need internal peace in Yemen, we look forward to comprehensive global peace. Peace in cyberspace and free flow of information is one of the important factors of it. We wholeheartedly appreciate and respect international covenants, charters and treaties and are working on accommodating our law to the spirit of these covenants and their requirements. We believe that an international legal system is very important for us and for the world and this limits the intrusion of multinational corporations and other organizations controlling cyberspace and safeguards the rights of developing countries. We affirm our readiness to engage positively and contribute effectively to the formation of common visions on this legal system and the one related to it.

Ladies and Gentlemen, we agree with the report of Zhixiong Huang, rapporteur of AALCO'S Working Group on International Law in Cyberspace. We express our deep appreciation for the efforts that he has made, and we agree with what came in the report, with our support to the proposal of Japan in annex 4 about deleting paragraph 14-16 of the Report's project and introducing an alternative proposal as follows: "Member States are encouraged to continue discussion on possible cooperation in countering cybercrime to complement the ongoing efforts in other international forums such as the Commission on Crime Prevention and Criminal Justice". We support China's proposal in Annex 3 with regard to the adoption of "a Declaration on the Principles of International Law on Cyberspace", which will summarize and define the basic common positions and values of

AALCO Member States in the application and development of international law on cyberspace.

Ladies and Gentlemen, with regard to the law of the sea, we see the importance of the recommendations made by the Secretariat of AALCO, especially with regard to working with the Preparatory Commission of the United Nations for the drafting of a new treaty. I wish all of us a world of peace, coexistence and the rule of law. Thank you.

President: I thank the distinguished representative of Yemen. Next, I invite the distinguished representative of Republic of Libya.

His Excellency Mr. Fathalla Senoussi Al-Jedi, Director-General, Legal Affairs Department, Ministry of Foreign Affairs and the Head of the Delegation of Libya[19]: Mr. President, and Ladies and Gentlemen, At the outset, I take pleasure in congratulating you for your election as the president for the Fifty-Seventh session, and your distinguished deputy and all the respected members of the office. It is my pleasure to thank and appreciate the government of Japan for hosting this Session and for actively participating in its organization and making this Session a success. Let me also thank to the president of the previous session and his deputy for their efforts during the last session.

Mr. President, the delegation of my country wishes to join the delegations which spoke before me to express our willingness to support for the work of the Organization. I would like to state that my country contributed to its establishment and supported it for several decades because of its absolute belief in the importance of cooperation in different fields between the Asian and African continents. Our delegation also appreciates the work done by Secretary-General which is reflected in the report presented in this Session. We also appreciate the valuable work mentioned in the documents presented by the Secretariat of the Organization.

Mr. President, despite the disturbing situation my country is going through fueled by some external actors, we remain hopeful especially regarding Rule of Law. There have been many legislative developments in Libya aimed at enhancing the Rule of Law and fundamental freedoms contributing to the desired stability by strengthening the judicial authority. It has now turned into a body independent of executive, i.e. Supreme Judicial Council, which was earlier under the ministry of justice. The judicial authorities have become independent in terms of regulation, administration and finance. From legislative point of view, the ability of citizens to resort to judiciary to preserve their rights has been strengthened and the authority of all special courts has been cancelled. All crimes have

[19] The statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

been subjected to a unified law before a single judicial authority. Given the conditions that all of you are aware of, the constitution drafting committee continued and concluded its work and referred to the parliament where a law has been issued for organizing a referendum on it. This in itself is a major legislative achievement. We would be pleased to revive the prominent role played by human rights activists and defenders of democracy, justice and rule of law.

In pursuance of strengthening legal cooperation with other countries, our country recently signed a number of agreements with Italy and USA in order to enhance the delivery of justice. We also signed quadrilateral agreement of cooperation with our southern neighbours—Sudan, Chad and Niger. Mutual judicial cooperation continued through judicial assistance requests from a number of countries including many Member States of this Organization. There have been mutual investigations which contributed to enhancing security and achieving stability for many countries, especially in the area of counter-terrorism. We thank these countries and their judicial institutions for this cooperation.

With regard to the agenda of this Session, we would like to encourage the Member States to offer some initiatives for creating an integrative vision about the legal topics presented here through coordination between AALCO and other Asian and African judicial organizations along with international organizations including the UN in which the Asian and African countries are members. We also hope to strengthen the exchange of experiences among the member countries and create intensified training programmes for capacity building. We are ready to support the Secretariat to offer any proposal in this regard. Thank you Mr. President.

President: I thank the distinguished delegate of Libya. Next, I invite the distinguished representative of Republic of Ghana.

Her Excellency Ms. Gloria Afua Akuffo, Attorney-General and Minister for Justice and the Head of Delegation of the Republic of Ghana: Mr. President, Mr. Vice President, the Secretary-General, Honourable Attorneys-General and Other Heads of delegations, the Diplomatic Corps, Distinguished Ladies and Gentlemen, I thank you, Mr. President, for giving me the floor and wish to express my delegation's gratitude for the invitation extended to Ghana to participate in this Fifty-Seventh Annual Session of AALCO. We are truly pleased to be here.

On behalf of my delegation may I add a congratulatory voice to that of the Speakers preceding me on the election of you, Mr. President and the Vice President for this Session. I commend you for the able manner you have conducted proceedings thus far. My delegation and I will continue to offer our uttermost support for a successful meeting.

I would also like to thank your predecessor, Prof. Githu Muigai, Former Attorney-General of the Republic of Kenya and the immediate past Vice President, Deputy Director-General, Department of Treaties and Legal Affairs of the Ministry of Foreign Affairs of Thailand, for their able stewardship.

We commend the Secretary-General, Prof. Dr. Kennedy Gastorn for his comprehensive report and the excellent manner he has steered the affairs of the organization thus far. We also acknowledge with deep gratitude the efficient and invaluable support of the Secretariat to AALCO and wish them well.

We must also thank abundantly the Government and People of Japan for hosting this Session as well as for their warm hospitality.

Mr President, permit me to recall the 40th Session of AALCO, then Asian-African Legislative Consultative Committee (AALCC) held at Headquarters, New Delhi, India in 2001 when I had the honour and privilege, for the first time, to lead Ghana's delegation to the meeting, two (2) years after Ghana had hosted the Session in 1999. As a demonstration of her commitment to upholding the rule of law and in recognition of the significant contribution of AALCO in shaping the development of international law, my delegation tabled a motion for the amendment of the name of AALCC to AALCO. Thankfully, the motion which was unanimously carried, now appropriately reflects the global significance of AALCO in its contribution to the development of international law.

Mr. President, without the rule of law, there can be no stability: without stability there would be no peace and without peace the governments cannot attain the desired development for its peoples. It is for this reason that we must at all times resort to a peaceful settlement of international disputes whenever they occur.

Mr. President, with your permission, I would like to share with distinguished ladies and gentlemen, a bit of Ghana's experience concerning its neighbour to the west, Côte d'Ivoire. For over five decades, Ghana and Côte d'Ivoire had observed what Ghana termed as the "customary equidistance boundary". The stability of that understanding had been mutually beneficial, as it provided a common basis for the conduct of the respective affairs of the two countries on their respective sides of their maritime boundary. The "customary equidistance boundary" was also the basis for significant investments by third parties on either side of the maritime boundary, all of whom placed justifiable reliance on what Ghana and Côte d'lvoire had done in their respective territories. Consequently, prior to 2009, there was no dispute between the Parties regarding the location of their maritime boundary.

A sudden departure in 2009 from this common understanding by Côte d'lvoire resulted in a dispute which led to ten rounds of negotiations which unfortunately ended in futility. Ghana had no alternative but to invoke the jurisdiction of International Tribunal of the Law of the Sea (ITLOS) for the resolution of the dispute. In turning to the Tribunal, Ghana's primary objective and interest was to secure legal certainty and, thereby, bring finality to a dispute with a valued neighbour.

On 23 September, 2017, the Tribunal rendered a unanimous judgment which substantially confirmed the maritime boundary that the two countries had hitherto respected. Following the decision of ITLOS the two countries affirmed their acceptance of the decision in accordance with the Statute of ITLOS and firmly pledged to work together to implement the decision to strengthen and intensify their brotherly relationships of cooperation and good neighbourliness.

Mr. President, I am happy to report that our two countries continue to hold meetings out of which a Memorandum of Understanding has emerged whereby areas of cooperation have been identified for the development and benefit of our peoples whiles adhering to the maritime boundary as delimited by ITLOS.

Mr. President, demonstrably, there is a lot to gain from resolving international and indeed all disputes peacefully. My delegation therefore wishes to encourage Member as well as Observer States to adhere to the principle of peaceful resolution of disputes so as to create the requisite environment for a better world.

Mr. President, arguably, cyber-crime poses a huge security threat to the world, perhaps second only to terrorism. The phenomenon which is without boundaries continues to snowball in such a fast and complex manner that requires all international organisations such as ours, to develop effective and sustainable strategies to combat it. To this end, many countries including Ghana have subscribed to the Budapest Convention in a bid to fight the crime along-side other countries. As we continue to debate on the inadequacies of the Budapest Convention, we need to develop the needed regulations that would plug the holes that may have been identified in the Convention, after all the efficacy of any piece of legislation is determinable only upon its application over a period of time. We need to act quickly in making these decisions since cyber-crime is outpacing the globe in as many ways as its complexities. On its part, Ghana has developed a National Cyber Security Policy and Strategy following which it has set up a National Cyber Security Secretariat, appointed a Cybersecurity Advisor, adopted a National Cyber Security Organizational Structure and inaugurated a National cyber Security Inter-Ministerial Advisory Council. Additionally, a National Cyber Security Technical Working Group has been established, a cyber security awareness creation has been launched and a number of capacity building programmes have been organized among other activities.

Mr. President, despite these interventions, Ghana acknowledges the short-comings of a solo effort in combatting a hydra-headed cyber-crime. Consequently in July this year, 2018, Ghana ratified the African Union Convention on Cyber Security and Personal Data Protection, the Malabo Convention as one of the strategies to improve Ghana's cooperation on cyber security at the African Union level. Ghana therefore welcomes other countries to collaborate with in mapping out strategies against the crime. We also call upon member states of AALCO to accelerate the creation and implementation of domestic plans that will enable them join hands with other multilateral organizations that will yield greater results in fighting the crime to at the least reduce it substantially if not eliminate it.

Mr. President, it is my earnest hope that as with previous Meetings, this Fifty-Seventh Meeting will offer States parties, observer states and other august invitees the opportunity to explore better and more effective ways of implementing the Convention on the Law of the Seas, the Budapest Convention, the Malabo Convention and other international conventions that would enhance global governance and international rule of law while giving practical meaning to the notion of the Common Heritage of Mankind. Mr. President, Mr. Vice President, the Secretary-General, Honourable Attorneys General and Other Heads of delegations, I thank you most sincerely for your kind indulgence.

President: I thank the distinguished delegate of Ghana for her statement. Next, on my list is United Republic of Tanzania. I invite the distinguished representative of Tanzania to present his statement.

His Excellency Mr. Mathias Chikawe, Ambassador, High Commission of the United Republic of Tanzania in Tokyo, Japan and the Head of Delegation of Tanzania: Mr. President, Excellencies, ladies and Gentlemen, On behalf of my delegation, the Government and People of the United Republic of Tanzania, I wish to express my appreciation for this opportunity to address this Session. This is indeed a privilege and honour for me as I represent the Minister for Justice and Constitutional Affairs Hon. Palamagamba John Kabudi who could not attend due some other equally important official assignment.

Let me join other delegations in congratulating you, Mr. President and the Vice President for being elected to lead this annual session and the work of this Organization in the coming year. We wish to assure you Mr. President and the Vice President of our support during your tenure as President and the same support will be extended to the Vice President.

Let me also express, on behalf of my delegation, our sincere appreciations to the outgoing President, for the accomplishment achieved during his tenure. In the same vein, let me

thank the Secretary-General, Prof. Dr. Kennedy Gastorn, for the creditable work of the Organization. I also join others in commending the Secretariat for exemplary work they are doing in support of the Organization and the Secretary General. We wish to recognize the entire Secretariat, for the tireless efforts and strength have been employed in the preparation of the session. We thank you very much.

Mr. President, in a very special way, my delegation wishes to thank our host the Government of Japan for offering to host this session. We express our appreciations to the Government and the People of Japan for the warm reception and hospitality extended to us since our arrival in this beautiful and modern City of Tokyo. I wish to convey to you all warm greetings and felicitations from H.E. Dr. John Pombe Magufuli, the President of the United Republic of Tanzania. The President has wished us a very fruitful annual session.

Mr. President, the growth and expansion of AALCO since its foundation in 1956 has been significant in contribution and development of international law, amongst the Member States. To-date, AALCO has increasingly become a significant platform for consultation by Member States to achieve international peace and order. This includes its current ground-breaking work in the legal aspects of combating Violent Extremism; tackling cyberspace and cyber security related challenges, such as cybercrime, cyber-terrorism, cyber-warfare, and improving cyberspace governance. The relevance of this topic at the current times is of paramount importance.

Tanzania commends the effort of the Open-ended Working Group on International Law in Cyberspace in conducting study and research to address the challenges posed. We are of the opinion that the Working Group should continue with further studies in order to come up with more concrete and comprehensive solutions to address the existing challenges.

Mr. President, AALCO has achieved immensely in upholding basic norms of international law including the laws governing diplomatic relations, environmental legal regime, state immunities, international boundaries, human rights law, humanitarian law, trade and business, commercial transactions, forced occupation, terrorism, blue economy, issues of law of the sea, conflict resolution and the like. AALCO has also continued to actively contribute in developing the requisite jurisprudence and legal regime, including the codification of the international law.

However, we should not be complacent in any way of what has been achieved: but rather we should intensify our efforts to address the enormous challenges ahead of us. It is imperative that we maintain our momentum, consistency and unity and spearhead to maintain the underlying core principles of this Organization. AALCO needs to address

the challenges of 21st Century in order to remain relevant and be able to effectively cater for the needs of the contemporary Member States.

Mr. President, The United Republic of Tanzania believes that Member States will continue to work together in fostering the core vale of the Organization in upholding the international legal regime and more importantly, in resolving internal disputes. The United Republic of Tanzania remains committed in implementing its endeavours in safèguarding the principles of rule of law, by all Government machineries.

We have relentlessly and tirelessly continued to intensify the war against cross international crimes such as corruption, terrorism and Money Laundering by amending the existing legislations to address the emerging challenges. In pursuance of that we have established a Financial Intelligence Unit to deal with money laundering crimes, and we have a National Counter-Terrorism Centre (NCTC), which is an inter-agency Institution that coordinates counter-terrorism efforts. Equally, we have continued to be part of both the regional and international counter-terrorism Institutions to enhance international cooperation.

Tanzanía has played a major role in peace keeping missions and has significantly contributed to the restoration of global peace and stability. The number of our troops serving in different missions currently stands at 2,687 peacekeepers in 6 different countries.

Mr. President, Tanzania has always maintained the historical role in hosting and providing sanctuary to refugees for decades from Central and Southern Africa. We have done that in conforming to the relevant international legal instruments of admitting asylum seekers and protecting refugees to which Tanzania is a part. Over the decades of hosting refugees, Tanzania has provided local integration and citizenship to more than 150,000 refugees in one undertaking.

Apart from providing sanctuary to refugees, we have also been involved in initiatives to resolve regional conflicts in the Great Lakes Region that have the potential to increase refugee influxes. The implementation of the above endeavours signifies Tanzania's commitment to confirming with peaceful Settlement of Disputes Agenda.

On International Trade and Investment Laws, Tanzania has recently enacted a number of legislations including the National Wealth and Resources (Permanent Sovereign) Act 2017, the National Wealth and Resources (Revenue and Re-Negotiation of Unconscionable Terms) Act 2017. We have also other legislations on international trade and investment such as Tanzania Investment Act 1997, the Mining Act 1979, Mining Act 2010, Petroleum Act 2015, etc.

The aim of these legislations is to create a friendly investment environment to the investors, to harness and harmonize dispute resolution mechanisms and to ensure mutual benefits to both parties. Through these legal initiatives and H.E. the President Dr. John Pombe Magufuli's efforts and commitments towards industrial economy, and with support of the international community and development partners, Tanzania has successfully implemented various national development plans which have significantly contributed to the growth of the economy.

Furthermore, we are proud to have incorporated the Sustainable Development Goals (SDGs) into our national development agenda in order to accelerate economic growth and become the Middle Income Economy by 2025.

In closing, Mr. President, allow me, once again, and on behalf of my delegation to reiterate Tanzania's relentless commitment and eagerness to work with AALCO and the State Members in upholding International Law. Tanzania will continue to render all the necessary support to Secretary General and his team as they pursue the noble goals of this Organization. Indeed, I Thank You, Mr. President.

President: I thank the distinguished representative of Tanzania. Next, I invite the distinguished delegate of Republic of Kenya. Please.

Her Excellency Ms. Christine Agimba, Deputy Solicitor General and the Head of the Delegation of the Republic of Kenya: Thank you, Mr. President, for the opportunity to make a very brief general statement on behalf of the Republic of Kenya, as we already had an opportunity to make earlier remarks during the inaugural session yesterday.

Let me begin by congratulating you and the Attorney General and Minister for Justice of Mauritius for your election as President and Vice President respectively of the Fifty-Seventh Session of AALCO. As outgoing President of the Fifty-Sixth Session, Kenya assures you of our full support and co-operation during your term.

Allow me on behalf of my delegation and on my own behalf to express our pleasure on this auspicious occasion of the Fifty-Seventh Session of the Asian-African Legal Consultative Organization (AALCO), being held here in this stunning city of Tokyo, the land of the rising sun. I wish to also take this opportunity to thank the Government of Japan and her people for the warm welcome and hospitality extended to us since our arrival.

Mr. President, we appreciate the tireless efforts of the AALCO Secretariat and in particular H.E. Prof. Dr. Kennedy Gastorn, Secretary-General, AALCO, in steering the

work of this Organization and ensuring that the interests of the two regions are well articulated at various forums such as the United Nations General Assembly, the International Law Commission and even at the World Trade Organization.

Mr. President, we note with interest the items on the Agenda at this Session which will give Member States an opportunity to deliberate upon important topics such as peaceful settlement of disputes, International trade and investment laws, among others. We note the inclusion of expert speakers who will share their views and experiences for consideration by the distinguished delegates and this will be useful to Member States as we use this forum to discuss and seek to formulate national and common positions on these important topics.

Mr. President, distinguished delegates, Kenya notes with particular interest the significant time allocated to the topic on the Law of the Sea during this Session. Kenya welcomes the scheduled side event on the Law of the Sea and notes the distinguished experts who will speak on this topic, which is of great importance and interest to all Member States present and we look forward to the deliberations on the same.

The Government of Kenya recognizes the fact that the resources on earth available for human consumption are finite and thus the need for common global concern for their conservation and exploitation. This includes sea, lake and river resources commonly known as the blue economy. It is in light of this that the Government of Kenya in partnership with Government of Canada will co-host a Sustainable Blue Economy Conference in Nairobi on 26-28 November 2018, which will focus on the theme “the Blue economy and the 2030 Agenda for Sustainable development”.

I hereby extend an invitation, on behalf of the government of Kenya, to the member states present at this conference to attend the event, noting that individual invitations have been sent through Kenya Missions abroad accredited to your countries as well as to your respective diplomatic missions in Nairobi through the Ministry of Foreign Affairs of Kenya.

Mr. President, allow me therefore, on behalf of the government of Kenya and my delegation to humbly welcome you all to Nairobi, the green City in the sun. For those of you who may not have been to Kenya, we promise you that you will enjoy the magical sights of Kenya's wildlife, the beautiful diversity of landscapes, white sandy beaches, our flora and fauna, captivating cultures and exotic food as we look forward to hosting delegations from your respective countries in Nairobi, Kenya in November. I thank you, Mr. President.

President: I thank the distinguished representative of Kenya, the previous host country of AALCO session. Next is the last speaker among Member States. I invite the distinguished delegate of Mauritius. Minister, please.

His Excellency Hon. Maneesh Gobin, Attorney General, Minister of Justice, Human Rights and Institutional Reforms and Head of the Delegation of the Republic of Mauritius: Mr. President, Let me at the outset congratulate you on your election as President of the Fifty-Seventh Annual Session of AACLO. I would also like to express our heartfelt thanks to the Government of Japan for hosting this Annual Session of our Organization and for the warm welcome and hospitality extended to my delegation. I also wish to place on record our deep gratitude to the President of the Fifty-Sixth Annual Session for the efficient and effective manner in which he has spearheaded the activities of our Organization.

Mr. President, in line with the theme for this General Debate, "Global Governance and International Rule of Law", my delegation would like to brief this meeting on the request from the United Nations General Assembly for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. At the heart of this request is the issue of decolonization which is a matter of direct interest to the United Nations. The UN General Assembly has indeed historically played a central role in addressing decolonization through the exercise of its powers and functions, especially in relation to Chapters XI through XIII of the UN Charter.

Mr. President, on 12 March of this year, Mauritius celebrated the 50th anniversary of its independence. However, the decolonization process of Mauritius remains to date incomplete in view of the unlawful excision of the Chagos Archipelago from the territory of Mauritius prior to its accession to independence.

The Chagos Archipelago has always been part of the territory of Mauritius since at least the 18th century, at a time when Mauritius was a French colony. When Mauritius became a British colony in 1810, the Chagos Archipelago continued to be part of its territory. The Chagos Archipelago was excised by the United Kingdom from the territory of Mauritius in violation of international law and UN General Assembly resolutions. UN General Assembly Resolution 1514 (XV) of 14 December 1960 unequivocally prohibits the dismemberment of any colonial territory prior to independence.

However, the United Kingdom dismembered the territory of Mauritius and violated its territorial integrity. The wrongfulness of the dismemberment of the territory of Mauritius was recognised and confirmed in UN General Assembly Resolutions 2066 (XX) of 16

December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967. This wrongful act continues until today.

The unlawful excision of the Chagos Archipelago also involved the forcible eviction by the United Kingdom of all the inhabitants of the Chagos Archipelago in total disregard of their fundamental rights. Most of them were moved the main Island of Mauritius. The Government of Mauritius is fully sensitive to their plight and their legitimate aspiration, as Mauritian citizens, to resettle in the Chagos Archipelago.

Mr. President, the UN General Assembly adopted on 22 June 2017 by an overwhelming majority a resolution which was tabled by the Republic of the Congo, on behalf of UN Member States that are members of the African Group of States, to request an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The resounding vote in favour of Resolution 71/292 no doubt testifies to the great importance that countries across the globe, including from Africa and Asia, attach to the need to complete the decolonization process of Mauritius.

In Resolution 71/292, the General Assembly has requested the International Court of Justice to give an advisory opinion on the following two legal questions:

(a). "Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXlI) of 19 December 1967?": and

(b). "What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?"

Following the adoption of General Assembly Resolution 71/292, the International Court of Justice invited the United Nations and its Member States to make written submissions on the questions in respect of which an advisory opinion has been requested. 31 States and the African Union presented written statements to the Court by the deadline of 1 March 2018. Subsequently, 10 States and the African Union submitted by the deadline of 15 May 2018 written comments on the written statements which were filed with the International Court of Justice.

After these two rounds of written submissions, the International Court of Justice held public hearings from 3 to 6 September 2018. All UN Member States were invited to participate in the hearings, regardless of whether or not they submitted a written statement to the International Court of Justice. 22 States and the African Union took part in the hearings.

Most of the States that participated in the hearings as well as the African Union took the stand that the International Court of Justice has jurisdiction and should exercise its discretion to give an advisory opinion. They also argued that the decolonization of Mauritius was not lawfully completed in 1968 when Mauritius was granted independence.

An advisory opinion of the International Court of Justice will no doubt assist in completing the decolonization process of Mauritius and in so doing, allow Mauritian citizens, including those of Chagossian origin, who wish to do so to resettle in the Chagos Archipelago. An advisory opinion will also contribute to clarify and strengthen the Rule of Law at the international level.

Mr. President, my delegation would like to take this opportunity to reaffirm our deep appreciation to AALCO Member States for their support to the ongoing struggle of Mauritius to complete its decolonization process and for their vote in favour of UN General Assembly Resolution 71/292. My delegation also wishes to reiterate our profound gratitude to AALCO Member States, which actively participated in the written and oral proceedings of the International Court of Justice. Thank you.

President: I thank the distinguished Minster of Mauritius for his statement. With that, we have come to end of list of Member States. Now, I would like to invite the observer delegations. First, I invite the Philippines to make their statement.

Mr. J. Eduardo Malaya, Assistant Secretary, Office of Legal Affairs, Department of Foreign Affairs of Phillipines-Observer Delegation: Mr. President, Excellencies, Ladies and Gentlemen, As representative of a former Member State re-engaging with the AALCO at this session, I will be brief in this my general statement. At the same time, the Philippines having been once an active member of this organization and the host of its 35th Annual Session in Manila in 1996, allow me to share some thoughts with all of you.

AALCO is one of the key outcomes of the historic Bandung Conference in 1955, of which delegates from the Philippines were present and actively took part. We can say that AALCO grew on the heels of the development of the United Nations system. In the post-war era and since the adoption of the U.N. Charter in 1945, greater cooperation has

become the norm, not just in international relations, but more so in international law in particular. Without a doubt, international law through the U N., including through the International Law Commission, inspired the mission of AALCO, just as AALCO enriched the debates on international law in the U.N.

Just like most, if not all, AALCO Member States, the Philippines believes that international law has served the global community well. Yet, we also know that international law on its own, however dynamic and even morally correct, has not eliminated inter-state and inter-communal conflicts. If we add to this limitation an emerging trend of a retreat from international institutions and arrangements by some countries and a tendency towards unilateralism there lies the challenge for international law in our time.

Mr. President, how should AALCO respond to this challenge? How should AALCO reinvent its dual role as an intergovernmental organization and an advisory board to Member States on matters on international law, to respond to this challenge?

Perhaps, AALCO can and will respond to the challenge in a manner similar to what it has done through the decades-through the light of knowledge and the hand of cooperation among its Member States and partners and beyond. As a country that is re-engaging with AALCO, the Philippines is much eager to know once again and learn more about AALCO and its roadmap. We see our reengagement with this organization as aligned with the Philippine Government's pursuit of a truly independent foreign policy.

We note that many items in this session's agenda as equally important and relevant to the Philippines. We look forward therefore to sharing knowledge, experiences and recommendations on these items, notably on international trade and investment law, migration, the law of the sea, and the peaceful settlement of disputes. We wish to further note that among the more important instruments that not only affirmed the principle of peaceful settlement of disputes under the U.N. Charter but also clarified and amplified it is the Manila Declaration for the Peaceful Settlement of International Disputes that was adopted by the U.N. General Assembly in 1982.

Mr. President, for this general statement, I wish to share with you some of the recent initiatives that the Philippine Department of Foreign Affairs, through the Office of Legal Affairs, has been pursuing to promote international law in the Philippines.

Last year, we convened a Colloquium on International Law Issues, ranging from enhancing international legal and judicial cooperation and facilitating trade and investments. This has deepened government engagement with the academe, practitioners, civil society and other stakeholders, so much so that its proceedings are now being

published in the revived Philippine Yearbook of International Law. Pursuant to the recommendations at the colloquium, the Philippines acceded to the HCCH Apostille Convention, and we are looking forward to accessions to the Service of Process Convention, as well as the Framework Agreement on the Facilitation of Cross-Border Paperless Trade in Asia and the Pacific, among other instruments.

We at the Department of Foreign Affairs also helped rebuild the Philippine Society of International Law, equipping it to organize and host the 7th Biennial Conference of the Asian Society of International Law (AsianSIL) in Manila in August next year.

We look forward therefore to welcoming many of you, AALCO Member-States, and the AALCO Secretary General to Manila on August 22-23, 2019 for the Biennial Conference of our Asian Society of International Law (AsianSIL), together with hopefully the Asian judges of the International Court of Justice and the International Tribunal for the Law of the Sea, and eminent international law scholars and practitioners within and beyond Asia.

Mr. President, in the spirit of affirming the Philippines commitment to the rule of law, we look forward to reacquainting ourselves with AALCO, hear its success stories, and learn also of the success stories of the Member States.

Let me conclude by echoing the previous speakers in congratulating you, Mr. President, on your election to lead this Fifty-Seventh session of the AALCO and in thanking the government and people of Japan for their warm hospitality and the excellent arrangements for our conference. *Maraming salamat*. Thank you.

President: I thank the distinguished Observer of the Philippines for the statement. Next, I invite the distinguished Observer of Burkina Faso for her statement.

Ms. Koala Kabore Koumbi Aline, Charge d' affairs, Embassy of Burkina Faso in Tokyo, Japan- Observer Delegation: Mr. President, Mr. Secretary-General of the Asian-African Legal Consultative Organization (AALCO), Distinguishes representatives of the Member States, Dear participants, First of all, let me to inform you that my country Burkina Faso, is specially honored to take part at this Fifty-Seventh session of AALCO which concerns both our continents Africa and Asia.

I would like, on behalf of the Minister of Foreign Affairs and Cooperation of Burkina Faso, to thank the Japanese Government for the warm welcome they have given us since our arrival and also to thank the General Secretariat of AALCO for the effort made for the success of this important activity.

My country Burkina Faso salute and appreciate this great opportunities which allow us to discuss about our common interest in order to harmonize our point of view on some important issues. As you know, today we face a world with a lot of interest sometimes divergent and contradictory. That is why it is very urgent for our countries to reinforce our unity particularly between Africa and Asia countries. Our strong collaboration could allow us to achieve our goal on these issues.

Today, we have to consider the new challenges in the international context of terrorism and religious and extremism violence with the traditional issues such as the promotion of peace, economic prosperity and good Governance. My country, Burkina Faso will continue to work with its partners to build a word without violence where only peace and prosperity shall be our common gift.

Distinguished Ladies and Gentlemen, on behalf of the President of Burkina Faso, H.E. Mr. Rock Marc Christian Kabore and the Minister of Foreign Affairs and Cooperation of Burkina Faso, I would like to express once again, our gratitude to the Secretary-General, for our participation in capacity of observer at this Fifty-Seventh Session. I thank you so much.

The main wish of our authorities is not to remain like an observer, but to become a full member of this important organization that intervenes and plays an important role in the sectors of global governance and Burkina Faso will work to make this happens. I would like to reassure the different Member States that all of important issues which will be taken at this session will be follow and consider to our policies. We will maintain the link with the General Secretariat of AALCO.

Finally, allow me on behalf of Our Excellency Mr. Alpha Barry, Minister of Foreign Affairs and Cooperation and our delegation, to thank you sincerely dear Secretary-General for your invitation and consideration. Thank you for your kind attention.

President: I thank the distinguished representative of Burkina Faso for her statement. Now, I invite international organizations for making their statements. First in the list is International Humanitarian Fact-Finding Commission (IHFFC). I invite the observer of the organization to make their statement.

Prof. Shuichi Furuya, Member, International Humanitarian Fact-Finding Commission (IHFFC)-Observer: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentleman, On behalf of the International Humanitarian Fact-Finding Commission (IHFFC), I would like to express my sincere gratitude to all the Member States and the AALCO secretariat for accepting it as an observer in this Session. This meeting concerning "Global Governance and International Rule of Law", is an important

occasion for the IHFFC to raise awareness on its activities for ensuring respect for international humanitarian law.

The IHFFC or the Commission was established by Article 90 of the First Additional Protocol to the Geneva Conventions of 1949. It is an only permanent and independent international organization for International humanitarian law fact-finding, which is composed of 15 members elected by the States having recognized its competence.

The Members of the Commission, however, do not represent their States and they serve in their personal capacity, as a result of which the Commission is truly neutral and impartial. The members are designed to reflect geographical diversity and come from all parts of the world reflecting different disciplines: military officers, professors of law, medical doctors, diplomats and so on.

Main task of the Commission is to verify facts concerning alleged violations of international humanitarian law during all types of armed conflict. I would like to emphasize here that the fact-finding by the Commission never aims to "blame" or "name and shame" a state or individuals for the violations of international humanitarian law. Its purpose is to establish the facts of alleged violations and, on the basis of those facts, to encourage the States concerned to resolve the disputes between them, and then to restore their attitudes of respecting the humanitarian law In this regard, the Commission is completely different from the International Criminal Court as well as the Commissions of Inquiry which have been established by the UN Human Rights Council for investigating and identifying those responsible with a view to prosecuting them for their violations.

The Commission has automatic jurisdiction in relation to complaints made by and against the State Parties which have already accepted its competence by a declaration under Article 90, paragraph 2 (a). However, in all other cases where either of the States concerned or all of them have not accepted its competence, it can act only with the consent of all those States. In other words, the mandate of Commission is strictly consent-based, and therefore it cannot start its mission only by its own decision.

The fact-finding mission is conducted in a neutral and impartial way. The facts will be investigated without legal accountability evaluation unless requested, and the report as the result of fact-finding may contain recommendations as the Commission deems appropriate. A very important point is that the report is confidential unless all Parties to the conflict request otherwise. The report is exclusively made to the States concerned, and never opened to the public.

For your further understanding of actual activities of the Commission, I would like to draw your attention to its latest mission carried out in Ukraine last year. The Organization

for Security and Cooperation in Europe (OSCE) had sent the Special Monitoring Mission to Ukraine. In April 2017, two armoured vehicles of this Special Monitoring Mission, patrolling in a town of east Ukraine was exploded by landmines. One vehicle was severely damaged, and one paramedic was killed and two monitoring staff were injured.

The OSCE sought external assistance to conduct a neutral and impartial investigation on this incident, and requested the IHFFC for its fact-finding mission. The team of the IHFFC reviewed relevant documents, interviewed witnesses, visited the blast site for collecting materials examined the damaged vehicles, and conducted forensic medical analysis of injuries. From these activities, the team concluded that the explosion was not likely to intentionally target the OSCE Monitoring Mission and then it constituted indiscriminate, unlawful usage of anti-vehicle landmines under international humanitarian law. The report was well received by the Permanent Council of OSCE and all the member States were satisfied with the outcome which contributed to reducing the tensions among the States and parties concerned.

Besides the Ukraine case, the Commission has been engaging in many activities to propose good offices in the cases where the implementation of humanitarian law is called into question.

Mr. President, the activities of the Commission are supported by the States which have made the declaration to accept its competence. However, the number of Asian and African States having accepted the competence is not necessarily prominent. Making the declaration is not only the expression of willingness to accept the fact-finding by the Commission, but also the manifestation of general attitude of respecting and complying with international humanitarian law When a State manifests its intention to respect the humanitarian law by making the declaration, it would contribute to increasing its international trust, and advancing confidence-building with its surrounding States. For this, the Commission will continue to make every effort to promote as many Asian and African States as possible to make the declaration to accept its fact-finding competence.

To conclude, I would like to recall the willingness of the Commission to act as an instrument of the international community to strengthen respect for international humanitarian law. The Commission stands ready to consult with any State at any time. Thank you for your attention.

President: I thank the representative of IHFFC. Now I invite the representative of the ICRC to make her statement.

Ms. Linh Schroeder, Head of the Mission in Tokyo, Japan, International Committee of the Red Cross-Observer: Mr. President, Mr. Vice-President, Mr. Secretary General

of the Asian-African Legal Consultative Organisation, Your Excellencies, Distinguished Delegates, I would like to first thank AALCO and the Government of Japan for giving the International Committee of the Red Cross the opportunity to address your Fifty-Seventh Annual Session.

The ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflicts and other situations of violence and to provide them with assistance. It also endeavors to prevent suffering by promoting and strengthening international humanitarian law and universal humanitarian principles. The ICRC's association with AALCO since the signing of our MOU in 2003 provides a platform for continued joint efforts to promote and implement international humanitarian law (IHL).

As AALCO members are no doubt aware, we continue to witness-throughout the world - indiscriminate attacks affecting civilian populations and infrastructures, the use of weapons which are prohibited under international law, rape and other forms of sexual violence, hostage taking, and the killing of humanitarian workers, and attacks against vital healthcare infrastructure and health-care workers, for which the patients and their families are paying a terrible price. It goes without saying that we must do more to prevent and repress such violations of international humanitarian law.

However, we don't often hear about instances when IHL works and brings positive results: when the field of land mines is cleared a year earlier than expected, when the taxi driver carrying a wounded person is allowed through a check point, or when military doctrine is updated to include all the latest interpretations of IHL. Perhaps we don't hear enough about them because good news are somehow boring? But as lawyers, you know that laws can make a difference- every single day. This I what I would like to talk about today: how we can help make a better world through international regulation of armed conflict

Mr President, distinguished delegates, you would agree with me that the respect for IHL and other norms applicable in armed conflicts is the most effective way to limit the human suffering. For this, State and non-State parties to armed conflicts must respect their legal obligations under IHL. How can they do that?

With regard to attacks against vital healthcare infrastructure, health-care workers, and patients, parties to armed conflicts must respect the sanctity of medical facilities and the ethical obligation of health personnel to treat all patients, irrespective of who they are. They must allow medical supplies to reach their destination and people in need of care to reach medical facilities. It is also essential that States put in place laws to protect those facilities.

Additionally, there is the imperative of unconditional, unimpeded and safe access for humanitarian organisations. Humanitarian access must not be dependent on political factors, and humanitarian, military and political solutions should not- and cannot - be dependent on one another. Likewise, when enacting counter-terrorism legislation, States should ensure that humanitarian activities are not penalised or prohibited.

Next year, we will celebrate the 70h Anniversary of the four Geneva Conventions of 1949, to which each State is a party. In 2016, the ICRC asked people living in several countries affected by armed conflict, as well as those from Switzerland and countries that are permanent members of the UN Security Council, if they believe the rules of war matter. They do. Over two thirds of them think it makes sense to impose limits on how armed conflicts are fought.

Uptake of the Additional Protocols to the Geneva Conventions is not quite the universal ratification that we aspire to. So this anniversary is a great occasion to accede to the 1977 Protocols as soon as possible for those AALCO member States which have not yet done so.

Of course, the primary responsibility for respecting IHL and for protecting civilians lies with the parties to armed conflicts. But let us recall that all States have an obligation to respect and ensure respect for IHL, as set out in Article 1 common to the Geneva Conventions. Governments with influence over the warring parties can and should take concrete steps to encourage the parties to a conflict to fulfil their obligations under IHL.

Furthermore, all States must promote awareness of, and compliance with, international humanitarian law and international human rights law. Indeed, the ICRC and Switzerland are co-facilitating a State-led process to Strengthen Respect for IHL, with the aim of providing a safe space for dialogue on IHL among States. We are encouraged that States continue to participate actively in the process

The anniversary of the Geneva Conventions should also be a good reminder to enhance the respect for and compliance with all IHL instruments.

For example, of great importance is the Arms Trade Treaty (ATT), whose purpose is to prioritize humanitarian interests and, in doing so, to reduce human suffering. The measures laid down, including on preventing and addressing diversion, can only work if all States involved in the arms transfer chain share information and act responsibly at every step along this chain. That way, they can prevent the devastating and irreparable harm that comes when weapons fall into the wrong hands.

The ICRC is therefore glad to see that Member States to the ATT who met here in Tokyo last August, reaffirmed that the States must act in accordance with the letter and spirit of the Treaty in, and that some AALCO member States reported taking significant steps towards ratification of this Treaty.

This year, we also celebrate the 10th anniversary of the Convention on Cluster Munitions. As we know cluster munitions have a severe impact on civilians, killing and injuring large numbers, and causing long lasting socio-economic problems. The CCM which prohibits the use, production, stockpiling and transfer of cluster munitions, requires States to take specific action to ensure that these weapons claim no future victims.

The progress report, adopted at the Meeting of States Parties to the CCM last month, noted a number of achievements. It is indeed encouraging to see that some States present here today have progressed a lot in the ratification process and others have adopted some implementing legislation. Noteworthy is the model law for African States to implement the CCM prepared by Ghana and UNDP.

But more work is still needed to achieve the goal of ratification or accession by 130 States by the next review conference in 2020. The ICRC takes this opportunity to offer its expertise, in particular to those AALCO member States that have not yet ratified the Convention or adopted an implementing legislation.

Since the Fifty-Sixth Annual Session gathering, an important IHL instrument was adopted on 7 July 2017: the Treaty on the Prohibition of Nuclear Weapons (NW). It is the first globally applicable multilateral agreement to comprehensively prohibit NW. It is also the first to include provisions to help address the humanitarian consequences of NW use and testing. The Treaty complements existing international agreements on NW, in particular the Treaty on the Non-Proliferation of NW, the Comprehensive Nuclear-Test-Ban Treaty and agreements establishing NW free zones. By first October this year, 51 States have signed and another 19 have become a party to this Treaty. The ICRC welcomes that among them there are numerous AALCO Member States.

Mr President, distinguished delegates When talking about contemporary warfare, we often speak about autonomous weapon system and cyber warfare. During the past 15 years, there has been a dramatic increase in the development and use of robotic armed forces, in particular various unmanned armed systems that operate in the air, on land, and in water. This paradigm shift is not a sudden development, but is the result of the incremental increase of autonomy in weapon systems, specifically in the "critical functions of selecting and attacking targets.

Alongside the development of that technology, we have seen the debates on autonomous weapon systems expanding dramatically also in diplomatic, military, scientific, academic and public fora. A group of governmental experts, appointed by the member States to the Convention on Certain Conventional Weapons, reaffirmed this August the general agreement amongst States that human control and responsibility must be maintained over weapon systems and the use of force. The ICRC welcomes this and encourages the AALCO member States to contribute to the on-going debate on the laws relating to autonomous weapons.

Another main and growing trend of contemporary armed conflicts is that hostilities are increasingly being conducted in population centers, thereby exposing civilians to heightened risks of harm, especially given the rapid and irreversible urbanization in all countries.

Indeed, warfare in populated areas using explosive weapons that have a wide impact area, including a range of different conventional weapon systems, exacts a terrible toll on civilians. Furthermore, their use against military objectives located in cities is likely to fall foul of the IHL rules prohibiting indiscriminate and disproportionate attacks. The ICRC is of the view that such weapons should not be used in densely populated areas.

Mr President, Distinguished Delegates, the last topic I would like to address concerns peace operations involving multinational forces. Given that multinational forces are more often than not deployed in conflict zones, the ICRC encourages the AALCO Member States who contribute with their troops to multi-national forces to recognise the need to determine when they may be deemed to have become belligerents for the purposes of IHL.

It is to be noted that IHL does not preclude multinational forces from becoming a party to an armed conflict if the conditions for the applicability of its norms are met. The applicability of IHL to multinational forces, like to any other actors, depends exclusively on the circumstances prevailing on the ground, irrespective of the international mandate that may have been assigned to such forces or the term used to designate the party (or parties) potentially opposing them.

Contemporary peace operations show that multinational forces often intervene in a pre-existing non-international armed conflict by providing support to the armed forces of a State in whose territory the conflict is occurring. This assistance has not often taken the form of full-fledged kinetic operations against a clearly identified enemy, but rather of sporadic use of force, logistical support, intelligence activities for the benefit of the territorial State or participation in the planning and coordination of military operations carried out by the armed forces of the territorial State.

Whether IHL will govern their operations in such situations should be determined by the nature of the support functions performed by the multinational forces. Support that has a direct impact on the opposing party's ability to carry out military operations can turn multinational forces into a party to a pre-existing non-international armed conflict-contrary to indirect forms of support, which would allow the beneficiary to build up its military capabilities only.

Mr President, distinguished delegates, the ICRC and the AALCO Secretariat continue to engage in a series of programmes and activities which serve to promote respect for IHL. In 2015, our organisations collaborated to further engage in the debate on cyber warfare, which culminated in the launch of a special edition of the AALCO Journal of International Law on Cyber Warfare. In 2017, the ICRC provided its technical and legal expertise to the AALCO Working Group on Cyber Warfare at the request of AALCO member States. We have also collaborated on a number of other topics of mutual interest, such as the interface between Refugee and IDP Law and IHL, and the Protection of Cultural Property in Armed Conflict, which led to a special issue of the AALCO Journal of International Law on the Protection of Cultural Property and the norms of IHL.

The ICRC looks forward to the continued collaboration with the AALCO Secretariat and its Member States on all efforts to respect and ensure respect for IHL. These efforts might seem legalistic to non-lawyers and might not be particularly newsworthy, but they are nonetheless of utmost importance in today's world and for humankind. Thank you for your support and attention.

President: I thank the distinguished representative of ICRC. Now I invite the observer of the OHCHR-CED to make his statement.

Prof. Koji Teraya, Member of the Committee on Enforced Disappearances, Office of the United Nations High Commissioner for Human Rights-Observer: Thank you very much, Mr. President. Excellences, Distinguished Guests, Ladies and Gentlemen, it is a great honor for me to speak in front of such distinguished delegates from Asian and African States. I would like to express my sincere gratitude to the AALCO for giving me this precious opportunity to speak here.

The Committee on Enforced Disappearances (CED) is a treaty body of the International Convention for the Protection of All Persons from Enforced Disappearance, the youngest of the core human rights treaties which entered into force in 2010. Still, this Convention is not well-known. The purpose of my speech is to encourage you to consider participation in this Convention, if Your State is not already a Party.

This Convention was adopted in 2006, "to prevent enforced disappearances and to Combat impunity for the crime of enforced disappearance" (preamble). Here, "enforced disappearance" means "(1) The arrest, detention, abduction or any other form of deprivation of liberty (2) by agents of the States or by persons or groups of persons acting with the authorization, support or acquiescence of the State, (3) followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person..." (Article 2).

Enforced disappearance usually involves a violation of several important human rights, right to life and the freedom from torture. Enforced disappearance amounts to "a crime against humanity", in cases where it is "widespread or systematic" (Article 5) The prevention of this crime is one of the most significant concerns within the international community and the participation of your state in this Convention demonstrates a strong commitment to this purpose.

On 28 September, we received the welcome news that Gambia has ratified the Convention, but as of now, the Convention has only 59 Parties. If you could please take a look at the slide or the map I have provided, which is a map from the CED homepage. The orange areas are those in which no action has yet been taken. As you can see, very unfortunately, the participation of Asian and African States is not high, compared with other continents. This is the main reason why I would like to speak to you here today.

I can of course fully appreciate that individual States have their own difficulties in ratifying this Convention. However, participation in the Convention is desirable, practical and meaningful for all States. If your State has already ratified general human rights treaties such as the ICCPR, it is not difficult to ratify this Convention, because prohibition of enforced disappearances is basically a specific part of the general obligations of human rights treaties.

Even if your State has not ratified such general human rights treaties because of internal difficulties, this Convention might be easier to ratify, because its scope is limited to focus only on an absolutely prohibited part. I understand that some of human rights issues are controversial due to political systems, economic conditions and cultural traditions, but as for the significance of the prohibition of enforced disappearances, no State can have room for doubt.

Political controversies are part of the common landscape of every State, but what is important is to ensure that such controversies do not escalate to the extent that agents do not resort to the enforced disappearance of their political opponents. In this respect, all States and their leaders have a common interest in supporting and ratifying the Convention.

One of the main mechanisms of the Convention is the State Reporting System (Article 29): "Every State Party...submits to the Committee…a report on the measures taken to give effect to its obligations under this Convention". The Committee will examine the report submitted by the State Party, and the Committee and the State Party will hold a dialogue in Geneva, referred to simply as a "constructive dialogue". This is a self-motivated mechanism. This is not like a university examination such as those I hold in my university. Rather this "constructive dialogue" is a way to find the issues we need to tackle and to discuss any experiences relevant to the prevention of enforced disappearances. My colleagues and I at the Committee on Enforced Disappearances will be happy to provide whatever advice and assistance you may require.

To conclude, again, I would like to encourage you to consider participation in this Convention. The Committee on Enforced Disappearances hopes to provide whatever help it can in support of the great strides that have been made, and continue to be made, in securing the Rule of Law among Asian and African States. If you have any questions, please do not hesitate to contact me or any of my colleagues at the CED office. Thank you for your kind attention.

President: I thank the professor for his statement on behalf of the Committee on Enforced Disappearances. I have two more speakers. I would like to invite the representative of the African Union.

Her Excellency Amb. Dr. Namira Negm, Legal Counsel, African Union-Observer: Excellences, Ladies and Gentlemen, Agenda 2063 of the African Union recognizes the essential role played by good governance, democracy, social inclusion and respect for human rights, justice and the rule of law as pre-conditions for a prosperous, integrated and united Africa, this guiding Agenda aspires for "an Africa of good governance, democracy, respect for human rights, justice and the rule of law".

Based on this, the African Union adopted various treaties, among which are the African Union Convention on Preventing and Combating Corruption (2003), the African Charter on Democracy, Elections and Governance (2007), the African Charter on Values and Principles of Public Service and Administration (2011), the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014). This bears testimony to the efforts being undertaken by the AU to achieve the goal of good governance.

Mr. President, it is no secret that the African Union has been committed to the promotion of the full decolonization and ending occupation of the continent and across the world.

Hence, it was our duty to fight on all levels the continued presence of the United Kingdom in the Chagos Archipelago and the illegality of its separation from Mauritius in 1965, prior to its independence. The Union for the first time, stood before the International Court of Justice to support the law of self-determination in the course of the Advisory Opinion on the Chagos.

Moreover, as a continuous concern to the international community, the African Union is committed in supporting the legitimate call by Palestine to end the Israeli occupation to its territory.

In this regard, the African Union receives a yearly report on the situation of Palestine through the President of the State of Palestine, and has supported his efforts to achieve a peace, by applying the principle of the Two-State solution.

Related to this, the Chairperson of the African Union Commission, H.E. Moussa Faki Mahamat on 6 December 2017 noted with deep concern the decision of the United States Government to recognize Jerusalem as the capital of Israel as this will only increase tensions in the region and beyond and further complicate the search for a solution to the Israeli-Palestinian conflict.

Mr President, it is an interesting time in International Law and indeed it's imperative that our Organizations address its important issues. I, therefore welcome the proposed "Special Study" before AALCO on the legal status of Jerusalem to bring more clarity and assist Member States in finding a long-lasting solution to the dispute over the city and I look forward to the discussion scheduled for Friday regarding the "Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues related to the Question of Palestine".

Excellences, Ladies and Gentleman, on the celebration of the 20th Anniversary of the Rome Statute, I would like to highlight that the African Countries have been at the forefront of supporting the establishment of the International Criminal Court (ICC) and more than three-fourth of the African Union's Member States have ratified the Rome Statute. My Office also is playing a vital role as a link between the Union and the ICC.

Having said that, the Union has raised concerns relating to the violation of the right to immunities by the ICC - a clear variance from existing customary international law. This led to several Decisions by the Assembly of the Union and further steps taken by my Office, as the representative of the Organization in legal matters. Such steps included the following;

The African Union has submitted a written Brief and participated in the Oral Hearings as Amicus Curiae before the Appeals Chamber of the ICC in the appeal of Jordan against the decision of the ICC Pre-trial Chamber II for its non-compliance with the request of the Court to arrest and surrender Omar al-Bashir President of the Sudan.

It is expected that the decision of the Appeals Chamber may have major implications for the African Union (AU) and its Member States, given the AU's vested interest in the conflicting obligations of States as it relates to the question of immunities.

Mr. President, on a related matter, upon the Decision of the Assembly of the African Union in January 2018, the African Group in New York, in close coordination and cooperation with the Office of the Legal Counsel, managed to place a request on the Agenda of 73rd Session of the United Nations General Assembly, to seek an advisory opinion from the ICJ on the question of immunities of heads of state and government and other senior officials as it relates to the relationship between Article 27 and 98 of the Rome Statute of International Criminal Court and the obligations of States Parties under international law.

Currently, my office together with the African Group to the UN in New York is engaged in the preparation of the Legal Question to be put forward in a General Assembly Resolution during this session.

This issue is of common interest to the African Union as well as AALCO and I would like to take this opportunity to seek the support of the Member States of AALCO in the General Assembly to adopt the Resolution forwarding the Request to the ICJ.

Mr. President, now turning to another issue of common interest on your Agenda this session which is the law of the sea. Within the African Union context, the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter) was adopted in 2016 in Lomé, Togo. The Charter requested the development of Annexes to complement its provisions. My Office has just finalized together with the States members of the Task Force on Maritime Security the first drafts of the 8 Annexes to the Charter. Now, they will be sent to the relevant technical committees for study and adoption before putting them to the policy organs.

In the same vein, a key pillar for social development is to establish a sustainable blue economy. The African Union has adopted the 2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy) to assist Member States in developing their respective national laws and regulations necessary for the implementation of rules of international law. This is another issue in which we can explore cooperation with AALCO, be it in capacity

building and/or the creation of platforms that allow the exchange of best practices and lessons learned in the field.

Excellencies, Ladies and Gentlemen, Lastly, I would like to mention the Union's latest achievement which is the adoption of the African Continental Free Trade Agreement (ACFTA) in March 2018. This free trade agreement brings together 1.2 billion people with a combined gross domestic product (GDP) of more than $2 trillion. In this context, consideration of the divergent views on the economic implications of regional trade arrangements on WTO and the study by AALCO on the matter is of great interest to the African Union.

As for the Peaceful Settlement of disputes, the AFCFTA has a Protocol on the issue that puts forward arbitration as one of the resorts for the Parties and putting into consideration the inevitable disputes that would arise in trade deals, it is incumbent on the African Union to work closely with Organisations such as AALCO, to benefit from its knowledge regarding the establishment of Regional Arbitration Centres. Thank you.

President: I thank the distinguished representative of African Union for her statement. The last speaker on my list is the Secretary-General of the Hague Conference on Private International Law. I invite you, Sir, for delivering your statement.

His Excellency Mr. Christophe Bernasconi, Secretary General, Hague Conference on Private International Law-Observer: Mr. President, Mr. Vice-President, Mr. Secretary-General, Distinguished Delegates, Ladies and Gentlemen, let me, at the outset express my sincere thanks to AALCO and our host, government of Japan, for invites us to your Fifty-Seventh Annual Session. I would also like to express our deep appreciation to Secretary-General of AALCO, Dr. Gastorn, for the very fruitful cooperation between the two organizations.

Distinguished delegates, the world in which we live is a world of cross-border transactions between private people. What I am talking about essentially involves cross-border contracts, cross-border family situations that raises many legal challenges. There is therefore a need to have an effective legal framework in place to deal with these challenges. There are basically two ways to do that. You can harmonize substantive law and make sure that it is the same law across the planet and this is our colleagues at UNCITRAL and in UNIDROIT are doing.

But, of course, harmonization of substantive law is not always possible and you have to rely on private international law or conflict of law to overcome challenges in a cross-border situation. This is exactly what Hague Conference on Private International Law has been doing by providing uniform private international rules. We have been doing this for

125 years. There are currently 152 States from around the world that are connected one way or another to the work of Hague Conference either by being a member or by being a non-member contracting party to at least one of our Conventions. There have been more than 920 accessions or ratifications of Hague Conventions but there is, of course, more to do.

Currently, 14 AALCO Member States are also members of the Hague Conference. Another 14 Member States are non-member contracting parties to at least one of the Hague Conventions. But there are 19 Members States who are not connected to the Conference at all. So still there is so work to do. So I invite you all to access the relevance of the Hague Conventions to your State and to become member of the Hague Conference. Thank you very much for your attention.

President: I thank the Secretary-General of the Hague Conference on Private International Law for his statement. With that, we have come to the end of "General Statements". I thank all delegations for their statements.

IX. VERBATIM RECORD OF THE SECOND GENERAL MEETING (CONTD.)

IX. VERBATIM RECORD OF THE SECOND GENERAL MEETING (CONTD.) HELD ON WEDNESDAY, 10 OCTOBER 2018 AT 11.15 AM

AGENDA ITEM: INTERNATIONAL LAW IN CYBERSPACE

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, President of the Fifty-Seventh Session of AALCO in the Chair.

President: Now it is time to deliberate on the substantive items. The first topic on our list is International Law in Cyberspace. To start the discussions I again invite H.E. Prof. Dr. Kennedy Gastorn, the Secretary-General of AALCO to present his introductory statement.

His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Mr. President, Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and Gentlemen; issues relating to cyberspace such as cyber-governance, cyber-security, cyber-sovereignty, combating cybercrimes etc. have dominated the discussions and deliberations on international forums for over a decade now, and the import of these issues continues to grow within the international community. Taking note of such notable developments, People's Republic of China, in accordance with the Statutory Rules of AALCO, had proposed the topic "International Law in Cyberspace" as an agenda item for the Fifty-Third Annual Session of AALCO, that was held in Tehran (Iran) in 2014, and which was accepted as such by consensus. The topic was deliberated thereafter in the Fifty-Fourth Annual Session, held in Beijing in April 2015, during which Member States decided to establish an Open-ended Working Group in International Law in Cyberspace. During the Fifty- Sixth Annual Session, held in Kenya, this topic was deliberated by the Member States. At the same time, AALCO's Special Study on International Law in Cyberspace based on mandates received from Fifty- Fourth and Fifty- Fifth Annual Sessions, was released during this Annual Session.

The resolution adopted during the Annual Session, amongst other things, directed the Rapporteur of the Open-ended Working Group on International Law in Cyberspace to prepare a Report on the basis of the discussions that have taken place thus far among the Member States, and the Special Study prepared by the Secretariat, laying down a future plan of action for the Working Group.

Based on this mandate, Rapporteur of the AALCO Working Group on International Law in Cyberspace, Prof. Zhixiong Huang prepared a "Report on the Future Plan of Action of the Working Group Meeting", that was sent to all Member States by the Secretariat on 5

April 2018 for their comments and observations. The Report of the Special Rapporteur was just discussed by Member States in Working Group Meeting on 8 October 2018.

I would like to place my appreciation to the Chairperson of the Working Group, H.E. Mr. Abbas Bagherpour Ardekani, from the Islamic Republic of Iran, and the Vice-Chairperson, from the Republic of Kenya, and the Rapporteur of the Working Group himself, for a good job in facilitating deliberations on this topic.

Mr. President, discussions on various facets of cyberspace are currently taking place at various international forums, such as, the UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security and the Open-ended Intergovernmental Expert Group established by the Commission on Crime Prevention and Criminal Justice, pursuant to the UN General Assembly Resolution 65/230. As a legal consultative organization, AALCO should endeavor to complement and not duplicate the similar ongoing work at these forums. In the end, I would like to state that the Secretariat sincerely hopes that the present Session and the future meetings, if any, of the Member States will formulate concrete and uniform approaches of our Member States on the contentious issues and have fruitful discussions on the future plan of action of the Working Group. Thank you, Mr. President.

President: I thank the Secretary-General of AALCO for his opening statement. Now I invite H.E. Mr. Abbas Bagherpour Ardekani (HOD), Chairman of the Working Group, for delivering his report on the Working Group Meeting on International Law in Cyberspace. You have the floor, Sir.

Mr. Abbas Bagherpour Ardekani, the Chairperson of the Open-Ended Working Group on International Law in Cyberspace: Thank you, Mr. President. Allow me to briefly report the proceedings of the Third Meeting of the Open-ended Working Group on International Law in Cyberspace held in Tokyo, Japan on 08 October 2018, at the start of the Fifty-Seventh Annual Session of AALCO. 24 Member States of Asian-African Legal Consultative Organization (AALCO) participated in the Third Meeting of the Open-ended Working Group on International Law in Cyberspace, together with two Non-Member States and one inter-governmental organization.

Prof. Dr. Kennedy Gastorn, in his opening remarks, stated that based on the mandate of the Fifty- Sixth Annual Session the Rapporteur was asked to prepare a Report on the Future Plan of Action, on which a number of comments were received from the Member States. On the basis of the same, the Rapporteur also prepared a revised Report.

The Chair of the Working Group, thereafter invited the Rapporteur of the Working Group, Dr. Huang Zhixiong, Professor, Wuhan University, People's Republic of China to present his Report. The Rapporteur divided his presentation into two main parts: the first regarding how the Report was prepared, and secondly, regarding the contents of the Report, as well as revisions carried out based on the comments by the Member States. He stated that as AALCO is an inter-governmental organization he paid attention to the views of Member States. In preparing the Report, he also relied on the Secretariat's documents such as the Verbatim Records and Resolutions.

On the future plan of action of the Working Group the Rapporteur offered three broad suggestions. The first was on AALCO Member States' cooperation in countering cybercrime. He stated that it is essential that existing mechanisms must be harmonized and improved. That is the reason why in his first Report he suggested for the establishment of guidelines or model provisions on preventing and combating cybercrimes. He further stated that there should be deepening of discussions on some key issues, new topics should be added where appropriate, capacity building in AALCO should be strengthened. Thereafter, Member States were asked to make comments.

The delegate of the People's Republic of China firstly suggested that the Working Group was encouraged to continue its work to raise the awareness on cybercrime, enhance capacity building and promote cooperation among the Member States to tackle the problem of cybercrime. They also stated that the proposal to adopt model provisions on cybercrimes was without prejudice to the existing positions in various other international instruments in cybercrime. Therefore, Working Group was encouraged to follow the major international processes. It was further suggested that the working group should broaden its scope of study to identify the major risks associated with cyber and Internet technology and compile best practices to prevent them. Lastly, it was suggested that AALCO may consider the adoption of a "Declaration on Principles of International Law in Cyberspace". Member States would only benefit from such a declaration in the long run.

The delegate of Japan stated with respect to preparation of model provisions on cybercrimes that it was premature to commence with the same as there was no consensus on the same yet. The delegate stated that views of stakeholders should also be considered for the purposes of cyberspace governance. The delegate also stated that Japan did not in principle object to the idea of the adoption of the Declaration of Principles of International Law; however, further discussions were required regarding which terms should be included in the Declaration.

The delegate from the Islamic Republic of Iran firstly stated that the special character of cyberspace does not preclude it from regulation of existing rules and principles of

international law. It remains to be highlighted, however, that the intricacies and complexities of the Cyberspace still require further regulation at the international level to which AALCO could make important contributions. The delegate requested the Working Group to also consider doing research on the terminology prevalent in this area of international law. As regards, the proposal for adoption of a declaration on the topic the delegation of the Islamic Republic of Iran was in agreement with the suggestion.

The delegate of the Republic of India expressed that the Working Group should consider the work on the topic that is being conducted within the auspices of the UN, with a view to avoid duplication of work. Further, it was expressed that India was not in favor of adopting a declaration on the topic due to lack of consensus amongst Member States on the topic.

The delegate of the Republic of Korea stated that the discussions have not been enough to converge in meaningful conclusions. It was stated that the topic of cooperation in cybercrime is a practically important one that requires attention of Member States. In this regard, it was also expressed that the work of the Open-Ended Intergovernmental Expert Group (IEG) established by the Commission on Crime Prevention and Criminal Justice (CCPCJ) should be considered and all efforts to avoid fragmentation of the law in this topic should be made.

Thereafter, the Chairperson invited the Rapporteur to express his views on the comments by the Member States. The Rapporteur assured that he would consider all views of Member States and come up with a revised report.

In light of the above, Mr. President, it may be concluded that the discussions during the Working Group Meeting indicated towards the continued relevance of the topic, that is, International Law in Cyberspace, especially for an inter-governmental organization like AALCO. There also seems to be a clear consensus in the Meeting on the continued relevance of the Working Group and its meetings, and that further in-depth discussions were 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 and the content of the principles, have a concrete outcome of the Working Group Meeting, including perhaps a Declaration of Principles on International Law in Cyberspace. Hence, we look forward to the comments of Member States in this session, to work towards the future plan of action of the Working group.

In the end I would like to express my gratitude on behalf of the meeting to the Secretary-General of AALCO, and the AALCO Secretariat in general, and the Special Rapporteur in particular for his in depth report.

The Third Meeting of the Open-ended Working Group on International Law in Cyberspace was thereafter adjourned. So this was a brief report on the proceedings of the Third meeting of the Working Group. Thank you, Mr. President.

President: Thank you, Mr. Chairman for your Report. Now I open the floor for discussions by Member States. I would like to remind the delegates that comments are invited from both Members and Observers. At this point I have requests from 6 Member States, and one Non-Member State, the Russian Federation. As there is also a side-event, which is to follow, I request the delegates to be as concise as possible. First I invite Malaysia for their intervention. You have the floor, Sir.

The Delegate of Malaysia: Mr. President, Malaysia wishes to express its sincere gratitude and appreciation to Professor Zhixiong Huang, the Rapporteur of the AALCO Working Group on International Law in Cyberspace for the Report on the Future Plan of Action of the Working Group on International Law in Cyberspace which is appended as Annexure 5 in the AALCO's Paper entitled "International Law in Cyberspace".

Noting that this topic has been deliberated since the Fifty-Fourth Annual Session of AALCO in 2015, Malaysia applauds the continuation of the ongoing work at this session for further deliberation and appreciates the effort made by H.E. Secretary-General and the AALCO Secretariat for the continued relevance of the Working Group on International Law in Cyberspace.

Mr. President, Malaysia notes there are four proposals with regard to the suggestions as to the future plan of action of the Working Group as stated in the Report. However, Malaysia would like to take this opportunity to address on two of the proposals, namely the AALCO's guidelines or model provisions on cyberspace and the proposed draft Declaration on Principles of International Law in Cyberspace. With regard to the proposal to develop AALCO's guidelines or model provisions on cyberspace, Malaysia supports the view that AALCO should ensure that there is no duplication with the on-going work of other international bodies that have been established to address the issue on cyberspace to which some AALCO Member States are currently participating, in particular the Open-ended Intergovernmental Expert Group Meeting on Cybercrime (IEG).

As far as AALCO is developing a model provisions on preventing and combating cybercrime, Malaysia notes that the IEG has established a work plan for its meetings

from the year 2018 to 2021. The work plan includes topics on legislation and framework, criminalization, law enforcement and investigation as well as international cooperation. In relation to this, Malaysia is of the view that it may be prudent for the Working Group to wait for the IEG to deliberate on the topics before proceeding with the drafting of the model provisions. Alternatively, AALCO may want to consider convening inter-sessional meetings of the Working Group prior to each of the IEG meeting to enable the AALCO Member States to be better prepared for the IEG deliberations and, where possible, such inter-sessional meetings may allow the AALCO Member States to have a common position on certain issues for purposes of the IEG meetings.

Mr. President, on the proposal for the AALCO Member States to consider adopting a Declaration on Principles of International Law in Cyberspace based on the elements as stated in the Report, Malaysia recommends for the Rapporteur and AALCO Secretariat to formulate draft text of the Declaration for consideration and deliberation by the AALCO Member States. This is to provide opportunities for the AALCO Member States to ascertain the acceptability of the draft Declaration and to ensure that the Draft Declaration is consistent with their respective national policies and legal framework as well as their international obligations on cyberspace where applicable. Other than that, on the elements as enumerated in the Report, Malaysia finds that while some of the elements intend to reflect customary international law vis-à-vis cyberspace, Malaysia is uncertain of the aim of some of the other elements. Hence, the draft text of the Declaration will also enable us to thoroughly understand the proposed Declaration before we could further deliberate on it. I thank you, Mr. President.

President: Thank you, distinguished delegate of Malaysia for her comments. Next I invite the delegate of Qatar to make remarks.

The Delegate of the State of Qatar[20]: Thank you, Mr. President. Professor, Secretary-General of AALCO, respected members of the Organization, Ladies and Gentlemen,

"In the name of Allah the Most Merciful"!

At the outset, let me extend my deep thanks and appreciations to the state of Japan, for the warm reception and generous hospitality and skillfully organizing the Fifty-Seventh session of AALCO. This is not new for this nation, which has extended happiness to the mankind in all areas of life with its advanced industry.

Distinguished Guests, the proliferation of internet and cyberspace transition from the phase of rapid growth to the phase of intensive use is accompanied by the emergence of

[20] This statement was delivered in Arabic. This is an unofficial translation made by the Secretariat.

criminal activities that have become the issue of the security of cyberspace from the electronic piracy, and the cyber-attacks are the most important topics on the agenda of international security and you all know about the piracy that the State of Qatar was subject to and it led to hacking of the website of the Qatari news agency "QNA" as well as its official site on social media and the criminal pirates published a fabricated statement, attributed to His Highness Sheikh Tamim bin Hamad Al Thani, the Emir of the country "May Allah protect him".

Ladies and Gentlemen, in the light of growing challenges of cyber security on global level, the protection of information and communication technology's basic system and infrastructure comes at the top of Qatar's priorities which has faced, like other nations, the impact of digital espionage and piracy. This is what pushed us to stress firmly on cyber security of the country, and we are willing to work with UN organizations and this very Organization to regulate it legally.

From this point, and in anticipation of the risks associated with electronic threats to the national and international security which your distinguished conference is discussing here, our country will host, under flagship initiative announced by His Highness Sheikh Tamim bin Hamad Al Thani, the Emir of Qatar, in his speech at 73rd session on the UN General Assembly, an international conference on cyber security in the world next year. Doha would host this conference in partnership between Munich conference on security and Qatari national committee for cyber security, which was established in 2013, and is chaired by The Honorable Prime Minister and Minister of Interior. This conference would discuss the pressing issues of digital espionage and piracy and their impact on international peace and security.

Distinguished Guests, there are four main categories of e-threats to national and international security. These are: electronic war and economic espionage, and these are to a great extent connected with state, and e-crimes and e-terrorism, and these are mostly related to the non-State actors. These categories are increasingly getting intertwined, which necessitate the international community to work in a collective system that would result in a set of security measures and technology preceded by legal regulation. This is the basis for fighting and dealing with the illegal use of cyberspace and addressing all the risks of it in all economic, social and security fields whether it is government, institutions or individuals.

The State should play an active role of raising awareness and strengthening cyber culture of the society through media and religious and educational institutions as a part of behavior directive and improving the understanding of the importance of cyber security and A B C of addressing perils of pirates and illegal acts.

Distinguished Guests, we are sure that the works of this conference and interventions based on relevant experience of the topic and models of digital protection would bring technical solutions and legislative and security steps of fighting e-terrorism and eliminating the pirates, the destroyers of peoples and their capabilities.

Distinguished Guests, thank you for listening intently. I also extend my thanks to the state of Japan and those who are in charge of this meeting for their sincere efforts. I hope that our work will be crowned with success.

May Peace, Mercy and Blessings of Allah be upon you.

President: Thank you, distinguished delegate of Qatar. Now I invite the distinguished delegation of Indonesia, to be followed by Iran and then India. Now, the delegation of Indonesia.

The Delegate of the Republic of Indonesia: Thank you, Mr. President.

First of all, let me join the previous speakers in congratulating you on your election. I would like also to commend the host of Fifty-Seventh Annual Session of AALCO for the excellent preparations that has been made. The impact of the cyber world on every aspect of human life is enormous. At every moment of the day information floods from all directions at immense speed. While cyberspace provides convenience to our lives it also comes with its own challenges. Indeed, we are confronted by paradoxes. While it provides vast opportunities for all nations, yet, in the wrong hands, it can be an instrument of crimes and discord.

The Indonesian delegation welcomes this year's discussion on the international law in cyberspace.

Indonesia believes that any criminal justice responses to prevent and counter cybercrime and all its forms should be based on the Rule of Law. We must, therefore, develop and promote cyberspace principles and norms that will support and sustain development. That will bring progress and promote democracy and tolerance instead of extremism and hatred.

Mr. President, based on the statistics, there are over 130 million Indonesians actively using the Internet, with more than 200 million Indonesians are using mobile phones. This portrays the magnitude of how the communications technology, including the Internet, has become a means of livelihood for Indonesians, be it for social or economic purposes.

It is fair to say that such benefits also entails challenges that at the wrong hands the advancement in communication technology including Internet may be exploited for criminal and other unlawful purposes.

For Indonesia, these unlawful activities pose a serious threat at the global, regional and national level. A comprehensive and holistic approach is needed to address the ever growing challenge of cybercrime, through building and strengthening collaboration between national stakeholders, and among States, through various regional and international mechanisms.

In this regard, to overcome these challenges, Indonesia established the State Cyber and Cryptography Agency (BSSN), on 19 May 2017. This new agency is tasked to develop policies on cyber security, including coordinating all relevant stakeholders in Indonesia in addressing the cyber challenges.

Indonesia also has a dedicated unit in the Indonesian National Police to counter cybercrime. This unit is focused on investigating cybercrimes. In many instances the Indonesian police have in the past collaborated with several countries in disrupting criminal organizations committing cybercrimes. A lot of such cooperation was conducted through formal mutual legal assistance requests.

Mr. President, another manifestation of cybercrime is the misuse of the Internet, including social-media by terrorists for terrorism purposes, such as disseminating false propaganda, recruiting, planning, financing, and even executing terrorist attacks.

To prevent such misuses, I wish to emphasize three points:

First, we need to prevent and protect our society's vulnerable groups, in particular women and youth from being the targets of radical ideologists, especially through the Internet and social media. This entails the need for States to empower the youth and women in the fight against terrorism.

Second, States should enhance its counter-radicalization tools that promote the values of tolerance, moderation, and culture of peace to provide counter-narratives against radical ideology leading to violent extremism.

Third, States should continue to collaborate and strengthen partnership with Internet providers and companies, thereby, instilling a sense of shared responsibility in keeping our cyberspace safe from the harms of the misuse of the Internet by terrorists.

Finally, Mr. President, we look forward to a productive and substantive exchange of views among the distinguished representatives on this issue, with a view to explore the need for various means in identifying gaps, as well as addressing the way forward for further action to effectively enhance cooperation in tackling the threat of cybercrime, in order to protect our society from the crimes and their perpetrators. Thank you.

President: Thank you, Sir. Now I invite the distinguished delegate of Islamic Republic of Iran.

The Delegate of the Islamic Republic of Iran: Mr. President, at the outset, my delegation would like to express its gratitude to the Secretariat for its continued work on the item "International Law in Cyberspace" and the background report. We would also like to thank the Rapporteur of the Working Group, Prof. Huang, for his Report on the Future Plan of Action of the Working Group.

Mr. President, the Islamic Republic of Iran has attached great importance to the item "International Law in Cyberspace" since its inception in 2014. We followed with interest the developments of the topic at AALCO, namely the establishment of the Open-Ended Working Group on International Law in Cyberspace, which has held several meetings ever since, including the meeting that took place last Monday. We consider this to be an important step towards the development of AALCO's international legal stance on the topic.

I may now focus on "The Report on the Future Plan of Action of AALCO's Working Group on International Law in Cyberspace" on which we have previously presented our comments and we continue to contribute to in due course.

On "enhancing AALCO Member States' cooperation in countering cybercrime" as the first blueprint in the set of suggestions made by the Rapporteur, my delegation underscores the significance of multilateralism to tackle the issue of cyberspace.

Without doubt, cyberspace is part and parcel of every day's life and coming to terms with the challenges it poses is inevitable. In tandem with all the benefits it provides, the Internet is the source of unprecedented challenges to States on national and international levels. The main problem is that cyberspace is a spatial entity without defined borders where transnationalism takes a whole new definition. Putting aside some aspects of cyberspace regulated through national legislation mainly that of cybercrimes - the complexity of the issue calls into question serious cooperation between States at regional and international level. AALCO provides the necessary platform to take the initiative to another level.

Drafting AALCO principles on international law in cyberspace may thus build upon the work already achieved on the issue and will lead to a common understanding of the diverse aspects of the international law governing the virtual world.

We highly suggest that in order to materialize such an idea, the Rapporteur should make clear the exact line between *applicability* and *application* of international law norms to cyberspace. This is specifically relevant when attempting to draw up principles on *lex lata* and to possibly approach the tip of *lex ferenda* when trying to come up with rules and guidelines. In this regard, while principles such as respect to sovereign equality of States is a *sine qua non* to any declaration of principles on the topic, the permeating nature of cyber-attacks and cybercrimes stands against some of the well-known tenets of international law in the real world, and as such needs further scrutiny.

Mr. President, concerning the second suggestion made by the Rapporteur, that is, "Deeping discussions on some key issues of international law in cyberspace among AALCO Member States", we especially agree with the Rapporteur's view that before each meeting of the Working Group, crosscutting sub-topics should be determined to provoke in-depth discussion by Member States. Moreover, we believe choosing technical topics along with background papers by the Secretariat ahead of each Working Group session could contribute to the deliberations.

We also view research on key terms in international law in cyberspace an essential endeavor, which may add to the existing literature on the topic. While terms such as "cyber-attack", "cyber-warfare" and "cyber-terrorism" are sometimes used interchangeably, definition of expressions like "governance of cyberspace", "Internet surveillance" and "critical cyber infrastructure" are crucial to understanding diverse legal aspects of cyberspace.

Furthermore, on "Strengthening capacity-building in AALCO", we highlight the importance of collecting information from Member States on their practice and national legislations on cybercrimes and probably cyber-attacks, which would also build upon the Rapporteur's work on Principles and Guidelines.

Finally, on "adoption of a Declaration on Principles of International Law in Cyberspace", we propose that attention should be given to those well-established principles of international law which are already enshrined in the Charter of the UN and are ever applicable in international relations. As such, sovereign equality of States, prohibition of threat or use of force against the territorial integrity of States, non-intervention in other States' affairs and respect for States' independence remain cardinal in all spaces including cyberspace. From these other principles may emanate which are especially applicable to cyberspace such as national jurisdiction over cyber infrastructures and

digital data in the territory of a State, transparent multilateral Internet governance, and bilateral and International cooperation aiming at combating criminal use of cyberspace.

Mr. President, in conclusion, we wish to highlight that we stand ready to extend our full cooperation for realizing all the objectives the future plan of action keeps in perspective. Thank you, Mr. President.

President: Thank you, distinguished delegate of Iran. Now I invite the delegate of India, followed by South Africa, Kenya, China, Viet Nam and Japan. India, you have the floor, Sir.

The Delegate of the Republic of India: Thank you, Mr. President. On behalf of the Indian delegation, I take this opportunity to thank the AALCO Secretariat for a detailed background document on the topic. I thank the Secretary-General for his introductory statement. We thank the Chairperson of the Working Group for his comprehensive report. Mr. President, cyberspace, as we all know, is a complex domain that goes beyond our understanding of traditional domains of land, sea, air and space, and its unique attributes present its own set of opportunities and challenges. The increasing use of Information and Communication Technologies (ICT) has not only generated social awareness, accelerated economic development, improved delivery of services to citizens and placed unprecedented power and information at the hands of an individual. The lack of borders in cyberspace and the anonymity of the actors have ensured that the traditional concepts of sovereignty, jurisdiction and privacy are challenged.

The issues of sovereignty among the States, data access, data jurisdiction, the growing threat of militarization of cyberspace, the need for confidence building, capacity building to bridge the digital divide, cyber espionage, cyber weapons and applicability of international law in cyberspace are issues that require concerted attention of this august forum.

We are committed to take steps to promote international security and stability in cyberspace, through a framework that recognizes the applicability of international law, in particular the UN Charter.

Mr. President, reaching international agreement on what qualifies as the use of force or an armed attack is a crucial problem for international negotiations and agreement on cyber security, and continued ambiguity hampers the application of international law. The international law aspects of intervention in self-defense, economic sanctions, counter measures and so on are also issues of discussion.

The UN Group of Governmental Experts on Information Security in 2017 could not reach a consensus to adopt its Report due to lack of common understanding on how international law applies to ICTs, especially on the issues relating to the right of self-defense and the applicability of international humanitarian law (IHL).

In the light of the above, the Indian delegation looks forward to the AALCO Working Group on Cyberspace generating ideas on way forward towards building consensus amongst Member States on the issue of applicability of international law in cyberspace matters. Thank you, Mr. President.

President: Thank you, distinguished delegate of India for his intervention. Now I invite the distinguished delegate of South Africa.

The Delegate of the Republic of South Africa: Thank you, Mr. President. In the globalized world we are living in today, characterized by substantial dependence on digital technology, none of us can claim complete immunity from the threats posed by potential attacks on our national security, especially ICT infrastructures, by those with evil intentions to destabilize the system and instill fear so as to de-legitimize States and cause instability in our societies.

It is, therefore, an honor to address this august gathering of African Asian States on behalf of the South African government and to inform you on what measures have been put in place by the government of South Africa, in particular the Department of Justice and Constitutional Development (DoJCD) to mitigate the impact of cyber-attacks in South Africa.

Mr. President, in terms of the National Cybersecurity Policy Framework (NCPF) for South Africa, the Department is obliged to review the cybersecurity laws of the Republic to ensure that these laws are aligned to the NCPF, and provide for a coherent and integrated cybersecurity legal framework for the Republic. In accordance with the mandate of the Department, the Cybercrimes and Cybersecurity Bill (the Bill) was developed and introduced in the Parliament in 2017 after a protracted consultation process. The Bill aims, amongst others, to put measures in place to deal with cybersecurity, capacity building and, as a subdivision of cybersecurity, also with cybercrimes. Chapter 11 of the Bill provides for the declaration of essential information infrastructures as critical information infrastructures and provides for the implementation of special measures, amongst others, to regulate the critical information infrastructure's minimum security standards relating to:

a) the classification of data held;
b) the protection of, the storing of, and the archiving of data held;
c) cybersecurity incident management;

d) disaster contingency and recovery measures which must be put in place;
e) minimum physical and technical security measures that must be implemented; and
f) other relevant matters that are necessary or expedient in order to promote cybersecurity in respect of the critical information infrastructure.

Mr. President, cyber-attacks are criminalized by various offences provided for in Chapter 2 of the Bill. Clause 11 of the Bill provides for specific offences that can be committed in respect of critical information infrastructures that are punishable with appropriate and proportional sentences.

The Bill further amends the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004), in order to criminalize cyber-terrorist activities. Amendments are also affected to the Disaster Management Act 2002 (Act 57 of 2002), to specifically make that Act applicable to disasters that may involve critical information infrastructures.

Mr. President, the Department also actively participates in initiatives of the interim Cyber Response Committee, which consists of various departments, that is tasked to implement the NCPF. The NCPF makes provision for the development and implementation of various initiatives and measures by different Departments that are aimed at securing South Africa's Information Communication Technologies.

South Africa will continue to work towards the protection and regulation of its cyberspace, in adherence to the principles of international law. Thank you, Mr. President.

President: Thank you the distinguished delegate of South Africa for his statement. Now I invite the delegate of Kenya.

The Delegate of the Republic of Kenya: Thank you, Mr. President. It is with great honor that I have this opportunity to make the following statement on behalf of the Republic of Kenya on this agenda item. Distinguished delegates, Kenya recognizes that cyberspace plays a critical role in the global economy, which has national and international dimensions that include industry, commerce, intellectual property, security, technology, culture, policy, and diplomacy. As such, it has its own distinct characteristics and challenges that emerge as technology advances on daily basis.

The African Union has developed the Convention on Cyber Security and Personal Data Protection, which addresses cyberspace related matters including, data protection and the prevention of cybercrime in line with the increasing adoption of similar legislation in other parts of the world.

The Convention also recognizes the need for the African Union to create legislative frameworks that enable States to participate in the digital economy at the same time protecting the fundamental rights of individuals in relation to their personal data and creating a framework that enable States to combat cyber risks and cybercrime. Kenya hopes this convention will address trans-boundary cyber space crimes.

Distinguished delegates, as Kenya moves further into becoming an ICT oriented society, cyber threats have become more glaring. In response to these threats, and in direct support of the national priorities and ICT goals, Kenya has developed a National Cyber security Strategy. The Strategy defines key objectives and ongoing commitment to support national priorities by encouraging ICT growth and aggressively protecting critical information infrastructures.

Distinguished delegates, the Government of Kenya in addressing the threat to cyber security has enacted ***The Misuse of the Computer and Cybercrimes Act 2018*** with the following objectives:

1. Prevent the unlawful use of computer systems;
2. Facilitate the prevention, detection, investigation, prosecution and punishment of cybercrimes;
3. Protect the rights to privacy, freedom of expression & access to information as guaranteed under the Constitution; and
4. To facilitate international co-operation on matters covered under the Act.

It is important to note that under International Co-operation, the Act will apply in addition to the existing Kenya's Mutual Legal Assistance and Extradition Act. This will therefore allow the Central Authority Kenya, to make requests for mutual legal assistance in any criminal matter to a requested State for purposes of proceedings concerning offences related to computer misuse and cybercrime. It additionally allows Kenya to receive and accede to the MLA requests on proceedings on computer misuse and cybercrime in line with the MLA Act.

Distinguished delegates, Kenya hosted the Africa Cyber Defense Summit in July 2018 through the Ministry of Information Communication and Technology under the theme *"Accelerating Africa's Cyber Security Dialogue";* the summit discussed the promotion of cyber security, fostering cyber security collaboration and facilitated the procurement of cyber security solutions in the continent.

The summit was represented by attendees from 51 countries, and it was one of the largest cyber security gatherings in Africa, which shows the need for acceleration of Africa's cyber security dialogue. The summit emphasized on the need to have a regional Cyber

Defense Institute to develop strategies and build capacities to anticipate, prepare and detect possible cyber-attacks. Further that there was need for African countries to share information on cyber security and collaborate to identify common challenges thus develop a comprehensive strategy to counter the challenges to cyber security threats and war against cyber criminals.

President: Thank you, the distinguished delegate of Kenya. Now I invite the delegate of China.

The Delegate of the People's Republic of China: Thank you, Mr. President. This delegation thanks the Chairman of the Working Group for his Report. We thank the Secretary- General for his introductory speech. We would like to express our special thanks to the Rapporteur for preparing a detailed and comprehensive Report that enabled us to have fruitful deliberations at the Third Working Group Meeting this past Monday.

Mr. President, technology in cyberspace evolves very fast, before we, the developing States, command and harness the technology, we may already be exposed to the risks associated with these new technological development. It is therefore of critical importance that this organization continue to facilitate consultation and cooperation among the Member States in the field of international law in cyberspace through the Working Group. We are encouraged to see increasing willingness to engage at the Working Group Meeting on issues like fighting cybercrime, conducting research on terminology and capacity building with respect to international law in cyberspace.

We are confident that the Working Group Meeting, assisted by the Rapporteur and the Secretariat, will continue to be a valuable forum for the Asian and African States to fully understand the different aspects of the risks in cyberspace and develop adequate legal tools to better prepare ourselves for the cyber age.

On the future plan of action of the Working Group, we agree with the summation of the Chairman of the Working Group, in principle. Our sense of the discussion within the Working Group Meeting, and discussions on the sidelines, is that there is an emerging consensus from the discussion on the way forward. We propose, therefore, to set up an informal consultation during the sidelines of this Annual Session to finalize the exact wording of the recommendation of this Agenda Item. We are hopeful that before the end of this session we can come up with a set of recommendations agreeable to all, concerning the future work plan of the Working Group. Thank you, Mr. President.

President: Thank you very much for that statement. Now I invite Viet Nam.

The Delegate of the Socialist Republic of Viet Nam: Honorable President, Distinguished Delegates, Ladies and Gentlemen, my Delegation would like to join with other delegations to share our concern on the application of international law in cyberspace and our concerns as cyber-security has increasingly become a global issue that deserves our utmost attention.

Our reliance on ICT Technology has presented us with evermore security risks. Attacks aimed at the cyber environment evolve rapidly, from what began as spontaneous and individual acts conducted for illicit personal gains, malicious cyber activities have now expanded in scope, are becoming trans-boundary in nature, and adversely affect the socio-economic stability and national security of many States, Viet Nam alike.

Viet Nam's Internet environment has so far been hit by thousands of cyber-attacks, which cost State entities and nationals. We are of the view that in the face of such ever-growing threats, it is imperative for each country and the international community to take actions. The most meaningful and effective solution is to have a universally accepted set of norms to govern activities in the cyberspace. In order to achieve this, Viet Nam believes that all States should cooperate and discuss to bridge their differences, join efforts against the common threat of cyber criminals. From these cooperation activities, a general practice may emerge and lay foundation for the creation of norms in the governance of cyberspace.

On its part, Viet Nam has taken steps to enhance cybersecurity within its territory. Starting with the Law on Cyber Safety in 2015, which provides for measures to safeguard telecommunication facility against attacks, the Government of Viet Nam is currently enhancing its legislative efforts by having enacted a Governmental Decree detailing the implementation of responsibilities and measures *to prevent the use of cyber technologies for terrorist purposes*; a Prime Minister's Decision providing for emergency response plans to ensure national cyber information security; and various Ministerial Circulars regulating information surveillance nationwide. Most recently, a comprehensive law on cybersecurity was enacted in June 2018, which governs the entire cyber-security of the nation and seeks to combat cybercrime, protect not only government assets but all those that are critical to the stability, security of the country.

Until now, Viet Nam has not yet become a party to any international convention on cybercrime or cybersecurity while it is still in the process of gradually improving its national legal framework in this area with a view to ensuring its compatibility with the current relevant international norms and standards. In this regard, Viet Nam is ready to engage in discussion at both international and national levels with all States and partners on how best to design and improve national legislation on cybercrime; as well as measures to enhance international cooperation.

Viet Nam would like to learn from experience of other Member States of AALCO as well as receive support from partners to improve its national legislation in a timely manner so that the general public, its government and businesses may continue to benefit from a safe and secured cyber-environment. Viet Nam has been participating in international cooperation on cyber-security, particularly with Member States of ASEAN and APEC partners.

With regard to the report prepared by the AALCO Secretariat entitled "International Law in Cyberspace", this delegation would like to extend its gratitude towards all works done by Prof. Zhixiong Huang, Rapporteur of the AALCO Working Group on International Law in Cyberspace. We therefore fully support the enhancement of AALCO's Member States' cooperation in countering cybercrime and deepening discussion on some key issues of international law in cyberspace among AALCO Member States as well as strengthening capacity building in AALCO.

In addition, we believe the suggestion on a Declaration on Principles of International Law in Cyberspace deserves further discussion between AALCO experts so that its Member States may explore the useful way forward that AALCO may contribute to the on-going discussion on the same topic taking place in other fora. I thank you for your kind attention, Mr. President.

President: Thank you very much for your statement. I invite Japan for their statement.

The Delegate of Japan: Mr. President, Japan would firstly like to join other States in thanking Chairperson of the Working Group for his Report, as well as appreciates the efforts of Prof. Huang, the Rapporteur of the AALCO Working Group on International Law in Cyberspace for the draft Report. The draft Report presents a concise picture of the discussion on international law in cyberspace at various international forums and also recaptures different views expressed thus far by Member States of AALCO.

We take note of the Report made by the Working Group Chair, and we recognize that more in-depth discussions would be needed among Member States on issues that entail different views or positions.

Japan believes that we should continue to study how existing international law could apply to cyberspace. We also believe cyberspace has been a driver for social and economic growth, innovation led by the private sector. For cyberspace to retain driving force for social and economic growth, it is essential to maintain open and transparent environment based on not multilateral but multi-stakeholder approaches that all stakeholders, such as civil society, academic, private company, NGO, and governments

can participate in the process. We would like to continue and deepen the discussion on international law in cyberspace among Member States of AALCO. Thank you.

President: Thank you. Now I invite non-Member State, Russian Federation to make its statement.

The Observer of the Russian Federation: As we are taking the floor at this session for the first time, we would like to start by congratulating you and the Vice-President for your election at this important forum. We would like to wish you all the best in this endeavor. We also would like to extend congratulations to our Japanese colleagues for the excellent organization of this event. We are thankful as well to the Secretariat and the Secretary-General for assistance to our work. We are thankful also to the efforts of the Chairman and Rapporteur of the Working Group on the item under consideration right now. Mr. President, in a situation of rapid development of the information and communication technologies (ICTs) the question of the applicability of the existing international law in situations of using ICTs in virtual space and its extent attains great importance.

On the one hand, the fact of application of international law "in general" to the using of ICTs should not raise any doubts. The international law shall be applied *a priori* to all aspects of interaction between subjects of international law both in physical and in virtual space. First of all, of course, the applicability of the generally recognized principles and norms of international law, including ones enshrined in the UN Charter, such as non-interference in internal affairs of the States, sovereign equality of States, peaceful resolution of disputes, friendship between the nations should be presumed. This presumption was confirmed by the UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, which noted in its 2013 and 2015 reports, that international law, and in particular the Charter of the United Nations, is applicable and is essential to maintaining peace and stability and promoting an open, secure, stable, accessible and peaceful ICT environment.

In considering the application of international law to State use of ICTs, the Group identified as of central importance the commitment of States to the following principles of the Charter and other international law: sovereign equality; the settlement of international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; respect for human rights and fundamental freedoms; and non- intervention in the internal affairs of other States.

At the same time, it should be noted that the existing international law does not contain special universal norms, which are devoted to a complex legal regulation of the use of ICTs. The reason for that is on the surface. International law arisen from the realities of physical world while ICTs' scope is in virtual space. Therefore, the existing international law not only "falls behind" rapid development of modem technologies, but also cannot consider fully all unique characteristics of ICTs and special features of the virtual world.

In view of the Russian Federation, it would be highly desirable for international community to develop special universal treaties that would deal with use of ICT in different aspects. In this regard the Russian Federation initiated in the Third Committee of the UN General Assembly resolution "Countering the Use of Information and Communication Technologies for Criminal Purposes" that will launch the process of drafting of an international convention on this subject. We call upon members of the AALCO to support this initiative.

Meanwhile the absence of the universally applied rules in the field of ICT does not mean that the existing legal gaps and gray zones may "be filled" by means of automatic extrapolation of the existing international legal rules and definitions to the behavior in virtual space.

It is dangerous in our view to assimilate the notions of "attack with the use of ICTs" and "armed attack" under Article 51 of the United Nations Charter given at least the following factors.

It is well-known that anonymity is the key characteristic of hacker attacks. The identification of the source and performers, especially in the conditions of the lack of "frontiers" in virtual space, makes it a difficult task. In this regard it is already possible to expect a high probability of a mistake in the identification of the source of the cyberattack. As a result the State which suffered from a cyber-attack can mistakenly use the armed force as the right for self-defense against innocent parties. Moreover, at the current stage of technologic development it is difficult to distinguish between malicious but relatively harmless attacks and the ones with serious consequences up until the moment that the attack has already occurred. In addition, only a few States possess the technology to track and classify an attack with use of ICTs and the ability to use them. Others will have to believe those who possess such technology on their bare word.

We also consider as inappropriate any attempts to extrapolate notions of the International Humanitarian Law to the use of ICTs. Apparently, while using ICTs it is not possible, as a minimum, to distinguish properly combatants and civilians, military and non-military

objects, since the majority of communication lines are of dual use. And this is not the only problem in this field.

In light of the above, the Russian Federation firmly supports exclusively peaceful use of ICTs. In our opinion, in a situation of lack of consensus on the application of international law to virtual space and its extent the international community should rather focus on the development of universal norms and principles of responsible behavior of States for maintenance of a safe and stable global ICT environment as the measure of confidence building between States.

Exactly for this purpose, the Russian Federation put forward in the UN General Assembly draft resolution titled "Development in the field of information and telecommunications in the context of international security", aiming as the final result at elaborating international code of conduct for information security. We call upon our Asian and African colleagues to support this initative.

Thank you Mr. President.

President: I thank the observer of Russian Federation for his statement. With this we have come to an end of the deliberations on the Agenda Item, "International Law in Cyberspace". I thank all the delegations for their important contribution. I think this topic will continue to be an important one for the AALCO Members. Now, all delegates are invited for lunch break.

The Meeting was adjourned thereafter.

X. VERBATIM RECORD OF THE THIRD GENERAL MEETING

X. VERBATIM RECORD OF THE THIRD GENERAL MEETING HELD ON WEDNESDAY, 10 OCTOBER 2018 AT 02:35 PM

AGENDA ITEM: PEACEFUL SETTLEMENT OF DISPUTES

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, President of the Fifty-Seventh Session of AALCO in the Chair.

President: Distinguished Delegates. Welcome Back. The next agenda item we are going to discuss is "Peaceful Settlement of Disputes". At the outset, I would like to ask for your understanding about some Special Arrangements during this session because I have to attend a courtesy call by the High-level Ministerial Delegates on Japanese Prime Minister, which is scheduled around 4:30 PM at the Prime Minister's Office.

I will have to excuse myself for some time to be with Vice-President. That means during that time, I will ask my Colleague Ambassador Motoo Noguchi to chair this meeting. He is the ambassador responsible for judicial cooperation. I would like to ask for your kind understanding of the arrangement. Mr. Soares, Under-Secretary-General of the United Nations will also attend the Courtesy Call, and so he will also leave at that period from the podium.

Please understand this arrangement.

Then, first, I would first like to invite the Deputy Secretary-General to make his Introductory Statement on the subject matter. Please.

Mr. Mohsen Baharvand, Deputy-Secretary General, AALCO: I thank you Mr. President, Excellencies. The topic of Peaceful Settlement of Disputes is a new item on the work programme of AALCO. It was proposed by the Government of Japan this year and we appreciate the Government of Japan for proposing this agenda item to be put on the programme.

Of all diverse areas of international law, peaceful settlement of disputes occupies a position of special significance. The maintenance of world peace is a goal that is unsurpassed by any other competing value and reflective of the collective conscience of the world community such that it occupies a position of privilege in the hierarchical structure of international law. In this context, there can be little doubt or disagreement on the relevance and importance of this topic especially so in the times we live.

The United Nations in its Charter and the UN General Assembly in various resolutions have highlighted the seminal significance of peaceful settlement of disputes for the world community. It is accepted, as a golden rule, that States should not resort to the use of force except under certain very specific circumstances and disputes between nations should be settled through peaceful means alone. Peaceful means in our context connotes either the use of political or judicial methods of dispute resolution. The Study prepared by the Secretariat on this topic surveys these developments with specific emphasis on the provisions of the UN Charter, UN General Assembly Resolutions, Manila Declaration on Peaceful Settlement of Disputes among others, all of which occupy pivotal positions in the field of international dispute resolution. AALCO in its observations reiterates the significance of the Manila Declaration calling Member States to steadfastly hold on and strengthen its ideals for the betterment of world humanity. It is apt mentioning that Asia and Africa have been progressive players in tapping the dispute settlement mechanisms offered by various international conventions and continue to guide the world on the need and importance to settle disputes employing pacific methods. The Secretariat keenly awaits deliberations in this regard and aspires to build on the suggestions and recommendations emerging from the deliberations of the Fifty-Seventh Annual Session. As this item is a new item, we invite, as the Secretariat the comments of the Member States and Delegations in this room to streamline and strengthen debate on this topic.

I thank you Mr. President.

President: I thank the DSG of AALCO for his introduction. Next, I would like to invite the next speaker of this session, Mr. Miguel De Serpa Soares, United Nations Under-Secretary-General for Legal Affairs to make a presentation. Mr. Soares, Please.

Mr. Miguel De Serpa Soares: Thank you, Excellencies, Mr President, Mr. DSG, Professor Yakushiji, Ladies and Gentleman.

There is a tendency to see disputes between States as a negative phenomenon – something almost pathological - something that must be prevented and, if they occur, to be quickly resolved and removed. I am not so sure about that. Disputes between States are a normal part of international life. Unless humans suddenly become angels, we will always have them. Indeed, some might even say that they are inherent to the process by which international law is made. Unless we think that customary international law must remain static, a principal means by which that law evolves and changes is through States taking actions that do not accord with the existing law, in a deliberate attempt to challenge that law and replace it with a new one.

That new law is then crystallized by the States that are driving for change "holding out"- resisting attempts to get them to back down and accept the status quo - until others come around to their way of thinking. We only need to think of the history of the development of the law relating to exclusive economic zones to realize that this is so. This makes it difficult for me to think that the international legal system wants all disputes, without exception, to be resolved.

Some disputes, however, are clearly problematic: in particular, those that, if left unresolved, could deteriorate and eventually put international peace and security at risk. Whatever kinds of disputes the UN Charter may require Member States to settle; it certainly imposes on them an obligation to settle disputes of that type. I want to pause for a moment and consider what that obligation means - what it entails.

In their eagerness to describe the various peaceful means that are available for the settlement of international disputes, international law textbooks generally overlook this important question. Yet it is a fundamental one, because it shapes how those means of settlement are chosen, which means is chosen and how that means of settlement is then used. As Article 33 makes clear, the obligation that the UN Charter imposes upon Member States to settle their disputes is not an obligation of result. It is not an obligation to ensure that their dispute is settled.

Rather, it is an obligation of conduct: an obligation to seek a solution, to make positive efforts in good faith towards resolving the dispute between them. This much, I think, should be obvious. However, what this obligation entails can only be fully understood in the light of another fundamental principle of international law that is reflected in Article 33 of the Charter: the principle of free choice of means. This principle means, as a general proposition, that States party to a dispute are not required to use any particular method or specific means to resolve their dispute - even negotiations, as both the General Assembly and, most recently, the International Court of Justice have affirmed. They are free to choose whatever means they like - provided that it is peaceful in nature; provided that it is not of such a nature as to potentially aggravate the situation so as to endanger international peace and security; and provided that its nature is such as to potentially make it more difficult to settle, or impede the settlement of, the dispute between them. They are even free to innovate and invent their own means.

Admittedly, in the Friendly Relations Declaration of 1970 and then in the Manila Declaration of 1982, the General Assembly affirmed that the parties shall agree upon "such peaceful means as may be appropriate to the circumstances and nature of the dispute" in hand. However, there is little indication in State practice that parties to a

dispute understand themselves to be subject to specific, substantive constraints on the means of settlement that they may choose. Thus, it has sometimes been said that negotiations, with their inherent process of give and take, are not appropriate for the settlement of disputes of a legal nature. Yet how many treaties and conventions require the parties to a dispute regarding its interpretation or application to try to resolve their differences through this means before engaging in other means of settlement? Again, it has been said that arbitral tribunals and courts are not appropriate means for the resolution of disputes that are of a non-legal nature. But does not the International Court of Justice have the jurisdiction to decide cases *ex aequo et bono,* if the parties agree; and did not many treaties before the Second World War and after empower tribunals or third persons to decide disputes between the parties *ex aequo et bono* by laying down, with binding effect, the terms of a settlement between them?

I think, then, that we must read the words of both the Friendly Relations Declaration and the Manila Declaration as an injunction to the parties to seek to identify the means that is best suited in all the circumstances to promote the early and effective resolution of the specific dispute between them. What the obligation to settle a dispute entails must also be understood in the light of another, second, and even more fundamental principle - a principle that is not expressly articulated in Chapter VI of the Charter, perhaps because it is so fundamental that it goes without saying, but which most certainly underlies it. I refer to the principle of consent. A State cannot be required as a matter of law to use a particular means of settlement, say, mediation or conciliation. It is free to agree to the use of it or not. It is only otherwise if it has already given its legally binding agreement to the use of that means - which is, of course, itself a reflection of the principle of consent.

Now how does this fit with the fact that States are under an obligation, in the words of the Friendly Relations Declaration, to "seek early and just settlement of their international disputes" - or, in the more elaborate and revealing language of the Manila Declaration, to "seek in good faith and in a spirit of co-operation an early and equitable settlement"? Well, if the principle of the peaceful settlement of disputes requires States to make positive efforts to resolve their disputes. Then, when it is read with the principle of the free choice of means and the principle of consent, it must necessarily entail that they must make positive efforts in good faith and in a spirit of co-operation to reach agreement with each other on the means of settlement that they are to use.

Again, this is an obligation of conduct and not of result. States are not under an obligation to agree on a means, but to try to do so. As I have previously mentioned, States are not under any obligation to have resort to negotiations as a means for the

settlement of their disputes. But, having seen what we have seen, I would think it would be difficult to resist the conclusion that, here, there is a duty to negotiate-a duty to negotiate with a view to reaching agreement on the means of settlement to be used. They may discuss whether to enlist the assistance of a third party to assist them in that task- a good officer or a mediator. But the fundamental duty to negotiate will always be there. This being so, if not for its own sake, it would certainly be useful to spell out what the principle of good faith entails in the conduct of negotiations.

The learning on this point has developed where negotiations have been chosen by the parties as the means that they are to use to attempt to resolve their dispute, or where they have agreed on some means that is designed to assist them in the conduct of their negotiations, in particular, good offices or mediation. But I would think that learning should be transferable to where the parties conduct negotiations to agree upon a means of settlement, whatever that means might be. What the principle of good-faith-in-negotiations requires has been the subject of elaboration both by the General Assembly of the United Nations and by International Courts and Tribunals.

The United Nations Secretary-General has also elaborated upon the requirements of good faith in the context of UN-mediated processes-in particular in the "ground rules" or "codes of conduct" that he or his envoys have developed to guide the conduct of negotiations, where he has been asked to mediate or lend his good offices to the resolution of a dispute. For this reason, too, I think it is useful that I say something about this subject. These requirements of good faith can be divided into positive and negative ones; obligations to do and obligations to refrain from doing.

Thus, by way of positive obligations, I think it can be said that parties to negotiations must:

- Exert their utmost efforts to resolve the dispute in an entirely peaceful and amicable manner;
- Negotiate constructively and in good faith with the objective of arriving at a full and early agreement for the solution of the dispute;
- Conduct negotiations in a continuing, sustained and result-oriented manner, avoiding any delay;
- Negotiate in a spirit of cooperation and mutual respect and understanding;
- Seek to understand each other's positions, views and interests;
- Give serious consideration in good faith and without delay to proposals or suggestions made by the other party;

- And be prepared to re-examine their own positions and consider the possibility of modifying or abandoning them and compromising in order to accommodate the interests of the other party.

In terms of negative obligations, parties to negotiation must:

- Refrain from any action or statement that might aggravate or widen the dispute or that might make more difficult or impede its early resolution;
- And exercise caution and restraint in the treatment of all matters relating to the negotiating process, so as to enable the negotiations to take place in a favourable atmosphere that is most conducive to their success.

Now, this second, negative obligation has frequently been further articulated along the following lines, with both negative and positive facets. Thus, it has been said that each party must:

- Avoid public accusations against, and the public attribution of hostile motives to, the other party;
- Moderate the language and tone of its written communications and public pronouncements about the other party in connection with the subject of the dispute;
- Make every effort to secure the concurrence of political parties and interest groups in its country that they, too, will not contribute to a heightening of tensions through inflammatory public statements of their own;
- And, in specific context of the negotiations, behave and express themselves at all times with courtesy, moderation and mutual respect, avoiding abusive or offensive language and behavior.

All this may sound rather vague and numinous; but, to give further content and meaning to these various requirements, it might be useful to note that courts and tribunals have treated the following actions as consistent with the duty to demonstrate good faith in the conduct of negotiations:

- To enter on negotiations without giving up one's own legal standpoints;
- To object to the other party's proposals, provided that this is done in good faith;
- To refuse to reach an agreement that is unsatisfactory to oneself, provided that this is not done in bad faith;
- To cause delays in the negotiations which are a result of normal political contingencies.

Perhaps more interestingly, courts and tribunals have treated the following actions as inconsistent with the duty to show good faith in negotiations:

- To systematically refuse to give consideration to the proposals or the interests of the other party;
- To simply adhere to one's own position without contemplating any modification of it;
- To cause abnormal delays in the negotiations;
- To unjustifiably break off negotiations;
- To act in disregard of the procedures that have been agreed for the conduct of the negotiations.

In at least one case, an arbitral tribunal has held that a State has conducted himself in a manner inconsistent with these requirements. Let me turn now to the various means that are available to States for the settlement of their disputes. Article 33 of the UN Charter lists these: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, and "other peaceful means" of the parties' choice. I have already said a lot about negotiations and about what they do and do not entail; so I will not say any more on that score.

As for other means of settlement, I will, as you may expect, look at these from a UN standpoint and concentrate on those where the UN has historically played the greatest role: good offices and mediation. I would of course also mention judicial settlement and the role of the International Court of Justice; but I think that will already be well known to all in this room and so no need for any further elaboration.

Good offices as such is not expressly mentioned in Article 33 of the UN Charter; but, in recapitulating the peaceful means of settlement that are available to States, the General Assembly added it, in its 1982 Manila Declaration , to the list set out in Article 33 of the Charter. This means of settlement is intimately connected nowadays to the UN Secretary-General. As UN Legal Counsel, I think that, for this very reason, I should focus on this means of settlement. There is some lack of clarity about what "good offices" involve as a means of dispute-settlement. It may be helpful in this regard to make a distinction between a narrow and a broad sense of that expression. As for the narrow sense, the essential idea is of a courier, one who carries messages between two sides that find it difficult for legal or political reasons to talk to each other directly.

As such, the good officer does not contribute anything of substance to the interactions between the parties. He or she "only"- in quotation- enables them to talk to each other. The situation is different when it comes to the broader sense of good offices. Here, the good officer does make a substantive contribution to the negotiations. We can distinguish two ways in which he or she may do this. In some cases, a good officer's role is limited to the first; in other cases, it embraces the

second. The first is by helping the parties to understand each other –an even themselves-and so assists them in their efforts to find a settlement. Here, the good officer helps the parties to identify their interests and formulate proposals and to understand the positions; proposals and interests of the other side, in a back-and-forth process, either with the parties in the same room or apart-perhaps even in their own capitals. Thus, the Personal Representatives of the Secretary-General on the Border Controversy between Guyana and Venezuela shuttled back and forth between Georgetown and Caracas in a process of this kind for several months during the first half of 2017, before bringing the parties together later in the year at Greentree, New York.

The second type of substantive contribution that the good officer may make to the negotiations is a "stronger" one: not only helping the parties to make their own proposals and understand and appreciate those of the other side, but actually making his or her own proposals for the resolution of the dispute in hand. In this last case, good offices are very much a synonym for mediation.

Interesting in this regard is the announcement by the Secretary-General of the appointment in 2017 of his Fourth Personal Representative on the Border Controversy between Guyana and Venezuela, Mr. Dag Nylander, whom he described as conducting good offices "with a strengthened mandate of mediation". Now a good officer may be limited in his or her tasking to making the first of these two kinds of contribution-helping the parties to help themselves. Or, as this announcement shows, his or her tasking may be broad enough to encompass both.

In truth, it is difficult to draw a hard- and fast line between the two kinds of contribution. It can readily be appreciated how the first can contain elements of the second-how a process of helping one party to understand its own interests and those of the other party and to formulate and present its proposals can come to have characteristics of the good officer "helping" the parties to reach the solution that he or she thinks best suited to accommodating the interests of both. It can also readily be appreciated how a good officer may make different kinds of contributions at different times. It will typically only be where he or she has fully earned the trust of the parties that he or she will feel comfortable enough to make his or her own proposals for solution of the dispute in hand; either that or when it comes to a "last throw of the dice".

I should say one other thing about the nature of good offices. The method can be employed as a means to help the parties either to start or to resume negotiations, the good officer dropping out of the picture once the parties have started to talk. The American Treaty on Pacific Settlement of 1948- the "Pact of Bogota" uses the

expression in this sense. In similar vein, it can be employed as a means of helping the parties to agree on a method of dispute settlement.

Alternatively, it can be employed as a means of dispute settlement itself, the good officer facilitating the substantive negotiations towards a settlement. It is in the second of these two ways that we most often come across the expression "good offices" in UN practice. Finally, I should say a few words about how the UN Secretary-General's good offices can be triggered. An intergovernmental organ-the General Assembly or the Security Council-may task the Secretary-General to lend his or her good offices for the resolution of a particular dispute but he or she may also lend his or her good offices on his or her own authority, in the exercise of the powers that are conferred on the Secretary-General under Chapter XV of the UN Charter. Of course, it follows from what I have said earlier that the Secretary-General cannot force himself or herself on the parties. They both have to consent to him or her playing such a role.

The important thing to note, though, is that, as a matter of the UN's internal law, the Secretary-General can offer his or her good offices to the parties to a dispute. So, at the request of one party, he or she can approach the other to see if it will agree to him or her playing such a role. And, what was once highly contentious, but now is settled law; the Secretary-General can offer his or her good offices to the two parties, unbidden by either.

I think that what I have said about good offices makes it unnecessary to say much more about mediation at the UN. I would only remark that we find mediation being analyzed rather like the broader sense of good offices that I have just described. Thus, it is said that the mediator facilitates negotiations between the parties by helping them to identify their interests and present proposals and to understand the proposals, positions and interests of the other side; and that, in this way, as well as through his or her procedural suggestions, he or she makes it easier for the parties to reconcile their contending claims. But it is said that the mediator may also do this by making his or her own proposals for a settlement. The extent to which a mediator moves from one to the other of these roles will be largely dictated by circumstances: that is, when he or she judges it is either possible, appropriate or necessary to do this. I suppose that the distinctive thing about mediation, which distinguishes it from good offices, is that it always includes the second role-or, perhaps more accurately, that it potentially does, depending on whether the mediator finds that he or she needs to move on from the first role and to play the second.

I am aware that I have said quite a lot today. I have described what I think that the obligation to settle disputes by peaceful means entails. As a necessary adjunct to

that, I have described what the principle of good faith requires in the context of negotiations –concentrating on where negotiations are used as a means of settlement, but noting the relevance of that to what is required of the parties when they need to agree upon a means of settlement. And I have outlined what two peaceful means of settlement that are particularly important in UN practice involve-good offices and mediation. I will now leave the floor for Professor Yakushiji to talk about some examples of the peaceful settlement of disputes in Asia and Africa and an overview of some trends in this particular field.

I thank you very much for your kind attention.

President: Thank you very much Mr. Soares for your presentation. I am sure that we have learnt quite a lot from his informative presentation on this important subject.

Now, I would now like to invite the Second Guest Speaker, Mr. Yakushhiji, Professor of Ritsumeikan University and also he is a Member of the National Group of Arbitration appointed by the Government of Japan to make his presentation. Prof. Yakushhiji will talk about the peaceful settlement of international disputes in accordance with the principles of international law and the significance of the third-party dispute settlement mechanism for Asia-Pacific and African countries. Prof. Yakushiji, Please.

Professor Yakushiji: Thank you Chairperson, Mr. President, Distinguished Under-Secretary-General, Mr. Soares, Distinguished delegates, thank you for your kind introduction. It is a great honour to make presentation on the topic of "Peaceful Settlement of International Disputes in accordance with Principles of International Law and the Significance of the Third-Party Dispute Settlement Mechanisms for Asia-Pacific and African Countries." Under contemporary international law, States shall settle their disputes with other States exclusively by peaceful means. Certainly, diplomatic negotiations play a predominant role, but if it reaches a deadlock or faces difficulties, States shall seek settlement by other peaceful means prescribed in article 33 of the UN Charter. In this presentation, focus will be on the significance of the independent third-party dispute settlement mechanisms such as conciliation, arbitration and judicial settlement in the process of resolution of international disputes.

The UN Charter recommends that "legal disputes should as a general rule be referred by the parties to the [ICJ]" (Article 36, paragraph 3), but given the weakness in the international judicial system, including the lack of means to enforce the decision, it is unrealistic to think that every dispute may be resolved through international adjudication. Despite this, the number of disputes referred to third-party adjudication mechanisms is increasing after the end of Cold War, which testifies the significance of "Peaceful Settlement of Disputes" to the agenda item of AALCO. In my following presentation, I

will first briefly touch upon the recent state practice. I will, then, turn to the role and function of the independent third-party dispute settlement mechanism, and their merits and significance for Asia-Pacific countries. With regard to State Practice, two things are remarkable. Firstly, submission of disputes to the ICJ has increased progressively. During the 27 years after 1991, 81, contentious cases have been submitted to the ICJ, in sharp contrast to the fact that 67 cases were brought before the ICJ during the 45 years between 1947 and 1991. Now, 73 States have recognized the compulsory jurisdiction of the ICJ under Article 36, paragraph 2 of its Statute, and about three hundred bilateral and multilateral treaties have provided a clause recognizing the ICJ's jurisdiction over disputes concerning the interpretation or application of the treaty.

Secondly, diversification of third-party dispute settlement mechanisms provides States certain latitude in the choice of procedures, and brought about revitalization of conciliation and arbitration. There are considerable number of multilateral conventions such as UNCLOS (section 2 of part 15) and UN Framework Convention on Climate Change (Article 24 (2) and (5)), that have dispute settlement clauses allowing State parties the choice of judicial means, or settling compulsory conciliation unless State parties otherwise agree. Reflecting this trend, twenty-three contentious cases have been submitted to the International Tribunal for the Law of the Sea (ITLOS) since 1997, and more than 20 inter-State disputes have been arbitrated under the auspices of the Permanent Court of Arbitration (PCA) since 1996. As far as Asian and African countries are concerned, by the end of the Cold War, only 22 cases involving twelve African and nine Asia-Pacific States were referred to the ICJ. But now, a total of 59 cases involving 26 African States (48% of all African Group (AFG) members) and 17 Asia-Pacific States (32% of all Asia-Pacific Group (APG) members) have been brought before the ICJ. Though African States were said to be reluctant to refer disputes to the ICJ in the 1960's, now many African States seem to have become more inclined to settle disputes by utilizing the procedure of the ICJ. Generally speaking, however, Asia-Pacific States still seem cautious to utilize the ICJ mechanism. For example, as of 1 October 2018 only 8 Asia-Pacific States have made the "optional clause" declaration recognizing the jurisdiction of the ICJ as compulsory (15% of the APG's members).On the other hand, 15 contentious cases involving 5 African and 7 Asia-Pacific States have been brought before ITLOS, and at least 13inter-State arbitrations involving 9 Asian and 5 African States have been resolved or are pending under the auspices of the PCA. After the Cold War, 12 African and 11 Asian States acceded to the 1907 Convention for the Pacific Settlement of International Disputes, and the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms provides for arbitration as a means to settle disputes. Thus, an increasing number of Asian States is also ready to submit legal disputes to arbitration and when appropriate to the ICJ.

Ladies and Gentlemen, now I would like to turn to the role and function of the independent third-party dispute settlement mechanism, and their merits and significance for Asia-Pacific countries. In the interest of time, I will briefly touch upon only a few examples. When a conflict of legal views or of interests cannot be resolved directly by the parties to a dispute, such dispute should be resolved not based on bare power relations but amicably in accordance with the principles of justice and international law. As the ICJ stated in the Fisheries Jurisdiction case, the judgment of an international court can provide States with the objective basis on which they conduct fresh negotiations to find an equitable solution. Therefore, conciliation, arbitration and judicial settlement serve to supplement diplomatic negotiations, rather than as a "last resort". The resolution of legal questions by an international court or tribunal may provide an important, and sometimes decisive, factor in promoting peaceful settlement of the dispute, as the ICJ's judgment in the *Tehran* case emphasizes.

Now, please allow me to share a few examples of settlements of intra-African or intra-Asian disputes. First, there is a case in which a provisional measures order promoted the amicable settlement of a dispute. In the Land Reclamation (Malaysia v. Singapore) case, the land reclamation works started by Singapore in and around the Straits of Johar were alleged to infringe upon Malaysia's rights in violation of the UNCLOS. The ITLOS issued the provisional measures order requiring both parties, in particular to establish a group of independent experts to determine within one year the effects of the land reclamation in question, and to propose measures to deal with any adverse effects of the reclamation. Based on the final report of the Group of Experts, the Parties signed the Settlement Agreement to terminate definitively the dispute concerning the land reclamation and all other related issues upon the agreed terms. The agreed conditions included certain commitments by Singapore. Consequently, the Arbitral Tribunal finished its work by authenticating the terms of the Agreement in the form of Award.

Second, after the Continental Shelf case between Tunisia and Libya, an increasing number of territorial and maritime disputes have been brought before the ICJ, ITLOS, or PCA's arbitral tribunals by African and Asian States, in most cases jointly by the parties involved. The decisions of the Court or Tribunals are said to have been generally observed by the parties. In these cases, the Courts and tribunals played important and decisive roles, particularly by identifying the applicable rules and principles of international law as well as identifying concretely the land or maritime boundary delimiting the disputed area. Though territorial and maritime disputes involve politically sensitive issues for States, the objective decision of the Court and tribunals based on the principles of international law may give the settlement the legitimacy essential to the inviolability and perpetuity of the boundary decided.

However, the decision of third-party adjudication does not always lead to the final settlement and further efforts of the parties are expected. In the Land and Maritime Boundary between Cameroon and Nigeria case, the ICJ decided, that sovereignty over the Bakassi Peninsula lies with Cameroon, and obliged Nigeria to expeditiously withdraw its administration and military. Though its implementation faced various difficulties, both governments, with the assistance of UN Secretary-General, agreed on the modalities of withdrawal and transfer of authority in the Bakassi Peninsula in Greentree Agreement. Nigeria formally ceded the territory in 2008, and transitional period was completed in 2013. It is true that the decision of the ICJ played the decisive role for the peaceful settlement of the dispute between two countries, but the efforts of the two States for the compliance with decision of the ICJ should not be forgotten.

In certain circumstances, a third-party dispute settlement mechanism may bring a comprehensive settlement even if it does not have the power to impose a legally binding solution. For example, in the compulsory conciliation proceedings initiated by Timor-Leste against Australia in 2016, the Commission sought to comprehensively engage with Parties to achieve an amicable and durable settlement, rather than restrict itself to the most immediate elements such as the delimitation of permanent maritime boundary. Consequently, the Commission's engagement progressed from the proposal of confidence - building such as suspension of all pending arbitration and proceedings before the ICJ, to the location of the boundary, consideration of revenue sharing and resource governance mechanism. As a result, the treaty concluded in March 2018 between two States ended a decade-long dispute by not only establishing maritime boundaries in the Timor Sea, but also establishing the Greater Sunrise Special Regime for the joint development of petroleum.

In concluding my statement, I would like to make a few observations. For Rule of Law, the practice of States to submit legal disputes to independent third-party dispute settlement mechanisms is a desirable phenomenon. Diversification of third-party mechanisms would provide States certain margin in the choice of means they consider appropriate in accordance with the context and nature of the dispute. The fragmentation of rules of international law can be avoided by the mutual communications and references among various forums. Decisions of the third-party mechanism often offer States new framework for further negotiations to settle disputes finally, rather than function as a last resort. In any case, whether to utilize a third-party mechanism depends on the strong will of the States to settle disputes amicably and in conformity with principles of justice and international law. In the following session, I would very much look forward to listening to the best practices of AALCO members.

Thank you very much for listening.

President: I thank Prof. Yakushiji for his very informative presentation. Now, I open the floor to comments from Member-States on this subject. I would like to encourage speakers to make remarks taking into account the presentations we have just heard. The first remarks will be made by the delegation of Japan.

The Delegate of Japan: Thank you Mr. President. I would like to thank Mr. Soares and Professor Yakushiji for their very informative speeches.

The obligation of States to settle disputes by peaceful means, together with the obligation not to use force, is one of the most fundamental principles of the United Nations Charter and general international law. Pacific settlement of disputes can only be up-held with respect for Rule of Law, and thus Japan is always committed to making and clarifying claims based on international law.

In this connection, Japan appreciates the role of AALCO in promoting rule of law in Asia and Africa. As a permanent forum on international law issues, AALCO has contributed over many years to the exchanges of views and State practices among its member States. On the other hand, discussions at AALCO have focussed mainly on the development of substantive law, and not so much on settlement of disputes. But AALCO is a perfect forum to learn other States experience in dispute settlement. That is why Japan has proposed to take-up peaceful settlement of disputes as a special theme for this session hosted by Japan.

Sovereign and equal States are free to choose a means of dispute settlement that is most appropriate, given the nature and circumstances of the dispute. But when a dispute cannot be resolved through negotiations, Japan believes strongly in the role that a third-party adjudication can play in dispute settlement. For this reason, Japan actively cooperates with international judicial organizations such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), and the International Criminal Court (ICC), to strengthen their functions via contributions both in terms of personal and financial needs. Most recently, Japan is proud to note the election of Ambassador Tomoko Akane as a judge of the ICC in its election in December 2017, and the election of Professor Yuji Iwasawa as a judge of the ICJ. In both elections, the Japanese candidate received an overwhelming support of the international community, and I would like to take this opportunity to thank the States who rendered their support.

Furthermore, to show Japan's commitment to peaceful settlement of disputes, Japan has made, already in 1958, the 'optional clause' declaration under Article 36, paragraph 2 of the Statute of the ICJ recognizing the jurisdiction of the ICJ as compulsory. As for ITLOS, Japan has not made any reservation pursuant to Article 298 of United Nations Convention on the Law of the Sea limiting or excepting the applicability of the

compulsory procedures entailing binding decisions. And as a matter of fact, Japan has participated fully to all proceedings brought before the ICJ and ITLOS. The decision of the Court on the most recent case brought before the ICJ, namely the case concerning "Whaling in the Antarctic" was unfortunately not in Japan's favour, but Japan immediately complied with the judgment. Following the case at the ICJ, Japan has established a new division in the International Legal Affairs Bureau of the Ministry of Foreign Affairs, called International Judicial Proceedings Division, to strengthen the study of case law and the development of procedural rules of international courts, as well as our ability to prepare for international litigations. I look forward to hearing other Members' views and experiences on peaceful settlement of disputes during the session. Thank you for your attention.

President: Thank you very much for your statements. Now my list requests from Iran, Kenya, India and Indonesia. I would like to encourage other delegations to say remarks after these countries if there are any. Now I would invite the delegation of Iran to speak.

The Delegate of the Islamic Republic of Iran: "In the name of God, the Compassionate, the Merciful"! Mr. President, at the beginning, my delegation would like to thank the Secretariat for preparing the Preliminary Study on Peaceful Settlement of Disputes following the introduction of the topic by Japan, which includes general overview and recent developments on the issue of Peaceful Settlement of Disputes.

Mr. President, in recent years, the importance of the Rule of Law in international relations has been recognized on an increasingly frequent basis by the international community of States. One of the primary goals of the United Nations, as stated in the Preamble of the Charter, is to establish conditions under which justice and respect for international obligations can be maintained. The principle of the settlement of disputes should be seen in the larger context of promoting the Rule of Law at the international level. One of the pillars of United Nations is that international relations must be ruled by law and not power. As highlighted by the Manila Declaration, the observance of the principle of peaceful settlement of disputes in relation to States can contribute to the elimination of the danger of recourse to force or to the threat of force, relaxation of international tensions, promotion of a policy of co-operation and peace and of respect for the independence and sovereignty of all States, and consequently to the strengthening of international peace and security. One might also add that successful resort to peaceful means of dispute settlement, and in particular negotiations, could further prevent abusive invocation of certain provisions of the Charter of the United Nations including Article 51 on self-defence. Any resort to peaceful means of dispute settlement, including negotiation and enquiry is subject to respect for other fundamental principles and rules of international law as enshrined in the Charter of the United Nations, including refraining from the threat or use of force against the territorial integrity or political independence of

other States, non-interference in their internal or external affairs, equal rights and self-determination of peoples and more specifically respective principles and rules concerning the peaceful settlement of international disputes, including right of free choice of means and exhaustion of local remedies whenever applicable.

Mr. President, Article 33 of the Charter of the United Nations, which contains a range of diplomatic and legal dispute settlement means, should be interpreted in light of Article 2 (3) thereof, which enshrines a fundamental principle of international law serving as one of the pivotal cornerstones of international peace and security. Although States are under a general obligation to settle disputes peacefully they are free to choose the methods for dispute settlement. The UN legal and dispute settlement system continues to reflect State sovereignty. According to Article 33, States will seek the peaceful means of their own choice. As a determined proponent of peaceful settlement of disputes, the Islamic Republic of Iran has always envisaged the means set forth in Article 33 of the Charter as an important component of its interaction with other States; the result being that recourse to negotiation and consultation is an ever-present element of dispute settlement clauses in bilateral instruments to which Iran is a party, including memorandum of understanding.

Mr. President, "meaningful negotiations", an expression referred to in the Manila Declaration, is what was demonstrated by Iran during more than eighteen months of lengthy and technically specific negotiations on the nuclear issue which led to the signing of "The Joint Comprehensive Plan of Action (JCPOA)" on 14 July 2015. While Iran demonstrated its good faith through the adoption and implementation of the JCPOA provisions with the approval of the International Atomic Energy Agency (IAEA) despite insufficient cooperation on the part of some parties to the instrument, the US unilaterally withdrew from the JCPOA in clear disregard of good faith and in sheer demonstration of an arrogant unilateralism void of respect for the most rudimentary tenets underlying international relations between civilized nations. Yet, the Islamic Republic of Iran had recourse to a peaceful means of settlement of disputes, that is, the International Court of Justice. On 16 July 2018, Iran filed its application together with a request for Provisional Measures to the International Court of Justice to protect its rights, which were infringed as the result of the re-imposition of sanctions previously lifted under the JCPOA. Last week, the Court unanimously indicated provisional measures whereby the US shall remove impediments arising from the measures announced on 8 May 2018 to free exportation to the territory of Iran of medicines and medical devices, foodstuffs and agricultural commodities, and spare parts, equipment and associated services necessary for the safety of civilian aviation. It also indicated that the US shall ensure that licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the said goods and services. Furthermore, the hostile and discriminatory approach of the US with regard to Iranian nationals, companies and entities urged the Islamic Republic of Iran to have another

recourse to the ICJ. Hearings are presently being held at the ICJ in the case concerning Certain Iranian Assets between the Islamic Republic of Iran and the United States of America. We filed in the Registry of the Court, on 16 June 2016, application instituting proceedings in this case against the United States in order to establish United States' responsibility for breach of its obligations again under the Treaty of Amity, Economic Relations, and Consular Rights of 1955. In conclusion, Mr. President my delegation believes that in empowering and strengthening of existing international legal rules for peaceful settlement of disputes between States should be among the priorities of the international community including those of the AALCO.

Ambassador Motoo Noguchi (In place of Mr. Mikami, the President): : Thank you the distinguished delete from Iran. Ladies and Gentlemen, Good Afternoon. My name is Motoo Noguchi. I am Ambassador for International Judicial Co-operation of the Ministry of Foreign Affairs. While Mr. Mikami, President is temporary away while accompanying the courtesy call of the delegation to the Prime Minister, I will be acting as President for the remaining part of the Session. I would like to thank you in advance for your co-operation. On my list, next, I would like to invite the distinguished delegate from Kenya to make his comments.

The Delegate of the Republic of Kenya: Mr. President, Mr. Deputy Secretary-General, Professor Yakushiji, all protocol officers, allow me at the outset on behalf of the Republic of Kenya to convey that Kenya is grateful to the government of Japan and AALCO in particular for this opportunity and welcomes the inclusion of this agenda item into the AALCO Session. The Republic of Kenya is encouraged by the positive experiences as has been enumerated by the various speakers today.

As such, we encourage the use of diplomatic methods to resolve disputes between States. We know that this debate on mediation and peaceful settlement of conflicts comes at an opportune time given the evolving nature of conflicts worldwide.

Thank you Mr. President. On behalf of my delegation, I wish to make the following statement on this agenda item.

Distinguished delegates; we welcome the use of diplomatic methods to resolve disputes between States. We note that this debate on mediation and peaceful settlement of conflicts comes at an opportune time given the evolving nature of conflicts worldwide. Kenya reiterates that it is important to invest in prevention of conflicts, build trust and drawing and having clear and inclusive mandates to guide the negotiation, mediation and adjudicative processes, which should also be complemented by reconciliation and post conflict development.

Mr. President, when a conflict breaks out, it is usually more costly to resolve therefore, there is need to give more significance to prevention and building capacities. Particularly for many decades, Kenya has been at the centre of regional peace processes, has chaired, and worked with her neighbours on many peace initiatives within our sub-region. We have achieved successes and experienced challenges in the process. We therefore call on the AALCO Member States to continue supporting regional peace initiatives. The use of technology and particularly as an early warning mechanism for sustained intervention and pre-empting war has proved effective in our activities.

Distinguished delegates; the role of regional and sub-regional organizations should also be recognized including the efforts by African Union (AU), Intergovernmental Authority on Development (IGAD), East African Community (EAC), Economic Community of West African States (ECOWAS), and the International Conference of the Great-lakes Region (ICGLR) and particularly in conflict prevention, management and peaceful settlement of conflict in their respective jurisdictions. It is important to extend support to these organizations through among others; technical assistance, capacity building, political support and general goodwill to enable them carry out their mandates to the fullest extent.

There is need to create awareness by addressing the socio-economic conditions that lead to conflicts, promotion of human rights and building national and regional capacities for conflict prevention so as to achieve sustainable peace and development.

Mr. President, Kenya's engagement in both the bilateral and multilateral Peace and Security initiatives is guided by the need to protect her sovereignty and territorial integrity as well as the need to enhance regional peace and security. Kenya believes that her prosperity is inextricably linked to peace and stability in the Horn of Africa region. In this regard, Kenya has identified peace diplomacy as a key pillar of its foreign policy. Over time it has, and continues to be, engaged and remains fully committed to the search of peace and stability in the region.

Distinguished delegates, Kenya was a significant player in the negotiations that produced the landmark Comprehensive Peace Agreement between Sudan and South Sudan. It has also been instrumental in the search for peace in the Somalia, chaperoning the process that produced the Somalia Transitional Federal Government in 2005. Kenya therefore believes and rightly so in the pursuit of peace within its borders, with its neighbours and the rest of the continent, while adhering to the principles of multilateralism as espoused by the Constitutive Act of the AU and the Charter of the United Nations. I thank you Mr. President.

President: Thank you the distinguished delegate from Kenya for your Statement. I would now like to invite the distinguished delegate from India.

The Delegate of the Republic of India: Thank you Mr. President. Indian delegation takes this opportunity to thank Deputy Secretary General for his introductory remarks on the topic. We commend the AALCO Secretariat for bringing a preliminary study on the topic. We also take this opportunity to thank the Panellists for their very informative presentations.

Mr. President, one of the major contributions of modern international law is the emergence of the principle of peaceful settlement of international disputes as *jus cogens* along with the development of international for a seeking to provide some institutional mechanism to materialize the principle. Four major practical significance of the principle of peaceful settlement of disputes are

- Principle applies to all international disputes in addition to those, which are likely to endanger international peace and security;
- The obligation of States to strive for peaceful settlement of a dispute is continuous. It remains unfulfilled so long as the dispute remains unresolved;
- The continuing obligation to seek peaceful settlement of dispute gives rise to a further obligation-also based on the principle of good faith-on the part of not only the State parties to the dispute but also all other States, to refrain from aggravating the disputes or frustrating the dispute settlement process;
- The dispute settlement obligation must be pursued in accordance with the principle of sovereign equality.

Sovereign equality implies that freedom of choice of peaceful means of settlement as well as in the process of dispute settlement through a mutually agreed means. It underscores voluntarism as the basis of selection of a dispute settlement means. The parties to a dispute may agree on any peaceful means of their choice. They may even agree on more than one means whether to be pursued simultaneously or successively.

Under the UN Charter, the States are obliged to settle their disputes by peaceful means, which is one of the fundamental principles under paragraph 3 of Article 2. Further, Article 33 of the UN Charter further strengthens this duty and provides the means, which the parties to a dispute can choose freely. The International Court of Justice, the principal judicial organ of the United Nations, plays an important role in the peaceful settlement of disputes.

Mr. President, the United Nations represents our collective recognition that only cooperatives and effective multilateralism can enable peace and security in the context of

the range of inter-connected challenges that we face in our inter-dependent world. India strongly believes in multilateralism and peaceful settlement of disputes according to laid down International Laws. Thank you Mr. President.

President: Thank you the distinguished delegate from India for your Statement. Next, I would like to invite the distinguished delegate from Indonesia.

The Delegate of the Republic of Indonesia: Thank you Mr. President! Distinguished Delegations, at the outset, let me join the previous speakers in congratulating you on your election for the post of President. My delegation would also like to thank the speakers, Mr. Miguel de Serpa Soares from United Nations and Professor Kimio Yakushiji from Ritsumeikan University for their presentations. It is in our opinion that the topic of peaceful settlement of disputes as proposed by Japan is highly important for us.

Mr. President, Indonesia has been a WTO member since 1 January 1995 and a member of GATT since 24 February 1950. Until now, Indonesia has implemented and complied with various agreements reached between WTO Member States. Indonesia has also played an active role in resolving disputes peacefully through the WTO. This year, Indonesia has revised its national regulation on the horticulture import as form of respected and accepted the WTO's decision on the DS478 dispute. Indonesia now is in the finalization phase of the Draft Government Regulation on Electronic Commerce (e-commerce) which refers to various rules of international organizations/institutions such as the WTO, the United Nations Commission on International Trade Law (UNCITRAL), and the Association of South East Asian Nations (ASEAN). One of the articles in the Draft Government Regulation is to deal with electronic conflict resolution (online dispute resolution) which was previously not regulated in Indonesian legislation. With this Draft Government Regulation, Indonesia will provide legal protection to consumers and guarantee the legal validity of the electronic conflict resolution process.

Mr. President, the inclusion of dispute settlement mechanism in International Investment Agreement as one of issue to be discussed in this agenda is just in time because it responds to today's need for a more balanced and fair international investment regime. Indonesia views that there is a pressing need to assess and reformulate the mechanism of ISDS that open for misuse by bad faith investor's frivolous claim taking advantage of the existing deficiencies in the mechanism. It is also worth noting that going into international arbitration is a very costly undertaking for developing countries, let alone for developed ones. Therefore, the issue of "Investor-State Dispute Settlement" has become a main focus and rationale to conduct our International Investment Agreement review. Thank you.

President: Thank you the distinguished delegate from Indonesia. Next, I invite the distinguished delegate from Libya.

The Delegate of Libya[21]: Mr. President, Libya supports the preliminary study of the report and hopes that it will be further expanded. Our delegation appreciates the presentations made by Mr. Soares and Professor Yakushiji.

Mr. President, Libya was one of the countries which has most resorted to the International Court of Justice. It has also resolved many of its disputes with other countries through negotiation, peaceful settlement and reciprocal compensation, and it has also made a number of successful mediation efforts between rival States.

Mr. President, in light of the current situation that my country is going through, we now face a fierce attack on the seizure of Libyan funds abroad, which were financial investments that are supposed to be protected under international law, but there are countries and people seeking to seize it in various ways and under almost fabricated reasons. For example, England is seeking to pass a law to seize the Libyan funds sitting in British banks on the grounds of compensation for victims of the Irish Republican Army, although this issue has already been closed under negotiations between the two countries adopting the approach of peaceful settlement of disputes. There are other countries that refuse the authorization of Libyan funds by misinterpreting UN Security Council Resolutions No. 1970 & 1973 of 2011. There are other countries that refuse the Libyan Investment Corporation to manage the funds in those countries. It is a long explanation, but what we would like to focus on is that our country takes it seriously to defend the funds of future generations and in all possible ways, including resorting to the international judiciary and international arbitration. In this regard, the Libyan State has won many arbitration cases, and much of the money has been recovered, but part of it remains under the freeze imposed by the Security Council. The delegation of our country strongly urged the discussion of this item and the prospect of legal solutions that would respect sovereignty and take into account the situation experienced by some States. Thank you Mr. President.

President: Thank you distinguished delegate from Libya. Now I would like to take 15 minutes break. We will be back after a 15 minute coffee break. Ok Could we resume. So now, 3 Member States remaining on my list. I would like to invite the distinguished delegate from Tanzania.

The Delegate of the United Republic of Tanzania: Thank you Mr. President. Tanzanian delegation wishes to thank you Mr. President for giving us this opportunity.

[21] This statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Tanzania delegation commends the Government of Japan for bringing up this Agenda during the Fifty-Seventh Annual Session of AALCO as its relevancy and importance cannot be overemphasized. It is a golden rule as provided by the UN Charter in conflict resolutions. The world at the moment is witnessing a number of conflicts among nations both internal and international. The United Republic of Tanzania encourages the AALCO Member States and Non-Member States to adhere to Article 33 of the UN Charter and the Manila Declaration in resolving conflicts through pacific means. It is by this approach that we can avoid escalation of disputes and hence achieve amicable dispute settlement. Thank you Mr. President.

President: Thank you the distinguished delegate from Tanzania. Now I invite the distinguished delegate from China.

The Delegate of the People's Republic of China: Mr. President, first of all, please allow me on behalf of this delegation to thank Mr. Mohsen, the Deputy Secretary-General of AALCO for the introduction of this topic. My thanks also go to H.E. Mr. Serpa Soares, the Under-Secretary-General of the UN, and Professor Kimio Yaakshiji for their informative and illustrative presentations.

Mr. President, the international security situation is presently complex and changeable at the same time. Traditional security threats and non-traditional security threats are intertwined, and disputes between states are on increase. The peaceful settlement of disputes, as a fundamental principle of international law, plays an important role in preventing conflicts, resolving disputes and building long-lasting peace. The discussion of this item by the AALCO meeting has very important practical significance.

Mr. President, there are many ways to resolve disputes peacefully, including political, diplomatic and lawful means. The principle of peaceful settlement of disputes allows the parties to disputes to freely choose particular ways to suit their needs. On the basis of sovereign equality, countries should respect the characteristics of regional inter-state relations and relevant historical and cultural traditions according to the specific conditions and nature of disputes, and States have the right to freely choose proper and effective means to resolve disputes. The principle of State consent shall be strictly observed no matter what means any of the parties to the disputes intends to choose. Both *the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* and *the* 1982 *Manila Declaration on the Peaceful Settlement of Disputes between States* confirm this principle, as elaborated just now by H.E. Mr. Serpa Soares. The International Court of Justice has also repeatedly emphasized in relevant cases that the Court's jurisdiction over a dispute depends on the consent of the parties.

Mr. President, China has consistently adhered to the peaceful settlement of international disputes and advocated ways to find solutions through negotiation and consultation, which can best reflect the true will and sovereign equality of countries. China has rich experience in this respect. For example, China has resolved the questions of Hong Kong and Macao, and settled land and maritime border issues with 12 neighboring countries through negotiations in an innovative manner.

China continues to settle maritime disputes peacefully and amicably with relevant countries through consultations on the basis of equality and mutual respect. In the face of current complicated international situation, China has put forward the vision of building a community with shared future for mankind. The core of this vision is to build a world of lasting peace, common security, shared prosperity, openness and inclusiveness, and to make our world clean and beautiful. We should stay committed to building a world of lasting peace through dialogue and consultation. We will seek to resolve all kinds of international disputes in a peaceful manner, to realize the harmonious coexistence and common prosperity and development of all countries. Thank you, Mr. President.

President: Thank you distinguished delegate from China. Now I invite the distinguished delegate from Republic of Korea.

The Delegate of the Republic of Korea: Thank you, Mr. President. My delegation would like to express sincere appreciation for the preparation of "Preliminary Study on Peaceful Settlement of Disputes" by the Secretariat pursuant to the proposal by the Government of Japan. The Republic of Korea has been a robust supporter of the principle of peaceful settlement of disputes in its various forms and has made efforts in national and international aspects to contribute to maintaining and strengthening the international system of peaceful settlement.

We believe that our Government's efforts to deal with North Korean nuclear issues in a peaceful manner represent our unwavering commitment to the principle of peaceful settlement of disputes stipulated in the Article 2 of the Charter of the United Nations.

Let me make a short comment on this agenda from a more fundamental point of view. In order to have sustainable development of international law and its dispute settlement system, it is truly important for each country to promote public understanding of international law and strengthen the national capabilities in this area. Without public support for and acceptance of international law, governments would find it difficult to have their foreign policies guided by international law and its institutional rules.

Furthermore, we need to have more exchanges among governments; academia, students and other interested groups in the field of international law especially in our regions so

that we can have common understanding on what international law can offer for the peaceful dispute settlement.

What is also important is that we have to be able to have our voices constantly heard and reflected in the global discussion on the development of international law. This will lead to increased confidence in the international legal system of dispute settlement. That is why the role of this Organization continues to matter. The Government of the Republic of Korea has implemented various programs such as Seoul Academy of International Law to contribute to the capacity building of our regions in the field of international law. We reaffirm our commitment to continue to expand our efforts in this respect. Thank you very much.

President: Thank you distinguished delegate from the Republic of Korea. Now I invite the distinguished delegate from Socialist Republic of Viet Nam.

The Delegate of the Socialist Republic of Viet Nam: Mr. President, Distinguished Delegates, Ladies and Gentlemen, at this session, my delegation would like to share with your few of our thoughts.

At the present context that disputes and conflicts are increasingly complicated and resulting in more devastating humanitarian and development impacts, it is more important that international institutions, like the United Nations, continue to play a primary and central role in preventing conflicts, settling disputes by peaceful means and assisting countries in overcoming the consequences. Viet Nam, therefore, greatly supports the deliberation on the item "Peaceful Settlement of Disputes" in our agenda. It is our consistent position that all disputes must be resolved by peaceful means, through mechanism and tools including diplomatic and legal processes in accordance with international law. It is crucial that States respect their obligations of non-use of force, refraining from any action that may escalate tension and strictly comply with international law.

In addition, we reaffirm the vital importance of international legal and judicial institutions in the maintenance of international peace and security by helping States to settle disputes by peaceful means in full respect of international law.

In line with this conviction, Viet Nam has participated in two Advisory Opinion proceedings before the International Court of Justice on the questions of Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion) and Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion).

President: Thank you distinguished delegate from Socialist Republic of Viet Nam. Now I invite the distinguished delegate from Republic of Indonesia.

The Delegate of the Republic of Indonesia: Mr. President, our Delegation would like to commend the efforts by the AALCO Secretariat in carrying out the Preliminary Study on Peaceful Settlement of Dispute. This document would surely serve as a basis for further discussion on the way forward.

In this regard, we would like to emphasize the following essential points: First, it is important that states implement obligations to settle international disputes by peaceful means, without resort to threat or use of force, in full compliance with international law. Second, the Secretariat and AALCO Member States should look into the current State Practice with regard to the principle of *pacta sunt servanda* in the context of on-going widespread trade and investment disputes and ways to overcome challenges facing States in various disputes now going on. Third, we believe the Secretariat may also look into the design and function of international tribunals and courts to safeguard its impartiality and judicial integrity in order to enhance the trust of international community on these institutions, thereby fostering a sense of respect for legal processes. I thank you Mr. President.

President: Thank you distinguished delegate of Indonesia. I have now run out of my list of registered speakers. I see Japan wishing to have the floor again.

The Delegate of Japan: Thank you Mr. President. Sorry to ask the floor for the second time during the same agenda item. As the delegation who proposed to include this matter in this agenda item of the Annual Session this year, we wanted to say a few words at the end of the discussion of this agenda item. We are very grateful to all the delegates/delegations who took the floor and shared with us their valuable insight. We are very encouraged to hear a number of very important and relevant points raised by a number of delegations. We wish to continue to hold discussions on this particular matter in meetings of future Annual Session. My delegation will consider appropriate ways and means to best address this matter in the framework of AALCO and we will let the delegations know our thoughts through the Liaison Officers meeting. In conclusion, I would like to reiterate our deepest thanks to Prof. Yakushiji and Mr. Soares who provided very valuable insights on this topic. Thank you Mr. President.

President: Thank you. Is there any other Member State who wish to make a statement? I see none. If not are there, any observers who wish to make a statement. I see none. Ok then I would like to thank the delegates for their statements and with this; we come to the end of our discussions on this agenda item.

Now few announcements. This is the end of work today. We would start on the substantive item, Law of the Sea tomorrow morning at 9 am. Before concluding today's business, I would like to inform that you are all invited to the reception this evening hosted by Mr. Kemchi Yamada, Parliamentary Vice-Minister of Foreign Affairs of Japan. The reception will be held at the official reception hall of the Japanese Foreign Affairs Ministry. You are kindly requested to bring your ID for the AALCO Annual Session such as badges and pins. The transportation is arranged to and from the venue for the delegations. The bus will depart at 6:10 PM from the main entrance of this hotel to the venue. Please gather promptly at 6:10 PM at the lobby. This is the only transportation for you. The meeting is adjourned for today. Thank you very much.

The Meeting was thereafter adjourned.

XI. VERBATIM RECORD OF THE FOURTH GENERAL MEETING

XI. VERBATIM RECORD OF THE FOURTH GENERAL MEETING HELD ON THURSDAY, 11 OCTOBER 2018 AT 09:10 AM

AGENDA ITEM: LAW OF THE SEA

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, and President of the Fifty-Seventh Session of AALCO in the Chair.

President: Good morning distinguished delegates. I welcome you all to the Fourth General Meeting. The first topic on the agenda for the day is discussion on the topic of Law of the Sea. The session of this topic is divided into two parts. In the first part we will discuss the historical development of schemes established under the United Nations Convention on the Law of the Sea (UNCLOS), such as the International Tribunal for the Law of the Sea (ITLOS) and the Exclusive Economic Zone (EEZ).

The second segment will deal with frontiers of the Law of the Sea. In this segment exploitation of the mineral resources in the Area and Marine Biodiversity beyond National Jurisdiction (BBNJ) will be taken up. Two guest speakers and one commentator for each part are invited in order to facilitate interaction among Member States.

Before opening discussion, I would like to invite the Secretary-General Dr. Gastorn to make introductory remarks.

His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen. The agenda item the Law of the Sea was taken up for consideration by AALCO at the initiative of the Government of Indonesia in 1970. Since then it has been considered as one of the priority items at the Annual Sessions of this organization. In fact, AALCO contributed significantly to the adoption of the UNCLOS 1982 which is considered as the "Constitution of the Oceans". As you may recall, concepts such as the EEZ was formally put forth for the first time at AALCO's Colombo Session which was held in 1971. The same was included in the UNCLOS. As of 3 April 2018, 41 out of 47 AALCO Member States have ratified the UNCLOS.

While the UNCLOS is one of the most complex international treaties that have ever been negotiated, it does not provide and has never been intended to provide an answer to every problem that arises in the sea. It remains a framework convention.

One of the main achievements of the UNCLOS is the progressive development of international law in areas such as economic jurisdiction, navigation rights, territorial sea limits, dispute settlement and compulsory adjudication, conservation and management of marine resources, protection of marine environment, marine research regime, and legal status of resources on the sea bed beyond the limits of national jurisdiction.

Mr. President, one of the concrete Secretariat proposals before this Plenary under this topic of the Law of the Sea is to establish the working group on the marine biodiversity beyond national jurisdiction (BBNJ). Given our past active involvement in the negotiation of the UNCLOS as well as the initial discussion on the BBNJ, it is our suggestion that AALCO should follow closely the ongoing negotiation of the subsequent working group meeting of the United Nations and contribute to the United Nation's regime by giving them views of the Member States of AALCO in developing the international legal instrument for conservation and sustainable use of BBNJ. Thank you Mr. President.

First Segment: Historical development of Schemes established under the UNCLOS

President: Thank you Mr. Secretary-General for your statement. Now I invite the two guest speakers and a commentator for the first segment- "Historical development of schemes established under the UNCLOS".

The first speaker is Mr. Myron Nordquist, Professor of International Law at the Center for Oceans Law and Policy, University of Virginia School of Law. Professor Nordquist will make a presentation on achievement of the ITLOS. The second guest speaker is Mr. Alexander Proelss, Professor at Hamburg University. Professor Proelss will speak about the development of the Exclusive Economic Zone (EEZ) regime. The commentator for this segment is Ms. Atsuko Kanehara, Professor of the Faculty of Law, Sophia University. Professor Kanehara is also a member of Advisory Council for the National Headquarters of Ocean Policy of Japan.

Now I'd like to invite Mr. Professor Nordquist for his presentation.

Professor Nordquist, Professor of International Law at the Center for Oceans Law and Policy, University of Virginia School of Law: Thank you Mr. President. Mr. Secretary-General and many distinguished guests. My assignment is to in fifteen minutes comment on the historical achievements of the ITLOS, which is found in the 1982 UNCLOS. Textually the Articles on peaceful settlement of disputes are contained in Parts XV, XVI and XVII (Articles 279- 320) of the Convention, together with the related subject matter of the Annexes V, VI, VII, VIII and IX, as well as in Resolutions I, III and IV given in the Annex I of the Final Act of UNCLOS III of the Convention.

Given the limited time available, and the complexity of the subject, my comments will concentrate on the principle achievements of ITLOS since the institution was founded in 1994. The dispute settlement provisions themselves are complex and we can't even begin to delve into the technical problems dealing with the speedy settlement. The main point to take away is that the principle of peaceful settlement of disputes is an essential part and parcel of the fabric of the Convention and that these principles are embodied in ITLOS. This is the most noteworthy achievement to take away from my comments.

The subject of dispute settlement was not dealt with in any depth by any of the established main Committees of the Conference. However, each topic went through a Committee stage in the Informal Plenary of the Conference. Occasional examination of the topics took place in the competent Main Committee or in the Plenary. But no records were kept of the meetings in Informal Plenary. Instead the President of the Conference, who presided over the dispute settlement provisions and the deliberations thereto, submitted formal reports to the Conference on the work of the Informal Plenary. His reports contain many indications and interpretative provisions about the circumstances in which a given provision came to be adopted. But, it's obvious that the official records are incomplete.

Thus, the dispute settlement articles evolved in a unique way at the Conference. You will recall that the pattern of procedures followed at the Conference was largely taken from the UN negotiations set up to deal with the deep seabed regime after Ambassador Pardo's ground-breaking speech in the General Assembly in 1967. In the List of Subjects and Issues relating to the law of the sea adopted by the Sea-Bed Committee in 1972, Item 21 was simply entitled "Settlement of disputes". In 1973, the Chairman of the Committee, Hamilton Shirley Amerasinghe from Sri Lanka who later became President of ITLOS, proposed that item 21 be dealt with in each Sub-Committee in so far as relevant to its mandate. This proposal was approved by the Committee and we therefore saw various proposals regarding dispute settlement topics accordingly included in different drafts submitted by States to the Sea-Bed Committee. But the fact is that neither the Committee itself nor any of the Sub-Committees discussed items in any depth. This meant that the Third Conference began its examination of the dispute settlement topic with what may be termed a clean slate.

As indicated, the List adopted by the Conference as the basis for the organization of work was adopted for the Conference in 1972 and an allocation of topical items was made. Item 21 was allocated to the Three Main Committees, to be dealt with by each Committee in accordance with its mandate. However, consistent with its importance and interest to the Conference as a whole, settlement of disputes itself was left for consideration of the Conference in Plenary. To this end, a wide ranging general debate on the topic was held in the 58th to 65th plenary meetings at the fourth session of UNCLOS in 1976.

Different procedures were followed in each of the Main Committee deliberations. The First Committee was primarily concerned with the jurisdictional aspects of disputes arising out of the international regime for the seabed and ocean floor beyond the limits of national jurisdiction (the Area). The First Committee did not concern itself with the institutional aspects of dispute settlement. The substantive articles regarding the settlement of disputes in the Area appear in Articles 186-191 of the Convention. They are also found in the Final Act, Annex I, Resolution II, paragraph 5. Institutional aspects are found in Annex VI, Articles 35- 40, and in the Final Act, Annex I, Resolution I, paragraph 10. I think you can sense why I'm reading this I could never possibly do this extemporaneously. This is the first time in over thirty-five years that I have read a text rather than just talking.

The Second Committee did not itself discuss the topic of settlement of disputes. Two of its negotiating groups established in 1978 to deal with "hard core" issues did, however. Negotiating Group 5 dealt with the question of the settlement of disputes relating to the exercise of sovereign rights of coastal states in the EEZ. Negotiating Group 7 dealt with a topic in the context of the delimitation of maritime boundaries between adjacent and opposite States. These negotiating groups reported formally to the Plenary. Out of these reports, Articles 294 and 297, part of Article 298 and Article 300 were produced, while Articles 264, 309 and 310 received their final form.

The Third Committee did discuss different aspects of the settlement of disputes in connection with its mandate. And for the most part its conclusions were generally incorporated in the articles. In the articles on marine scientific research, however, specific textual provisions were retained regarding settlement of disputes and these are found in Articles 264 and 265.

Throughout the negotiations, various institutional and jurisdictional aspects of the settlement of disputes were considered primarily in the Informal Plenary, which, remember, kept no records. The results of these discussions were transmitted formally to the Plenary itself where, after debate on the record, the accepted changes were incorporated into the Convention text.

Part XV (Articles 300-304) includes a series of miscellaneous general provisions, which originated in various organs of the Conference. The concepts, by and large, are reflected in the provisions of the Convention which refer to "generally accepted international rules and standards". An example would be Article 211, paragraphs 2, 5 and 6 (c).

A comment on the negotiating history of the dispute settlement articles at the Conference would not be complete without mention of the seminal drafting role played by Professor

Louis Sohn, a member of the US delegation while on the faculty of the Harvard Law School. Louis prepared countless drafts and redrafts and revisions of the dispute settlement provisions for the then President of the Conference. Indeed, Professor Sohn was a "gentle soul" who had dedicated his life to peaceful settlement of international disputes. He, in fact, was part of the Secretariat for the drafting the UN Charter. Anyway Louis was widely known and respected at the Conference and universally trusted by many for whom he had taught as students at Harvard. Louis was the principal author of the dispute settlement volume that we produced in our commentary. You'd be a brave soul, and I was not brave with that, to question what Louis said happened.

ITLOS was established to adjudicate disputes arising out of the interpretation or application of the Convention. It is commonly mistakenly written as "and application"; it is "or application" and they're different. The Tribunal is composed of 21 independent members elected from highly qualified persons nominated by States party to the Convention. The Convention entered into force on 16 November 1994 and, as noted, ITLOS formally came into being at that time.

The Convention establishes a comprehensive legal framework to regulate ocean space, its uses and resources. Part XV of the Convention lays down a system for the settlement of disputes that requires State Parties to use peaceful means as indicated in the UN Charter. However, if parties to a dispute fail to reach a settlement of their own choice, they are obligated to resort to compulsory dispute settlement procedures entailing binding decisions, but subject to important express limitations and exceptions spelled out in the Convention.

The Convention provides for four alternative means for the settlement of disputes: ITLOS, the International Court of Justice, an arbitral tribunal pursuant to Annex VII or a special arbitral tribunal constituted under Annex VIII of the Convention. ITLOS's statute forms four Chambers: Summary Procedure, Fisheries, Marine Environment and Maritime Delimitation.

Disputes relating to activities in the Area may be submitted to a Seabed Disputes Chamber of ITLOS consisting of 11 judges. Otherwise the jurisdiction of the Tribunal comprises all disputes submitted in accordance with the Convention or in any other agreement concluded which confers ITLOS jurisdiction. To date, 12 multilateral conventions have been concluded in this latter category.

As noted, unless the parties otherwise agree, the jurisdiction of ITLOS is mandatory in cases relating to prompt release of vessels and crews under article 292 and to provisional measures pending the constitution of an arbitral tribunal under article 290 (5) of the

Convention. The procedures to be followed for the conduct of cases is defined and spelled out in ITLOS's Statute and Rules.

To date, ITLOS has dealt with 25 cases. Cases 21 and 17, respectively, were in response to Party's requests for Advisory Opinions regarding Fisheries and Deep Seabed disputes.

Overall, the Convention has successfully established legislative and judicial authority over almost all aspects of ocean law. The Rule of Law governing ocean space is, therefore, primarily being implemented through conforming State Practice and through decisions of the newly formed ITLOS created under the Convention. The Convention therefore is a historic and fundamental achievement in advancing the progressive development of international law and is both conventional and customary in the legal regime for the world's oceans. Thank you.

President: I thank Professor Nordquist on his very detailed and informative presentation on the history and structure of ITLOS. Now I invite the second speaker, Mr. Professor Proelss to present on the topic of development of the EEZ regime.

Professor Alexander Proelss, Professor at Hamburg University: Mr. President, Mr. Secretary-General, Excellencies, Distinguished Delegates. Let me start by expressing my sincere gratitude to the Ministry of Foreign Affairs for the kind invitation to be allowed to address you on the issue of the regime all the EEZ.

I have prepared a set of slides. It's already there. So without further ado, let me introduce you to the structure of my talk: first, very brief introductory remarks; followed by the main subject of my talk, namely, the background of the development of the Exclusive Economic Zone, to which I will refer with the abbreviation EEZ; then some challenges of today concerning the application and interpretation of the Law of the Sea Convention and with a couple of brief conclusions.

It is well known to most of you, I suppose, that the regime of the EEZ is one of the real inventions of the Law of the Sea Conference that took place from 1973 to 1982. Part V, which is the respective part of the Convention, establishes the legal basis of what has been referred to as a specific legal regime- a term that has provoked a considerable degree of debate on what exactly that means. I will try to specify that a little further in the third section of my talk. What is clear from the definition laid down in Article 55 of the Convention is that the EEZ is a zone with regard to which coastal states have been allocated exclusive sovereign rights and jurisdiction but not full and absolute sovereignty. In other words, the EEZ is not part of the territory of the coastal states. In its judgment in the Fisheries Jurisdiction case the ICJ has referred to the predecessor of the EEZ as

"*tertium genus*" between the territorial sea and the high seas. I think that is still an appropriate description for today's legal situation.

So, let us then look at the origins of this regime. As it will be known to you, this can be traced back to the tendency of coastal and island states to extend their jurisdiction concerning fisheries to areas beyond the outer limits of what today is the territorial sea. Now, things started in a much more reluctant manner in 1930 at The Hague Conference for the Codification of International Law. It was expressly rejected by the Committee of Experts for the Progressive Codification of International Law of the League of Nations to extend fishery rights beyond what is today the territorial sea. And the same approach- a conservative approach- was still taken by the ICJ in the Anglo-Norwegian Fisheries case of 1951 when the court refused to allocate specific legal weight to a fisheries zone established by Norway.

Coming then to the first United Nations Conference on the Law of the Sea of 1958 (UNCLOS I), there was a lot of discussion concerning proposals that militated in favor of accepting a six Nautical Miles zone beyond the outer limits of the territorial sea. But because of disputes and controversies concerning the legal status of that zone, these proposals were ultimately rejected. Even in the following decades of the last century, in the 1960s, leading authorities of the field continued to oppose acceptance of exclusive fishing rights in an area beyond state territory. There's a quotation of Sir Fitzmaurice here which I will not need to read to you. The same position was in 1962 taken by Judge Shigeru Oda of Japan and many others. Things started to change in the early 1960s when the doctrine of unity of territorial sea on the one hand and fisheries zone on the other came under increasing pressure. You will probably be familiar with the background of the Fisheries Jurisdiction case decided by the ICJ in 1974 in relation to Icelandic attempts to extend fishing rights to a zone adjacent to the territorial sea. It is interesting that the court concluded in 1974 that two concepts were already accepted under the customary law- the first one being the concept of a fisheries zone which can best be described as the predecessor of the EEZ on the one hand; and at the same time the second concept of preferential rights of fishing.

Now the Court's finding was in essence overtaken by developments that took place in the course of the third United Nations Conference on the Law of the Sea and even prior to that. Let me first refer you to the practice of Latin American States in particular to the 1972 Declaration of Santo Domingo, which advocated the existence of what was called a patrimonial sea, established or consisting of three crucial elements. The first one being the existence of sovereign rights of the coastal States over resources, both living and non-living; secondly, a maximum breadth of 200 nautical miles; and thirdly, the persisting right to freedom of navigation and overflight of other States. If you compare this to

today's regime on the EEZ, it is already very closely related to what we are talking about today.

Maybe even more importantly, and this is a nice opportunity for me to pay respect to the work of this Organization, the predecessor of the Asian-African Legal Consultative Organization, namely, the Asian-African Legal Consultative Committee echoed and further developed the course of action taken by the Latin American States. Kenya was the first State to submit a working paper which was entitled "The Exclusive Economic Zone Concept". So here for the first time we had the name of that zone. This concept was further developed in the following years, the central and crucial elements being on the one hand again exclusive jurisdiction of the coastal State, and on the other these rights being without prejudice to the exercise of freedom of navigation, overflight, the freedom to lay submarine cables and pipelines- elements which are today codified in Article 58 paragraph 1.

Let us then have a look at what were the discussions during the third United Nations Conference on the Law of the Sea. All proposals that were until then submitted to the Seabed Committee and were submitted later on to the Conference concerning of what is today called the EEZ, were collected in one single working paper. Now, these conceptions differed with regard to the legal status of the zone. In essence, at least three different notions were proposed; the first one being the EEZ being an extended territorial sea with some limitations concerning freedoms of other states; the second one being the EEZ as part of the high seas with exclusive usage rights in favor of the coastal State; and the third one being the EEZ to be understood as a *sui generis* regime, following the model of the patrimonial sea concept presented by the Latin American States.

Uncertainties on this question remained, and that prompted in 1976 the Chairman of the Second Committee of the Third Conference to state that "the matter on which the Committee was perhaps the most divided was whether or not the EEZ should be included in the definition of the high seas". So what can what can be seen here is that the legal status of the zone as an in between- a *tertium genus*- between territorial sea and high seas as we understand it today was one of the really crucial aspects in the course of the negotiations. The breakthrough was finally achieved by the Castañeda Group, an informal group which then submitted for the first time a set of articles on open aspects of the EEZ regime which were ultimately then included in the Informal Composite Negotiating Text. They remained, with minor editorial exceptions, unchanged until the end of the third United Nations Conference on the Law of the Sea.

Let me then turn in the last couple of remaining minutes to what I would suggest to be major challenges that still continue to be relevant today in international practice. It is my viewpoint that the issue of providing a fair balance between the diverging interests of

coastal States on the one hand and other States on the other is still the dominating challenge. This is closely related, first, to the scope of the sovereign rights and jurisdiction of the coastal State according to Article 56 paragraph 1 of the UNCLOS, and to the freedoms of others states according to Article 58 paragraph 1 on the other. It is my assumption that reference being made to the specific or special legal regime of the EEZ is not sufficient as a mechanism to solve these problems and challenges. I would also argue that the co-existence of the rights and jurisdiction of the coastal State and the freedoms of other States as important, as that fundamental dichotomy with regard to the development of that zone does still bear a considerable potential for disputes and conflicts in it. So the question is: can that be resolved in one way or the other? To name just one example from my home country, which is, as you know, not related to AALCO in a formal sense, just very recently the question arose whether the jurisdiction of the coastal State over artificial islands, installations and structures would also extends to foreign-flagged construction ships that are used in order to construct offshore wind energy farms in the German EEZ. Obviously we have a conflict here between the jurisdiction of the coastal State over such installations and the flag State jurisdiction. The question is: is that in any way resolved under the Convention? I will get back to that in one minute. Now is there, in case of conflict between the sovereign rights and jurisdiction of the coastal State and the freedoms of other state, some kind of priority? The Law of the Sea Convention contains two provisions, which are relevant here, establishing a mutual 'due regard' rule. That implies one thing, namely, that neither the sovereign rights or jurisdiction of the coastal state, nor the freedoms of others states can be held to be absolute.

Now, the problem is what does 'due regard' mean? It has been interpreted by international tribunals, in particular the arbitral tribunal in the Chagos Marine Protected Area case as being of procedural nature. Since the Chagos case, we have the first case providing some input on what 'due regard' actually means. According to the tribunal this would mean at least some consultation between the States, including consultations (1). in a timely manner; (2). in the spirit of understanding of the other State's concerns; and (3). if possible, by submitting suggestions of compromise. Now, this is a really a formal procedural approach that was taken by the tribunal. The question is: is there a general guideline of substantive nature concerning how to balance the interests involved in the matter?

I do strongly believe that the Law of the Sea Convention provides more than is often thought with regard to such conflicts because it contains some special rules that help us to resolve these kinds of disputes. This is true, for example, for the laying of submarine pipelines and cables under Article 79, as well as with regard to the conflict between protection of the marine environment on the one hand and navigation on the other which is the subject of Article 211. But in general this situation is more difficult. Essentially, I think there are three options concerning whether there is a general conflict rule on which

the UNCLOS relies. The first option would be No. It's merely a case by case thing on the basis of due regard. The second option would be Yes, because of this special regime established by Part V of the UNCLOS there is a presumption at least that the coastal State enjoys priority once it has activated its sovereign rights, for example, by providing an authorization for the establishment of a platform or the like. Thirdly, there is a shifting of the burden of proof in favor of the coastal State if the dispute settlement mechanisms have been activated. That is a position, which has been taken in the past by today's judge David Attard.

Now what I think is crucial is that we do have a mechanism of conflict avoidance at hand, and that is marine spatial planning- a system that can be activated by the coastal State on the basis of its jurisdiction and sovereign rights and which is then a helpful tool in order to avoid the existence of conflicts between the uses all of the EEZ, in terms of Article 56 on the one hand, and Article 58 on the other. Concerning how to determine the scope of the sovereign rights and jurisdiction as well as the freedom of others States, since the Virginia G case all of the ITLOS which concerned offshore bunkering of fishing vessels, we know that it is necessary that there be a direct connection between the fields mentioned in Article 56 on the one hand and a certain matter regulated by a coastal State. I think that this decision can also be applied to two others sovereign rights and jurisdiction of the coastal State and probably also with regards to the freedoms of other States under Article 58. In other words, we need to have a sufficiently close relationship between an activity and the rights and freedoms mentioned in the Convention. And that presupposes that it depends on or is inseparably linked to one of these rights or freedoms respectively. If that is not the case and such a direct connection doesn't exist, it is Article 59 which is applicable- a provision which has so far not received the attention it deserved, in particular, in international disputes settlements mechanisms.

There are a couple of controversial examples for the application of Article 59. There is a lot of divergent State Practice. So it is extremely difficult to come to clear results here. One of the examples being the protection or conservation of archeological and historical objects found in the EEZ; another one perhaps being the operation of ocean data acquisition systems which goes beyond mere marine scientific research. I'm not going to touch upon the very controversial issue of military maneuvers where there is no direct relation to navigation under Article 58. So I'll maybe leave that to discussion later on.

Coming to my conclusions, ladies and gentlemen, altogether I would argue the regime of the EEZ is well accepted in international practice today. However, there is obviously a challenge of the existence of sufficient capabilities on the side of the coastal State. It doesn't help too much if the coastal State has been allocated sovereign rights and jurisdiction, and if that very coastal State doesn't have the capability in order to enforce the laws which it has prescribed on the basis of its jurisdiction. Secondly, and that is my

main message, there is still a considerable degree of uncertainties and controversies regarding the rights and freedoms of the two groups of States which are extremely difficult to resolve because there does not seem to be a uniform State Practice, which increases the risk of legal disputes. At the same time there is no doubt that the existence of the EEZ has given rise to the risk of 'creeping jurisdiction' simply by way of broad interpretation of the sovereign rights and jurisdiction under Article 56 paragraph 1 which, it would be my submission, is somewhat problematic.

With these words, I would like to thank you for your attention and to extend my apologies to the President for speaking two minutes longer than allocated. Thank you.

President: I thank Professor Proelss for his very informative and stimulating presentation on the history and structure of the EEZ regime as well the challenges and problems facing us. Next I would like to invite the commentator Professor Kanehara to reflect on these presentations. Professor Kanehara, please.

Professor Kanehara, Sophia University, Councilor of Headquarters for Ocean Policy of Japan: Thank you President and Secretary-General. Excellency, distinguished delegates, ladies and gentlemen, good morning. It is a great honor for me to have an opportunity to speak on this occasion.

We have heard wonderful presentations by Professor Nordquist from a procedural perspective, and Alex from a substantial perspective regarding the EEZ regime under UNCLOS. We have speakers for this session on the Law of the Sea, Mr. Lodge, Ms. Lee, and Professor Shirayama. These speakers are really representing and reflecting the core regime under UNCLOS and the newly coming issues to UNCLOS. Therefore, under the common theme for this part of the session, namely, "Historical Development of Scheme Established under UNCLOS", these faces of distinguished speakers inevitably bring me to some examination of the challenges to the fundamental idea reflected in UNCLOS.

I would like to talk about two points: first, regarding the procedural aspect of UNCLOS, I will take up the issue of jurisdiction and applicable laws; second, I will discuss possible or required change of a traditional idea of oceans, which has been particularly raised in the context of the new BBNJ issue.

As a starting point of my discussion, confirmation of the important declaration by the arbitral tribunal on the occasion of the South China Sea dispute is very useful. According to it, UNCLOS bears a comprehensive nature. While it focused upon the EEZ regime, the comprehensive nature may be recognized with respect to UNCLOS as a whole. This

means a goal that UNCLOS has reached after the historical development explained by Alex.

My purpose is not a review of the award rendered by the tribunal. My point is that, if UNCLOS is comprehensive, there should be, first, the integrity of UNCLOS, and, second, the reconsideration of the idea of oceans.

Let me begin with the first, the procedural issue.

UNCLOS, as a comprehensive convention, included tremendously various issues of the law of the sea. In addition, disputes frequently relate not only to issues under UNCLOS but also to issues in the different fields of international law. This tendency will continue and further be strengthened with the increase of international law rules to regulate wide range issues of international law. For instance, in the M/V Saiga case and the Guyana and Suriname case, the issue of the use of force was dealt with by ITLOS and the arbitral tribunal. In this sense, they seem to have stepped over their jurisdiction to entertain disputes on interpretation and application of UNCLOS. In comparison, in the Arctic Sunrise Case, the issue of human rights protection was not directly addressed by the tribunal.

Under this situation, what is required for the courts and tribunals that deal with disputes on interpretation and application of UNCLOS?

The jurisdiction of those courts and tribunals are limited to the disputes on interpretation and application of UNCLOS. Regarding applicable laws, under Article 293, the courts and tribunals may apply UNCLOS and "other rules of international law not incompatible with"' UNCLOS. The point is that the wide coverage of applicable laws does not, in any sense, make broader the jurisdiction of the courts and tribunals that is given by UNCLOS.

The comprehensive nature of UNCLOS would never mean and allow inclusions within it issues in different fields of international law. The comprehensive nature can be properly maintained, if the integrity of UNCLOS is kept at the same time. The integrity of UNCLOS can be ensured, among others, by the proper exercise of the jurisdiction of courts and tribunals that have competence under Part 15. In line with this, the applicable laws should be appropriately applied without broadening the jurisdiction of courts and tribunals beyond their jurisdiction which UNCLOS confers on the courts and tribunals. Necessary restriction of jurisdiction would maintain the integrity of UNCLOS, and ensure the comprehensiveness of UNCLOS in a proper manner. That means the Rule of Law through the decisions of ITLOS created under UNCLOS that was mentioned by Professor Nordquist.

Then, I will move on to the second, the substantial issue.

A change to be brought in the idea of oceans is a shift from "a wide and open understanding" of oceans into "an understanding of oceans as a closed water tank." This change will be required for the purpose of the conservation and sustainable use of BBNJ.

Under UNCLOS, the high seas regulation for the purpose of realization of common interests of international society is a "sector-specific" regulation. The common interests are, such as the safety of navigation, conservation and management of fishery resources, environmental protection and so on.

In order to fully protect BBNJ, two new approaches are strongly required: first, an ecosystem approach; second, "a cross-sectoral or integrative" approach.

Let's take a very simple example. Habitat protection requires considerations of the impacts of shipping, fishing activities, discharges from ships into the sea and any harmful uses to the habitat. A cross-sectoral, or an integrated regulation is realized based upon the evaluation of the multiple impacts exerted by these uses as total. For that purpose, the point is that the high seas are regarded as forming "a huge closed water tank." This water tank may be named as a marine ecosystem or a habitat. Inside this closed water tank, the regulation is realized according to the evaluation of the multiple impacts a total exerted by various activities.

Thus far, the law of the sea has assumed that the high seas are wide and open. In a sharp contrast, the ecosystem approach to be implemented by a cross-sectoral or an integrated regulation of the high seas would bring a change to the idea of oceans under the law of the sea.

UNCLOS is facing such a fundamental change of the idea of oceans. It would require reconsideration of various issues under UNCLOS to revitalize its comprehensiveness. This is the substantial point.

The comprehensiveness is the goal that UNCLOS has historically achieved. It would become further solid with the integrity and the revitalization of UNCLOS. This is the end of my comments. Thank you for your attention.

President: I thank Professor Atsuko Kanehara for her very insightful comments. Now I open the floor to comments from Member States on this subject. As we did yesterday, I encourage the delegates to make remarks taking into account the presentations we just heard. Delegates wishing to ask questions can also do so. On my list, I have the

delegation of Indonesia, followed by Nepal, Viet Nam and then Kenya. I invite the distinguished delegate of Indonesia to speak.

The Delegate of the Republic of Indonesia: In the name of God, the Compassionate, the Merciful! Mr. President, Distinguished Delegates. At the outset, let me first take this opportunity to congratulate Mr. Masahiro Mikami as the newly elected President of the Fifty-Seventh Annual Session of AALCO. I am very confident that under your leadership we will be able to produce fruitful results and way forward on issues that we have.

My sincere gratitude to the People and the Government of Japan for the hospitality extended to my delegation, as well as the excellent organization of this AALCO Annual Session.

Indonesia would like to thank the AALCO Secretariat for preparing the Document AALCO/57/TOKYO/2018/SD/S2 for this important agenda item. Indonesia has carefully read through the report, and is of the view that further study and discussion on the issue of the law of the sea is a pertinent endeavor.

As one of the initiators of discussion of the law of the sea in AALCO, we are delighted that this matter concerns all AALCO Member States and it continues as one of AALCO agenda.

Mr. President, Distinguished Delegates, we would like to give general remarks on issues of Exclusive Economic Zone (EEZ), exploitation of mineral resources in the Area, International Tribunal for the Law of the Sea (ITLOS), and Biodiversity Beyond national Jurisdiction (BBNJ).

On the issue of development of the EEZ regime, Indonesia would like to encourage all States, especially those Member States of the UNCLOS 1982 to uphold the EEZ regime and honestly implement it as based on Part V of the Convention.

Furthermore, Indonesia has expressed its seriousness in implementing this regime since very early, by promulgating the national legislation No. 5 of 1983 on EEZ.

The 1983 legislation principally covers matters such as: definition of EEZ; sovereign rights, other rights and jurisdiction in EEZ; activities within the Indonesia's EEZ, and law enforcement.
Hence, as the largest Archipelagic State in the world, Indonesia shares its maritime boundaries with 10 countries, some of which are EEZ boundaries. We have settled our EEZ boundaries with Australia, Philippines, and Papua New Guinea, and the negotiations

to delimit the EEZ boundaries with Malaysia, India, Thailand and Viet Nam are underway.

Mr. President, Distinguished Delegates, Indonesian Government has very consistent stance in addressing issue of Illegal, Unreported and Unregulated (IUU) Fishing and crimes related to fisheries, most of which occur within the EEZ. Therefore, we strongly encourage all countries to support and join the global action in wiping out IUU Fishing and crimes related to fisheries from the world. Indonesia believes that our national effort and mobilization would be effective when they are carried at the regional level and beyond.

Turning to the exploitation of mineral resources in the Area, Indonesia closely observes and highly appreciates the work of International Seabed Authority (ISA) for the development of the current draft of the exploitation regulation.

The draft regulation on exploitation of mineral resources in the Area is critical, and comprises of a number of key areas, among others are applications for approval of exploitation contracts; terms of exploitation contract, and settlement of disputes.

Indonesia emphasizes the importance of the management of mineral resources as well as on the protection of environment at sea from the negative impact caused by exploration and exploitation in the deep sea.

It is encouraged for AALCO to have more intense cooperation and engagement with the ISA. This measure is beneficial for both sides as it would improve understanding and capability of States on exploration and exploitation of mineral resources in the Area.

On the issue of the ITLOS, Indonesia's position is to always support the application of peaceful means particularly through dispute settlement mechanism. In this regard, Indonesia would also like to underline that Indonesia understands fully well that sustaining a peaceful means, including abiding by a decision of an international tribunal may have some challenges. However, for every State, as a responsible member of international community, it is an honourable and important international obligation that it honours a compulsory and legally binding decision under an international instrument.

Mr. President, distinguished delegates. In its Resolution 69/ 292 of 19 June 2015, the General Assembly has decide to develop an internationally legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Indonesia believes that through such vibrant and in-depth meetings which have been held among States, we will achieve our common interest in governing BBNJ through international legally binding instrument.

In this regard, we would also like to further stress the importance of close cooperation and coordination between AALCO Member States in order to advance the application of common heritage of mankind principle for issues pertaining to BBNJ. Against this backdrop, Indonesia is in the position to support the establishment of special working group in AALCO to discuss BBNJ issues regularly.

Mr. President, distinguished delegates. As a country, Indonesia attaches importance to the issues related to the law of the sea, bearing in mind Indonesia's unique characteristic as an Archipelagic State as well as its geographic position. We hope that the other Member States share the same perspective, regardless their size or geographic location.

Allow me to conclude by inviting AALCO Member States to continue our endeavor to utilize and manage the ocean in accordance with the applicable international law and the principle of environmental protection for our future generation. I thank you.

President: I thank the distinguished minister of Indonesia for his statement. Next speaker on my list is the delegation of Viet Nam. I would like to remind the delegates that this segment is on the EEZ regime as well as the achievements of the ITLOS. After the coffee break, we will deal with exploitation of mineral resources in the Area as well as BBNJ. So, if you would like to make remarks on exploitation of mineral resources in the Area as well as BBNJ, please do so in the next segment. During this segment, please restrict yourself to the items of EEZ and the ITLOS. I invite the delegation of Viet Nam.

The Delegate of the Socialist Republic of Viet Nam: Thank you Mr. President. Mr. President, Mr. Secretary-General, Distinguished Delegates, Ladies and Gentlemen, the Vietnamese Delegation would like to express our gratitude and appreciation to the AALCO Secretariat for the work done. The report on the Law of the Sea is very well written and informative. We do share many important points reflected thereof.

Our high appreciation and sincere thanks also go to Professor Nordquist, Professor Proelss and Professor Kanehara for their excellent presentations and comment in favour of the Rule of Law governing the seas and oceans. On behalf of our head of delegation, I would like to share some general and basic thoughts with respect to the law of the sea as follows. First, As a new member of this important organization, we are proud of its noble contributions and those of its member states to the codification and progressive development of international law, including the Law of the Sea, particularly the 1982 UNCLOS. The development of the EEZ concept and the common heritage of mankind

regime, among others, are one of its great contributions in this regard. This clearly signifies not only the shared vision and interests of AALCO member States about the promotion of the rules-based international order, but also the clear and long-standing commitment of this organization and its members to the maintenance and development of the law of the sea.

In this connection, we share the view long held by this organization that UNCLOS serves as the Constitution of the Oceans, providing the legal framework for the seas and oceans, facilitating international communication, promoting the peaceful uses of the seas and oceans, the equitable and efficient utilization of marine resources, the conservation of the marine living resources, the study, protection and preservation of the marine environment. As such, UNCLOS works for the maintenance of peace, justice and progress for all of us, and of course, all the peoples of the world.

Viet Nam is a coastal state and among countries most seriously affected by the adverse impacts of climate change, especially the sea-level rise and extreme weather events. Viet Nam has also increasingly suffered adverse impacts of maritime pollution and maritime resource depletion. We, therefore, strongly support all efforts of the international community for conservation and sustainable use of seas, oceans and marine resources.

Against this background, Viet Nam considers that it is important to join the international efforts in, and make meaningful contribution to, the promotion of Sustainable Development Goal 14 (SDG14) on preservation and sustainable use of the oceans and their resources, including development of sustainable fisheries, implementation of measures to control illegal, unreported and unregulated fishing (IUU fishing), the regulation of exploration and exploitation of mineral resources in deep seabed under the ISA framework, and the development of a new international legal binding instrument under UNCLOS governing the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). At the same time it is undoubtedly necessary to continue and promote the adherence to UNCLOS in good faith for maintaining regional and global peace, stability and development. Furthermore, while supporting and committing to the IUU fighting, we are of the view that this should not amount to trade barrier which might hinder legally caught fish and agricultural products.

Mr. President, Viet Nam has integrated the SDGs into national development plans and strategies. We have enacted the National Action Plan to implement SDGs of Agenda 2030, including SDG 14. Viet Nam has been carrying out various measures, such as implementing the project "*Development of Locally Managed Areas for Restoration and Sustainable Use of Coastal Eco-systems with Involvement of Local Stakeholders*". At the G7 Summit in Canada in June 2018, our Prime Minister, H.E. Mr. Nguyen Xuan Phuc, has put forward the Initiative of setting up a cooperation forum between G7 and coastal

countries with a view to responding to climate change, protecting the marine biological diversity and marine environment.

We fully share the view that in the process of implementation of SDG 14, it is important to promote strong partnership and cooperation among and between governments, enterprises, international and regional organizations as well as all other stakeholders. Viet Nam also notes that this process will not be completed fruitfully without the active participation of the poor and disadvantageous people so implementing measures of SDG 14 should be taken to change their ways of living and enhance their living standard. The legal basis for these partnership and activities should be the universally recognized interpretation and application of international law, particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Viet Nam acknowledges negative impacts of IUU fishing on marine resources, environment and economic development of States. Therefore, the Vietnamese Government strongly support and is committed to the fight against IUU fishing.

With respect to BBNJ, our Delegation would like to reiterate our support for the development of a legally binding instrument on BBNJ, which shall be fully in compliance with the relevant provisions of UNCLOS and without prejudice to States Parties' existing rights and obligations contained therein. It is of our view that such an instrument should promote cooperation between and among States and relevant stakeholders in the preservation of the seas and oceans, sustainable use and equitable benefit sharing of BBNJ. In addition, it is also of our view that BBNJ should be considered as common heritage of mankind, the access of which must be properly managed through an international mechanism, and the benefits resulted from their use and exploitation should be shared equitably among States.

Mr. President, as a State Party to UNCLOS and as a coastal State bordering the East Sea (the South China Sea), we believe in the Law of the Sea as reflected in UNCLOS, including the peaceful settlement of disputes by peaceful means, without resort to threat or use of force, in accordance with international law. We also believe in the great interests and benefits that states and international community would receive or enjoy if the rights and the obligations provided for under UNCLOS are exercised and performed in good faith respectively. As such, we are of the view that maintenance and promotion of peace, security, stability, maritime safety and security, and freedoms of navigation and overflight in accordance with international law certainly serve the interests of all and require strict compliance with UNCLOS.

Finally, we reaffirm our commitment to and support of, the promotion of the values of AALCO, including the important contributions to the development of the Law of the Sea

as reflected in UNCLOS, and of its on-going efforts with respect to the progressive development of the Law of the Sea. I thank you, Mr. President.

President: I thank the distinguished delegate of Viet Nam for his statement. Next, I invite the delegation of Nepal.

The Delegate of the Federal Democratic Republic of Nepal: Mr. President, Your Excellencies, Ministers and Ambassadors, Mr. Secretary-General, Distinguished Delegates, Participants and Observers, Ladies and Gentlemen. First of all, I would like to thank the presenters for their excellent presentations. The delegation of Nepal deeply acknowledges and appreciates the compilation of developments in the field of Law of the Sea prepared by the AALCO Secretariat. In fact, the AALCO has made a historical contribution to the 1982 United Nations Convention on the Law of the Sea (Convention), which is considered as the Constitution of the Seas. Up to now, 168 states are parties to the Convention. Among them, forty-one states are AALCO Member States.

Mr. President, the Convention embodies the principle of customary international law, which states that the high sea beyond national jurisdiction is a global commons and therefore all states are entitled to freedom of access to the high seas and to its resources. As a member state, Nepal has always extended its full cooperation in ensuring proper management, and sustainable and equitable use of ocean resources. As a land-locked country, Nepal attaches a great importance to the Convention as it embodied with the freedom of unrestricted transit of land-locked states to and from the high seas.

Mr. President, in order to materialize the right to freedom of navigation within the high seas, to ensure all the resources of seabed and subsoil beyond the limits of national jurisdiction as the common heritage of humankind, to ensure equitable benefit-sharing mechanism reflecting the common heritage principle, and to materialize capacity building through the transfer of marine technology also for the landlocked countries, those countries must have an unconditional right of transit to and from the sea. In this regard, it is my humble submission again to this august gathering to consider and prioritize effective international mechanism to ensure easy and effective access of the landlocked countries to and from the Sea.

Similarly, land-locked States have a right to participate on an equitable basis in the exploitation of an appropriate part of the surplus of the living resources of the Exclusive Economic Zone of the coastal States of the same region or sub-region, and as well as in the exploitation of the international seabed and sub-soil thereof.

Mr. President, Nepal is in favor of a comprehensive and binding international agreement under the Convention on conservation and sustainable use of marine biological diversity

of areas beyond national jurisdiction. Nepal reiterates its position that the common heritage of humankind is essentially applicable to marine genetic resources in the high seas.

Mr. President, on this occasion, I would like to make a couple of submissions for consideration of the delegates attending the Session: Firstly, AALCO should consider developing a model agreement to further materialize and solidify unconditional right of transit of the land-locked Member States to and from the seas in order to make them realize the notion of common heritage of whole humankind. Secondly, AALCO should 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. Thank you.

President: Thank you very much for your statement and suggestions. The next speaker on my list is the delegation of Kenya, to be followed by Japan.

The Delegate of the Republic of Kenya: Thank you Mr. President. It is with great honour that I have this opportunity to make the following statement on behalf of the Republic of Kenya on this agenda item.

Distinguished Delegates; Kenya is a State Party to the United Nations Convention on the Law of the Sea and has since actively participated in international meetings on the Law of the Sea. During the 27th meeting of the State Parties to the United Nations on the Convention on the Law of the Sea held in New York in 2017, Kenya supported the implementation of part 15 of the United Nations Convention on the Law of the Sea on the development and transfer of marine technology to ensure that African countries equally benefit from the economic and commercial activities implemented under the International Seabed Authority.

Kenya reiterates that progress made in regulation of exploration and exploitation of marine resources should be in consonance with the strengthening of the institution that is expected to participate in the commercial exploitation of these resources for the benefit of the rest of all parties. This is in line with the principle of ensuring that the benefits accruing from these activities benefit not a few but mankind as a whole.

Mr. President, Kenya is fully conscious about the potential of the ocean and is fully committed to ensuring that ocean resources are fully utilized in a sustainable manner in accordance with agenda 14 of the Sustainable Development Goals (SDG). Furthermore, the development and utilization of ocean resources require states to implement measures to safeguard the health of the oceans. In this regards, Kenya has totally banned the

manufacturing, sale and use of plastic bags. This courageous step on our part will eliminate pollution of the ocean from land based activities, particularly, the plastic bags.

As part of our agenda to push development of blue economy, Kenya, Japan and Canada will co-host the Global Conference on the Sustainable Blue Economy in Nairobi from 26-28 November 2018. The agenda of the conference is based on two conceptual pillars: 1. Sustainability, climate change and controlling pollution, and 2. Production, accelerated economic growth, jobs creation and poverty alleviation. Kenya welcomes all the AALCO member states and their delegations to attend the conference, actively participate and enjoy the Kenyan hospitality.

Distinguished Delegates, Illegal, Unreported and Unregulated (IUU) fishing posed a great threat to sustainability of many developing countries and it is for this reason, that Kenya has ratified the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Kenya has also enacted the Fisheries Development and Management Act and established Coast Guards to deal with incidents of illegal fishing through monitoring, control and surveillance.

The African continent is endowed with long coastlines, lakes and great rivers whose full economic potential have not been fully realized due to weak technical and institutional capacities, lack of relevant technologies, insufficient information and inadequate financial resources. Through the upcoming blue economy conference in Nairobi, Kenya seeks to make a strong case for investment in blue economy to enable the continent fully explore and utilize its abundant resources found in blue economy domain.

Mr. President, in conclusion, Kenya welcomes the efforts by the United Nations for the development of a legally binding instrument on the governance and conservation of marine biodiversity beyond national jurisdiction (BBNJ) which is expected to address the issues of sharing of benefits, area based management tools, marine protected areas, environmental impact assessment and marine transfer technology. Thank you Mr. President.

President: Thank you very much for your statement. Next, I invite the delegate of Japan.

The Delegate of Japan: Thank you Mr. President. I would first like to echo appreciation for Professor Nordquist, Professor Proelss and Professor Kanehara for their very informative and stimulating presentations and comment. Mr. President, the EEZ is a maritime area prescribed in the 1982 UNCLOS to adjust the rights and duties of the coastal State and other States about the area adjacent to the territorial sea. Almost a quarter century has passed since the UNCLOS entered into force in 1994, and now the EEZ regime has been well-established through State Practice including the enactment of

domestic laws in many countries. In 1996 Japan ratified the UNCLOS, along with enactment of "Act on EEZ and Continental Shelf", "Act on the Exercise of the Sovereign Right for Fishery etc. in the Exclusive Economic Zone", and it has also incorporated the EEZ regime into domestic laws including "Basic Act on Ocean Policy" in 2007.

In the EEZ the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. Japan undertakes marine research for exploiting and managing of the EEZ, and all relevant ministries and agencies cooperate in addressing infringements for the sovereign rights of Japan. These measures in the EEZ are included in "Basic Plan on Ocean Policy", which serves as the pillar of the marine policy of Japan.

However, the EEZ is not only about exploration and exploitation. Marine environment, issues of IUU fishing and marine pollution such as micro-plastic has been discussed globally today, and the coastal States need to cope with and solve these issues within its jurisdiction in the EEZ. Therefore, it is a future task for all States to cooperate to address the issues in global marine environment.

Mr. President, Japan strongly believes that the establishment of the Rule of Law at sea is essential to ensure the long-term stability of maritime order. Japan has therefore attached great importance to the contribution made by the ITLOS in the peaceful settlement of maritime disputes and in the maintenance and the development of the legal order at sea, which is strongly advocated by Prime Minister Abe with "the Three Principles of the Rule of Law at Sea".

Reminding that the Tribunal celebrated its 20th Anniversary in 2016, I would like to reiterate on this occasion the accomplishments that the Tribunal has steadily made over the past two decades. As an increasing number of diverse cases are submitted to the Tribunal, the international community continues to raise its expectations for the Tribunal's function to settle disputes. Japan looks forward to a continued active role by the Tribunal in further promoting and strengthening the Rule of Law at sea.

Japan has consistently contributed to the Tribunal since its establishment, both as its largest budgetary contributor and through the provision of capable judges. Japan will continue this support so that the Tribunal can play its role even more effectively and live up to the increasing trust and confidence of the international community. Thank you Mr. President.

President: I thank the distinguished delegate of Japan for his statement. I have one more request for remarks. I invite the delegate of the Republic of Korea, please.

The Delegate of the Republic of Korea: Thank you Mr. President. We would like to express our appreciation to the Mr. Secretary-General and the three distinguished speakers for fruitful and enlightening presentation on this important issue.

Let me make a short comment on the ITLOS. Yesterday, we discussed the peaceful settlement of dispute in this room. The UN Convention on the Law of the Sea is also relevant in this respect. The dispute settlement system envisaged by the Convention has contributed to the positive development of international law for many years. The ITLOS and arbitration tribunals established by the Convention have successfully dealt with various cases. The Government of the Republic of Korea will continue to work with the ITLOS to explore ways to contribute to the continuous development of the Law of the Sea.

In this respect, I would like to make a short announcement. The Government of the Republic of Korea will co-host an international maritime law seminar with the ITLOS this November in Seoul, with the aim of strengthening cooperation and exchanges among international law experts. We welcome wide participation from member states of this Organization. Thank you.

President: Thank you very much. It seems we have one more request, from Tanzania. Please.

The Delegate of the United Republic of Tanzania: Thank you Mr. President. Since I am taking the floor for the first time, may I join others to congratulate you Mr. President and your Vice President for being elected to lead this Annual Session and the work of this Organization in the coming year. I also thank the Secretary-General Prof. Dr. Kennedy Gastorn for the very good work of the Organization and the accomplishments since he assumed this office two years ago.

Allow me to thank the presenters on this agenda for their very insightful presentations. The United Republic of Tanzania (URT) is comprised of two former sovereign states, namely Tanganyika (currently Tanzania Mainland) with an area of 942,800 square Kilometres and Zanzibar (Unguja & Pemba Islands), which occupy an area of 2,400 Square Kilometres and border the Indian Ocean.

It is on this premise the United Republic of Tanzania attaches a great importance on the Law of the Sea. Her ocean ward boundary extends to 200 nautical miles, the Exclusive Economic Zone (EEZ) limit, in accordance with Part V of the United Nations' Convention on the Law of the Sea (UNCLOS) 1982.

Last year, the country made a partial submission on the outer limit of its continental shelf beyond 200 nautical miles to the Commission on the Limit of the Continental Shelf pursuant to Part VI and Annex II of UNCLOS. Its EEZ area borders with Kenya, Mozambique, Comoros and the Seychelles. The coastline extends approximately 1,400km in the north-south direction, that is, from the Tanzania-Kenya border in the north to the Tanzania-Mozambique border in the south.

Mr. President, Ladies and Gentlemen; Tanzania is a party to the United Nations Convention on the Law of the Sea and has enacted a number of Legislations including: The Deep Fishing Authority (Amendment) Act 2007, Chapter 371 of the Laws; the Maritime Zones Act 1989, Act No.6 of 1989; the Tanzania's Territorial Sea and Exclusive Economic Zone Act 1989, Act No. 3 of 1989; the Fisheries Act 2003, Act No. 22 of 2003, the Environmental Management Act 2004, Act No. 20 of 2004, the Marine Parks and Reserves Act 1994, Act No. 29 of 1994, etc.

These legislations have contributed immensely in addressing a wide range of contemporary issues in the Law of Sea with a view to exploring challenges to the public order of the oceans in Tanzania. However, there is still a large scale of illegal and unreported fishing activities conducted in the Economic Exclusive Zone that escalates a big crisis of management of the Indian Ocean. It is in this context that Tanzania urges AALCO Member States to collaborate on cross-border patrol to prevent these illegal activities.

To address some of these challenges, Tanzania has already taken some measures in conducting training, research and capacity building in the country's maritime regime. Thus, Tanzania calls upon more assistance from AALCO and the Member States on capacity building to enhance its capacity to fight against this menace.

Tanzania would like to thank the Government of Japan for her significant contribution to the International Tribunal of the Law of the Sea (ITLOS), which is a judicial tribunal established under the United Nation's Convention on the Law of the Sea (UNLCOS). ITLOS has played a great role through its interpretation and application of the Convention, and predictability and stability in the area of the Law of the Sea.

Tanzania has actively continued to engage and cooperate with ITLOS in upholding the underlying jurisprudence on the Law of the Sea. To date, Tanzania has her Judge Hon. Ambassador James Kateka serving at the Tribunal in Hamburg, Germany since 2005. Indeed, this is a great honour and respect for the United Republic of Tanzania.

On Mineral Exploration at the International Sea Bed Authority and Marine Biodiversity Beyond National Borders Agendas, Tanzania supports the recommendations of AALCO

to have a working group to conduct a comprehensive study and research on how international law could apply in these areas.

Mr. President, as indicated earlier, much as legal and regulatory efforts have been done, we still have some challenges on the future of maritime security in our region. It is paramount for each member state to evaluate its maritime security environment as well as problems facing each country. This would make clear the difference in the participating countries awareness. It will definitely promote mutual understanding and cooperation among the participants in deploying permanent and sustainable solutions.

Finally, Mr. President, I would like to pay my deep respect to you and all the participants for your positive participation in this year's Session. I hope what the participants have learned through this session will help our countries in implementing our obligations towards achieving the core principles of this noble Organization to upholding the rules of International Law and more specifically lead to the stability of the maritime security in our regions.

It is Tanzania's pleasure to be part of this forum and we would like to reiterate and assure you Mr. President our commitment and cooperation in all the deliberations. I thank you Mr. President!

President: I thank the distinguished delegate of Tanzania for the statement. With that, we have come to the end of the list of speakers from the Member States. Is there any other non-Member State or International Organization or observer which needs to speak? Russia, please.

The Observer of Russian Federation: Thank you Mr. President. We would like to speak on the issue of BBNJ. Shall we do it now or after the coffee break?

President: About the BBNJ, after the coffee break.

The Observer of Russian Federation: Thank you very much.

President: I wonder if there are additional comments from the three distinguished Professors. No. if none, I would like to express my deep gratitude for the great contributions of the three Professors to this session. Thank you very much.

I propose we have a coffee break here, and we will come back to the room at 11:00 AM to resume the second segment of the session.

Second Segment: Frontier of the Law of the Sea

President: Please take your seats. So now, I would like to resume the discussion. First, I invite two guest speakers. We are honoured to have Mr. Michael Lodge, Secretary-General of the International Seabed Authority with us today who is making a presentation on the exploitation of the mineral resources in the Area. The second guest speaker is Ms. Rena Lee, Ambassador for Oceans and Law of the Sea Issues and Special Envoy of the Minister for Foreign Affairs of the Republic of Singapore. Ms. Lee is also the President of the Intergovernmental Conference on Marine Biodiversity beyond National Jurisdiction (BBNJ) and she will talk about the recent developments and challenges related to BBNJ. The commentator is Dr. Yoshihisa Shirayama, Japan Agency for Marine-Earth Science and Technology (JAMSTEC).

Now, I invite Mr. Lodge to make his presentation. Mr. Lodge, please.

Mr. Michael Lodge, Secretary-General, International Seabed Authority: Mr. President, Mr. Secretary-General, distinguished delegates and colleagues, good morning. I believe this is the first occasion on which the Secretary-General of the International Seabed Authority has had the opportunity to address the Annual Session of AALCO. Considering the long and distinguished contribution of AALCO to the progressive development of the international Law of the Sea, it is long overdue. It is therefore a real honour and pleasure for me to be here today and to have this opportunity to speak about some of the recent developments in the work of the Authority.

41 out of the 47 Members of AALCO are Members of the Authority, which is a significant proportion of our total membership of 168 States Parties. 5 Member States of AALCO are also sponsoring States for deep seabed exploration activities. It is evident therefore that AALCO has an important role to play in the work of the Authority.

Today I want to provide a brief update on the progress of work in the Authority with respect to the development of regulations governing exploitation of marine minerals.

First, however, let me take a few moments to place the work of the Authority in the context of the international Law of the Sea. As one of the institutions created by the Law of the Sea Convention, the Authority has a critical role to play in international ocean governance.

Let me recall that 50 years ago, some 10 years after the Bandung Conference that established the ALCC, the international community took a decision to set aside the resources of the deep seabed beyond national jurisdiction as the common heritage of mankind and to place its administration in the hands of an international organization to be created for that specific purpose.

That decision was motivated by the discovery of high grade mineral resources on the seabed and concerns that exploitation of these resources would be monopolized by a few technologically advanced countries, without due regard to the interests of mankind as a whole. The alternative would have been that access to those mineral resources would have been on a first-come, first-served basis, without international management. There would be a serious risk of conflict between rival claimants. The financial and economic benefits from these riches would end up in the pockets of the few, and no single organization would have regulatory oversight.

The status of the deep seabed and its resources as the common heritage of mankind underpins the legal regime for the management of all marine space. What is not under the exclusive jurisdiction of States is managed by all States through the Authority, based on principles of equality and equity in access to and allocation of resources and with a view to promoting the economic and social advancement of all peoples of the world.

Part XI of the UN Convention on the Law of the Sea establishes a carefully balanced and comprehensive legal regime that not only safeguards the rights and interests of all mankind, but also pays particular attention to the protection of the marine environment from harmful impacts.

Rather than seabed mineral resources being open to all, without restriction, access is permitted only under a contract with the International Seabed Authority, under strict conditions and subject to the supervision of the Council. In this way, the Convention guarantees the rights of seabed miners, whether States, state enterprises or private entities sponsored by States, whilst protecting the interests of the entire international community. It is a unique and unparalleled international organization in terms of its governance structure and ability to create and implement rules relating to future mining activities.

Thanks to the Convention, the financial and economic benefits of this new industry have to be shared for the benefit of mankind as a whole – something that has not been achieved in any other sector.

As a result of this stable and secure legal regime, we have seen almost 40 years of steadily increasing investment in exploration of the deep seabed. Since 1982, these investments have been subject to the international rules set out in the Convention. As of today, the Authority has issued 29 contracts for exploration covering parts of the seabed in the Pacific, Indian and Atlantic Oceans.

Exploration – which produces no financial return – consists primarily of identifying mineral resources and conducting environmental studies. The contribution of this

preparatory work to our understanding of deep sea ecosystems and mineral resources has been immense.

Thanks to these preparatory investments, coupled with tremendous advances in offshore technology –some of which we saw yesterday, we are now at the stage where we can see that deep sea minerals can provide a stable and secure supply of critical minerals to benefit mankind in the future. As well as having the potential to provide a low cost, environmentally sound, supply of the minerals needed to drive the smart economy, they could also contribute to the Blue Economy of several developing States.

Our task now is to operationalize the basic rules set out in the Convention so as to provide the essential regulatory framework to allow investors to make the commercial decision as to whether to proceed to mining or not. This is a task that is expressly conferred on the Authority by the 1994 Implementation Agreement, where it is listed as one of the priority tasks to be done before mining starts. It is a challenging task.

We must set the conditions for access to seabed minerals, the financial terms for exploitation, equitable sharing criteria for distributing the financial benefits, and measures to ensure the protection of the marine environment from harmful effects. At the same time, we must not create new legal obligations on States Parties or new legal rights and we must take care not to alter the delicate balance between rights and interests, that is contained in Part XI of the Convention.

Let me now turn to briefly address the two issues raised in the paper prepared by the Secretariat, which I must say is a very good paper indeed, very comprehensive, as a basis for your discussions today.

First, in respect of the draft Mining Code. This is presently the highest priority in the work of the Authority. At its last meeting in July 2018, the Council of the Authority reiterated its target of adopting a Mining Code by 2020. This is an ambitious target, but it is necessary for at least two reasons:

One, some contractors have indicated that they could be ready to apply for exploitation rights by that time, and therefore there is a need for certainty in the regulatory regime in order to attract financial investment at the scale required – which is hundreds of millions of dollars.

Two, for those contractors whose exploration contracts will be expiring in the early 2020s, the Council has made it clear that it expects that they will have completed the necessary preparatory work to proceed to exploitation by that time. This cannot happen without regulations in place.

The recommendation that AALCO members should engage in the negotiation of the Mining Code is therefore timely and important. These will be the rules that will govern mineral exploitation in the deep ocean for many years to come. Once adopted by the Authority, they become binding on all 168 Member States whether or not they have participated in making the rules. Since every Member State has an interest in the use of the mineral resources of the deep sea that are common heritage of mankind it is important that they make their voices heard. This is not just a matter of academic interest.

The Mining Code covers all aspects of mineral exploitation from application for a contract, environmental impact assessment, feasibility, environmental management and monitoring, safety of human life, inspection, financial terms of contracts, enforcement and penalties and closure and decommissioning of operations. It will also set out the rules for equitable sharing of the financial and economic benefits from mining.

It is fundamentally important therefore both to those who may wish to carry out deep seabed mining, or sponsor activities in the Area, but also to the large mass of developing States, many of whom are members of AALCO, who stand to share in the financial rewards from deep sea mining in the future.

There is still time to participate in this effort. We are currently at the stage of receiving written comments and these will be considered by the relevant organs of the Authority throughout 2019.

This year, the Council held a first round of substantive discussions on the text of the draft Mining Code as prepared by the Legal and Technical Commission. There is no time for me to go into the detail of the text. What I will say, however, is that the draft is the product of a great deal of painstaking technical work and discussion. It contains 105 regulations, 10 annexes, 4 appendices and one schedule covering a total of more than 120 pages.

As a first negotiating text, clearly not everyone will agree with everything that is in the document. There is much more to be done, particularly in terms of understanding the economics of deep seabed mining and reaching agreement on the financial terms of contracts, not to mention the difficult issue of devising a system for equitable sharing of the financial benefits. But I believe the text provides a solid basis for discussion. I sincerely encourage AALCO members to work together to review the draft Mining Code and to participate fully in the negotiations.

The second issue that is touched upon in the paper prepared by the Secretariat is the growing attention that is being paid to sound environmental management. Taking account

of its responsibilities to advance the 2030 Agenda and the implementation of SDG14, the Council endorsed in 2018 an ambitious strategy to fast track the development of regional environmental management plans in key areas where deep sea exploration activities are taking place. These include the Indian Ocean ridge system, the Mid-Atlantic.

In fact, the first such plan was adopted in 2012 for the Clarion-Clipperton Zone of the Pacific Ocean. This included the designation for conservation purposes of a network of nine areas of particular environmental interest. At 1.6 million square kilometres in size, these areas actually represent one of the largest applications of an area-based management tool on earth.

What we are now doing is rolling out this approach to other ocean areas. This process was kick-started this year thanks to initiatives taken by China and Poland to host international scientific workshops to consider environmental management in the North-West Pacific Ocean and the mid ocean ridges respectively. I would like to take this opportunity to thank very much, through the delegation of China, the great contribution made by China in starting that effort and in hosting the workshop in Qingdao that took place a few months ago. We will continue these collaborative efforts throughout 2019 and 2020.

The relevance of this for AALCO is that, to be effective, regional environmental plans must include the collaboration of all stakeholders, including coastal States in each region and developing States, particularly small island States in the Indian and Pacific Oceans. In the Atlantic Ocean, this also includes the West African States.

I, therefore encourage, AALCO members to participate fully in these efforts.

In conclusion, despite the very optimistic tone of my presentation, we must remember that this project of deep sea mining is incredibly challenging and incredibly difficult. It is at least as difficult, while at the same time as exciting, as going to the moon or Mars. We have made huge advances in the last 40 years. Many of those advances were demonstrated at the presentations in the Side Event yesterday. But we must remember that there is still a long way to go. Technology is not proven. We work in extreme depths, in very remote locations. Most of these locations are 5 or 6 days by ship from the nearest land. It is very costly, and there are tremendous environmental challenges. There is, as yet, no agreement on the financial terms on which mining will be carried out. And those are the reasons why it is highly important that all States who've invested so much in elaborating the Part XI regime in the Convention, and then again in the 1994 Implementation Agreement to bring the Convention into force and to enable the ISA to come into being, participate, make their voices heard and that the regime that is developed is in the best interest of the international community.

With that, Mr. President, I thank you very much for your attention.

President: Thank you very much Mr. Secretary-General for your very informative presentation. Next, I would like to invite Ms. Lee, the President of the Intergovernmental Conference on the BBNJ to make her presentation on the BBNJ. Please.

Ms. Rena Lee, President, Intergovernmental Conference on BBNJ: A very good morning to you Mr. President as well as Mr. Secretary-General. Ladies and Gentlemen, good morning. My name is Rena and I'm from Singapore. I want to begin by thanking the organizers of the Fifty-Seventh Annual Session of all AALCO, the Government of Japan for your very kind invitation to me to participate in this meeting and for your excellent arrangements, and, of course, my thanks go to the AALCO Secretariat as well.

Today I want to speak about the topic of BBNJ. It is a subject that many who are familiar with the Law of the Sea will know and indeed some of you in your comments prior to the tea break have already been commenting on this subject. But before I begin, I want to state that today I am not speaking in my capacity as a member of the public service of Singapore. So nothing I say here today represents the views of the Government of Singapore.

I realized that, looking at the agenda of the Fifty-Seventh Session and the breadth of the topics that are covered by AALCO, there may be some of you here today who are not familiar with the subject of BBNJ. You hear this phrase being thrown around, and you don't really know what it stands for. So I want to start with giving a very quick introduction to what BBNJ is. For those of you who already know what it is, and I know that many of you in the room who do know, please be a little patient. And then I want to take up the recommendations contained in the AALCO paper for this session on the Law of the Sea and I thank the Secretariat for preparing this paper. The recommendations are contained in document AALCO/57/TOKYO/2018/SD/S2. I will pick up on a couple of the recommendations and discuss one of the issues that we are grappling with in the Intergovernmental Conference (IGC), namely, how to mesh the ongoing work with what we are trying to build in the IGC.

So, I start first with what BBNJ is. It's a very long title. It basically refers to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. Now you know why we only say BBNJ; because it's too long. So the focus of the work that we do is first on conservation and sustainable use. It's not just conservation; it's not just sustainable use; but both. We do have a tendency to refer to one or the other but the work that we're trying to do is really to develop an instrument in relation to both conservation as well as sustainable use.

Secondly, the focus is on marine biological diversity. Now, sometimes we'll hear people talking about this going to be an instrument about the protection of the marine environment, which, to a large extent, is true. And all of us here who are parties to the 1982 UNCLOS, and we've just heard the Secretary-General say that 41 out of 47 Member States of AALCO are parties to the UNCLOS. As members of the ISA, they have a duty to protect and preserve the marine environment. But, in my view, marine biological diversity and marine environment are not interchangeable terms: there is a lot of overlap, but they don't exactly mean the same thing.

And the third area of focus of the work of the IGC is on areas beyond national jurisdiction. For all purposes, that refers to the high seas and the deep seabed otherwise known as the Area in the UNCLOS. So what we are not looking at are actions taken in areas within national jurisdiction, meaning to say we're not looking at areas within the exclusive economic zone or on the continental shelf. Now expanding on all areas of focus, there are a number of issues that are being considered in the IGC. In 2011 the UN General Assembly developed a package of issues to be considered together and as a whole. So we're taking a package approach to our work and there are 4 main elements to this package: the first is marine genetic resources including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and transfer of marine technology.

Nowadays you hear a lot of people mention BBNJ and it seems like a kind of a very recent topic to have come up in the field of the Law of the Sea. But, in fact, the UN has spent quite a long time discussing this matter of BBNJ. It began as a discussion under the Informal Consultative Process on Oceans and Law of the Sea in 2002. So, it has a fairly long history. Then in 2004 the General Assembly decided to establish an Ad-hoc Open-ended Informal Working Group which met from time to time between the years of 2005 and 2015. In 2015 it was decided to establish a Preparatory Committee to develop an international legally binding instrument under UNCLOS on BBNJ. The Preparatory Committee met in four sessions in 2016 and 2017, and after the fall session in July 2017 the General Assembly decided in Resolution 72/249 to commence an Intergovernmental Conference to negotiate the new legally binding instrument under the UNCLOS.

As some of you here will know the IGC has just completed its first session about a month ago, and work is under way to prepare for the second session which we anticipate will be held in March next year. And I should say that what I said in the past few minutes barely scratches the surface of what the subject of BBNJ is about. It's a very wide ranging and complex matter and for those of you who are interested in learning more about the subject I recommend that you start on the website of the Division for Oceans and Law of

the Sea of the United Nations where many, if not all, of the primary materials relating to this issue can be found.

And this brings me to the AALCO paper. In the section on BBNJ there are four recommendations, namely, the first is the need to establish a working group on BBNJ; and second, working with the United Nations Preparatory Committee towards drafting a new treaty; third, developing regional and sectoral conservation mechanisms; and fourth, an integrated approach to scientific diplomacy and governance utilizing the global scientific community. Now, I am not going to speak on the first recommendation to establish a BBNJ working group because that is for AALCO Member States to decide for yourselves. The second recommendation to work with the PrepCom is to a large extent overtaken by events because the PrepCom has completed its work and we are now in the stage of the IGC. Even still it is worthwhile to take note of the comments under this recommendation on being active in these negotiations and to ensure, and I'm quoting here from the paper, "that the protections guaranteed to developing economies such as international intellectual property rights law are not eroded when devising this new regime". And I want to assure everyone here that AALCO Member States have been thus far very active in the IGC and I hope that you continue your active participation in the IGC whether as AALCO's individual Member States or through other groups such as the African Group, the G77 or the Group of Landlocked Developing States.

Still I will look at the remaining two recommendations, which seem particularly apt, given that I'm on the same panel with my friend Michael Lodge, the SG of the ISA. The ISA is one of the international organizations to which many here are a member, and whose work focuses primarily on areas beyond national jurisdiction. Also, Dr. Shirayama here is the head of Japan Agency for Marine-Earth Science and Technology (JAMSTEC), which, as you may know, has been involved in deep sea research for many years both within and beyond national jurisdiction.

That both the ISA and JAMSTEC are involved in efforts related to the deep sea and the seabed illustrates a point about what is currently going on in the areas beyond national jurisdiction. Yes, activities are taking place in areas beyond national jurisdiction-shipping, fishing, laying submarine cables and pipe lines, but so do are measures to conserve and sustainably use the resources of the areas beyond national jurisdiction. We've heard the SG of the ISA talk about the fast tracking of development of regional environmental management plans both in the Indian Ocean as well as the mid-Atlantic ridge and this is but one of the examples of what is the kind of work that's going on in terms of conservation and sustainable use.

And it is also important to keep in mind that part of the mandate of the IGC in Resolution 72/249 is that the outcomes of the IGC should not undermine existing relevant legal

instruments and frameworks and relevant global, regional and sectoral bodies. Indeed, many, if not all, of the AALCO Members are the members of several of these bodies including the Convention on Biological Diversity, the Food and Agricultural Organization, the International Maritime Organization, and of course, needless to say, the International Seabed Authority. Therefore, what we're doing in the IGC is not starting from a clean slate, nor are we trying to build a governance structure from ground up. And so one of the key issues facing the IGC then, if we assert that we are not starting from a clean slate, is how to mesh the outcomes of what we're doing in the IGC with ongoing work undertaken elsewhere in other bodies, in other frameworks- regionally, sectorally, internationally. In order to figure this out my suggestion is that there are two key questions that need to be considered. First is, what is the scope that will be covered by any governance structure that will be developed in the new instrument; and second question is what are the processes by which the governance structure will operate? In other words, what do we want the new governance structure under this new treaty that we are building to do and how is the structure going to do what it's supposed to do?

And if we take a look at the AALCO recommendations in the context of these two questions, for example, the recommendation to develop regional and sectoral conservation mechanisms, the AALCO members may wish to consider questions such as whether any such mechanism should be focused on conservation; whether it should have a dispute settlement component (these are things that are actually expanded in the AALCO paper); or focus on whether the mechanism should have a focus on monitoring of compliance and enforcement of the wide array of instruments. This you can read in detail in the AALCO paper.

Likewise, with the recommendation on an integrated approach to scientific diplomacy and governance utilizing the global scientific community, for those who attended the side event yesterday, we learned that science is a necessary component for evidence-led ocean governance. Indeed, in the IGC we will hear many people repeatedly saying that we must use the best available science and that measures that we want to take must be underpinned by science. Dr. Shirayama will correct me if I'm wrong, but the bottom-up scientist collaboration which is proposed in the paper is, as I understand it, already taking place, and not just between sciences but also in an interdisciplinary fashion. Here I want to express my view that I don't see this global scientific community as a single entity. There isn't a single science as such. Marine scientific research in areas beyond national jurisdiction involves many different disciplines including, for example, biology, oceanography, geology and geo-morphology. So one aspect that AALCO Member States may wish to consider is how to encourage such multidisciplinary collaboration both within and beyond the scientific community and also how to encourage the top-down international coordination that is proposed in the recommendation.

I've set out some issues for AALCO Member States to consider. I don't have the answers, because the answers lie in your hands, in the hands of Member States. I look forward to listening to your interventions in relation to this issue. Thank you very much.

President: Ms. Lee, thank you very much for your very lucid presentation on the subject matter.
Next I would like to invite Dr. Shirayama to make some comments on these presentations. Dr. Shirayama, please.

Dr. Yoshihisa Shirayama, Japan Agency for Marine-Earth Science and Technology (JAMSTEC): Thank you very much President of AALCO. It's my great honor to have an opportunity to make some comments on the AALCO Fifty-Seventh Session, at the special session for BBNJ. I would also like to thank the excellent presentations by the former presenters Mr. Michael Lodge and Ms. Rena Lee about the background of BBNJ issues.

I myself am a deep sea biologist and the intervention I shall make would be from the standpoint of a biologist, on behalf of, probably, the marine scientists, but not on behalf of the Japanese Government. However I have been a delegate of the Japanese Government for the BBNJ first session. So I'd like to have some comments on the previous sessions as well as some of the preparatory sessions about BBNJ, through the experiment what I learned, I'd like to emphasize here. In addition to the BBNJ discussions, among the global issues very pertinent now are the Sustainable Development Goals (SDGs). SDG 14 is about the marine issues. But from the biological point of view, what "sustainable" means is not clearly defined in the discussion of the policy-makers. That is my impression. So let me make clear what sustainable means from the biological point of view.

The human society is having a benefit from the nature and that benefit is named the ecosystem service, or recently, more definitely named as nature's contribution to people. For example, we get food and also the forest is making wood that is a very important part of our houses, or the nature is providing us with oxygen from carbon dioxide. These are very important services nature is providing to us. On the other hand we eat the fish, or we eat the mammals or we use the woods. This impacts the ecosystem. This negative impact to the eco system is named ecological footprint. So, the footprint is a negative impact to the ecosystem, but ecosystem service is a positive service from nature to the human society. If we are using sustainably the ecosystem services then the recovery of the nature is always larger than the footprint. I mean, if you take ten fishes per year from your fish stock, and next year 10 new fishes will recruit to that population, it is sustainable. But if you take 20 fishes, and you can get only 10 new recruits, that it is not sustainable. So always the recovery of the nature must be larger than the footprint by human. In such an

ecosystem service, resilience is the key for the sustainable use. Ecosystem approach- the term strongly emphasized by Professor Kanehara- is that point recovery is larger than the footprint. This is the key for understanding if it is sustainable or not.

In marine areas, such sustainability has two large differences between local sustainability and global sustainability. If you take a lot of fishes in a limited area, that area is not sustainable. But if you look at from the global populations, it may still be sustainable. In the local, ecological footprint is consisting of two parts: one is the terrestrial activities, or the pollutions provided by the human activities and also the fisheries activities in the local areas. The terrestrial activities' footprint is heavily impacting the coastal regions, for example, heavy metals, toxic materials and more recently, plastic has been the key element as an ecological footprint caused by terrestrial activities. And these terrestrial activities' footprint is very actively discussed by a variety of forums, such as the World Economic Forum, or G7, or G20 or etc. I believe AALCO will also, probably, discuss very activity about this point.

On the other hand the global ecological footprint is not well discussed in most of the forums because it's far beyond the coastal regions, two hundred miles away, and the change over that area is not very easy to detect. However, that area does suffer heavy change of the environment; for example, the ocean acidification is a big issue in the open areas. In the future, probably, in addition to the temperature changes, the global primary production will decrease seriously. That will impact fisheries activities in the future too.

So the question is whether or not, in the future, the recovery ability of the ecosystem in BBNJ is kept larger than the ecological footprint of the human society? Is it larger now? Can it be kept larger in the future? To answer this question, scientific evidence is the key. As Rena Lee clearly emphasized, based on sound and good scientific information, we can understand the current status of the ecosystem function. Then we can predict the future ecosystem service is sustainable or not. Also, we can monitor whether or not our human activity is good enough to use the ecosystem service from the ocean in a sound way. To carry out such good scientific activities, it is very important to keep the freedom of the marine scientific activities in the Areas Beyond National Jurisdiction (ABNJ) and the Area. One very good example is Argo float. It is a robotic float which sink down to 2000 meters every four hours and send back the ocean status of that point through satellite. That float is now running more than 4000 in a global scale, and will provide us key and basic information about the ocean status semi-real time, thanks to that information the prediction of, for example, typhoon is now getting much better than the previous predictions of the weather forecast. That will contribute to the reduction of the impact of tropical cyclones to the societies compared to the previous poor predictions. However, if such Argo float activities are restricted through the discussion on the ABNJ, the service of science to the human society will be seriously damaged. So I sincerely ask, as an

oceanographer, to keep the freedom of the marine scientific activities in ABNJ. That will contribute to not only the scientists but also the society, even more if capacity-building activities are carried out alongside the BBNJ discussions. Then I sincerely ask the recipient of capacity-building to make the data open, and make the data available to the human society as a whole. That will make the global human societies much richer and happier. Thank you very much for your attention.

President: Thank you Dr. Shirayama for your interesting comment as an ocean scientist.

Now I open the floor for comments from Member States on the subject, i.e., frontier of the Law of the Sea, such as exploitation of mineral resources in the Area, and conservative and sustainable uses of the BBNJ. On my list I have Thailand, India, Iran, Korea, China and Japan wishing to speak as Member States and Russian Federation as the Non-Member State. I would first like to invite the delegate from Thailand to speak.

The Delegate of Kingdom of Thailand: Thank you Mr. President. At the outset, my delegation would like to thank the AALCO Secretariat for the paper on the Law of the Sea, which serves as a basis for our deliberation today. We would also like to thank distinguished speakers who gave excellent presentations earlier for the information and insights on various issues that are important to our work. It would be beneficial for us if the statements are made available to delegates for future reference.

Mr. President, the Law of the Sea is indeed a very important topic, and pertinent to many countries in the world especially those who rely on oceans for their livelihoods. As "the constitution of the sea," and one of the most comprehensive international legal instruments on this subject matter, the United Nations Convention on the Law of the Sea (UNCLOS) provides safeguards for the nations in the utilization of the sea, exploitation and exploration of marine resources in the peaceful and sustainable manner. In this regard, my delegation wishes to commend AALCO for its Work Programme to assist member states to become signatories to UNCLOS and thereafter. The report on "Marine Biodiversity beyond National Jurisdiction: An Asian-African Perspective", for example, provides a useful groundwork for the negotiations on the BBNJ, the topic that is so contemporary and significant in the realm of the Law of the Sea and ocean governance.

Mr. President, my delegation is pleased to see the four issues selected for the deliberation on the Law of the Sea at the Fifty-Seventh Session of AALCO, especially the issues of the exploitation of the mineral resources in the Area and marine biodiversity in areas beyond national jurisdiction which have some exciting developments recently, and we would like to share our views as follows.

Starting with the BBNJ with the first intergovernmental conference held recently at the UN headquarters in New York, my delegation supports a global effort in crafting an international legally binding instrument under UNCLOS (the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction). As a developing country, Thailand would like to see the following elements being included in such instrument. These are: the principle of common heritage of mankind, equitable access and benefit sharing, area-based management tools including marine protected areas, capacity building and transfer of marine technology. In this regard, it is worth exploring the proposal to establish an AALCO Working Group on the BBNJ and to see how such a mechanism could work to complement the ongoing negotiation process at the UN. Thailand also supports the protection of International Intellectual Property rights law in the new regime so as to ensure the protection to developing countries' interests.

As for the exploitation of the mineral resources in the Area, Thailand strongly supports UNCLOS to ensure that no State can claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, and that activities in the Area must be carried out for the benefit of humankind as a whole. Benefits derived from activities in the Area must be equitably shared on a non-discriminatory basis. In this regard, Thailand welcomes the draft 5-year strategic plan of the International Seabed Authority (the ISA), which has been formulated for the first time since the establishment of the ISA in 1994. Having a long term plan defining strategic direction and aims of the ISA, we believe, would help ensure that the work of the ISA will be consistent with UNCLOS and its 1994 Implementing Agreement as well as the goals and targets of the 2030 Agenda. This would also help ensure that the goal for the exploitation of resources of the Area for the benefit of mankind is reached, while at the same time providing effective protection and preservation of the marine environment for the benefit of future generations. With the Strategic plan, Thailand would like to emphasize the need for promoting and encouraging marine scientific research in the Area, capacity building programmes, especially for developing States, and full participation in activities in the Area by developing States.

On the development of the International Tribunal for the Law of the Sea (ITLOS), Thailand is proud to have Professor Dr. Kriangsak Kittichaisaree on the rostrum of ITLOS judges. It is the first time for Thailand to have its national serving on this distinguished tribunal. We trust that, with its expertise, ITLOS would help resolve disputes relating to the Law of the Sea effectively and promote peaceful settlement of dispute as underscored by the UN Charter.

Last, on the development of the EEZ regime, if I may continue on these comments, Thailand notes various issues of concern in this area, including the issues of Illegal, Unreported and Unregulated fishing activities (IUU) and its impact on domestic

economies. Thailand remains committed to promoting responsible and sustainable fisheries. A comprehensive fisheries reform has been continuously pursued in collaboration with all relevant government agencies, civil society organizations, international partners as well as neighbouring countries. Fisheries management scheme, national plan of action against IUU fishing, including the system and mechanisms for fisheries control and inspection, have been in place and fully implemented.

Following the accession to the 1995 UN Fish Stocks Agreement and the FAO's Port State Measures Agreement, Thailand has developed and implemented several measures in line with international standards. Thailand is also actively seeking closer cooperation with RFMOs such as Southern Indian Ocean Fisheries Agreement (SIOFA) and Indian Ocean Tuna Commission (IOTC) in Indian Ocean and Western and Central Pacific Fisheries Commission (WCPFC) in the Pacific area. Thank you Mr. President.

President: Thank you for your statement. I would like to remind the delegates about the suggestion by the AALCO Secretariat to set up a working group on the BBNJ. Any feedback on this proposal will be welcomed and I thank the delegation of Thailand to have touched upon this proposal. Next speaker on my list is the distinguished delegate of India, to be followed by Iran. I invite India to speak.

The Delegate of the Republic of India: Thank you Mr. President. On behalf of the delegation of India, I thank the Secretary-General for the introductory remarks on the topic. We also thank the panellists for their very informative presentations.

Indian Delegation first wishes to briefly deal with the on-going negotiations on an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

India has participated in the negotiations all through including in the recently concluded first intergovernmental conference on the instrument. Indian delegation emphasises the necessity of having a legal regime so that there is clarity and clear guidance over the procedures to access the resources of ABNJ. We believe that this will not only help conservation efforts but also augment scientific investment on the exploration of innumerable species from ABNJ region before they become extinct. More importantly, the use of the resources will become transparent and thereby conservation efforts will be feasible.

Indian delegation is of the view that while IGC effectively discharge its duty as per the mandate of UNGA resolution 72/249 of 2017, as envisaged in the Resolution, the work and results of IGC should be fully consistent with the provisions of the United Nations

Convention on the Law of the Sea. It should not undermine existing relevant legal instruments, frameworks and relevant global, regional and sectoral bodies.

Indian Delegation supports meaningful discussions in developing the text of the proposed implementing agreement, taking into consideration the 2011 package, deliberations and outcomes of the earlier processes, including the report of the PrepCom established by UNGA resolution 69/292.

My delegation wishes to share our views on each the topics in the package under consideration of the IGC. On the topic Marine genetic resources, including sharing of benefits, Indian delegation is of the view that the scope of the instrument must cover every aspect of the marine genetic resources in the Area and high seas without prejudice to the relevant provisions of the UNCLOS and other relevant instruments. The proposed regime has to be fully consistent with the provisions of the UNCLOS which guarantees rights and jurisdictions of coastal states in their maritime zones including the extended continental shelf beyond 200 nm, where applicable.

Regarding the inclusion of various forms of marine genetic resources, Indian delegation is of the view that all the forms of resources, regardless of its nature as physical, data or information such as the resource collected in-situ, ex-situ, in-silico and digital sequences, are to be included under the implementing agreement. The scientific and technical body or any other competent body established for this purpose under the instrument will have to categorize the various forms of resources and come out with the mechanisms of monitoring and benefit sharing.

Indian delegation is of the view that right to access Marine Genetic Resources (MGR) is crucial to the advancement of science and technology development leading to its sustainable use. In the case of regulating access to MGR, it is pertinent to note that the genetic material required for bio-prospecting is very less and hence it is desirable to regulate all access to MGR without prejudice to the regime on Marine scientific research provided under UNCLOS. Indian delegation is also of the view that there should be a monitoring mechanism to establish traceability of MGR for meaningful sharing of benefits.

As regards the objectives of benefit sharing, my delegation supports the application of the principle of Common Heritage of Mankind as the underlying principle of benefit sharing. On the issue of Benefit-sharing modalities, Indian delegation is of the view that sharing of benefit shall be done at different stages. At the research level, sharing shall be making the information about the research outcome publically available, whereas the stage when the research outcome has led to commercial venture, the sharing could be even at monetary level. On the question of what existing instruments and framework will be

applicable, Indian delegation is of the view that we can take guidance from the existing instruments, however keeping in mind the fact that the resources of ABNJ are different from land resources.

As regards the Environment Impact Assessment (EIA), the UNCLOS provides guidance in part XII of the convention particularly under Articles 192, 204, 205 and 206. Considering the delicate nature of marine biodiversity and marine environment in ABNJ, activities in the ABNJ require EIA, provided there is no duplication or it does not undermine the existing framework or regulations provided in the other relevant instruments. The present state of scientific understanding on the possible impacts on marine biological diversity is not adequate and hence EIA plays a critical role on the protection of the marine environment and achieving the objectives of the implementing agreement.

From a practical perspective, it may be difficult to set minimum threshold of impact as it could vary amongst ecosystems, and especially when our scientific knowledge on biodiversity of such ecosystems in ABNJ region are limited. However, it is desirable to have a minimum threshold of impact based on ocean based /sound scientific principles as the basis for the EIA studies. EIA activities carried out by the proponent state and report submitted by them be reviewed by a competent scientific and technical body as in case of ISA. This competent body may update the guidelines on EIA. The EIA regime provided in the Madrid Protocol on environmental protection to the Antarctic Treaty and International Seabed Authority could be explored as models for this implementing agreement.

Mr. President, on the Topic Area Based Management Tools (ABMT), including Marine Protected Areas (MPAs), Indian delegation is of the view that there is a need for institutional mechanism to coordinate ABMTs, on the basis of a sound science-based approach, ecosystem uniqueness, application of precautionary principle, transparency and accountability and due regard to Coastal States involved in the process. At the same time, we should also ensure that position of any existing MPAs under similarly placed instruments is not undermined. Management of MPAs should ensure conservation and sustainability as this being the main focus of this instrument.

While there is an obligation under UNCLOS to protect and preserve marine environment and for States to cooperate with each other in the conservation of living resources in the areas of the high seas, we believe that rights of other States, including freedoms of the high seas, are equally important and the challenge would be to arrive at an effective balance so that these rights are not restricted due to employing ABMTs and declaration of MPAs. Therefore, procedure to establish due diligence in identification of ABMTs and

MPAs, consultation process through regional cooperation and institutional mechanism for final adoption are important components that need to be discussed.

Mr. President, on Capacity building and Transfer of Technology, Indian delegation is of the view that capacity-building should be need-based and country driven. Indian Delegation supports the view that enhancing and developing the capacity and ability of developing countries is very crucial to create a well informed and knowledge based society that would enable to assume its responsibility and obligations under the new instrument leading to conservation and sustainable use the marine biological diversity both within the jurisdiction of coastal state and in ABNJs. Indian delegation emphasis the support for international cooperation, specifically through establishment of national and regional marine scientific and technological centres which are important from the perspective of training and education of nationals of developing States and others.

Mr. President, on seabed mining, India is a pioneer investor on seabed mining and has contracts with the ISA for exploration of polymetallic nodules and polymetallic sulphates. We are looking forward to the conclusion of the exploitation code. Thank you Mr. President.

President: Thank you for your statement. Next, I would like to invite the delegation of Islamic Republic of Iran.

The Delegate of the Islamic Republic of Iran: In the name of God, the Compassionate, the Merciful! Mr. President, in the beginning, I would like to thank the Secretariat for the report on the item of "The Law of the Sea". The continuous consideration of the topic by AALCO can contribute to the existing discussion on Law of the Sea issues currently on the agenda of the international forums, particularly the United Nations.

Mr. President, in its resolution 69/292 of 19 June 2015, the UN General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). The first session of the Intergovernmental Conference on an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) on the BBNJ was held from 4th to 17th of September in New York and we are glad that the President of the Conference is with us today.

The deliberations in the first session had clearly demonstrated, once again, the significance, seriousness and urgency of moving forward in a more concrete and shaped manner.

In fact, the marine biodiversity of areas beyond national jurisdiction has a notable environmental, economic and social importance and it could contribute to poverty eradication, sustained economic growth, development of science, public health and food security. The accumulation of a number of threats to marine ecosystems beyond areas of national jurisdiction, including unsustainable exploitation of resources, destruction of habitats, pollution, ocean acidification and climate change are the matters of concern. There is an urgent need to establish a legally binding instrument to address the issue of conservation as well as, current fragmented procedures in access and utilization, including benefit sharing from marine genetic resources in areas beyond national jurisdiction of states.

The guiding principle that best serves both elements of sustainable development in terms of conservation and distribution is the Common Heritage of Mankind enshrined in the UNCLOS and in the General Assembly resolution 2749. The principle of the Common Heritage of Mankind, is part of customary international law and should be taken into account without any prejudice to the rights and obligations of non-parties to the convention. In this regard, we also reiterate Article 311 of UNCLOS according to which no amendments or derogations from the common heritage of mankind is permitted and State parties shall not be party to any agreement in derogation thereof.

Mr. President, on the issue of access and benefit sharing, and the possible role of intellectual property in this regard, we believe that the IGC should utilize the guiding principles put forward by the Convention on Biodiversity (CBD) and the Nagoya Protocol on Access and Benefit-sharing, namely prior informed consent (PIC) as well as fair and equitable benefit sharing. In our view, the best way to guarantee effective implementation of these principles is Mandatory Disclosure of the source of Biological resources. In other words, the patent applications related to BBNJ inventions shall disclose the origin of the source of biological resources to ensure effective tractability of prior informed consent requirement and companies while applying for the patents, particularly in pharmaceutical products, should reveal the source of MGRs utilized in the process of inventing the new product. In fact, the two guiding principles which most of the countries supported to be included in this protocol namely transparency and common heritage of mankind uphold the inclusion of mandatory disclosure requirement in the new protocol.

With respect to transfer of technology, the new instrument should define general obligations in promoting cooperation to develop capacity and transfer of marine technology while recognizing the special needs of developing countries. The needs and priorities for capacity building should be identified and constantly reviewed by an advisory or decision-making body under the new instrument. It is also essential to ensure an adequate, predictable and sustainable funding mechanism for projects on the

conservation and sustainable use of marine biological diversity of ABNJ. The idea of a clearing-house mechanism and a capacity-building network could be developed and the experience of the CBD and the United Nations Framework Convention on Climate Change (UNFCCC) could be instrumental in this regard.

Mr. President, I believe we can now affirm that, based on the fruitful discussions and interactive dialogue we have had during September Conference in New York, which were shaped under the eloquently drafted "aid to discussion" of the President, time is now ripe to expect receiving the Zero draft of the treaty, so as to serve as the basis for the future deliberations; bearing in mind that, any option and format, other than the draft text of a treaty would complicate the process and distract us further from the objective entrusted to us for which we have duty to cooperate. To that end, all of us, including all AALCO Member States, have a shared responsibility toward protecting seas, conservation, sustainable use and sharing equitable benefit deriving from BBNJ. I thank you Mr. President.

President: Thank you for your statement. Next, I invite the delegation of the Republic of Korea to speak.

The Delegate of the Republic of Korea: Thank you, Mr. President. We would like to express our appreciation to Mr. Secretary-General and the distinguished speakers for meaningful presentations and comment. My delegation hopes to take this opportunity to reaffirm the importance of the United Nations Convention on the Law of the Sea (UNCLOS), which has served as the central normative frame of the global governance of the oceans. As Professor Proelss pointed out, this Organization played a significant role in exploring new concepts in the process leading up to the adoption of the Convention.

The Convention has proved to be effective in numerous areas of the Law of the Sea, and continues to play an important role in dealing with emerging issues of environment and international security.

Still, the governments are working on a new international legally binding instrument relating to the marine biological diversity of areas beyond national jurisdiction (BBNJ) under the Convention through intergovernmental conferences.

As we have mentioned in the previous intergovernmental conference in New York, we believe that this process and its result would need to secure the widest possible acceptance and therefore, the states should spare no effort to reach consensus on the substantive issues, under the principle that any new instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

My delegation looks forward to engaging with other Member States in this important area and hopes to continue our constructive consultations on this matter. Thank you for your attention.

President: Thank you for your statement. Next, I would like to invite the delegation of People's Republic of China to speak.

The Delegate of the People's Republic of China: Thank you Mr. President. The Law of the Sea is a traditional and evolving regular agenda item of AALCO. With oceans and the law of the sea increasingly attracting more attentions from various parties, it is important for AALCO to discuss the relevant frontier questions about the Law of the Sea. We thank the Secretary-General and all the presenters for the Secretariat Report and the excellent presentations. The Chinese delegation would like to deliver the following:

First, AALCO had in the past made great contributions to the development of the Law of the Sea. Ideas such as the exclusive economic zone, the archipelagic State and the rights of the land-locked State have witnessed an important role played by AALCO for the establishment of corresponding systems of the Law of the Sea. In the context of new times, AALCO could draw on past experiences, make use of its legal consultative functions, and creatively participate in the study and elaboration of relevant ocean issues, with a view to making new contributions to the codification and progressive development of the Law of the Sea.

Second, the disputes settlement mechanism under the UNCLOS is an indivisible whole, of which the exclusive declarations made by States Parties form an integral part and should be binding. All parties shall uphold the purposes of the UNCLOS, and shall interpret and apply it, including its disputes settlement mechanism, in good faith, and in an accurate and complete manner. As a party to the UNCLOS, China has consistently supported the work of the Tribunal for the Law of the Sea. At the end of 2017, China donated 150,000 Euros to the relevant trust fund of the Tribunal to assist applicants from developing countries for their training in the field of the Law of the Sea. China, along with other countries, maintains that the full bench of the Tribunal has no advisory competence, and is willing to see the Tribunal play a due role in addressing disputes concerning the interpretation or application of the UNCLOS within limits of its authorized mandate.

Third, the international deep seabed mining is currently at a crucial juncture of transition from exploration to exploitation. China welcomes the MoU signed between AALCO and the International Seabed Authority, convinced that it will no doubt facilitate the communication and cooperation between the two international organs. As to the

Exploitation Regulations for the deep seabed resources, China believes that it shall comply with, in a complete, accurate and strict manner, the UNCLOS and its relevant Implementing Agreement; and explicitly define the rights, obligations and responsibilities of various parties involved in the exploitation activities in the Area. In particular, since to share the benefits derived from deep seabed mining is the intrinsic requirement of fulfilling the principle of the common heritage of mankind and bears on the vital interests of the developing countries, it should be properly stipulated in the Exploitation Regulations.

Fourth, the negotiation on the international instrument for the conservation and sustainable use of BBNJ is one of the important international maritime legislative processes, which relates to the adjustment and change of the rules of global ocean governance. AALCO could attach importance to the BBNJ process and actively participate in relevant work so as to duly convey the interests and concerns of the Asian and African countries. As regards the BBNJ issue, China opines that the freedoms and rights enjoyed by all parties in respect of navigation, scientific research, fishing and so forth, should not be derogated. The regulatory arrangement about the marine genetic resources under the new international instrument should not only facilitate access to the genetic resources and reasonable sharing of the relevant benefits, but also promote marine scientific research and innovation. China is in favor of strengthening capacity building and transfer of technology to the developing countries for the conservation of BBNJ, advocates the idea of "teaching how to fish", with a view to tangibly improving the endogenous capacity of developing countries for the conservation and sustainable use of BBNJ.

Mr. President, oceans are the common homeland for all peoples of the world. The ocean issues relate to the vital interests of nations in Asia and Africa. China's Belt and Road Initiative, including the 21st Century Maritime Silk Road, is intended to push forward the strengthening of international communication and cooperation among countries along the routes, especially Asian and African countries. China is willing to work hand in hand with other parties in promoting the establishment of a new type of international relations and the development of a community with a shared future for mankind, so as to enhance the common wellbeing for peoples of all countries.
Thank you, Mr. President.

President: Thank you very much for your statement. I would like to invite the delegation of Japan.

The Delegate of Japan: Thank you Mr. President. I would like to join previous speakers in thanking the panelists for their valuable and insightful presentations and comments. First of all, I would like to once again warmly congratulate on signing of MoU between

AALCO and ISA two days ago. Japan fully supports that cooperation between AALCO and ISA in matters of mutual concern relating to their purposes and functions including training and capacity building and internships for qualified candidates from members of AALCO in the Area.

As for the development of the Regulations on Exploitation of Mineral Resources in the Area, thanks to the leadership of Secretary-General, Mr. Lodge, the drafting work has progressed smoothly. Japan will continue to constructively engage in the work of the Authority to formulate reasonable Regulations, properly striking a balance between exploitation and environmental considerations. Japan considers appropriate sharing of mineral resources in the Area presupposes the entry of ample number of companies to the deep-sea mining industry. Therefore, I would like to stress that the discussion on the draft Regulations should be based on the accurate evaluation on its economic efficiency with the knowledge of experts, taking into consideration technical and economic difficulties in exploiting mineral resources in the Area.

Japan is making efforts to establish technologies for excavating ocean mineral resources and develop the environmental impact assessment technology for ocean resources exploitation as shown in the side event held yesterday. We believe that they are also useful for the developing countries. Japan would like to contribute to the development of mineral resources as well as conservation of environment in the Area through these technologies.

Mr. President, as a maritime nation, Japan attaches great importance to the role played by the IGC to elaborate the text of an international legally binding instrument under the UNCLOS on the conservation and sustainable use of the BBNJ.

It is of crucial importance that the new instrument enjoys broad support, including by those States with development capabilities in the high seas and in the Area, so that it will be truly universal and effective. For the advancement of the knowledge of BBNJ and the collection of data essential for climate change measures, it is also important to make sure that the new instrument will not hamper any maritime scientific research. It is also important to have science-based and constructive discussion within the IGC. For that, we will continue to engage actively in the discussions in the IGC and contribute to developing the well-balanced, universal and effective new instrument. Thank you Mr. President.

President: Thank you for your statement. With that we have come to the end of the list of speakers from Member States. If there is no other Member State wishing to speak, I would like to open the floor to Russian Federation.

The Observer of Russian Federation: Thank you Mr. President. First of all, let me express our gratitude to the invited speakers for their excellent presentations. Mr. President, within the agenda item under consideration, I would like to touch upon just one particular issue, which is of great importance to us, namely, the BBNJ process. It is not a secret that the Russian delegation has serious reservations with regard to the stance taken on this topic by many delegations present here in this room. However, this meeting presents a unique opportunity for us to explain once more our vision and approach thereby contributing to our common goal of finding consensus based solutions.

The 1st session of the Intergovernmental Conference (IGC) in September resulted in a somewhat more focused discussion of the main elements of the future instrument. However, it can hardly be claimed that any attempt to bridge the gaps in positions was made. A transition in format from the PrepCom to IGC has not in itself lead to any change in the negotiations dynamics, which still is very much entrenched. Delegations keep insisting on many options marked by their peers as "non-starters" (e.g. broadening the scope of the "common heritage of mankind" concept; creating new global structures to take over the competences of the existing regional and sectoral organizations, etc.). First session of the IGC looked almost as the PrepCom- round five, which was not necessarily a bad thing: as you remember, our delegation had insisted that additional round of the PrepCom had been necessary to further explore ways of bridging the gaps. Unwillingness of certain delegations to accept such option at that time, as we can see, resulted in sacrificing a full session of the IGC to a PrepCom-type discussion.

We hope that a more focused document of the President of the IGC containing textual elements (due late February 2019) will help delegations to leave the PrepCom behind and finally start to explore ways of reaching consensus solutions. At the same time, we are convinced that the process on the way to a full scale "zero draft" needs to remain State-driven.

Mr. President, we're sure that along the lines of the GA Resolutions 69/292 and 72/249 the new instrument on BBNJ should not undermine provisions of 1982 UNCLOS, 1995 UN Fish Stocks Agreement (UNFSA) and other relevant international instruments. It equally should not alter or duplicate the competence (mandate and terms of reference) of existing global, regional and sectoral bodies – International Maritime Organization (IMO), International Seabed Authority (ISA), Regional Fisheries Management Organizations (RFMOs), etc., including such *sui generis* cases as the Convention for the Conservation of Atlantic Marine Living Resources (CCAMLR) within the Antarctic Treaty System.

We see no legal, political or scientific grounds supporting the creation of a new global mechanism on establishment of area-based management tools (ABMTs), including marine protected areas (MPAs).

Within BBNJ process there is no much difference between "global" and "hybrid" approaches. Key issue is organization of decision-making on establishment of MPAs. For both approaches scheme is exactly the same – a new global body is entrusted with designating specific areas in the World Ocean as MPAs. In absence of consensus it takes decisions by voting.

In our view, this would result in politicization of decision-making. Establishment of a new MPA will economically affect certain amount of countries and such a move cannot be justified by "the greater good" for the rest of the world or by other philosophical dispositions. Such decisions should be taken responsibly, taking into account a correct balance between environmental concerns and conservation of the marine biological resources that definitely includes sustainable use thereof.

We have a very simple question: why should we believe that new global bodies, like Conference of the Parties of the new BBNJ Agreement, present the best available option to strike the right balance between regional/sectoral approach in the all matters connected to establishment of ABMTs, including MPAs. Could they provide due consideration to the actual state of the relevant ecosystems and whether they could ensure the best available scientific data or regular, consistent and integral monitoring of relevant ecosystems? Whether they are capable to ensure that the regime of ABMTs is regularly reviewed and modified as necessary or terminated when the conservation goals have been achieved?

Implementation of such principles and designation of specific ABMTs, including MPAs is to be done on the basis of cooperation and coordination between existing competent regional and sectoral bodies without prejudice to their respective mandates.

Lastly, MPA is just one instrument out of full spectrum of ABMTs, its significance should not be overstated or exaggerated. As far as MGRs are concerned, such resources definitely cannot be considered "common heritage of mankind". This concept covers only mineral resources of the Area. The category that this concept can be spread over all the resources is as a rule of international customary maritime law. Under the new agreement there shall be no mechanisms imposing limitations on access to MGRs or the marine scientific research beyond national jurisdiction. Issues of intellectual property rights in connection with MGRs are being discussed in specialized fora. Such problems fall outside the scope of the future agreement.

Fish and marine mammals are to be excluded from the subject matter of the new agreement. Any other approach would undermine the fisheries management system existing under UNCLOS and UNFSA. Attempts to artificially separate "fish as a commodity" from "fish as a source of MGRs" can only lead to confusion. Extraction of fish, disregarding the purpose of its further use, constitutes fishing activity, already regulated by the mentioned instruments.

One more important element of the issue – EIA procedure. Such assessment should take into account potential effects of specific economic projects rather than global-scale considerations (climate change, ocean acidification, etc.). In this regard we are quite cautious to use the term "cumulative impact assessment".

We also object to creation of international oversight bodies on EIA. Establishment of such mechanisms – where initial assessment will be reassessed or verified by a global technical and scientific body – would, in our view raise a number of issues. First, added value – what is the need for the global expert body to review the work already done by other experts? Is it an issue of trust? Then what are the guarantees that the "global" experts will be more trustworthy? Second, such process will be lengthy, cumbersome and costly. Bureaucratic and time-consuming process will turn into economically unsound activity. Finally, we cannot agree with suggestions that the global EIA body shall have a say on whether to permit or ban any respective activity. Such a decision should always be left to a State, under whose control or jurisdiction the activity is performed. In general, we believe that EIAs should continue to be performed at national level. Some indicative guidelines in that respect could be annexed to the Agreement.

As per our general approach to the aspect of capacity-building and transfer of marine technology, such activities must be carried out on a voluntary basis. In particular, we would not object an idea of trust funds or information centres that would aggregate funds and information on strictly voluntary basis. At the same time, delegations should be mindful of multiple mechanisms and forms of cooperation already existing on the matter. The new agreement must not make access to those more complicated or bureaucratized.

And finally – in our view, the subject matter of the new instrument must not cover any areas that already have a *lex specialis* regime, namely the Antarctic, governed by the respective treaty and the areas of responsibility of the RFMOs (regional fisheries management organizations). Same logic should apply to the Arctic, where prerogatives of the special role of the five Arctic States must be fully respected. Thank you, Mr. President.

President: Thank you for your statement. Are there any non-Member States or observer organizations wishing to speak? I see none. Once again, I would like to express my

appreciation for the three invited guests for their excellent presentations. Thank you very much.

With that we have come to the end of our discussion in the morning. I now propose to have a lunch break and lunch is served in the Magnolia Hall. I propose we reassemble at 2:30 PM for the afternoon session.

The Meeting was adjourned thereafter.

XII. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)

XII. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.) HELD ON THURSDAY, 11 OCTOBER 2018 AT 02:50 PM

AGENDA ITEM: SELECTED ITEMS ON THE AGENDA OF THE INTERNATIONAL LAW COMMISSION

His Excellency Mr. Maneesh Gobin, Attorney General and Minister of Justice, Human Rights and Institutional Reforms, Republic of Mauritius, Vice-President of the Fifty-Seventh Annual Session in the Chair.

Vice-President: Excellencies, Ladies and Gentlemen, It is my pleasure to chair this session. The topic on the agenda is "Selected Items in the Agenda of the International Law Commission." We have for this session, on my right, Mr. Eduardo Valencia-Ospina from Colombia, Chair of the International Law Commission; to my left, Deputy Secretary-General of AALCO; Prof. Shinya Murase from Japan, Special Rapporteur for the Protection of Atmosphere, and on the far left, Ambassador Marja Lehto from Finland, Special Rapporteur for the Protection of in relation to Armed Conflict. Before starting the discussion, I would invite Deputy Secretary-General of AALCO for his introductory statement.

Mr. Mohsen Baharvand, Deputy Secretary-General of AALCO: Thank you, Mr. Vice-President. Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, It is the Secretariat's pleasure to invite you all to the session on the topic "Selected Items on the Agenda of the International Law Commission". AALCO cherishes its longstanding and mutually beneficial relationship with the International Law Commission (ILC). In addition to its role as a consultative body among its Member States in the field of international law, its statute assigned the Organization to examine subjects that are under the consideration of the ILC; to forward its views to Member States; and to make recommendations to the ILC based upon the viewpoints and inputs of the Member States on the Commission's agenda items. Fulfilment of this statutory mandate over the years has helped to forge closer relationship between the two organizations. It has also become customary for AALCO and the ILC to be represented during each other's sessions. The Asian and African members of the Commission have undoubtedly made, and continue to make a valuable contribution to the work of the Commission. Their presence is essential if the ILC is to be truly representative.

Excellencies, please note that the report prepared by the Secretariat for this Annual Session focused on the deliberations of the ILC in its Sixty-Ninth Session in 2017. AALCO Annual Sessions are usually held in the months of April or May of a given year wherein the deliberations of the ILC in the preceding year are discussed. However, this

year, it is being held in October. As you are aware, the Seventieth Session of the ILC has also been concluded in August 2018. Given these circumstances, the Secretariat has prepared and uploaded on AALCO's website an addendum to its report on ILC matters briefly covering the deliberations at the ILC in its Seventieth Session as well.

The deliberations at the Seventieth Session of the Commission focused on eight topics. These were: (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.**

Mr. Vice-President, moreover, the Secretariat would like to put forward a proposal— we propose that the Secretariat in consultation with the Member States try to make a list of topics, which are of utmost importance to the Asian-African nations that may be taken up by the ILC. With that proposal, I conclude my remarks. I thank you, Mr. Vice-President.

Vice-President: Thank you. It is time to call upon the members of the ILC on this panel for their presentations, starting with the Chair of the ILC, Mr. Eduardo Valencia-Ospina.

Mr. Eduardo Valencia-Ospina, Chair of the International Law Commission: Thank you, Mr. Vice-President. Excellencies, Mr. Deputy Secretary-General, Ladies and Gentlemen, having had the unique opportunity, in my former capacity as Registrar of the International Court of Justice, to represent the Court as an observer at the AALCO conference held in the 80s and 90s in Arusha, Beijing and Islamabad, it is a privilege for me to once again address the Asian-African Legal Consultative Organization (AALCO), this time in my capacity as the Chair of the International Law Commission. May I thank AALCO and in particular, its Secretary -General, Prof. Dr. Kennedy Gastorn, for inviting me to present the work accomplished by the Commission at its seventieth session, which just ended in August. In so doing, I am extremely honoured to follow in the tradition of substantive dialogue continuously maintained between our two institutions. Today, I am being joined by two of my ILC colleagues, both Special Rapporteurs on topics closely related to the protection of the atmosphere and of the environment, Prof. Shinya Murase of Japan and Amb. Marja Lehto of Finland, who will speak in turn after me. Two other ILC colleagues, Amb. Hussein Hassouna of Egypt and Amb. Nguyen Hong Thao from Viet Nam will address the conference tomorrow.

2018 has been a landmark year for the International Law Commission, which celebrated its Seventieth Anniversary with events organized in New York and Geneva under the

overarching theme "70 years of the International Law Commission - Drawing a balance for the future". In New York, the Commission convened at UN Headquarters a solemn half-day meeting, which was followed by a half-day conversation with representatives in the Sixth Committee of the General Assembly. The event at the UN Office in Geneva consisted also of a solemn meeting, as well as successive meetings with legal advisers from States and other international law experts, focusing on various aspects of the Commission's mandate to promote the progressive development of international law and its codification. The commemorative events in New York and Geneva were enriched by a large number of side events, in which the members of the Commission and representatives of States, international organizations and academic institutions participated.

Several of those side-events were organized in New York by AALCO. In particular, thanks to AALCO, a panel took place with members of the Commission on immunity of State officials, crimes against humanity and identification of customary international law, as well as an informal discussion on the interplay between immunity and impunity at the international level and on the practical implications of the result of identification of customary international law. Both events gave rise to rich exchanges of views between Members of the Commission and of the Sixth Committee of the General Assembly. They highlighted once again the important contribution of AALCO to the development of international law, as well as to the work of the Commission and of the Sixth Committee.

The anniversary celebration provided an opportunity to reflect on the achievements prospects of the Commission since its First Session in 1949. Given the prevailing circumstances at its birth in the aftermath of the Second World War, the Commission was established precisely to tread carefully along this path between past and future: through codification and progressive development of international law. Its function, as we all know, is to assist the General Assembly in the implementation of Article 13, paragraph 1 (a), of the Charter of the United Nations by initiating studies and making recommendations to encourage the progressive development of international law and its codification.

During the Congress organized within the framework of the United Nations Decade of International Law in 1995, I had the opportunity to remark that codification and progressive development, although formally separated in the Statute of the Commission, have in fact merged into one broader concept of "codification", which is no longer seen just as the mere transposition of "unwritten law" into "written law", but as a process encompassing both codification and progressive development proper. In turn, this broader conception of codification is linked to the observation that the final form of the work of the Commission - whether stand-alone Articles which are in turn elaborated into a convention, or draft conclusions, draft principles or a mere report - is perhaps less

momentous than the complex process of codification and progressive development itself.

Historically, it was considered that the ultimate goal for each topic considered by the Commission should be a multilateral treaty enshrining the results of its work. The most recent experience, however, has shown that the Commission may fulfil its mandate by other means indeed; some of the most authoritative and frequently relied upon instruments arising from the work of the Commission are today in the form of texts that have not, so far, become multilateral treaties or were never intended to be.

I should stress, however, that the variety of forms of codification does not imply that multilateral treaties are now obsolete, far from it. In this connection it is quite significant that the Commission has as recently as 2016 explicitly recommended by consensus that one of its adopted texts become the basis for the elaboration of a multilateral convention. This is the case for the final Draft on topic I had the honour to act as Special Rapporteur for - the Protection of Persons in the Event of Disasters - on which the corresponding ILC's recommendation will be considered by the General Assembly this Fall as a separate item on the Agenda of its Seventy-Third Session.

The Commission's work on the Protection of Persons in the event of Disasters owes a great deal to the many positive regional developments in the fields of disaster response and prevention, undertaken in the last decades in Africa and Asia. The formalization by the General Assembly of the ILC's Final Draft on this topic, whose scope is universal, becomes today, more than ever, of capital importance to meet an urgent need of the international community as a whole, given the exponential increase in the variety, frequency and intensity of the disasters affecting all regions of the world. As we are witnessing again today, from the Far East, specially our host country Japan, China, the Philippines and Indonesia, to Caribbean and the United States of America, disasters, whether natural or attributable to human action, do not spare any nation, independently of their level of economic and social development.

By definition, developed States are better placed than less developed ones to take by themselves more immediate and effective measures, preventive or remedial, when a disaster threatens or do strike their territory. But in either case, international solidarity and cooperation, however different might be the degree of their manifestations, must play their constructive humanitarian role whenever and wherever the need arises. To facilitate that goal, the Commission' Draft, couched as a framework convention, contains a set of provisions drafted in compulsory terms as rights and duties, so that they may become binding rules of international law, either as conventional or customary law.

In adopting its carefully evaluated consensual recommendation, the Commission is in effect inviting the General Assembly to move ahead and acknowledge all the significance

that attaches to it. This is a recommendation arrived at by the Commission in full awareness of the reluctant attitude increasingly shown by the Assembly towards the elaboration of international conventions on the basis of its final drafts on diverse topics. Such an attitude is tellingly reflected in the fact that, starting in 2004, that is to say, during the last 14 years, not a single convention has been adopted by the General Assembly nor under its auspices, on any of the topics on which the ILC has completed and presented the results of its work in the form of draft articles.

During the past two decades, the ILC has seized the Assembly of 9 final drafts on a variety of topics, all aimed to eventually serve as the basis of international codification conventions. For its part, the Assembly has systematically reacted by repeatedly delaying, in one recent specific case almost indefinitely, taking action on the Commission's express recommendations to the effect that its final drafts be transformed into international conventions.

This is an inefficient and uneconomical use of the legal resources and mechanisms at the disposal of the General Assembly for implementing its mandate under Article 13 (1) (a) of the Charter. It, consequently, calls for prompt and effective remedial action on its part, through the determined efforts of delegations of States in the Sixth Committee. The time to bring a halt to, if not reverse, that pernicious trend, is now, when multilateralism, the laboriously built post –World War II concretization of international solidarity and cooperation, is being alarmingly subverted today by influential actors in the global stage invoking an exaggerated notion of the "national interest".

But this is also a time in our contemporary history when, in spite of some notable though highly disturbing exceptions, States continue to demonstrate their readiness to participate in legally binding instruments whose subject-matter is closely related to the theme of disasters. Suffice it to mention in this respect the French initiative working its way through the General Assembly, aimed at adopting a "Global Pact for the Environment", an international instrument which, like the ILC's Draft on the Protection of Persons in the event of Disasters, is intended to establish rights as well as duties and responsibilities.

It is against the background I have just outlined that the distinguished legal advisers of African and Asian States gathered here are respectfully invited to consider giving, at the forthcoming session of the General Assembly, their support to the 2016 ILC's recommendation concerning its final Draft on the "Protection of Persons in the event of Disasters".

The day before the opening of this conference, I had occasion to visit at the Mori Art Museum here in Tokyo a most exhibition entitled "Yet Still We Rise: Catastrophe and the Power of Art". If art can effectively stress its intimate connection with human suffering, I

ask myself, shouldn't international law likewise reassert its crucial role in this respect?

As shown in the addendum to the Report on Matters Related to the Work of the International law Commission prepared by the AALCO Secretariat, the 70th Session of the Commission has been one of the most intense and productive in its history: the Commission concluded the second reading of two topics by adopting two full sets of draft conclusions and commentaries thereto, and completed as well its work on two other topics on first reading. It also advanced in its consideration of four other topics in such a manner as to make it quite likely that work on three of them will also be completed on first reading at the 2019 session.

The topic **"Subsequent agreements and subsequent practice in relation to the interpretation of treaties"** is the first topic concluded on second reading at this session, with the adoption of a set of 13 draft conclusions, and commentaries thereto. This was the culmination of ten years of work of the Commission since its decision to include the topic "Treaties over time" in its programme of work in 2008 under the guidance of Mr. Georg Nolte. The purpose of these draft conclusions, which are based on the 1969 Vienna Convention on the Law of Treaties, is to facilitate the work of those who are called on to interpret treaties: States, international organizations, and courts and tribunals at the international and national levels.

At its session this year, the Commission re-examined the texts adopted in 2016 on first reading in light of the comments and observations made by States and the fifth report by the Special Rapporteur. The draft conclusions were subsequently amended, although not significantly, by the Drafting Committee before the Commission could adopt them on second reading together with the corresponding commentaries.

At the conclusion of its work, the Commission paid tribute to the Special Rapporteur, Mr. Georg Nolte, and recommended that the General Assembly take note in a resolution of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, annex the draft conclusions to the resolution, and ensure their widest dissemination; and commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to interpret treaties.

The topic **"Identification of customary international law"** is the second topic concluded second reading at this Session. Work on this topic began in 2012 when the Commission decided to include it in its programme of work and appointed Sir Michael Wood as Special Rapporteur.

As in the case of the topic **"Subsequent agreements and subsequent practice in**

relation to the interpretation of treaties", the purpose of this topic is not to set forth rules aiming at the conclusion of a new convention. These draft conclusions rather concern the methodology for identifying rules of customary international law. Their purpose is to offer practical guidance on how the existence of rules of customary international law, and their content, are to be determined, and to assist specialists and non-specialist in such endeavour. As a recent example, I would like to note the judgment of the Court of Appeal of England and Wales in the case *Freedom and Justice Party v. Secretary of State for Foreign and Commonwealth Affairs*. In that case, the Court relied extensively on the work of the Commission on this topic for the purpose of identifying a specific rule of customary international law relating to immunities of members of a special mission.

In addition to the comments by Governments and the Fifth Report by the Special Rapporteur the Commission had before it an updated bibliography on the topic, as well as a Memorandum by the Secretariat on the ways and means for making the evidence of customary international law more readily available. As you will surely notice, the Memorandum highlights the great importance of the work of AALCO in this context.

In the light of comments and observations by Governments, the Commission adopted, on second reading, a set of 16 draft conclusions on identification of customary international law, with commentaries thereto. Here too, the second reading text is not very far from that adopted in 2016, although the commentaries have been refined to reflect the useful observations made since then. Allow me to acknowledge here the important contribution of AALCO to this topic. The related events organized by AALCO, as well as the reports commenting in depth on the Commission's drafts, greatly facilitated the work of the Commission and led to a number of important improvements of its provisionally adopted texts.

The Commission paid tribute to the Special Rapporteur, Sir Michael Wood, and recommended that the General Assembly, *inter alia*, take note in a resolution of the draft conclusions on identification of customary international law, annex the draft conclusions to the resolution, and ensure their widest dissemination; commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to identify rules of customary international law; and follow up the suggestions made in the Memorandum. As I already mentioned, the Commission also concluded the first reading of two other topics, namely "Protection of the atmosphere" and "Provisional application of treaties".

Let me now turn to the topic **"Protection of the atmosphere".** It is acknowledged that both the human and natural environments can be adversely affected by certain changes in the condition of the atmosphere mainly caused by the introduction of harmful substances,

causing transboundary air pollution, ozone depletion, as well as changes in the atmospheric conditions leading to climate change. In this topic, the Commission is seeking to assist the international community as it addresses critical questions relating to transboundary and global protection of the atmosphere.

At the seventieth session, the Commission had before it the Fifth Report by the Special Rapporteur, Prof. Shinya Murase, on the basis of which it considered questions concerning implementation, compliance and dispute settlement and adopted three additional draft guidelines on those issues. It thus concluded its consideration of the topic on first reading with the adoption of a draft preamble and 12 draft guidelines, together with commentaries thereto. Governments and international organizations are now being consulted for comments and observations, before the Commission considers those texts on second reading in 2020 on the basis of a further report by the Special Rapporteur.

The Commission also concluded its first reading in the topic **"Provisional application of treaties"**, with the adoption of the draft Guide to Provisional Application of Treaties, which comprises a set of 12 draft guidelines with commentaries. The purpose of the Guide is to assist States, international organizations and other users concerning the law and practice on the provisional application of treaties by providing answers that are consistent with existing rules and most appropriate for contemporary practice.

The consideration of this topic was based on the Fifth Report of the Special Rapporteur, Ambassador Juan Manuel Gómez Robledo, which provided additional information on 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, and formulation of reservations and amendments. The report also included 8 draft model clauses bibliography on the topic. In addition, the Commission had before it the Memorandum by the Secretariat reviewing State Practice in respect of treaties (bilateral and multilateral), deposited or and a in the last 20 years with the Secretary-General, that provide for provisional application, including treaty actions related thereto.

The draft Guide to Provisional Application of Treaties was transmitted to Governments and international organizations for comments and observations in view of its consideration on second reading in 2020, on the basis of a last report by the Special Rapporteur. The Commission also raised the possibility of including during the second reading a set of draft model clauses based on a revised proposal that the Special Rapporteur would make at an appropriate time.

As I mentioned earlier, the Commission also continued its work on four other topics.

With respect to the topic **"Peremptory norms of general international law (*jus***

***cogens*)"**, the Commission discussed the Third report of the Special Rapporteur, Mr. Dire Tladi, dealing with the consequences of peremptory norms of general international law (*jus cogens*) in general, for treaty law and for the law of State responsibility, as well as other effects of peremptory norms of general international law (*jus cogens*). The Commission decided to refer 14 additional draft conclusions to the Drafting Committee, which provisionally adopted 7 of them.

The Commission also resumed its work on the topic **"Protection of the environment in relation to armed conflicts"**, under the stewardship of the new Special Rapporteur, Ms. Marja Lehto. The Commission discussed issues related to the protection of the environment in situations of occupation. The Drafting Committee provisionally adopted a new Part Four on Principles applicable in situations of occupations. This Part comprises 3 draft principles relating respectively to the general obligation of an Occupying Power, to the sustainable use of natural resources and to due diligence. The Commission also adopted 9 draft principles on the basis of the work accomplished in 2016, as well as the corresponding commentaries.

As for the topic **"Succession of States in respect of State responsibility"**, on which the Special Rapporteur is Mr. Pavel Sturma, the Commission considered his second report, which addressed the legality of succession, the general rules on succession of States in respect of State responsibility, and certain special categories of State succession to the obligations arising from responsibility. Seven additional draft articles were referred to the Drafting Committee, which provisionally adopted two draft articles as well as an additional paragraph to a third draft article.

Finally, the Commission began its debate on the Sixth Report on **"Immunity of State officials from foreign criminal jurisdiction"** by the Special Rapporteur, Mrs. Concepción Escobar Hernández, which was devoted to addressing procedural aspects of immunity from foreign criminal jurisdiction. The debate on this report was partial since the report was only issued at the very end of the session, and will resume at the next session.

Before I conclude, allow me to say a few words about our future work. As I just mentioned, the Commission has concluded its work on the topics "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" and "Identification of customary international law". The topic "Crimes against humanity" was not considered this year since States and international organizations are currently studying the texts adopted on first reading in 2017. On this basis, the Commission will consider the draft articles on crimes against humanity on second reading next year and should conclude its work at its 2019 session. I encourage States that have not yet done so to submit their comments and observations on the draft articles adopted on first reading to

the UN Secretariat by 1 December 2018.

This year, the Commission has decided to include a new topic in its programme of work, namely the topic "General principles of law" and has appointed Mr. Marcelo Vázquez-Bermúdez Special Rapporteur. Over the years, the work of the Commission has contributed to the analysis of the first two category of sources of international law enumerated in Article 38 of the Statute of the International Court of Justice, namely international conventions and international custom. The Commission considered that it would be useful and appropriate to turn to the third category of sources, general principles of law.

In addition, the Commission has included at its 2018 session two new topics in its long-term programme of work, namely "Universal criminal jurisdiction" and "Sea-level rise in relation to international law". The Commission considered that work on the two topics would constitute useful contributions to the progressive development of international law and its codification and would welcome the views of States on those topics.

Finally, I would like to inform you that the Commission has recommended that the Seventy-First session of the Commission be held in Geneva from 29 April to 7 June and from 8 July to 9 August 2019.

Let me conclude my presentation by reiterating the importance that the Commission attaches to its relationship with the AALCO. The focus of the work of our respective institutions is similar to a large extent although we operate in different contexts. Experience has shown that we benefit greatly from each other's work and from our regular interactions, and I would like to express my gratitude one more time for allowing me to address you today in furtherance of our close links of cooperation. I thank you for your attention.

Vice-President: Thank you, Excellency for this overview. It was very comprehensive. It is my honour to invite the next speaker, Prof. Shinya Murase, who will update us on the topic "Protection of the Atmosphere."

Prof. Shinya Murase, Member, International Law Commission: Thank you, Mr. Vice-President. Distinguished Delegates, Ladies and Gentlemen, it is my great honour and privilege to speak at this annual meeting in Tokyo on the ILC topic, Protection of the Atmosphere. I had the pleasure of speaking on this topic in the AALCO annual meetings of Tehran, New Delhi and Beijing. I missed the last meeting at Nairobi, because it overlapped with our ILC session.

I am deeply grateful for the strong support that AALCO has given to this topic over the

years. I am particularly grateful to Dr. Rahmat Mohamad, former Secretary-General of AALCO, who always expressed AALCO's formidable support and endorsement of the ILC's draft guidelines on this topic when he made his speeches at ILC on his annual visits. I am also grateful to Prof. Dr. Kennedy Gastorn, who succeeded Dr. Mohamad as Secretary-General of AALCO for the continued support.

As the Chairman of the ILC updated you a few minutes ago, I am delighted to inform you that the ILC has completed the first reading of this topic this year and adopted 12 guidelines with several preambular paragraphs together with the commentaries thereto (2018 ILC Report, A/73/10, Chapter VI). The ILC will wait for the comments from States next year, and on the basis of those comments, the ILC will have the second reading in 2020, by which the topic will be concluded. It is therefore extremely important for the ILC to receive comments from you. Your oral statements at the Sixth Committee of the General Assembly later this month and your written comments to be submitted by December next year are crucial for the fate of these guidelines, and I would like to ask each delegation of AALCO Member States not to lose the opportunity to express the views on the topic.

We all know how important this topic is in view of the fact that the conditions of the atmosphere are deteriorating both in transboundary and global contexts. Extreme weather is now everywhere on the globe. The WHO informs us that each year over 7 million people in the world face premature death by air pollution.

It is the practice of the Commission that any substantive amendments should be made in the second reading on the basis of comments from States. I would therefore like to ask each delegation to consider some points that the Commission has not been able to amend in the course of its first reading. I would like to point out some of the paragraphs that need to be reconsidered.

First, the third preambular paragraph, which currently reads: "Recognizing therefore that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole," needs to be revised. This was provisionally adopted by the Commission in May 2015. The original proposal of the Special Rapporteur was "a common concern of humankind", but there was a view that international community had abandoned this language for more than twenty years in the relevant treaties since 1992 UNFCCC. Actually, however, the international community has not abandoned "common concern", which has been incorporated in the preamble of the Paris Agreement concluded in December 2015. So, we need to replace the language to "common concern of humankind" in this preambular paragraph.

Second, Guideline 1 (b) on the use of term "atmospheric pollution", it refers only to

"substance" as its cause. The original proposal was "substances and energy", which was in line with the 1979 Convention on Long-Range Transboundary Air Pollution (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.

Third, I would like to refer to the so-called 2013 Understanding. It enumerated certain conditions when the topic was adopted in 2013, namely that the topic will not interfere with the relevant political negotiations, that it will not deal with certain principles such as common but differentiated responsibilities and that it will not deal with specific chemical substances, etc. Imposing such conditions has never been done in the history of the Commission, and some members considered it a "disgrace" not to mention that it is "humiliating" to the Special Rapporteur. There were suggestions in recent years in the Commission as well as in the Sixth Committee that this Understanding should be re-visited. However, I was not in favour of such a re-visit, because, having worked on the basis of the Understanding, it was too late to change the draft guidelines already adopted provisionally. So, we have fully complied with the Understanding in the first reading of the topic.

In the second reading, we don't need to refer to the Understanding any more. I would therefore like to suggest that the relevant provisions in the first reading texts concerning the Understanding should be deleted. They are the 8th preambular paragraph, and paragraph 2 and 3 of Guideline 2 on the scope of the guidelines. They are no longer necessary, because these conditions have been fully complied with. Beside, paragraph 2 of Guideline 2, does not make sense with the double negative formula ("does not deal with but without prejudice to...") as pointed out by some delegations of the Sixth Committee. I would therefore like to ask the distinguished delegations to kindly agree with the deletion of these paragraphs in the second reading so that any disgraceful elements be removed from the text of the Guidelines.

With regard to the other Guidelines, I think they reflect proper balance and I hope that distinguished delegations will endorse them basically as they are, but any comments for improvements on individual guidelines would be most welcome.

Regarding the part of draft guidelines adopted this year by the Commission on the basis of my Fifth Report, namely Guidelines 10 to 12, I believe that they well reflect existing international law and State Practice. I would however be most grateful for any comments that the distinguished delegations may have on those provisions. Thank you very much.

Vice-President: Thank you very much, Prof. Murase. Now, it is my distinguished honour to invite Amb. Lehto to make her presentation on "Protection of the environment in

relation to armed conflicts".

Amb. Marja Lehto, Member, International Law Commission: Thank you, Mr. Vice-President. Distinguished delegates, Ladies and gentlemen, First of all, I wish to thank the AALCO for this opportunity to address the annual meeting in Tokyo and to share with you the latest developments with regard to the topic "**Protection of the environment in relation to armed conflicts**". Let me also commend the Secretariat for the informative and insightful background report on Matters relating to the work of the International Law Commission.

As you know from that report, there has been a break in the Commission's work last year as the decision to appoint a new Special Rapporteur after Dr Jacobsson's departure from the Commission was taken only on the last day of the Commission's 2017 session. I am nevertheless happy to say that the Commission this year has worked very efficiently on the topic so as to cover the ground that was left pending in 2016, and also to make some progress. What this means, in a nutshell, is that the Commission as a whole has adopted the nine draft principles that came out from the Drafting Committee in 2016, together with commentaries that were prepared by Dr Jacobsson last year, and have since then been considered and finalized by the Commission. This means that there are now 18 draft principles complete with commentaries.

Moreover, the Commission debated the First Report of the present Special Rapporteur with a focus on situations of occupation. Three new draft principles addressing the environmental obligations of an Occupying Power were provisionally adopted by the Drafting Committee. I will present the new draft principles and their background in some detail in a while but I think that it can be useful first to comment on a couple of questions related to the earlier work, or to the topic in general, which have been raised in the AALCO background report. Finally, I will say a few words of the future program of work with regard to this topic.

- Issues raised in the AALCO report: Indigenous Peoples

Draft principle 6 on the 'Protection of the environment of indigenous peoples' is among those that have attracted quite some comments in the Sixth Committee and it has also been highlighted in the AALCO report, in which the Secretariat calls upon Member States to deliberate upon the inclusion of such a principle and on whether it is appropriate.

I do trust that the relevant commentary adopted by the Commission this year will bring some clarity as to the reasons for the inclusion of draft principle (DP) 6. As you may recall, DP 6 consists of two paragraphs. Paragraph 1 encourages states to take appropriate

measures, in the event of an armed conflict, to protect the environment of the territories that indigenous peoples inhabit. Paragraph 2 addresses post-conflict situations. It recognizes that where armed conflict has adversely affected the environment of indigenous people'' territories States should attempt to undertake remedial measures.

In light of the special relationship between indigenous peoples and their environment, such steps should be taken in a manner that consults and cooperates with such peoples, respecting their relationship and through their own leadership and representative structures. What I wish to underline is that the focus in this draft principle is 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.

I should add that the special relationship between indigenous peoples and their environment has been recognized in a number of international instruments such as the Indigenous and Tribal Peoples Convention of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples as well as in the practice of States and in the jurisprudence of international courts and tribunals.

- Issues raised in the AALCO report: temporal approach:

Another issue I wish to highlight is related to the temporal approach which is one of the points of departure for the topic. As is clear from the title of the topic, Protection of the environment in relation to armed conflicts, its scope has not been limited to situations of armed conflict but is broader. "In relation" means, first, that the Commission has been looking at the measures that can be taken to prevent or minimize environmental harm in conflict including those that need to be taken before a conflict breaks out. Likewise, special attention has been paid to 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.

The temporal approach has provided 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. The draft principles have been organized so that those in Part I relate to measures to be taken before an armed conflict, or principles that are of a general nature and relevant to all temporal phases. The draft principles in Part II relate to periods of armed conflict and those in Part III to post-conflict circumstances.

The Commission has nevertheless acknowledged it is not possible to make a strict differentiation between the phases. The subject of my first report-situations of

occupation- provides a good example. According to the law of armed conflict, situations of occupation are a sub-species of an international armed conflict and would therefore belong to the "during" phase. In practice, however, protracted occupations may approximate peacetime and present problems that are close to those confronted in a post - conflict situation. Furthermore, as the ICRC has emphasized, the legal obligations of the occupying power tend to grow in time, that they are commensurate with the length of the occupation. Therefore, the three new draft principles relative to situations of occupation have been placed in a separate Part IV.

-Three new draft principles:

Why are there only three draft principles this year, you may ask. One reason is that military occupation is a very specific situation, but more importantly, many of existing draft principles are relevant to occupations and there would be no reason to replicate them in Part IV. The Commission therefore agreed that the existing 18 draft principles would apply mutatis mutandis to situations of occupation. I now turn to the new draft principles and their background.

- DP 19

DP 19 addresses the general obligations of the Occupying Power. Paragraph I requires that an Occupying Power respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory. The point of departure for DP 19 is Article 43 of the Hague Regulations of 1907; this is the customary obligation of the occupying State to restore and maintain public order and civil life.It is argued 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. This means that the concept of civil life cannot be interpreted to refer to the civil life in the 19th century but must be given a contemporary content.

As far as the term "applicable international law" is concerned, it must be noted that the law of armed conflict is *lex specialis* during times of armed conflict, but that other rules of international law providing environmental protection remain relevant. It is further specified in paragraph 2 that an Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.

Paragraph 3 of draft principle 19 finally recalls the obligation of the Occupying Power, by virtue of Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva

Convention, to respect the laws and institutions of the occupied territory concerning the protection of the environment. It is worth mentioning that this requirement has the potential to be an importantsafeguard for the environment. It may be assumed that most States, if not all, have introduced laws and regulations pertaining to the protection of the environment.

Environmental rights have been recognized at national level in more than a hundred States. Major multilateral environmental agreements have moreover attracted a high number of ratifications which makes it likely that either the occupied State or the occupying State or both are parties to them. Especially when incorporated in the legislation of the occupied State, such conventions would be covered by the obligation of the occupying State to respect the laws and institutions of the occupied territory. At the same time, it is recognized that the law of armed conflict allows the Occupying Power to introduce changes to the legislation only within certain limits (Article 64 of the Fourth Geneva Convention).

- DP 20

DP 20 relates to the administration and use of natural resources of the occupied territory. It begins with recalling the various limits that the law of occupation and other relevant international law set on the Occupying Power's capacity to use the natural resources of the occupied territory for instance the principle of self-determination, or that of the permanent sovereignty to natural resources.

Paragraph 20 then requires that any such use must be sustainable and minimize environmental harm.

(To the extent that an Occupying Power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes environmental harm.)

The point of departure for draft principle 20 is Article 55 of the Hague Regulations, according to which "the occupying State shall be regarded only as administrator and usufructuary of [immovable public property] situated in the occupied country." The Occupying Power, according to article 55, "must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct".

The Roman law concept of usufruct, which literally refers to the enjoyment of the fruits of a property, has traditionally been regarded as applicable to the exploitation of all kinds of natural resources, including non-renewable ones. The rules of usufruct have thus been

seen to allow the occupying State to "lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines" and make other uses of the "fruit" of local public property. The Commission agreed that the right of usufruct from which DP 20 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.

What this could entail in practice, for instance, is that the Occupying Power should exercise caution in the exploitation of non-renewable resources and not exceed pre-occupation levels of production. Renewable resources should be exploited in a manner that ensures their long-term use and the resources' capacity for regeneration. And, as already highlighted, the Occupying Power can only engage in such activities for the purposes authorized under the law of armed conflict.

- DP 21

DP 21, finally, is based on the established principle that all States should ensure that activities in their territory or control do not cause significant harm to the environment of other States or areas beyond national jurisdiction. The international Court of Justice, in the Advisory Opinion on the Legality of Nuclear Weapons, has confirmed that this is a customary principle of international environmental law, and its applicability in situations of occupation has also been firmly established.

The substance of draft principle 21 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.

- Future work

Before concluding, I would still wish to say a few words of the future work plan. The Commission intends to bring the work on the topic to conclusion in first reading in 2019. The Commission has agreed that the report would address:

- certain questions related to the protection of the environment in non- international armed conflicts, including how the international rules and practices concerning natural resources may enhance the protection of the environment during and after such armed conflicts;

- certain questions related to the responsibility and liability for environmental harm in relation to armed conflicts; and
- issues related to the consolidation of a complete set of draft principles will have to be considered.

I would also like to mention that there will be a whole-day workshop at the UN in New York on Thursday before the International Law Week, 18 October, addressing the topic and specifically highlighting the remaining areas of work. You are most welcome if you happen to be in New York at that time. Thank you for your attention.

Vice-President: Thank you, Ambassador Lehto, for the detailed presentation on the topic. Now it is time for statements from the floor. I have a list of 6 Member States and 2 Non-Member States on my list, starting with Japan.

The Delegate of Japan: Thank you, Mr. President. At the outset, we are gratified by the successful ILC sessions and all the commemorative sessions that have taken place both in New York and Geneva during the 70th Anniversary of the ILC this year, which provided opportunities for greater interaction between the ILC and UN Member States. Japan would like to commend the President of the ILC this year, Dr. Valencia Ospina, for his able guidance, as well as all the Special Rapporteurs and the ILC members for their excellent contributions to the work of the Commission, which made it possible to complete the second reading of the topics of "Subsequent agreements and subsequent practice in relation to interpretation of treaties and "Identification of customary international law", and the first reading of the topics of "Protection of atmosphere" and "Provisional application of treaties."

Mr. President, with regard to the topic of the "**Protection of the Atmosphere**" led by the Special Rapporteur Dr. Shinya Murase, Japan acknowledges the importance of the topic to find the common legal principles arising from the existing treaties related to the environment. Japan would like to congratulate the Commission and the Special Rapporteur on the successful completion of the first reading of the topic and the adoption of the Preamble and 12 Draft Guidelines, and makes three observations.

First, Japan recalls that the 4th Preambular Paragraph of Draft Guidelines states that "the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole." Taking into consideration the fact that the Paris Agreement in 2015 recalled the concept of "the common concern of humankind" in its preambular paragraph, Japan considers it appropriate for the ILC to reconsider this paragraph in the second reading and to update the discussions on this concept.

Second, Japan recalls that Draft guidelines 19(b) states that "Atmospheric pollution" means the introduction or release by humans, directly or indirectly, into the atmosphere of substances contributing to deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth's natural environment." Taking into consideration the fact that both the 1979 Convention on Long-range Transboundary Air Pollution (LRTAP) and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) adopt "substances or energy," Japan considers it appropriate for the ILC to reconsider this subparagraph in the second reading and to update the discussions on this concept.

Third, Japan respects the Commission, which upholds the 2013 Understanding that was established as a condition and guiding principle for its consideration of the topic. Japan notes that the Commission and the Special Rapporteur have faithfully respected the 2013 Understanding in completing the first reading of the topic. A question may be raised whether it is necessary to repeat the content of the 2013 Understanding in the Guideline. Therefore, Japan considers it appropriate for the ILC to discuss in the second reading all possible formulas including the deletion of the 13th Preambular Paragraph as well as in Paragraphs 2 and 3 of the Draft Guideline 2 on "Scope of the guidelines.'

Protection of the atmospheric environment is a serious issue, particularly - for Asia and Africa. Japan thus hopes that AALCO Member States will contribute to the discussion at the Sixth Committee. We look forward to a fruitful outcome at the ILC.

Mr. President, turning to the topic of "**Immunity of States officials from foreign criminal jurisdiction**", Firstly, a proper balance between State sovereignty and the fight against impunity is essential on this topic, and a consideration of the procedural aspects of immunity would be beneficial to ensure such balance. In this regard, it has not been made clear yet how the procedural aspects of immunity would mitigate the risk of abusive use of the exception of immunity. We must pursue the practical measures which will effectively prevent the law enforcement authorities from abusing the exception of the immunity and would not impair the stable interstate relationship.

Secondly, it is necessary to recognize that State practices have not been sufficiently accumulated. Japan finds it meaningful to collect State practices from a variety of regions. Also, since each State has different domestic laws regarding criminal procedures, State practices should be analyzed with due consideration to each domestic system.

Lastly, in the future work on this topic, it would be desirable to further address Draft Article 7 based on the discussion of the procedural aspects of immunity. Unfortunately, last year, the members of the Commission could not reach a consensus about this article. Japan hopes that all of the Draft Articles, including Draft Article 7; will be adopted by

consensus with adequate discussion. Thank you, Mr. President.

Vice President: I thank the distinguished delegate from Japan and now invite the delegate from the Republic of India to present his statement.

The Delegate of the Republic of India: Thank you Mr. Vice President, on behalf of Indian delegation, I take this opportunity to thank AALCO Secretariat for its study on this subject and thank the Deputy Secretary-General for introducing the agenda item. My Delegation also takes this opportunity to thank Distinguished Chairman and Members of International Law Commission for their very informative presentations. Mr. Vice President, at the outset, Indian Delegation congratulates the International Law Commission for celebrating its 70th Anniversary wherein India also participated on 5-6 July 2018 in Geneva. Development of international law is an evolving process. This process requires regular studies and reviews of the existing laws and the formulation of the new to meet the contemporary requirements. In this context, contribution of ILC towards progressive development of international law is immense.

Taking stock of the volume of work, the Report reveals that the Commission has been able to complete work on two topics, namely, **"Subsequent agreements and subsequent practice in relation to the interpretation of treaties"** and; "Identification of customary international law." Eight topics are remaining on the programme of work of the Commission and the work on them is in progress namely, Provisional application of treaties; Peremptory norms of general international law (*jus cogens*); General principles of law; Succession of States in respect of State responsibility; Immunity of State officials from foreign criminal jurisdiction; Crimes against humanity; Protection of environment in relation to armed conflicts and; Protection of the atmosphere.

Mr. Georg Nolte deserves appreciation for his hard work since 2009 as Chairman of the Study Group in the name of the topic "Treaties over time", based on the recommendations of which in 2012, the Commission renamed the topic as "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" appointing Mr. Georg Nolte himself as the Special Rapporteur. As a result of the consideration by the Commission, of four reports by the Special Rapporteur, in 2016 a set of 13 draft conclusions with commentaries thereto was adopted. At its current year's session, the Commission considered the fifth report of the Special Rapporteur along with the observations of Governments and adopted the entire set of draft Conclusions and commentaries thereto, recommending for the General Assembly to take note of the draft Conclusions in a resolution and commend the same to the attention of States and others for use in interpretation of treaties.

This work, in the form of draft Conclusions, includes extensive analysis of article 31 and 32 of the Vienna Convention on the Law of Treaties, 1969. Paragraph 1 of Conclusion 2 mentions that these articles of the Vienna Convention are reflective of the customary international law. In an attempt to bring clarity to the meaning and scope of interpretation of these articles, paragraph 2 of Conclusion 5 states that the conduct of non-State actors does not constitute subsequent practice under articles 31 and 32. Paragraph 1 of Conclusion 6 has stipulated that a mere agreement of the parties not to apply a treaty temporarily or to establish a practical arrangement does not amount to taking a position regarding the interpretation of the treaty. Paragraph 3 of Conclusion 7 of this work reflects the presumption that the subsequent agreement or practice cannot amend or modify the treaty. Further, according to an observation in paragraph 1 of Conclusion 10, such agreements or practice may, but need not be legally binding. We agree with these observations. This work would certainly be useful for States and other in need of guidance as to the import of articles 31 and 32 of the Vienna Convention on the Law of Treaties.

Coming to the topic **"Identification of customary international law "**, which the Commission took over as "Formation and evidence of customary international law" in 2012, and later changed as the "Identification of customary international law" has also been completed in the current year's session, with the adoption of a set of 16 draft Conclusions along with the commentaries. We would like to congratulate the Commission in general and Sir Michael Wood the Special Rapporteur for the topic in particular in this context. We have been giving our views on this topic and the resulted Conclusions during the process of their consideration in the Sixth Committee. Customary international law is a formal source of international law having been recognized in the Statute of the International Court of Justice, though unlike the treaty provisions, it may not be sometimes so easy to find out that what the applicable customary international law may be in a given case or situation. We are hopeful that in the absence of authentic guidance or methods by which the evidence of the existence or the process of formation of a customary international law principle could be appreciated and identified, the Conclusions adopted by the Commission would be of relevance to help fill this gap. We once again congratulate the Commission as a whole and both the Special Rapporteur in particular for the completion work on their respective topics and support the recommendations of the Commission relating thereto.

On the topic **"Peremptory norms of general international law *(jus cogens*)"**, we would like to commend the Special Rapporteur, Mr. Dire Tladi for his third report on the topic. It essentially considered the consequences and legal effects of the topic by taking into account the earlier works of the Commission and the relevant provisions of the Vienna Convention on the Law of Treaties. The third report proposed 13 draft Conclusions, which have been provisionally adopted by the Commission. The proposed draft

Conclusion 14 recommended for a compulsory dispute settlement procedure through ICJ in the case of conflict between a treaty and a *jus cogens* norm. Although, the submission of a dispute to the ICJ is subject to the jurisdictional principles of the ICJ, we feel it however necessary that the issue may also be analysed in the light of concerns of some members in negotiating Article 66 of the Vienna Convention on the Law of Treaties wherein, it had provided for all means of dispute settlement, not restricting to the ICJ alone.

Draft Conclusion 17 refers to invalidity of binding resolutions of international organizations, including the Security Council resolutions. We feel that the Commission is required to study in detail and analyse its impact in terms of action taken under Chapter VII of the UN Charter and the application of Article 103 of the UN Charter. This would provide greater clarity on the issue of whether a Charter obligation overrides an obligation that represents a *jus cogens norm*. So, while we appreciate the furthering of work on the topic, given the sensitivity attached to the nature of the topic, the Commission is expected to have extensive analytical debate on the conclusions.

Turning to the topic **"Protection of the atmosphere"**, we commend Special Rapporteur Mr. Shinya Murase for submitting the fifth Report. The report indicates that it addresses the question of the implementation of the draft guidelines, the question of compliance through the cooperative compliance mechanism over the punitive and enforcement mechanisms, and the question of dispute settlement in three new guidelines 10, 11, and 12 respectively.

While, we like the suggestion of cooperative mechanisms, this is however our understanding that the guidelines, when finally adopted, would be available as a material to be followed and used to the suitability of conditions and willingness of States, and not to be implemented, as such, as the treaty provisions.

We understand that the obligations under international law referred to in the guidelines would mean for a State those agreed in an international instrument and to which that State is a party. Meaning thereby, the guidelines are not creating the binding international law themselves. Further, similarly, the disputes should also refer to those that may arise under the international instrument to which the States concerned are a party. In fact, such international instrument itself would have provisions on procedure for the settlement of disputes.

To understand in summary, the guidelines should work as a reminder to States about their obligations towards the protection of the atmosphere and to carry them out in accordance with the procedure envisaged in the relevant international instrument.

Turning to the topic **"Immunity of State Officials from foreign criminal jurisdiction"**, we have taken note of the 6th Report submitted by the Special Rapporteur, which relate to the procedural aspects of immunity and would continue in the next session of the Commission. We prefer the examination of immunity perspective as a concept, without linking the same to the questions of immunity in reference to the International Criminal Court. Further, draft article 7 has been adopted only provisionally by a method of vote which method is not dear to a number of delegations including ours in the context of Commission's work. Therefore, we consider it ideal that in the process of final adoption of this article, the views of all members of the Commission be taken into account in an attempt to achieve consensus. Thank you all.

Vice President: I thank the distinguished delegate from India and now invite the delegate from the Republic of Indonesia to present his statement.

The Delegate of the Republic of Indonesia: Mr. President, Distinguished Delegates, allow me to begin by thanking the Government of Japan for hosting this important event, and for its hospitality accorded to all delegations to this annual session. My delegation would also like to thank the Chairman and the distinguished members of the International Law Commission for their dedicated work and continuing contribution to the codification and the progressive development of international law.

We have studied the report prepared by the Secretariat no AALC0/57/TOKY0/2018/SD/S 1 and at this opportunity, allow me to make general comments and observation on several issues under consideration in the report. In this statement, we will touch upon selected topics of discussion as contained in our agenda.

Mr. President, Distinguished Delegates, on the "**Topic of Immunity of State Officials from Foreign Criminal Jurisdiction"**, First of all, we appreciate the work of special rapporteur for their sixth reports addressing particularly on the debate surrounding the adoption of draft Article 7. We would like to make brief comments on the draft Article 7, which on our view has sensitive and contentious topics reflected in how the draft article was provisionally adopted by voting. As mentioned in draft Article 7 paragraph 1, we are in the position that the immunity of state officials should exclude the grave international crimes, such as genocides, crimes of corruption, and other crimes that cause harm to person. Our concern is we need to strike a balance between the fight against impunity for the grave international crimes, and the need to foster relations between countries through the sovereign equality principles. We also need to bear in mind that prosecution of state officials of one country by the foreign courts will potentially create issues in relation to the sovereign equality principle.

Let me state that there are only limited examples of our domestic laws adopting

limitations and exceptions to immunity of foreign state officials, even for the international crime cases. In the case of Indonesia, there is no single case relates to the limitations and exceptions up till now, except in civil proceedings.

Mr. President, on the work of **crimes against humanity**, allow me to be cognizant as prescribed in draft Article 4 that the prevention aspect does acknowledge the extensive nature of preventive measures, by using the phrase "...other preventive measures...". Since the draft is a legal instrument, we suggest that in addressing the preventive measures, the draft shall be more specific and prescriptive, elaborating on all aspect of relevant preventive measures. It would be legally sound to remove the words "other preventive measures", since that may lead to multi-interpretation by states and result in legal uncertainty or ambiguity.

As an observation concerning Article 6 of the Draft Articles, Indonesia has criminalized crimes against humanity. Up till now, we have criminalized 10 (ten) out of the proposed 11 (eleven) acts of crimes against humanity in the draft articles. We have also put in place the legal framework to ensure that victims of a crime against humanity have the right to obtain reparation. We have also a government regulation setting the mechanism for a victim to get compensation.

Regarding the Draft Articles 13 and 14 concerning international legal cooperation, we emphasized the need for and importance of cooperation in the field of extradition and mutual legal assistance by having bilateral or multilateral treaties although in the facts and practices that not all countries consider a multilateral treaty to be a legal basis particularly for extradition cooperation. The effectiveness of the treaty will depend again on the willingness to pursue bilateral treaty on extradition.

Mr. President, we would like to welcome the inclusion of two new topics for further study and discussion by the Commission, namely: (a) Universal criminal jurisdiction; and (b) Sea-level rise in relation to international law.

We are all aware that the issue of universal jurisdiction is always controversial as it is potentially considered to undermine national jurisdiction. We are in the view that the principle of universal jurisdiction was to be deemed a measure of last resort and the application itself was mostly optional and not obligatory, unless there are other prevailing agreements between States to do otherwise.

The topic of sea-level rise as a result of climate change is in relevance with the topic of **protection of atmosphere**. The sea-level rise issue has become a global phenomenon as it will affect the maritime zone of the coastal States. The Commission should further study whether there is a need for State to develop practicable solution in order to respond

effectively to the issues prompted by sea-level rise. It is also important to look into other pressing concerns of the international community as a whole.

Before I conclude, Mr. President, my delegation wishes to reiterate the view that in order to contribute to the work on international law, it is imperative that we continue fostering even stronger and more intensive engagement between the ILC and the AALCO. Thank you.

Vice President: I thank the distinguished delegate from Indonesia and now invite the delegate from the People's Republic of China to present his statement.

The Delegate of the People's Republic of China: Mr. President, this year marks the 70th Anniversary of the International Law Commission. China highly appreciates the achievements made by the Commission over the past 70 years. Many important conventions such as regarding diplomatic and consular relations, the law of treaty and the law of the sea, which were concluded on the basis of the Commission's work, have become universally applicable international norms and contributed to the healthy and stable inter-states relations in their respective fields. China welcomes and expects the Commission to continue to play an active role in the progressive development of international law and its codification. We hope the Commission can pay more attention to the urgent needs of the international community, especially developing countries' needs in its future work, and also the positions and legitimate concerns of Asian and African countries.

Mr. President, this year, the Commission adopted, on second reading, the draft conclusions of Identification of customary international law and Subsequent agreement and subsequent practice in relation to the interpretation of treaties, together with commentaries thereto. As to the topic of **Identification of customary international law**, China is of the view that a rigorous and systematic approach shall be applied and the widespread State Practice must be examined comprehensively and thoroughly in the identification of customary international law (CIL) as CIL is an important source of international law. Selective identification and lowering the threshold of identification in the particular interest of any country in this regard is unacceptable.

As to the topic of "**Subsequent agreement and subsequent practice in relation to the interpretation of treaties**", China holds that the subsequent practice as the authentic means of treaty interpretation, stipulated in paragraph 3, Article 31 of the Vienna Convention on the Law of Treaty (VCLT), must be the one that reflects the parties true and common understanding in the treaty interpretation. Other subsequent practice may only play some role as the supplementary means of treaty interpretation in Article 32 of the Vienna Convention on the Law of Treaties.

Mr. President, as to the topic of "**Peremptory norms of general international law(jus cogens)**", as for the particular importance of *jus cogens* as it is different from other rules of international law, Chinese delegation thinks that the approach to the examination of this topic should be extremely prudent. The identification of the elements, standards and consequences of *jus cogens*, must be based on the relevant provisions of The Vienna Convention on the Law of Treaties and sufficient State Practice, and focus on the codification of *lex lata* other than formulate new laws. As for the draft conclusions contained in the third report of the Special Rapporteur, China emphasizes two points: first, considering that the content and the scope of *jus cogens* and the definition of "an offence prohibited by a peremptory norm of general international law (*jus cogens*)" are still vague and ambiguous, China does not agree to the incorporation of any offense prohibited by *jus cogens* into the scope of the exceptions to immunity *ratione materiae* of state officials from foreign criminal jurisdiction as the Special Rapporteur suggested.

Secondly, according to the current procedure of the deliberation of this topic adopted by the Commission, the draft conclusions adopted by the Drafting Committee will not be considered by the plenary of the Commission and will not be contained in the annual session report of the Commission. All of the draft conclusions and their commentaries can only be submitted to the Sixth Committee for States' review as a package only after the whole set of draft conclusions passed the first reading. For such an important topic as *jus cogens*, this approach entails great difficulties for States to closely track the progress of the work of the Commission and to comment likewise. China suggests the Commission to improve the approach.

Mr. President, as to the topic of "**Immunity of state officials from foreign criminal jurisdiction**", the Draft Article 7 regarding exceptions to the immunity *ratione materiae* of state officials, adopted by the Commission by recorded votes, has raised huge controversy among States. China suggests that the Commission revisit this drat article. As to the Sixth Report of the Special Rapporteur on procedural issues relating to immunity, China would like to emphasize two concerns: first of all, the forum State shall consider the immunity issue as early as at the stage of instituting legal proceedings against a foreign official's conduct performed in his/her official capacity, even though those proceedings are not binding, not imposing any obligation to the foreign official and not affecting the foreign official's exercise of functions. This is because the immunity of the State officials not only emanates from the need to guarantee his/her performance of functions, but also derives from the basic principle of international law of *par in parem non habet imperium* and reflects the respect for the principle of State sovereign equality. Secondly, whichever State organ has the final authority to determine whether there is immunity falls within the scope of internal affairs of the forum State and does not come into the scope of international law's regulation. China does not think it proper for the

Commission to set an unified rule on this matter.

Mr. President, as to the topic of "**Protection of the atmosphere**", the Commission adopted, on the first reading, the preamble and 12 Draft Guidelines, together with commentaries thereto. China is of the view that in the field of protecting the atmosphere, clear and specific rules in international law have not yet been formed. In particular, no definite legal obligation for a state to protect atmosphere has emerged yet. Relevant State Practice and rules are still developing. Simply copying some of the rules in specific areas of international environmental law, especially those rules which have specific application scope, to the field of protection of the atmosphere, such as the Draft Guideline 4 on environmental impact assessment and Paragraph 3 of Draft Guideline 9 on some special classifications of countries, is improper in that these rules remain short of the national practice supports.

Mr. President, the AALCO's follow-up to the topics of the Commission and the regular exchange mechanism with the Commission are vital for fully representing AALCO members' positions and concerns. China supports the AALCO's efforts to continue to strengthen the good interaction with the Commission and to make contributions to the progressive development of international law and its codification. Thank you, Mr. President.

Vice President: I thank the distinguished delegate from the People's Republic of China and now invite the delegate from the Islamic Republic of Iran to present his statement.

The Delegate of the Islamic Republic of Iran: "In the name of God, the Compassionate, the Merciful"! Mr. President, my delegation would like to thank the Secretariat for its comprehensive report on "Matters related to the Work of the International Law Commission at its Sixty-Ninth and Seventieth Sessions" contained in document AALCO/56/NAIROBI/ 2017/SD/S1.

As from the topics on the agenda of the Commission during its Seventieth Session, as advised by the Secretariat, we will limit our remarks on two of them, namely, "*Jus Cogens*" and "Provisional Application of Treaties."

Mr. President, as regards "**Peremptory Norms of General International Law (Jus Cogens)**", we welcome the third report presented by the Special Rapporteur, Mr. Dire Tladi. We would like to present our comments on draft Conclusions 10 to 23. On draft Conclusion 10 concerning a treaty being void at the time of its conclusion and its conflict with a peremptory norm of general international law (*jus cogens*), we concur with some of the Members of the Commission that the Special Rapporteur had better give further clarification on the second sentence of draft Conclusion 10 (1), that is, "such a treaty does

not create any rights or obligations." Should the clarification given appear not to clear the existing ambiguities on the notions of "rights" and "obligations" and their non-existence as the result of a conflict between the treaty and a peremptory norm of general international law (*jus cogens*), its redundancy, as proposed by certain Members of the Commission, would be preferable. While we acknowledge the general tenability of non-severability of treaty provisions in conflict with norms of *jus cogens*, we believe that some thoughts should be given to treaties wherein single or a few provisions are inconsistent with norms of *jus cogens*. In some cases it seems that severability of treaty provisions is possible under certain circumstances. It goes without saying that a treaty becomes void if it's very object and purpose conflict with a norm of general international law or where such a conflict forms the very basis of the consent to be bound by the treaty. However, in case a treaty is concluded where some provision of subsidiary character thereof is in conflict with a norm of *jus cogens*, it seems illogical and unfair to call for its whole abrogation.

Turning to draft Conclusion 12 on "Elimination of consequences of acts performed in reliance of invalid treaty", we concur with some members of the Commission on the replacement of "any act performed in reliance of the provision of the treaty" with "any act performed as result of the implementation of the treaty" or further with "any act performed in implementation of the treaty." We also acknowledge the proposal whereby paragraphs 1 and 2 should closely track article 71 (1) (b) of the 1969 Vienna Convention on the Law of Treaties to the effect that States must also bring their mutual relations into conformity with the peremptory norm of international law.

On draft Conclusion 13, as the Special Rapporteur notes that the very existence of a rule of *jus cogens* in a treaty does not renders invalid any reservation to the treaty including to a compromissory clause, We reiterate the distinction between procedural and substantive proceedings of which reservations is also a part. This has been reaffirmed by the ICJ in numerous cases e.g. Jurisdictional Immunities of the State (Germany v. Italy). This confirms the consensual nature of inter-state adjudication which is also reflected in draft conclusion 14 (2).

Concerning draft Conclusion 14, we reiterate our contention during the 71st Session of the Sixth Committee as regards the organ competent to identify a norm of *jus cogens*. Once we accept the ICJ as such an organ, it would seem wise a fortiori to take the ICJ as the dispute settlement body in that regard. However, in order to keep with the normative framework of peremptory norms of *jus cogens* as established by the 1969 Vienna Convention, we would suggest that such dispute settlement should be limited to disputes concerning interpretation or application of the contents of the Article 53 or 64 of the Vienna Convention. As such, the ICJ or arbitration may be resorted to where there is a dispute concerning the alleged conflict between the conclusion of a treaty and a norm of

jus cogens or the alleged conflict between an existing treaty and an emerging norm of *jus cogens*.

On draft Conclusion 15, paragraphs 1 and 2, a natural reading of Articles 53 and 64 make us acknowledge that a rule of customary international law is void if it is in conflict with a norm of *jus cogens* and that a norm of customary international law becomes void once it is in conflict with an emergent rule of *jus cogens*. As regards paragraph 3, distinction must be made between objection to an existing norm of *jus cogens* and objections raised during the formation of norms of *jus cogens*.

Concerning draft Conclusion 17, acts performed by international organizations are hinged upon diverse instruments which comprise of resolutions, directives and decisions. While the importance of Security Council resolutions and the necessity of an express reference thereto is undisputed in this regard, resolutions and decisions of other international organizations are to be taken into account with due care. As such, we suggest that the word "including" in either paragraph be replaced with "in particular" and the world "resolutions: be accompanied by "decisions, directives and other instruments as appropriate."

Furthermore, acts performed by international organizations in conflict with norms of *jus cogens* must be given particular attention either in draft conclusion 17 or draft conclusion 16 on unilateral acts. ILC's work on "international responsibility of international organizations" provides guidance in this regard. We believe that international organizations are bound to respect obligations arising from peremptory rules of general international law and as such must bear all the legal consequences resulting from their breach, in particular the obligation of non-recognition. In practice, such an obligation seems to be disregarded on a daily basis.

As concerns draft Conclusion 21, the duty of non-recognition must be taken on a different level than the duty of cooperation due to their distinct natures and as such we concur with the observation that the Commission should engage in progressive development in this area which is supported both by doctrine, jurisprudence and State practice and the current status of the law in that regard.

We also agree that a paragraph should be added to the effect that non-recognition should not disadvantage the affected population and that relevant acts such as registration of births, deaths and marriages ought to be recognized, in line with ICJ's dictum in Namibia.

Draft Conclusions 22 and 23 address primary rules of international criminal law regarding criminal prosecution under national jurisdiction and effect of specific subsets

of rules of *jus cogens*, namely, those prohibiting international crimes. Such an approach deviates from the scope of the topic which specifically deals with secondary rules of international law and general effects of all rules of *jus cogens*. Additionally, state practice does not support draft Conclusions 22 and 23. On paragraph 2 of draft Conclusion 22, most States lack legislation as to jurisdiction over offences prohibited by a norm of *jus cogens* such as apartheid, crimes against humanity and aggression and this demonstrates lack of *opinio juris* in this regard.

Finally on draft Conclusion 23, the practice cited by the Special Rapporteur in the third report does not support the draft Conclusion proposed. The Draft Conclusion 23 seems to cross the limits of its corresponding provision drafted in the other work of the Commission, that is, Immunity from Foreign criminal jurisdiction. This makes it more difficult to reach consensus on two other works at hand, namely crimes against humanity and immunity of state officials from foreign criminal jurisdiction. As such, leaving the provision in abeyance until completion of the two other works of the Commission on the issue seems advisable.

Mr. President, turning to the topic "**Provisional Application of Treaties**", my delegation would like to express its appreciation to the Special Rapporteur, Mr. Juan Manuel Gomez-Robledo, for his fifth report on the topic. I am sure the final outcome of the work, including the guidelines and the commentaries thereto, could contribute to clarification of the diverse aspects of the institution of provisional application of treaties.

Reference, in draft guideline 3, to treaty between "States or international organizations", such as the wording formulated in draft guideline l2, seems vague, especially when compared with draft guidelines 7, 10 and 11 where States and international organizations are treated separately to give effect to the classic distinction made between the two in light of the law of treaties as developed under the Vienna Conventions of 1969 and 1986. Although clarification is given through the relevant commentary, it still seems preferable to have specific formula for States and international organizations.

With respect to draft guideline 4, in case of silence of the treaty concerning provisional application of the whole treaty or a part thereof, such provisional application may be agreed through either a separate treaty or "any other means or arrangements", "a resolution adopted by an international organization or at an intergovernmental conference", or "a declaration by a State or an international organization that is accepted by the other States or international organizations concerned."

In this regard, we reiterate our concern concerning agreement purportedly demonstrated through "resolutions", "declarations" or "any other means or arrangements"; as also affirmed in the ILC's work on "Subsequent Agreements and Subsequent Practice in

relation to Treaty Interpretation", while resolutions adopted at international forums carry some weight with respect to treaties they refer to, they are sometimes results of political convenience and synergy and do not always reflect consent of States to effect acts with respect to treaties including provisional application thereof. Furthermore, although the commentary provides clarification on the phrase "any other means or arrangements", this seems too broad and thus the content of the draft guideline seems needy of precision if the commentary is not given more clarity.

In paragraph (3) of the commentary to draft guideline 7 on "reservations", reference has been made to interpretative declarations in conjunction with agreeing to provisional application. While the Special Rapporteur distinguishes these from reservations, the explanation given is far from convincing. Question arises as to the applicability of interpretative declarations having the effect of reservations as approached in the work of the ILC elaborated by Prof. Alain Pellet. More clarification in that regard would be helpful.

Furthermore, Paragraph (6) of the Commentary refers to the legally binding obligation arising from provisional application of a treaty or a part thereof "as if" it were in force between relevant States or international organizations. Room is also given for treaties that stipulate otherwise; this does not, however, seem to have been taken into account in drafting guideline 8 on "responsibility for breach" which lacks any reference to such exception clauses in treaties.

Draft guideline 9 is on "Termination and suspension of provisional application". No reference is made, however, to suspension of provisional application in the content of the guideline.

Mr. President, to conclude, my delegation continues to attach high importance to the items on the agenda of the International Law Commission and further continues to follow up the discussion at AALCO with interest. Thank you Mr. President.

Vice President: I thank the distinguished delegate from the Islamic Republic of Iran and now invite the delegate from the Republic of Korea to present his statement.

The Delegate of the Republic of Korea: Thank you, Mr. Vice President. First, I would like to thank the speakers from the ILC for their insightful and informative presentations, as well as the Secretariat for the preparation of the report containing in-depth analysis and comments.

Last May, the Government of the Republic of Korea co-hosted one of the events in celebration of "70 Years of International Law Commission" in the UN headquarters in

New York. We will look forward to continuing to work closely with the Commission in the coming years.

Today, my delegation would like to briefly touch upon a couple of Agenda items of the ILC.

As for the topic of the "**Peremptory norms of general international law**", my delegation believes that the work of the Special Rapporteur would contribute to better understanding of the current state of the law and to the progressive development of law in this area.

Given the exceptional characteristics of peremptory norms of international law, there would be numerous difficult issues to be dealt with, and my delegation is of the view that relevant state practice and judicial precedents should be analyzed in a more rigorously and thoroughly than for any other categories of agenda.

Regarding the topic of the **Protection of the Atmosphere**, this topic is especially meaningful in light of increasing concerns about transboundary air pollution including fine dust problems.

We would like to appreciate the excellent work of Professor Murase as the Special Rapporteur. As stipulated in the preambular part, the draft guidelines are not to interfere with relevant political negotiations on other environmental issues and not to seek to fill gaps in existing treaty regimes.

Therefore, in discussing this issue, we believe it is important to focus on how to facilitate and promote future-oriented cooperation among interested States, and my delegation believes the ILC is taking appropriate approaches in this respect. Thank you.

Vice President: I thank the distinguished delegate from the Republic of Korea and now invite the delegate from the Socialist Republic of Viet Nam to present his statement.

The Delegate of the Socialist Republic of Viet Nam: Honorable Vice President, Distinguished Delegates, Ladies and Gentlemen. Our Delegation would like to express our gratitude and appreciation to the work done by the AALCO Secretariat as illustrated in the Report and its Addendum on Matters related to the Work of the International Law Commission at its Sixty- Ninth and Seventieth Sessions.

On this occasion, we would like to re-affirm the Viet Nam's high appreciation of the International Law Commission's role and its dedication to the progressive development and codification of international law.

This Delegation is of belief that the AALCO discussion on the ILC topics would surely benefit and reinforce not only the view of AALCO Member States in their participation at the Sixth Commission of the 73rd General Assembly of the United Nations but also the opinions of the 13 ILC members from AALCO members.

In the following parts, our comments are based on the latest report of the International Commission Law to the General Assembly contained in document A/73/10. On topic **"Subsequent Agreements and subsequent Practice in relation to the Interpretation of Treaties**", we are pleased to learn that the Commission has adopted the draft Conclusions in its entirety by consensus. In the earlier draft of the Conclusion, we had voiced our concern regarding the treatment of "silence" on part of the States with regard to the pronouncement of expert treaty bodies. In the final draft Conclusion, the Special Rapporteur has rightly pointed out that silence by a party should not be presumed to constitute subsequent practice under article 31, paragraph 3(b), accepting an interpretation of a treaty as expressed in a pronouncement of an expert body.

On topic **"Identification of Customary International Law"**, Viet Nam supports revisions and commends efforts of the Special Rapporteur and the Commission to work on this important and difficult as well as high-theoretical topic of general international law. In order to improve the ILC report on the topic, this delegation would like to provide some comments as follows:

With regard to draft Conclusion 4 on Requirement of Practice, in its commentary, the Commission mentioned that actions to be taken as state practice in formulating customary international law must be actions that such state has endorsed or reacted to. This is, indeed, a correct approach as states should have acknowledged and reacted to actions that may be directly or indirectly legally binding on them. We, therefore, believe the Special Rapporteur should reflect this approach by adding "subject to the extent that States have endorsed or reacted to them" at the end of paragraph 3 of draft Conclusion 4.

With regard to draft Conclusion 8 "The Practice must be general" and Conclusion 15 "Persistent Objector", we notice that while draft Conclusion 8 mentioned that no particular duration is required, even a short duration may suffice, such formulation may cause difficulty with persistent objector when the specific timing for a customary international rule to arise is disputable. We, therefore, look forward to further elaboration by the Special Rapporteur on this matter.

On the topic **"Protection of the Atmosphere"**, we would like to congratulate Prof. Murase for the completion of the full draft Guidelines and commend all his efforts in this process. With regard to his latest report, we would like to express our support for his

approach on the significant role of scientific evidence in adjudicating environmental disputes in order to safeguard a fair proceedings and interests of disputing parties. Indeed, we recognize that in protection of the atmosphere, the use of scientific evidence is indispensable. Thus, instead of passively reacting to evidence submitted by disputing parties, international tribunals and courts should actively seek assistance from scientists and experts when dealing with highly technical disputes, such as environmental disputes.

On the topic **"Provisional Application of Treaties"**, this delegation congratulates the Special Rapporteur and the Commission on the completion of the full draft Guidelines for the first reading of the General Assembly. However, we notice an issue with regard to Guidelines 9 (c) which provides that the Guidelines would not prejudice Part V of the Vienna Convention 1969 on the Law of Treaties. In fact, Part V of the Vienna Convention only deals with treaties already in force while the Guidelines govern treaties, which are provisionally applied. This leads to an uncharted problem with legal consequences for serious violations of provisionally applied treaties. In our view, the Special Rapporteur and the Commission should have a careful evaluation of such violation in order to ascertain the *mutatis mutandis* application of the Vienna Convention 1969.

On the topic **"*Jus cogens*"**, our delegation observes that this topic has been considered by the Commission on a number of occasions without reaching a final outcome. However, the fundamental nature of *jus cogens* in general international law merits further discussion at the Commission. Along this line, we take note of the third Report by the Special Rapporteur, Dr. Tladi, with new 13 Conclusions. With regard to Conclusion 17, we understand that in addition to binding resolutions, inter-governmental organizations may also produce binding decisions, guidelines or may take other binding actions. So, it would be helpful if the Special Rapporteur in his future work clarifies whether draft Conclusion 13 covers all binding acts by international organizations.

On the topic **"Protection of the Environment in relation to Armed Conflict"**, we fully support the continuation of this topic in the Commission's agenda thereby defining responsibility of states in dealing with war remnants, including damages to the environment. We also support the direction by the Special Rapporteur to integrate the law on occupation, international humanitarian law and international environmental law in this project. Accordingly, even though we support the use of "occupying power" instead of "occupying State" in the draft Principles, we would like to see further elaboration on different forms of occupation as well as ensuing obligation to protect environment for each form of occupation. In addition, we believe that the Commission and its Special Rapporteur should explore on the obligation to prevent, mitigate and control environmental damages applied for occupying powers.

On the topic **"Succession of States in respect of State Responsibility"**, this delegation would like to put in record its reservations regarding paragraph 154 and 155 in the second Report by the Special Rapporteur, in relation to his interpretation of the 1995 US Viet Nam Claims Settlement Agreement. With regard to the recently proposed draft articles, this delegation would like to draw your attention to draft Article 6 paragraph 1 that currently says "Succession of States has no impact on the attribution of the internationally wrongful act committed before the date of succession of States".

We believe that the rule of non-succession of State responsibility still applies, therefore suggest that the wording of this paragraph should be revised as follows: "Obligation arising from an internationally wrongful act committed before the date of succession of States shall be attributed to the predecessor of Sates unless the successor State accepts to be bound by such obligation."

With thus having said, we strongly encourage AALCO member states to voice their opinions on this formulation at the upcoming Sixth Committee meetings. I thank you, Mr. Vice President.

Vice President: I thank the distinguished delegate from the Socialist Republic of Viet Nam and now invite the Observer from the Republic of Belarus to present his statement.

The Observer of the Republic of Belarus: Distinguished Chairperson, Excellencies, Ladies and Gentlemen. As this is the first time I take the floor allow me first to express gratitude to AALCO secretariat on behalf of the Republic of Belarus for extending us an invitation to participate in this session in our capacity of an observer to AALCO. Our words of thanks also go to our generous hosts, the Government of Japan, for perfect arrangements for this meeting. Belarus values highly this opportunity to exchange views with such a representative body of expert lawyers and diplomats.

Turning to the subject, let me share briefly our views regarding the work of the International Law Commission (the ILC) during its anniversary seventieth session. The session has been productive; the Commission has concluded its work on topics of subsequent agreements and subsequent practice in relation to the interpretation of treaties as well as identification of customary international law. Belarus is satisfied with reasonable conservatism demonstrated by Special Rapporteurs and the Commission in the text of the conclusions balanced by certain elements of progressive development in the commentaries. We assume that this is the only possible approach towards foundations of international law. While international case-law and scholarly writings can be of certain value, only the analysis of practice of representative groups of States can move forward these topics.

In general, Belarus commends the work of the Commission aimed at developing the fundamentals of the international normative system, of the architecture of international law. We welcome these contributions to the codification and progressive development of international law as a holistic system. In this context, we also note with satisfaction the inclusion of topic **"General principles of law"** in the Commission's programme of work.

Given the importance of "**Peremptory norms of international law (Jus cogens)"** for the whole structure of modem international law, we regret that the Commission was not able to discuss the fundamental report of the Special Rapporteur during current session. We hope that topics of such importance would benefit from more time allocated for their consideration in the future. The same comment is relevant for the topic of succession of States in respect of State responsibility.

Speaking of the interpretation of the treaties, we support the presumption of the Commission that by subsequent practice the Parties rather intend to apply, than to modify the treaty. We regret, however, that the Commission stopped short of further investigating this topic. It would be beneficial to consider if and when the application of the treaty by one Party transforms either into its violation or into its amendment upon tacit agreement by other Parties. We also believe it would have been useful to enumerate at least some forms of subsequent agreement and subsequent practice in the draft conclusions or in the commentaries thereto.

While generally supportive of the approach taken by the Commission towards practice in and by the international organizations, we remain of the opinion that the definition of the "Conference of Parties" should not be based on a contraposition to the "organ of the organization", but rather on substantive criteria. It is our understanding that these criteria should include the plenary nature of the conference, as well as treaty-specified powers to consider the operation of the treaty in question. We also support the Commission'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.

Turning to the "**Identification of the customary international law**" we can't leave unnoticed the fundamental memorandum on ways and means to make evidence of CIL more readily available, prepared by the UN secretariat. We are yet to recognize scientific and practical value of this document. While in principle supporting the draft conclusions, we note certain inconsistency in one of key elements thereof, namely the treatment by the Commission of the "persistent objector" concept. While the commentary to draft conclusion 15 aptly notes that "States cannot be expected to react on every occasion", the conclusion itself still uses the "maintained persistently" language, which places an

unreasonable burden on objecting State. In our assessment once, the objection is stated and made known to other States concerned it remains valid until explicitly withdrawn.

As far as "***jus cogens*"** is concerned, Belarus reiterates its position that the codification and progressive development of international law should be primarily based on State practice in its various forms. While the decisions of international tribunal and "writings of most qualified scholars" can elucidate, streamline and reflect upon such practice, they maintain, in our view, their supplementary character. In this regard our delegation believes that draft conclusions 22 and 23, dealing with exceptions to immunity of State official and duty of States to prosecute certain acts are manifestly outside the scope of the topic and, additionally, do not reflect the status quo. We therefore welcome the decision of the Special Rapporteur to replace these draft conclusions with a single "without prejudice" clause.

Turning to the **"Protection of the environment in relation to armed conflicts"** Belarus supports in principle the methodology and results achieved by the Commission thus far. Our key priority regarding this topic is the coherence of the draft principles with existing legal frameworks, first of all - with the international humanitarian law. This relates both to the use of terms and to the use of concepts, such as the concept of the Occupying Power. Thus we support the approach, according to which basic institutes of the *jus in bello* are augmented by environmental dimension.

We note certain potential of the subject of succession of States in respect of State responsibility, while in our view in this area the State practice is scarce and highly context-specific, which makes it a difficult task to identify certain common patterns.

In our perspective, this task could be completed by ensuring "backward compatibility" of this topic with the: topic of the responsibility of States for internationally wrongful acts. Seen from this angle, a case can be made that as long as the Predecessor State, responsible for internationally wrongful act, continues to exist; there is a presumption against the transfer of responsibility to Successor State(s), unless there is compelling evidence to the contrary. On the other hand, if the "respondent State" ceases to exist, utmost caution should be exercised in ascertaining that one or several successor States have assumed any responsibility of the Predecessor State. We also hold an opinion that draft articles on this topic should cover both "legal" and "illegal" succession. Indeed, the second scenario would benefit much more from the draft articles, as the "legal" succession would most likely be duly reflected by relevant legal acts.

The topic of "**Immunity of State officials from foreign criminal jurisdiction**" retains its contentious character, which is evidenced, in an unprecedented split of opinion in the Commission regarding exceptions from immunity (draft Article 7). The sixth report of

the Special Rapporteur notes diverging views of States regarding draft Article 7 and whether it represents codification or progressive development of international law. While there are proponents of the view that this article represents CIL, a significant number of States see neither evidence of the existing rule limiting immunity of the highest government officials, nor trend towards its development. This confirms our principled position that the immunity of State officials (in particular the "troika") is the fundamental rule based on principles of sovereign equality of States and prohibition of use of force or threat of force.

We do not deny the right of the Commission to propose to States certain solutions representing progressive development of international law. However, such submission should be clearly identified as such.

As far as future work on this topic is concerned, our key priority would be the procedural safeguards preventing politically based prosecutions and abuse of jurisdiction. In this regard we submit that, first, the burden of proof as to the exception to immunity rests with the State, which intends to exercise its jurisdiction, and, second, there should be a strong presumption in favor of prosecuting an official in his or her domestic courts, by analogy with diplomats. Only if the State of nationality of the official is unwilling or unable to prosecute, the jurisdiction can be claimed by other States. Yet another important subject is the dual nature of "procedural guarantees." While there are indications that the Special Rapporteur intends to focus on individual guarantees (i.e. right to a fair trial etc.), in our view the priority should be given to international guarantees - prevention of double standards, abuses and politically motivated trials.

We support the anticipated consideration by the Commission of the universal criminal jurisdiction·. Belarus has consistently maintained that universal jurisdiction is purely treaty-based. Consideration of the topic by an expert body can contribute to depoliticization of this sensitive issue, provided that the Commission would be guided first and foremost by the practice of States, not by works by NGOs, including so-called Princeton Principles. As Special Rapporteur, Mr. Charles C Jalloh, rightly notes there are diverging views among States regarding this concept. In this regard we believe that the focus of ILC's work should be on clarifying the existing "common ground" (if any), rather than proposing new rules. Outcomes of the Commission's work on "*Aut dedere aut judicare*" can be a valuable contribution in this regards. I thank you for your kind attention.

Vice President: I thank the distinguished observer from the Republic of Belarus and now invite the Observer from the Russian Federation to present his statement.

The Observer of the Russian Federation: Mr. Chairman, The Russian Federation is

following with great attention the work of the International Law Commission. It is hard to overestimate the contribution that the Commission has made over the years to codification and progressive development of international law.

Given the great authority of the Commission, particular attention should be paid to the selection of topics for its consideration, its working methods and, most importantly, to the results of its work presented for consideration to the Sixth Committee (Legal) of the United Nations General Assembly. It is true that over the last decade the Sixth Committee has become more and more reluctant to recommend drafting of legally-binding instruments on the basis of products of the Commission. This situation led to an unexpected result - namely, courts and tribunals often treat ILC's drafts as evidence of international customary law and apply them directly.

We cannot ignore the fact that states are main subjects of international law and the Commission should base its work on states' opinions, their practice and policy. Thus the Commission should demonstrate "reasonable conservatism" in its work. We firmly believe that international law is the cornerstone of international relations which should be solid and stable in order to ensure the sustainability of the entire system.

Mr. Chairman, In this statement we would like to focus on the very important and sensitive topic on the ILC's agenda – **"Immunity of state officials from foreign criminal jurisdiction"**. The provisions of international law regarding immunity of state officials from foreign criminal jurisdiction are extended to all officials and are a norm of customary law deriving from state sovereignty as a fundamental institution of international law.

The Commission has examined the issue of exceptions to the immunity following the proposal by the Special Rapporteur Ms. Escobar Hernandez. Before giving comments on the substance of the Commission's conclusions we would like to note with regret that the exceptions became a subject for consideration by the Commission before the procedural aspects of immunity. Since immunity is of a procedural nature (and thus it is different from material law, which determines the legality of the person's conduct), the procedural aspects of its application are of exceptional importance. We think that formulating procedural rules of application of immunity first could remove a number of concerns that are put forward in favor of the need to have exceptions to the immunity of state officials. We share the view of the Commission that exceptions to immunity of officials are not applicable to persons possessing immunity *ratione personae*. Let us emphasize once again our firm conviction that persons possessing immunity *ratione personae* are not limited to so called "troika" (head of state, head of government and foreign minister), but may extend to other high officials, for example the minister of defense. Unfortunately, our agreement with the conclusions of the Commission regarding exceptions ends at this point.

Having reviewed the report of the Commission as well as the report of the Special Rapporteur, we would like to note that they do not prove of the existence of exceptions to immunity *ratione materiae* in the existing international law, especially regarding practice of states or their opinion juris. Equally we cannot observe trends toward the formation of exceptions in the practice of states. Exceptions listed in Draft Article 7 adopted by vote in the Commission are not confirmed by consistent practice of national or international courts or national legislation. Moreover, the Commission did not pronounce itself as to whether such exceptions are *lex lata* or *lex ferenda* rule which also may lead to the conclusion that the issue was not considered objectively. We must note that the consideration of the issue of exceptions to the immunity led to profound disagreements not only within the Commission but also among members of the Sixth Committee. Thus, we have to recognize with regret that during the consideration of this issue the objective approach was substituted by a subjective wish to create a new rule for prosecuting state officials. The declared reason behind this approach is fight against impunity. However the questions whether international law contains exceptions to immunities and whether they should exist are different questions like the notions of immunity and impunity are different as well. The question before the Commission is not to find a way to prosecute state officials but to find out whether exceptions to the general rule of immunity of officials of one state from national (rather than international) criminal jurisdiction of another state exist. It follows from the name of this topic that there are other ways of prosecuting officials who committed crimes, for example in his or her own state or in the competent international judicial institutions. Moreover, any state can waive immunity.

We believe that the artificial attempt to create an international legal norm that does not reflect the practice of states notwithstanding objections of states cannot be either codification or progressive development of international law and is inconsistent with the goals of the Commission's work.

In general, the desire to eradicate impunity for grave international crimes is a noble goal, but it should not be used as an instrument for manipulating with the rules of customary international law. The introduction of exceptions to immunity of officials from foreign jurisdiction would become just another tool to put political pressure by one state on another state under the slogan of fight against impunity, which will just increase tensions in the interstate relations.

In the light of the considerations above we would kindly invite Members of the AALCO to oppose the rule on exceptions to immunity of state officials and make their position known to the Sixth Committee of the United Nations General Assembly.

As a separate matter, we would like to note that we do not support the consideration of the questions regarding international criminal jurisdiction under the topic of "Immunity

of state officials from foreign criminal jurisdiction". Firstly, according Draft Article 1 preliminary approved by the Commission, these draft articles deal with the immunity of certain state officials from the exercise of criminal jurisdiction by another state. This wording excludes consideration of international criminal jurisdiction. Secondly, international criminal jurisdictions are subject to special legal regimes be it a special treaty (as the Rome Statute) or UN Security Council resolution. Therefore, the application of immunity in this context is subject to these special instruments and we do not see room for codification or progressive development of international law in this field

Mr. Chairman, I would also like to make a brief comment regarding another challenging topic on the agenda of the Commission "***jus cogens*"**. We do support the approach of the Commission to base its work on the subject on the relevant provisions of the 1969 Vienna Convention on the Law of treaties. In our view the Commission should make the consequences of *jus cogens* norms for international treaties the central issue of the topic.

However, we do not consider that settlement of disputes, which may arise in the application of norms of *jus cogens* to international treaties, and competence of the International Court of Justice in this regard must be part of the project of the Commission. It should be noted that the Commission does not work on a draft convention, but formulates draft conclusions, which is not a suitable form for dealing with mechanisms of compulsory settlement of disputes. In our opinion, the questions related to criminal responsibility of persons and immunity of state officials are beyond the scope of this topic. Their consideration under the heading of norms *jus cogens* is a duplication of work that is currently underway on the theme of "immunity of state officials from foreign criminal jurisdiction" and may lead to the same confrontation that took place regarding possible exclusions to immunities.

We also do not support attempts to include into this topic issues that gave rise to heated theoretical discussions, but are not sufficiently clarified in state practice. We mean relation between norms of *jus cogens* and *erga omnes* or between norms of *jus cogens* and resolutions of the UN Security Council. One might draw only theoretical conclusions regarding these issues, which is not appropriate given the working methods of the Commission. Moreover such theoretical conclusions may lead to significant and unexpected results. I thank you Mr. Chairman.

Vice-President: I thank the distinguished delegate from the Russian Federation. According to the list of speakers there are no further requests for statements. If there are, please raise your hand or flags. If there are none, then I understand Ambassador Lehto would like to make a comment. Since we have finest brains on international law here with us, if they so wish they can make a statement.

Amb. Marja Lehto: Thank you. I was asked if I would like to make a statement hence I would like to state it certainly is not the time to draw any conclusions since the discussion will continue in New York during the international law week as the representative of the Russian Federation just noted. I just wanted to, on my behalf thank you for your interest in the work of the Commission and for the comments we have heard today. I believe that my colleagues have not taken the floor; I thought they would do so. I can probably say that they agree with this.

Vice-President: Yes, Señor Valencia Ospina.

Mr. Eduardo Valencia-Ospina: Well simply to thank my distinguished colleague for having expressing my sentiments towards the discussion we have had. It is the best example of the type of constructive cooperation between the AALCO and the International Law Commission. The observations that have been made are substantive and certainly we shall have a record of them in the report prepared by AALCO that reaches us every year, and the comments made in the Sixth Committee that we will hear or may receive in writing on some of the topics on which this kind of comments have been asked will certainly serve for the second reading of some topics and for the continuation of the our work on some topics. Since we are there not to sit in and ivory tower but our role is to serve the interests of states, and so your observations are vital for the viability of our work.

Vice-President: Thank you Your Excellency, and I also thank all distinguished delegates who have participated and I also wish to invite those delegates who wish to make written submission on the matter to forward their written submission or comments to the Secretariat. The Secretariat will welcome such written comments or submission. With this ladies and gentlemen we have come to the end our discussion on this agenda item. However since it is not yet six o'clock, I place before you two options. Either, we start another item on the agenda which is the Report of the Regional Arbitration Centre we start and then we stop at six and then continue tomorrow. The reasons for proposing this suggestion is because of the heavy agenda we have tomorrow. Or if there is no consensus on this agenda then we finish early today that is now. May I have some feedback on what to do, because if I don't receive any feedback I will take the option of starting the next agenda item that is the Report of the Regional Arbitration Centres because I really appreciated that have a heavy agenda tomorrow. Can we invite the distinguished representatives of the Regional Arbitration Centres to come forward and we can start the next agenda item. Thank you, excellencies.

XIII. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS

XIII. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS OF AALCO MEMBER STATES HELD ON THURSDAY, 11 OCTOBER 2018 AT 05:40 PM

AGENDA ITEM: REPORT OF THE WORK OF REGIONAL ARBITRATION CENTRES

His Excellency, Mr. Maneesh Gobin, Attorney General and Minister of Justice, Human Rights and Institutional Reforms, Republic of Mauritius and the Vice-President of the Fifty-Seventh Annual Session of AALCO, in the Chair.

Vice-President: By way of introduction to my right we have Professor Sundra Rajoo, Director of the Asian International Arbitration Centre. To my left is the honourable Deputy Secretary General, and to left of the Deputy Secretary-General is honourable Dr. Wilfred Ikatari, Director for the Regional Centre for International Commercial Arbitration Lagos and on the extreme left is Mr. Lawrence Muiruri Ngugi, Registrar and Chief Executive of the Nairobi Centre for International Arbitration. We welcome all our panellists. First of all I will invite the Deputy Secretary-General for an introductory statement.

Mr. Mohsen Baharvand, Deputy Secretary-General of AALCO: Thank you Mr. Vice President, I promise to be brief due to this late session. The Regional Centre for Arbitration at Kuala Lumpur, Malaysia for the Asian region and at Cairo, Arab Republic of Egypt for the African region were established in 1978 and 1979 respectively. Later two more such Centres were established in Lagos, Nigeria in 1989 and Tehran, Islamic Republic of Iran in 2003. On 25 January 2013, the Nairobi Centre for International Arbitration Act came into force and it was inaugurated on 5 December 2016. This was the history of our regional arbitration centres.

With the inauguration of the Nairobi Centre, AALCO Regional Arbitration Centres have further augmented their vast network and operations in the two continents. This presents us an opportune moment to build synergies through effective cooperation and coordination among the Centres to better cater to the burgeoning demand for institutionalized ADR mechanisms in developing economies of Asia and Africa. The Resolution on the Report of Regional Arbitration Centres adopted in 2015 and reiteration of this proposal in the 2016 and 2017 was a meaningful step in this direction. The resolution had called upon the Regional Arbitration Centres to organize a biennial Arbitration Conferences by rotation primarily to share best practices and experiences in conducting arbitration proceedings.

The Secretariat is pleased that the inaugural AALCO Annual Arbitration Forum, which is now called theAAAF was held in Kuala Lumpur at the Asian International Arbitration Centre in Kuala Lumpur, Malaysia in July this year and next year it will held at the Cairo Regional Centre for International Commercial Arbitration. We wish to thank the Directors of the Regional Arbitration Centres for their support for AALCO as well the support for the AAAF. The AAAF is in fact a very important meeting where the Directors of all the Regional Arbitration Centres are present to their share best practices and their experiences inviting other arbitration centres from Asia and Africa.

One of the concrete suggestion before this plenary relates to the establishment of another arbitration centre in an interested Member States to cater to the needs of South Asia, East Asia and the South African Region. While we thank the host government of the Centres for their continued support, we also appeal to the other Government of Member States to choose our, in fact their arbitration centres as a seat for arbitration with foreign investors and in their domestic contracts. I would like to once again reiterate the thanks and appreciation of the secretariat and above all on behalf of the Secretary-General to the Directors of the arbitration centres.

I would like to conclude this brief introduction by extending our warm welcome and invite the Directors of all our Regional Arbitration Centres, whose work is a matter of pride for AALCO. I would also like to wish them all the best in their future work. Thank you Mr. Vice-President.

Vice-President: Thank you Deputy Secretary-General. Let us now hear from Prof. Sundra Rajoo, the Director of the Asian International Arbitration Centre.

Datuk Prof. Sundra Rajoo, Director, Asian International Arbitration Centre (AIAC): Excellencies, distinguished delegates, ladies and gentlemen. It's my privilege to be here again; this is my eighth Annual Session to present to you the activities of the arbitration centre in Kuala Lumpur. I thought I should give a brief back ground about our centre, about where it all started. The KLRCA, or the Regional Centre for Arbitration as it was called in 1978 was the first AALCO Centre in Asia and followed very closely by the Cairo Centre. In 2012, we renamed ourselves to the Kuala Lumpur Regional Centre for Arbitration, as a rebranding exercise. This year at the 40th Anniversary of the centre we have again rebranded ourselves as the Asian International Arbitration Centre, with the support of AALCO and the Malaysian Government.

I will start with what have done up to date in terms of numbers and caseload. Our growth in caseload, because we have become an ADR doing sorts of dispute resolution ranging from arbitration to other forms of adjudication like domain remain. We have actually

started with a base of 20 cases in 2010 and last year we did a total of 2917 cases over the 8 years, which I consider to be quite a phenomenal growth story over the years.

We have panellists, from all over the world to reflect the transnational and international character of the centre reaching a number of over two thousand. Last we commissioned a consultant's report to see what are the returns to Malaysia in terms of economic saving which showed that it had a saving million Ringgits of savings.

We also involved ourselves heavily in capacity building, in which more 17,500 participants made their contribution. We also have more than 47 different international collaborations. I just want to show the graph of the caseload along with our various institutions that are doing similar work that includes the ICC, the International Chamber of Commerce, the Hong Kong International Arbitration Centre, the Singapore International Arbitration Centre, the London Court for International Arbitration, the Stockholm Chamber of Commerce. So I think the phenomenal increase in the work load of the last three years, the work that we put in during the initial years has come to bear.

Our main caseload comes from a dispute resolution mechanism that was enacted in 2012, and commenced in 2014. It is called statutory adjudication, and caseload has been tremendous. We have provided our service for 700 cases later and expect to 800 to 900 cases this year after which I assume it shall plateau. In terms of arbitration, we have been growing steadily so we have 100 over cases of all types of arbitration that includes domain name arbitration, international commercial arbitration and domestic arbitration and we are looking into many new areas as well.

In conjunction with the 40th Anniversary of our centre the Malaysian Government in consultation with AALCO decide to rebrand the Centre as the Asian International Arbitration Centre. I think it was a bold move in trying to claim the geographical space, which was the idea behind the move, following which, with the help of the Chambers of the Attorney General of Malaysia amendments were made in all official documents and legislations effected through an omnibus amendment to the law. It was instrumental in giving the Centre a legal standing in the Arbitration Act in Malaysia, to give further standing a supplementary agreement was entered into between AALCO and Government of Malaysia. What we said through the process was that through a rebranding process we had new identity and a renewed vision and transformed at the age of forty. All our products, domain name and brand was revamped including our rules, mediation rules, fast track rules, but the statutory adjudication provision remained the same as they were enacted by law.

We also became very active in the Asian Domain Name Dispute Resolution Centre which is an alliance between the China International Economic and Trade Arbitration

Commission, the Hong Kong International Arbitration Centre, the Korean Commercial Arbitration Centre and the AIAC. I assumed the Chairmanship of the new council this year and the Secretariat was moved to Kuala Lumpur. So some of the new things we are doing is going into new markets as an alliance, which is very important. I must also add that it was only due to the formation of collaboration that we were able to materialize this effort.

One of major initiatives this year was the formation of the Asian Institute for Alternate Dispute Resolution. This is a membership institution to replace or provide similar services eventually to the Chartered Institute of Arbitrators. So what has happened is that the Chartered Institute of Arbitrators have the monopoly except for the national institutions in training of dispute resolution professionals. So what we decided was to form an Asian Institute for ADR, for which I thank my government the Malaysian Government for its foresight in allowing use to set up a Company limited by guarantee based in Kuala Lumpur and which was inaugurated by His Excellency Prof. Dr. Kennedy on 6 May. At present we have started recruiting members and we already have more than five hundred and thirty two members at the present moment. We expect to get a membership of more than six thousand, in next few years which in spite of keeping a low membership fee shall make the initiative self-sustaining eventually. The objective is to provide training and accreditation for ADR related matters, which I think was one of the things lacking in Asia and Africa for which had to get that recognition from England and other institutions. We did not have an institution in Africa as we wanted to see whether it would be a success in Asia first.

The next event which was a major event convened at the request of Professor Dr. Kennedy was the meeting of the all the Directors of the Regional Arbitration Centres to meet at least once a year for what is called the Annual AALCO Arbitration Forum (AAAF). We were asked to organize the first event which we did and we brought together stake holders from Asia and Africa which was graced by our Minister from Malaysia and a Minister from Tanzania as well as two Chief Justices from India and Zambia. There were a lot of interesting topics for discussion that revolved around the conduct of business and resolving disputes. The forum is something that is sustainable and next one is set to be held in Cairo.

One of the other things that we have being is the talk series almost every week that goes on in our centre basically, last year we did fifty-two talks because we have the facilities we are utilizing the same to host any eminent person in the field to deliver talks. Some of topics combining mediation and arbitration were business valuations disputes, advocacy, Belt and Road Initiative, tailoring the dispute resolution mechanism.

Another major initiative that we have undertaken is to move from dispute resolution to the avoidance of disputes for which terms of the contracts need to be looked into. We have realised from our experience of adjudication that the only way to avoid disputes is to draft standard form contracts. We have come up with our first set of standard form contracts which is very well received for which we set up a specialized website called http://sfc.aiac.world/aiacstandard formcontract from which the draft can be downloaded which avoids the use of much paper and has an amazing outreach. A lot of people in Malaysia have downloaded the standard form contract and it has also been downloaded around the world. The next edition of the standard form contract is going to come out at the end of November, i.e. The AIAC 2019 Construction Contract which shall be marketed across the world. The project was made possible bringing together the experts of construction law from across the world with clear terms of reference which was to use simple unambiguous language, place emphasis on completing the projects, and more importantly include provisions for transparency, accountability and, anti-bribery along with providing the jurisdiction to the centre for dispute resolution.

Young people are the hope of the future as said by Jose Rizal and we have focussed on that while creating a young practitioners group comprising of over thousand student and young practitioner members from all over the world. Another way in which we have promoted youth is by organizing Moot Court Competitions including the collaboration with the ICC by organizing the Pre-Vis Moot Court Competition in Kuala Lumpur every year. Last year it was the second pre-moot it was the second largest pre-moot in the world and we hope that for year 2019 we shall break the record for the largest pre-moot thanks to our world-class facilities.

We are also now moving towards investor-state arbitrations in furtherance of which we have signed venue arrangements with ICSID and the PCA who has also signed a host country agreement with the Malaysian Government granting immunities and privileges. It is also most important to mention that the AIAC has been mentioned in the ASEAN Investment Comprehensive Agreement. I think with that Your Excellences I conclude my report. Thank you.

The Meeting was adjourned thereafter.

XIV. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS (CONTD.)

XIV. VERBATIM RECORD OF THE THIRD MEETING OF DELEGATIONS (CONTD.) OF AALCO MEMBER STATES HELD ON FRIDAY, 12 OCTOBER 2018 AT 09:10 AM.

AGENDA ITEM: REPORT ON THE WORK OF AALCO'S REGIONAL ARBITRATION CENTRES (CONTD.)

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, President of the Fifty-Seventh Session of AALCO in the Chair.

President: Good morning, distinguished delegates. Today is the last day of this session we have to accomplish discussions on some important agenda items on the work programme of AALCO. I would like to request all delegates to be mindful of the limited time at our disposal. Yesterday we had already started the reports of the Regional Arbitration Centres and we have already listened to the presentation of Prof. Sundra Rajoo, Director of the Asian International Arbitration Centre. So today I would like to start with the second speaker that is Dr. Dalia Hussain, Deputy Director of the Cairo Regional Centre for International Commercial Arbitration.

Dr. Dalia Hussain, Deputy-Director, Cairo Regional Centre for International Commercial Arbitration (CRCICA): I would to first thank the organizers of this Annual Session after which I would like to briefly inform you about the activities of the Centre for the third and fourth quarters of2017 and the first three quarters of 2018. I would shed some light on our future events and plans for the rest this year and the coming year. I'll start first by our caseload followed by our international cooperation then our events and activities. I will conclude by discussing our future plans.

For the caseload, in 2017 we had a total of 65 cases filed which takes the total number of cases filed before the Centre to one thousand two hundred and twenty six cases. For the first three quarter of 2018 that is from January 2018 till today we have exactly 49 new cases that takes the total number of cases to 1275 cases. The cases filed during this period that from 2017 until today involved mainly disputes arising out of constructions, contracts for works, lease, media and entertainment, agency contracts, charter parties, management agreements, hotel management, real estate development, and oil and gas contracts. These cases involved many foreign parties, mainly from Saudi Arabia, Spain, the United Arab Emirates, Singapore, Netherlands, Italy, France and the United Kingdom, Germany, Kuwait and USA. The detailed numbers are available in our Newsletter Online but even those numbers are a little conservative because they do not include Egyptian Companies owned or controlled by Non-Egyptian shareholders. For e.g.

this year we had cases filed by Egyptian SPVs of large US Companies operating in the Oil and Gas industries. 2018 also witnessed the filing of two mediation cases, is based on a Bilateral Investment Treaty (BIT) against a Middle East Country and a number of its state entities. This mediation case was based on the dispute settlement provision in the relevant BIT which included CRCICA as a forum for dispute settlement, arbitration and mediation. Before concluding on the cases just one word on the CRCICA diversity policy related to Arbitrators and their appointment.

In 2017 the Cairo Centre signed the Pledge for Equal Representation in Arbitration, accordingly CRCIA adopted a policy of regional, gender and age diversity when it acts as a appointing authority or when it acts instead of a defaulting party. In implementation of this policy the list communicated to the parties to a case for choice of the presiding or sole arbitrator generally includes the name of a competent female arbitrator under the age of forty and arbitrators coming from regions that are less appoint Africa for instance. In implementation of this policy in the last two years that is 2017 and 2018 CRCICA has appointed a number of Nigerians and Sudanese arbitrators, female arbitrators and seven arbitrators under the age of forty. For the Centre arbitration costs, in September 2017, the Global Arbitration Review in 2017 published a survey comparing the costs of arbitration and CRCICA was the only centre from Africa. According to the survey, CRCICA was judged as most affordable cases involving a sole arbitrator in which the amount in dispute is around one million US dollars and among the most affordable when we have three member tribunals. Also CRCICA came in the middle level for disputes that involved a sum of more than five million US dollars. In 2017, CRCICA also featured on the Global Arbitration Review White List for Middle East and Africa

Moving to the international cooperation, the Centre has signed an important agreement with the Permanent Court of Arbitration in the Hague. According to this agreement PCA hearing can take place at the Cairo Centre and Cairo Centre hearing can take place at the PCA premises. The Centre has also adopted a new strategy of cooperation with Asia and Africa. For Asia for instance, the CRCICA signed the Belt and Road Arbitration Initiative with the Beijing International Arbitration Commission and the then Kuala Lumpur Regional Centre for Arbitration now the Asian International Arbitration Centre. Again in June, CRCICA devoted a considerable part of its annual activities during the years 2017 and 2018 to boost relations with Africa. Throughout 2017 and 2018 the CRCICA Director participated in many events in Africa, just to cite a few, the UNCITRAL celebration of its fifteen anniversary, the effective case management processes for arbitration institutions in Africa, and also the he attended the third ICA Consultative Workshop on Cooperation among African Arbitral Institutions Initiative, which lead to the creation of the African Arbitration Association and the Director of CRICA became a board of member of this association. This association of course aims to promote arbitration and enhance cooperation between arbitration institutions in Africa.

Also CRCICA continues to support the Sino-African Cooperation specially under the scheme of the China-African Cooperation Forum so in November 2017 the Director also participated in the international conference on the China Africa Joint Arbitration Centre (CAJAC) to help and support this initiative. Throughout the past year CRICA continued to promote itself arbitration centre to promote ad doc and institutional arbitration an mediation cases. Many meeting were held to reach out to law firms and financial institutions that are financing major projects in Egypt. To cite a few example, the Director also had meetings in the Mayor Brown Office in Paris where met representative of significant financial institutions. The Director held meetings with the UK Export Finance and the US OPIC. Also in October 2017 the Director presented CRCICA to the European Investment Bank at its premises in Luxembourg and the bank is also important because it financing a lot of projects in Egypt specially energy projects.

For the events in the last year, the events also aim at focussing on the regional developments in Egypt, Africa and also on the global level. For instance CRCICA hosted the UNCITRAL fifteen anniversary it also organized a conference in December 2017 on the Belt and Road Initiative in cooperation with the Beijing Arbitration Centre and then Kuala Lumpur Centre now the Asian International Arbitration Centre. Again in January 2018 a conference on the use of the French language in arbitration was held in order promote recently issued French Arbitration Rules of the Centre based on the recommendation of the African Development Bank and the Centre has now equipped itself with case managers and administrators who can manage in the French language in order to accommodate many African users. In June 2018 in Cooperation with the European Commission the Centre organized a conference the New Suggestion of the Multilateral Investment Court to discuss its pros and cons and its influence investment dispute settlement in the region.

For the future plans, for this year CRCICA will continue its mission of spreading its knowledge of arbitration. We have our biannual arbitration conference to be held this year in December and this year's programme also includes two prominent African Speakers and also a Chinese Speaker. We also continue to provide the courses of the Chartered Institute of Arbitrators where CRCIA is the only institution recognized as an accredited course provider. We have two coming courses for non-lawyers this month and another course on arbitration in December later this year. These courses allow those who succeed to become a member of the Chartered Institute of Arbitration. CRCICA also considers providing its courses for the distinguished lawyers programme in cooperation with the American Bar Association Rule of Law Initiative. We have provided courses all throughout last year and will continue to do so this year and the next. Next month we will continue publishing Volume 8 of the Centres Awards.

For next year, CRCICA is preparing for the celebration of its fortieth anniversary and is planning to amend its rules to include basically new provision on consolidation of cases. CRCICA is launching a forum for young arbitrator under forty to raise awareness of ADR among young lawyers and arbitration professionals. We are also aiming at holding two conferences one on franchise law and other on sports law. It is worth mentioning that the International Association of Football Lawyers will hold its annual conference for the first time in Africa at the Centre in cooperation with CRCICA. Finally, it may be said that CRCICA will continue emphasizing its role international dispute settlement we hope that all the AALCO established centre be promoted as international arbitration centre not only as domestic arbitration centres as views by many financial institutions and we hope that the AALCO and other sister institutions will help uphold the neutrality and integrity of all the arbitration centres to be used more in the BITs and in international contracts.

President: I thank Dr. Daliah Hussain for her explanation about the activities of the Cairo Regional Centre for International Commercial Arbitration. The next speaker is Honourable Wilfred Ikatari, Director of Regional Centre for International Commercial Arbitration, Lagos.

Honourable Mr. Wilfred Ikatari, Director, Regional Centre for International Commercial Arbitration, Lagos: Your Excellencies, President of this Annual Session, Mr. Vice President, Mr. Secretary-General, distinguished delegates I welcome you to this Fifty-Seventh annual session. I consider it a privilege to present in a very tight summary form the report effective from May 2017 to 2018 on the salient engagements of the Regional Centre for International Commercial Arbitration, Lagos. When the invitation was made in respect of this presentation of this report we were limited to fifteen pages it is imperative that you have to go through the key areas in order to accommodate time. In this respect I therefore crave your indulgence that what is being presented is a brief summary not the entire activities of the Centre dwelling only on key areas on aspects of for instance dockets of last year, and also to present it in a very summary form. The Regional Centre at Lagos is a tall pillar of the dispute resolutions system of the Asian African Legal Consultative Organisation. We are mandated under the headquarters agreement to operate as an institution of international character vested with diplomatic immunities and privileges for purposes of effecting the international mandate given to us. We are mandated to promote international commercial arbitration and other forms of alternate dispute resolution and encourage the adoption and use of the UNCITRAL Model Arbitration Rules. That is what we also trying in Nigeria to modify the old law.

The next item is a presentation of my profile. I was a sitting judge of the Federal Tribunal before I was appointed as the Director of the regional centre. I am man of many disciplines from a man of science to the practice of law.

The caseload for the period under review excludes the docket of the orders here so we concentrate on the order passed this year. Within the period eleven cases were filed out of which one is international with a Canadian party. The other are domestic but of high value. The pie chart in the report shows the various stages the cases are currently are at.

Of the events we consider it necessary to highlight is the African International Legal Awareness Conference which was a big conference that gather persons from all over the continent and well attended by many persons. That event brought a lot of topics that were critically examined in the light of investor-state obligation protections in the ECOWAS supplementary act on the community rules of investment and trade treaties in West Africa. Africa's Role in International Investment Reforms and the need for coherence in regional bilateral and the international levels was discussed. It was very enriching and quite enlightening to listen to the experts.

The next event was the Chartered Institute of International Arbitrators Annual Conference which is also major event in Nigeria because in the African Continent it has the highest number of chartered arbitrators. So when it comes to such events there is a lot of interplay and hence we consider it necessary to report. That conference discussed a lot issues including international and domestic arbitration along with investor-state arbitration. I was not able to attend as a matter of fact due to other engagements but my Deputy Chief Legal Officer and Assistant Chief Legal Officer attended the same.

The next was the Conference organized by the Bar Association of Nigeria. In Nigeria this conference is like a big festival receiving participation from top government functionaries, judges and lawyers. The Centre featured as the host for participants from across the region.

The Centre has been given observer status at the United Nations Commission on International Trade Law Working Group I, II and III. We attended the event last years, and the next one is coming up at the end of this month and I do hope to be there as well. In such places a major issue for discussion both in Vienna as well as in New York centred on the Reforms in the Investor-State Dispute Settlement Mechanism. We tried to examine and consider reforms to ISDS. To consider whether reform was desirable in light of any relevant concerns. The Regional Centre participated effectively making professional contributions whenever the floor was opened and we hope to continue our efforts in the future. We are there because, we are recognized as part of the Asian African Legal Consultative Organization dispute settlement institutions, so what we are doing is on behalf of our parent body.

Next was a conference we organized called the 50th United Nations Commission on International Trade Law and the 60th New York Convention Anniversaries Celebration

Conference, 2018. We organized that conference together with the International Dispute Resolution Institute and were assisted by the Federal Ministry of Justice. The conference was well attended and in fact the continents of Asia, Europe and the Americas were fully represented. We examined the role that the UNCITRAL has played in the modernisation and harmonization of International Trade Law. In attendance was the Secretary of UNCITRAL, Ms. Anna Joubin-Bret, who was part and parcel of the entire arrangement. Almost all the members of the judicial arms of the government were also present. In the conference a number of issues were examined almost all aspects of the modernisation process and the role UNCITRAL has played in that regard. More so the impact the New York Convention, 1958 has had in the horizon of arbitration internally were fully looked into. I do not want to take the time of the delegates to delve into all the issues, but I do know that the Director of the Centre made a very good inaugural speech and also examined some aspects on the applicability of the Model Law and rules of UNCITRAL.

Next is a high level dialogue on law, justice and security held in Abuja, Nigeria. Nigeria is country where a part of it is a war zone where a number of skirmishes take place and thus it is considered important to have such a dialogue to throw light on issues such as border and security, stability and dispute settlement. In that dialogue the centre was given an opportunity to throw light on the relevance and pivotal nature of amicable dispute settlement in order to bring in stability in the economic aspects that impact the social life of the people as a necessary condition to address some of those issues that galvanise issues related to Boko Haram. In northern Nigeria the level of illiteracy is very high and you can imagine that in such place because there is no integration process that gives space for educational programmes the youth are vulnerable and hence Boko Haram thrives in that part of the world. So this dialogue was very crucial and also was well attended and was major event that the Centre undertook to participate in.

The Director of the Centre visited the AALCO Headquarters to visit the Secretary-General of AALCO for a briefing. I used the opportunity to invite the Secretary-General to a conference in Nigeria, unfortunately he was not able to attend the same and had to leave a week before the conference.

The Secretary-General of AALCO also visited Nigeria that afforded him an opportunity to discuss with the government officials of the host nation government of the Regional Centre.

The major activity of the centre for this year was the renovation of the Secretariat. You know when I assumed office in 2014, we were operating in a very small four bedroom apartment. When I got there I discovered that there was big property located near the Centre lying there waste dilapidated for almost twenty years. A place overgrown by trees so I decided to take the bull by the horns. We have about five major properties in a

cluster so inspite of the problems I had to do it because the rent where we were before was very high. I took it as a challenge, and was appreciated by many persons. So we were able to tackle block A, in which we were able to get three hearing rooms, a ninety five seater conference hall, a director's office, and the car park for about 60 cars. In collaboration with host government we were able to come up with a new architectural design for the whole place in order to t modernize the facility. As I am talking now the matter is receiving the attention of the Presidency and I have assured the Organization that before the end of next year we will have a new modern facility complete with air conditioning and ICT facilities. I am happy that with prayers and assistance of the parent body we will arrive at our goals. I thank you all for listening.

President: I thank Director Ikatari for the explanation of the activities of the centre. Next, I invite Mr. Lawrence Muiruri Ngugi, Registar and Chief Executive of the Nairobi Centre for International Arbitration to report his activities.

Mr. Lawrence Muiruri Ngugi, Registrar/CEO of the Nairobi Centre for International Arbitration: Excellencies, the President of the Fifty-Seventh annual session of AALCO, Secretary-General Prof. Dr. Kennedy Gastorn, distinguished delegates. Permit me Mr. President, to congratulate you and His Excellency the Hon. Attorney General of Mauritius on the occasion of your election as President and vice-President respectively of the Fifty-Seventh Session of AALCO. It is with profound gratitude that we express our appreciation to the government of Japan for the warm and hospitable reception that we have received here in Tokyo. I also join my fellow delegates in acknowledging the tremendous preparatory work of The AALCO Secretariat, under the stewardship of the Secretary-General Prof. Dr. Kennedy Gastorn in making excellent arrangements for this Session. I will briefly touch on the activities of the Nairobi being the last in terms of establishment amongst the AALCO Regional Arbitration Centres.

For the Nairobi Centre for International Arbitration the choice of Tokyo as the venue for the Fifty-Seventh Session coming in succession to the Fifty-Sixth Session held in Nairobi has a special attachment. It is in this great city of Tokyo during the Thirty-Third Session in January 1994 that the AALCO adopted the proposed establishment of a Regional Centre for International Arbitration in Nairobi under the auspices of AALCO.

It may be recalled that during the Forty-Fifth Annual Session of AALCO held at New Delhi (Headquarters) on 3 April 2006, the then Secretary-General of AALCO and the Attorney General of the Republic of Kenya signed the Memorandum of Understanding (MoU) for the establishment of the Regional Centre for Arbitration in Nairobi, Republic of Kenya.

In pursuance to the MoU, an Agreement Establishing the Nairobi Regional Arbitration Centre for Arbitration was signed between the then Secretary-General of AALCO and the Attorney General of the Republic of Kenya during the Forty-Sixth Annual Session of AALCO held at Cape Town, Republic of South Africa from 2-6 July 2007.

During the Fifty-Fourth Annual Session in Beijing (China, 2015) the Head of Delegation of the Republic of Kenya noted that the Government of Kenya had shown its commitment to establishing a regional centre by enactment of the Nairobi Centre for International Arbitration Act No. 26 of 2013 to establish the Nairobi Centre for International Arbitration.

Mr President for the preceding year 2018-2018 in keeping with the mandate of AALCO Regional Arbitration Centres to promote the practice of international commercial arbitration and other forms of dispute resolution, the Centre held the First National Alternative Dispute Resolution Conference, in Nairobi between 4th to 6th June 2018. The Conference coincided with launch of the Nairobi China-Africa Joint Arbitration Centre (CAJAC). This attracted participation from practitioners in Kenya, South Africa and China. More than 300 participants took part in the two-day conference.

In the outreach to the private sector the Centre hosted a Chief Executive Officers Roundtable on 4 June 2018 attended by major corporates and business leaders in Kenya. The event was graced by the Honourable Chief Justice and President of the Supreme Court of Kenya and witnessed senior representation from the Office of the Attorney General of the Republic of Kenya among other distinguished participants from leading companies in Kenya. It was an opportunity for participants to hear perspectives from Kenya, South Africa and China.

The Centre has continued to participate actively in forums organized by partner institutions and other arbitral institutes including the just concluded AALCO Regional Arbitration Centres Conference held in Kuala Lumpur, Malaysia hosted by the Asia International Arbitration Centre in July 2018.

The Centre also extended her global network through participation in the Twenty Fourth International Council for Commercial Arbitrators (ICCA) Congress held in Sydney, Australia between 15th and 18th April 2018. The 2018 Congress addressed the theme ‘Evolution and Adaptation: The Future of International Arbitration’. The ICCA Congress as you all know is widely regarded as the largest and most important conference in the international arbitration universe and combines rigorous and stimulating programming featuring leading figures from around the world with the opportunity to engage informally with a vast number of arbitrators, arbitration practitioners, government officials and judges.

In our immediate region of Africa, the Centre participated in the 4th SOAS Arbitration in Africa Conference co-hosted with the Kigali International Arbitration Centre (KIAC) held in Kigali, Rwanda between 2nd and 4th May 2018. The 4th SOAS Arbitration in Africa Conference addressed the theme 'The Role of Arbitration Practitioners in the Development of Arbitration in Africa'

The Centre places great emphasis in building partnerships. An arbitration friendly Judiciary is a *sine qua non* of an effective arbitration regime. In accordance to the objective of AALCO for the Centres to assist in the enforcement of Arbitral awards, the Centre has forged partnerships with the Judiciary respecting its neutrality and independence to harness a legal ecosystem where arbitration and judicial adjudication serve the respective roles.

In the preceding period the Centre in collaboration with the Judiciary undertook a baseline study on alternative dispute resolution in Kenya with a report on assessment, situational analysis and recommended action points on Kenya's alternative dispute resolution mechanisms.

In further pursuit of this collaboration with the Judiciary, the Centre organized a national alternative dispute resolution stakeholder forum on 12 and 13 April 2018 dubbed 'Cultivating a Robust Coordinated Alternative Dispute Resolution Framework for Kenya towards Sustained Economic Growth and Access to Justice'.

Mr. President, the strengthening of partnership with the Judiciary has seen the Centre facilitate the conduct of Court Annexed Mediation held between 4 and 8 December 2017 at the NCIA Alternative Dispute Resolution Centre.

On regional collaboration in accordance with the objective of AALCO for coordinating and assisting in the activities of existing Centre's, particularly those within the two regions of Asia and Africa , the Centre has entered into cooperation arrangement with other Centres in China and Africa.

As noted above the Centre hosted the launch of the China Africa Joint Arbitration Centre – Nairobi on 4th June 2018 as an initiative of the Centre and the Beijing International Arbitration Centre to promote arbitration cooperation between the two centres. This initiative is built on the Forum for China Africa Cooperation proposal for a dispute resolution mechanism between China and Africa.

Mr. President on educational activities, on 6 June 2018, the Centre hosted the First Moot Competition in Nairobi for investment arbitration. The competition attracted participants

from law schools in 9 Universities in Kenya. This provided an opportunity for the students to showcase their talent and learn from each other. Following success of the first moot, it was declared as an annual event to provide a platform for upcoming practitioners to interact with international commercial and investment arbitration practice.

The Centre also organized training titled 'Introduction to Commercial and Investment Arbitration' to members of the Kenya Chinese Chamber of Commerce. The training is one among many other developed by the Centre to capacity build and develop stakeholders capacity and awareness in alternative dispute resolution mechanisms.

The year 2017-18 has continued to record a growth in reference of disputes for administration by the Centre. I am pleased to report that the disputes totalled in value at USD 1.5 – 2.0 million a significant rise from the previous first year of the Arbitration Rules for the Centre. The expeditious determination of arbitrations filed at the Centre has been a noteworthy achievement that we will continue to build upon.

There is now a variety of cases administered by the Centre by nature of dispute and applicable law. More panellists from different nationalities have continued to be enlisted on the mediator and arbitrator panels of the Centre over the period of the last Session. The Centre extends a call for expression of interest to practitioners in international commercial and investment arbitration within the Asia and Africa region to join the NCIA Arbitrators and Mediators panels as we forge partnerships to offer a path for pacific settlement of disputes.

Turning to my last part the planned activities lined up by the Centre for the remainder of 2018 include quarterly seminars on select topics in international commercial and investment arbitration. We also seek to organize the Investment Arbitration Conferences co-hosted in Nairobi as a precursor to the CIArb International Conference in November 2018 and the Africa International Institute of Law investment arbitration organized with the collaboration with AALCO later in the same month.

The Centre has developed rules to assist parties in designating the Centre as an appointing authority in ad hoc arbitration under the UNCITRAL rules. We look forward to the launch of these rules during the term of the Fifty-Seventh Session, which, in our view, will further foster and promote the objectives of AALCO.

Mr. President it will be remiss of me was I not to commend the support and enthusiasm shown by the Secretary-General Prof. Dr. Kennedy Gastorn and the President of the Fifty-Sixth Session, the Honourable Attorney General of the Republic of Kenya towards the work of these arbitration Centres during the Fifty-Sixth Session.

We have the confidence that under your leadership, Mr. President, the Fifty-Seventh Session will further entrench the place of these important pillars in the settlement of disputes in the Asia-Africa region. Thank you.

President: I thank the distinguished Registrar and Chief Executive of the Nairobi Centre for International Arbitration for his report and kind words. Are there any delegations wishing to make comments or questions? If none, I'd like to thank again the four Directors for their explanations of their activities. With that, I would like conclude this agenda and would like to move to our next agenda, that is, International Trade and Investment Law. I would like ask the new panellists to come up on stage. Thank you very much.

XV. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)

XV. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.) HELD ON FRIDAY, 12 OCTOBER 2018 AT 09.50 AM

AGENDA ITEM: INTERNATIONAL TRADE AND INVESTMENT LAW

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, President of the Fifty-Seventh Session of AALCO in the Chair.

President: Now I would like to start the discussion on International Trade and Investment Law. It is my great pleasure to introduce to you three guest speakers. Two of them are distinguished International Law Commission Members, namely, Ambassador Mr. Hongthao Ngyuen from Viet Nam, and Ambassador Dr. Hussein Hassouna, from Egypt. Dr. Hassouna will make a presentation on "Regional Trade Agreements and Effect on WTO", and Ambassador Ngyuen will speak on "Intellectual Property and the Agreement on Trade-Related Aspects of IPR (TRIPS)". The last guest speaker is Datuk Prof. Dr. Sundra Rajoo, who is the Director of Asian International Arbitration Centre (AIAC). The theme of his presentation is "Role of AALCO Arbitration Centres in Promoting Trade and Investment within the Region". Each speaker has 15 minutes for the presentation. Before commencing with the presentations, I would like to invite Deputy Secretary-General of AALCO, Ms. Wang Liyu, to present her introductory statement, on the Agenda Item, "International Trade and Investment Law".

Ms. Wang Liyu, Deputy Secretary-General of AALCO: Mr. President, Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and Gentlemen; it is a great honor for me to present a brief introduction to the topic international trade and investment law, on behalf of the AALCO Secretariat, as a newly appointed Deputy Secretary General to AALCO. AALCO has dealt with the topic "WTO as a Framework Agreement and Code of Conduct for the World Trade", including the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS), from the time when the Uruguay Round negotiations were completed in 1994, and with the establishment of the World Trade Organization (WTO) in 1995. That was when the item was introduced at the Thirty-Fourth Session of AALCO held at Doha, Qatar in 1995. Thereafter, this item continued to remain on the agenda of the Organization and was deliberated upon during the subsequent sessions.

Coming to the International Investment Regime, AALCO has long associated itself with the issue of a congenial investment environment, and actively worked towards the direction of having an appropriate investor-State relation.

While it goes without saying that a number of relevant developments have taken place in the areas of international trade and investment law, however, due to mainly constraints of time, the present session will focus on three broad issues: a) Regional Trade Agreements and Effect on WTO, b) Intellectual Property and Trade Related Aspects of Intellectual Property Rights, and c) AALCO's Regional Arbitration Centres.

Immediately, following the completion of this Annual Session, as part of ongoing efforts on part of the AALCO Secretariat to strengthen the capacity of Asian and African countries to design and implement investment policies and law reforms, in order to improve their business climate, a seminar on "Reviewing Reforms to the International Investment Regime and the Investor-State Dispute Settlement Mechanism: An Asian-African Perspective", will be jointly organized by AALCO and African Institute of International Law, and will be held at Arusha, Tanzania, from 19-21 of next month. It will be our aim to raise the profile of Asian and African States as investment destinations, and to facilitate regional cooperation in that regard.

In the end, I would like to state that the Secretariat sincerely hopes that the present Session and the future meetings of the Member States will formulate concrete and uniform approaches of our Member States on the issues under deliberation. Thank you, very much.

President: I thank the Deputy Secretary-General of AALCO, Ms. Wang, for her opening statement. Now I invite Dr. Hussein Hassouna, to speak on the topic "Regional Trade Agreements and Effect on WTO". You have the floor, Sir.

Ambassador Dr. Hussein Hassouna, ILC Chair: Mr. President, Deputy Secretary-General, Excellencies, Ladies and Gentleman, it is my pleasure to speak once again at AALCO's Annual Session. I would first like to thank the Secretary-General of AALCO for having organized this session to deliberate issues on "International Trade and Investment Laws." In this session, I am invited to speak on the topic of the impact of regional trade agreements on the World Trade Organization. Let me begin by saying that the rise of regional trade agreements is a subject of great importance to AALCO members, many of which are also members of the WTO.

In fact, the shift toward regional trading raises a number of questions related to the changing landscape of international trade, and how this change will impact trading on the multilateral stage. That is why I welcome discussing these questions at the AALCO Annual Meeting this year, in the hope of offering a new perspective and raising awareness to these developments. I will also try to incorporate my own perspective as a Member of the United Nations International Law Commission, since the Commission is currently studying and working on topics that are relevant to our discussion today.

The international community has seen a proliferation in regional trade agreements over the past few decades, which coincides with the diminishing success of multilateral trade negotiations and, in particular, the stalled negotiations surrounding the Doha Development Agenda. In my view, the increased prevalence of regional trade agreements may be attributed to developments in the legal framework of international trade, and to political, economic and sociological developments throughout the world.

Consensus at the multilateral stage is difficult to reach, especially in light of the increased number of WTO Members and the domestic interests that bind each Member State. The unsatisfactory progress of the Doha Round negotiations reflects the difficulty of reaching consensus on the multilateral plane.

We are all aware that there is intensifying competition among developing countries to liberalize their trade policies and recruit foreign investment. These States increasingly find it in their economic interest to lower tariffs unilaterally or bilaterally rather than waiting for the stalled multilateral negotiations to establish common rules on the global level. The political realities result in the shift away from the cooperation-model upon which the WTO was founded, towards preferential trade agreements.

In light of these obstacles, States are increasingly turning to negotiating trade agreements on the regional level. Regional trade agreements may appear as bilateral trade pacts, large customs unions, or cross-continental trade agreements, and may serve as a comprehensive trade agreement, or regulate specific aspects like tariff reduction. Though the structure and content of regional trade agreements may vary, all such agreements share one thing in common: the objective of reducing trade barriers between Member States.

Mega-regional trade agreements, which serve to integrate existing trade blocks and open-up trade in a region, are growing in number and stand to considerably modify the world trade landscape with systemic challenges for the multilateral trading system. The three largest mega-regional trade agreements include the recently concluded Trans-Pacific Partnership (TPP), the envisaged Transatlantic Trade and Investment Partnership (TTIP) and Regional Comprehensive Economic Partnership (RCEP) in Asia, which together represent over three-quarters of global GDP and two-thirds of world trade. Although the impact these mega-regional trade agreements will have on third-countries is fairly uncertain given that the exact provisions have not yet been established, it is apparent that those countries that are not included in the agreement will be impacted by the increased competition and preference erosion in mega-regional trading system markets. According to some experts, Mega-regional trade agreements may be seen as enshrining the role of Europe and the United States as setting standards in international trade and posing a threat to the multilateral trade system.

The question may be raised whether regional trade agreements constitute building blocks or stumbling blocks to the multilateral trading system. Why do states prefer to conclude regional trade agreements rather than multilateral agreements on these issues? The answer
lies in that regional trade agreements share a certain flexibility which is no longer enjoyed under the WTO's single undertaking approach. States are able to reach agreements more quickly with a fewer number of seats at the negotiating table and negotiate commitments beyond what is possible at the multilateral level. Many regional trade agreements have deeper and more extensive commitments, and have moved beyond commitments only in market access to goods. These more complex regional agreements address a variety of issues, from technical norms, procurement, investment protection and intellectual property rights, to social and environmental protection.

However, there are also disadvantages in regional trade negotiations that are otherwise mitigated at the multilateral negotiating stage. First, implicit in regional trading is the reality that some States will be excluded from the negotiating table. Often, the smaller and most vulnerable States are excluded, which impedes on their economic development. For example, among the three largest mega-regional trade agreements, there are no African State members. An important response by non-parties to mega-regional trade agreements was to negotiate their own regional trade agreements, such as the Continental Free Trade Area (CFTA) in Africa, or bilateral agreements with Members of the TPP or European Union.

Second, many States are parties to multiple regional trade agreements. Multiple regional trade agreements may result in inconsistent or overlapping obligations and raise concerns of inefficient regulatory burdens on a given State. This is of particular concern within the context of dispute settlement processes. Separate dispute settlement mechanisms within each agreement could lead to possible conflict of procedures and rules, and erosion of the significance of the WTO dispute settlement system.

Finally, it is important to consider how the rise of regional trade agreements impacts trading on the multilateral stage. The WTO exists as a unified, multilateral forum for international trade, which plays an important role in economic development and alleviation of poverty and embodies principles of non-discrimination, transparency, reciprocity and inclusiveness. Regional trade agreements, which by their nature are preferential toward certain States, may be seen as contravening the integrity of the WTO, and in particular, its cornerstone principles of non-discrimination and most-favored nation treatment.

Nevertheless, the WTO has recognized the legitimate role of regional trade agreements in facilitating trade amongst its parties and therefore treats regional trade agreements as a

special exception. The WTO allows Member States to enter into regional trade agreements according to specific rules, and under the condition that the regional trade agreement be "complementary to, not a substitute for, the multilateral trading system." To achieve that end, the WTO established a Transparency Mechanism for regional trade agreements, which has been provisionally applied since 2006. Member States undertake to report to and notify the WTO whenever a regional trade agreement is formed. This Mechanism has been under- utilized, and many regional trade agreements are concluded without being reported. Though the Transparency Mechanism has been provisionally applied by WTO Member States, Member State obligations to report regional trade agreements should be taken more seriously in my view.

At the WTO Parliamentary Conference in 2016, a number of representatives from developing countries noted that regional trade agreements, and mega regional agreements in particular, may sap the energy of multilateral negotiations and disproportionately affect small trading nations for whom the WTO is not replaced by networks of preferential trading agreements. To avoid these outcomes, they stressed that the international community needs to ensure that regional trade agreements remain complementary to, and not a substitute for, the multilateral trading system.

Mr. President, in order to reconcile the different trading systems, a way forward would entail actions by both the multilateral and regional trading systems. With respect to the multilateral system, the reality remains that the rise of regional trade negotiations diminishes the role and relevance of the WTO as a multilateral trading system. Attention continues to be directed to regional negotiations, while WTO negotiations continue to falter. Yet the WTO remains an indispensable institution for transparency and non-discrimination, and for addressing future issues that impact all states on a global level. Very few of the big challenges facing the world today can be solved outside the global system. Global problems, like sustainable development and mitigating climate change, demand global solutions and the WTO is the proper institution to promote development in accordance with the UN Sustainable Development Goals. Furthermore, the WTO's essential role for trade negotiations cannot be replaced by regional trade agreements because it is unlikely that regional trade agreements will include enough major trading States to enable deals to be struck on global issues. Financial or telecoms regulations, for example, cannot be efficiently liberalized for just one trade partner, and so it is best to negotiate services trade-offs on the multilateral level within the WTO.

Let me recall here that the Group of 77, a coalition of developing States within the United Nations, reaffirmed the central role of the WTO in today's global economy in its 2017 Ministerial Declaration. It further reaffirmed that "the WTO provides the multilateral framework of rules governing international trade relations, an essential mechanism for preventing and resolving trade disputes, and a forum for addressing trade related issues

that affect all WTO members." This year, my country, Egypt, has the honor of chairing the Group of 77, and it will continue to articulate the positions and views of the member States, including with respect to advocating for a transparent, non-discriminatory, open and inclusive multilateral trading system as embodied in the WTO.

In my view, however, the multilateral trading system is in need of reform. Thus, the WTO should review is procedures, improve its effectiveness and preserve its independence. For example, the WTO should make clear that regional trade agreements must be compatible with the WTO rules relating to the formation of regional trade agreements. And the WTO Committee on Regional Trade Agreements (CRTA) should continue to study the systemic effects regional trade agreements have on the multilateral trading system, and should energize its efforts to do so. The capacity of the Committee to monitor and address non-compliant regional trade agreements should be strengthened, to facilitate the Committee's role in maintaining the balance between multilateralism and regionalism. The Committee decision-making process should be improved and its relationship between dispute resolution and political functions should be clarified. Decisions made by the Committee should be made on independent bases, and not affected by political considerations. Such efforts are useful and increasingly important to understand the shift toward regional trading and to harmonize the multilateral and regional trade systems.

There is also a need for global guidelines to harmonize preferential rules of origin, especially in light of the growing multiplicity of rules of origin caused by overlapping regional trade agreements. The complexities of complying with various rules of origin create significant burdens on the State and their companies involved in production. This is especially true for States that belong to multiple regional trade agreements, each of which contain specific rules of origin. The WTO is well-suited to study and harmonize preferential rules of origin with a common set of rules of origin that are simple, easy to apply and non- restrictive across different regional trade agreements.

There should be continued and increased complementarity between the WTO, regional trading systems and the United Nations Conference on Trade and Development (UNCTAD) in order to promote a universal, transparent and equitable trading system and to ensure that developing countries continue to integrate into the multilateral trading system and have a meaningful voice at the trade negotiation table.

On the other hand, with respect to regional trading systems, efforts to increase South-South trade cooperation should be supported. The African Continental Free Trade Area (CFTA) stands as an opportunity for all 54 African Union States to mitigate trade losses generated by the formation of major trade blocs as well as enhance trade policy coherence within the continent.

At a time when African countries are engaged in reciprocal, albeit asymmetrical, trade deals with third countries, such as the Economic Partnership Agreements (EPAs) with the European Union, the CFTA should ensure that any African country does not disadvantage its continental counterparts over external partners in terms of market access.

In an age where regional trade is flourishing, there are still ways and means to harmonize the regional and multilateral trading systems, while mitigating damage to the latter. First, both the established and emerging regional and mega-regional trade agreements should ensure that they complement the WTO's multilateral trading system, rather than threatening it.

The tension between regional and multilateral agreements may be attributed to the very structure of international law. Aside from the UN Charter, there is no general hierarchy between bilateral and multilateral treaties. As a matter of customary international law, States are free to enter into any type of agreement they choose, and the International Law Commission concluded in its study of the Most-favored nation clause that equal treatment or most-favored nation status are not considered to be principles of general public international law.

Though there are no WTO rules regulating the potential conflict of WTO obligations and the obligations stemming from a regional trade agreement, general rules of treaty interpretation may provide guidance. In its study of the Most-favored nation clause, the International Law Commission concluded that the Vienna Convention on the Law of Treaties, completed by the Commission in 1972, is the point of departure for interpreting trade agreements. The cornerstone principles of treaty interpretation, found in Articles 31 and 32 of the Vienna Convention and reflected in customary international law, require agreements to be interpreted in good faith and in light of their object and purpose. Therefore, as States negotiate regional trade agreements, they must still interpret their obligations to the WTO in good faith and in accordance with international law.

Additionally, a regional trade agreement cannot attempt to narrow States' obligations to the WTO. In its current work on Subsequent agreements and subsequent practice in relation to treaty interpretation, the International Law Commission clearly explained that a "subsequent agreement" is an agreement among all the parties to a treaty. By that definition, a regional trade agreement that does not reflect agreement of all WTO Members would not constitute a supplemental means for interpreting WTO obligations, such as those underlying the WTO dispute settlement mechanism. By following principles of treaty interpretation, States can mitigate conflicts between their obligations to the WTO and to regional trade agreements.

To harmonize regional trade agreements with the multilateral trading system, regional trading systems should work to make their agreements open to accession by third parties. Part of this effort includes containing terms that are accessible to all States, including developing and disadvantaged States. As representatives from developing countries stated at the 2016 Parliamentary Conference on the WTO, it is important to focus on the urgent needs of developing countries and to identify mechanisms to ensure that developing countries are not refused access to global markets simply because they are unable to meet certain conditions of a regional trade agreement. Efforts should be made to harmonize regional trade agreements to avoid inconsistent and overlapping obligations for States.

Furthermore, express confidence-building measures in mega-regional trade agreement negotiations could include efforts to minimize the negative impact they may have on the multilateral trading system and low-income States. Lastly, regional trade agreements should continue to use the WTO dispute settlement mechanism, or, at a minimum, establish similar mechanisms that are harmonized with the WTO. The number of disputes brought before the WTO Dispute Settlement Mechanism is continuing to increase, and cases that could have been dealt with in a regional trade agreement dispute settlement mechanism are still appearing before the WTO. This is largely due to the legitimacy of the WTO Dispute Settlement Mechanism and its ability to involve States affected by the dispute but that are not parties to the regional trade agreement. In this regard, regional trade agreements should provide resources and support to the WTO dispute settlement mechanism so it can continue to operate as an efficient and effective dispute resolution system. The WTO, in turn, should recognize regional trade agreements as a source of law and a means to interpreting WTO obligations.

To conclude, Mr. President, although regional trade agreements are on the rise, the importance of the WTO as a forum for multilateral negotiations and dispute settlements continues. Whether regionalism is seen as complementing or threatening multilateralism may continue to be debated, but ultimately, the task before the international community today involves how to maximize the benefits of each system and to harmonize them together. In addition, I strongly believe that at a time where international law is facing tremendous challenges in today's world, it is of paramount importance for AALCO Members to be actively involved in coordinating their positions in the field of international law, including International trade and investment law. It is only through such coordination that Asian and African States will succeed in defending their vital interests and legitimate concerns. I thank AALCO once more for giving me the opportunity to speak today on this topic of great contemporary importance.

President: I thank Dr. Hussein Hassouna on the insightful reflections on the relationship between the regional trade agreements and the WTO. Now I invite Ambassador

Hongthao Nguyen to present his statement on the topic "Intellectual Property and the Agreement on Trade-Related Aspects of IPR (TRIPS)". You have the floor, Sir.

Ambassador Hongthao Nguyen, ILC Member: Mr. President, Distinguished Delegates, Ladies and Gentlemen, first of all I would like to express my sincere gratitude to the AALCO Secretariat and the Japanese Government for giving me this opportunity to present before the AALCO Fifty-Seventh Annual Session. I would also like to join the previous speakers in congratulating the President for his election to the said post to guide the Fifty-Seventh Annual Session. I would now like to briefly inform you of the current developments in the Trade Related Aspects of the Intellectual Property Rights (IPRs), and its amendment on three points: (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) electronic commerce.

In order to reduce the disparity in the capacity of the WTO Members in trade and commerce, it is important to strike a balance of interests, a flexible approach is applied. The WTO Ministerial Meeting held on November 14, 2001, adopted the "Declaration on the TRIPS Agreement and Public Health" (Doha Declaration) that gave least-developed countries an additional 10 years to implement TRIPS patent and "undisclosed information" provisions as they related to pharmaceuticals. In 2003, a new decision was approved to waive the obligations of least-developed countries concerning exclusive marketing rights for pharmaceutical products until 1 January 2016. And now new extension of transitional period, by decision of the Council, allows LDC Members of WTO maximum flexibility in approach to patenting pharmaceutical products until at least 2033.

Another development that must be noted is the decision of the WTO General Council to extend the time of acceptance of the Protocol Amending the TRIPS Agreement. The Protocol was adopted following the Doha Declaration on 6 December 2005, to amend the "compulsory license" provision in Article 31(f) of the TRIPS Agreement in favor of LDC. Poor people in LDC which are at risk of HIV and other infectious diseases have no capacity to access high price pharmaceutical products under the patent. To fix this conflict of interest, a government may grant a third party a compulsory license without approval of the patent holder to manufacture and export pharmaceutical products to the relevant country to address its public health problems under certain conditions. The Protocol amending TRIPS Agreement also allows Member countries and parties other than patent holders in the cases of extent necessary and demand of the importing country to produce pharmaceutical products related to infectious diseases and export these products to relevant developing countries. Countries with limited or no pharmaceutical production capacity can import cheapest pharmaceutical products from other countries to address public health issues related to HIV and other infectious diseases.

The Protocol amending the TRIPS agreement entered into force, however, there are still one-third Members who are not yet prepared to accept the Protocol before the deadline of the acceptance procedure on 31 December 2017. To facilitate other countries to have access to the Protocol, the WTO Council extended the period for acceptance of the Protocol by Members for the sixth time until 31 December 2019.

Article 27 of the TRIPS Agreement provides the possibility to exclude certain biological materials or intellectual innovations from patenting under certain conditions.

Developing countries want to amend the TRIPs Agreement and Convention on Biodiversity to enhance mutual support between them. The Nagoya Protocol of the CBD entered into force on 12 October 2014 includes traditional knowledge associated with genetic resources and the benefits arising from its utilization. The Protocol seeks to ensure that genetic resources are not used without the prior consent of the countries that provide them and that the indigenous communities that possess the traditional knowledge associated with the use of these resources have rights of benefit sharing with the rest of the world. The task of Member States is how to fully apply the Access and Benefit-sharing Clearing-House (ABS-CH) established under the Protocol. It's appropriated as a platform for exchanging information on access and benefit-sharing, by enhancing legal certainty and transparency on procedures for access, and for monitoring the utilization of genetic resources along the value chain, including through the internationally recognized certificate of compliance.

Another reason for amendment of the TRIPS Agreement is that it does not address several new developments, such as the Internet, digital copyright issues, advanced creating uniform global standards of laws and practice.

E-commerce is the future of global trade. E-commerce causes new challenging issues in connection with IPRs for copyrights, trademarks, custom, import duties, taxes and technology regulations. E-commerce also affects existing trade agreements and political security. In 1998, the Work Programme on e-commerce was set up to give an assignment to the TRIPS Council to examine and report on the IP issues arising in connection with electronic commerce. However, until now, no formal exchange of views on e-commerce regulation has been established in the framework of the TRIPS Council, in the Cancun Ministerial Conference in 2003 or in the Nairobi Ministerial Conference in 2015. Some countries do not want governments to intervene with the trade secrets of companies. They want to prohibit any domestic rule requiring the disclosure of trade secrets, particularly source codes and algorithms.

At the November 2016 session of the TRIPS Council, Canada proposed to undertake an exchange of views on themes related to IP and e-commerce which may be of interest to all Members of WTO. Discussion should focus on the impact of IP rules to the growth of e-commerce, privacy protection, data flow, new technologies, access to technology, consumer protection, cybersecurity, the legal recognition of electronic documents, electronic signatures and advanced electronic signatures, the protection and enforcement of copyright and related rights; protection and enforcement of trademarks and so on. It is envisaged that the TRIPS Council will periodically review the relationship between IP and e-commerce.

Mr. President, today, we are witnessing the ongoing 4th industrial revolution. This revolution is based on new technologies, artificial intelligence and cross-border trade development. It creates many trade-related issues, including trade-related intellectual property rights. It's necessary to build and develop a certain legal framework to assure the fair and equitable access to resources, using IP protection for promoting trade and not hampering it. The legal framework on trade-related intellectual property rights must be amended to ensure the mutual benefits for all countries in the world. AALCO must encourage Asian-African States to raise their voices to enforce their rights and implement the amended TRIPS Plus Agreement in a positive direction to benefit national and international economies, and mitigate challenges of public interest.

President: I thank Mr. Hongthao Nguyen for the informative yet concise presentation. Now I invite Dato' Prof. Sundra Rajoo to present his statement on "Role of AALCO Arbitration Centres in Promoting Trade and Investment within the Region". You have the floor, Sir.

Professor Sundra Rajoo, Director, AIAC: Thank you, Mr. President, Excellencies, Distinguished Delegates, ladies and gentlemen. It is a matter of great honor for me to present my views on the role of AALCO Arbitration Centres in promoting international trade and investment within the AALCO region.

There are 5 red circles, standing for the five arbitration centres established under the auspices of AALCO. There is the Lagos Arbitration Centre in the far West Africa, Cairo in the north of Africa, our youngest addition Nairobi, in Eastern Africa, and then Tehran in Central Asia and we have Kuala Lumpur in the Asia Pacific. So we are pretty much well covered at the moment. I could have put red dots on the map to highlight the cities, but the circles make more sense as they signify that we stand united by not one but five circles of friendship and collaboration. We all share the same ideals, the ideals of AALCO, of promoting investment and trade in the AALCO region, which now comprises of more than 50 countries.

The founding goal of these Arbitration Centres was to make these Centres neutral and independent institutions to serve the regions where they are located. The basic idea is to promote trade and investment and to develop the economy of the regions. This process was initiated long time ago, in 1972 March, when the Special Rapporteur to the 5th session of the United Nations Commission on International Trade Law proposed the idea of establishment of AALCO Arbitration Centres. He cited two reasons for such establishment, which in my opinion are still relevant today: firstly he noted that a key reason for the establishment of such Centres was to promote commercial arbitration and the growth of international trade within the AALCO regions; and secondly because, and I quote: "[the] Centres will be an important step towards the achievement of equilibrium between the industrialized and developing countries with regards to arbitration. I think Mr. Nestor was aware that the Centres existing at the time were all in the west, including in London, the US and Paris. I think in 1972 these were the three main Centres. But there was none in the Asian region. Although there was the China International Economic and Trade Arbitration Commission (CIETAC) in 1956, but that was more of a domestic arrangement. I think the coming of age of the AALCO Arbitration Centres together with the other Centres in Asia took place after the 1980s. Therefore, as suggested by Mr. Nestor our main goal ought to be to promote investment by providing Alternate Dispute Resolution Mechanism, and to be able to administer arbitration.

One of the important developments in the past few decades in the massive increase in inward foreign direct investment, especially into Asia, and the figures are phenomenal, as we talking of figures like an increase in FDI of over 12000%, between 1978 to 2017. We are talking about export increase, over 25000%. We are talking of imports also increasing concurrently. Therefore, international trade today has become very important, especially the growth in trade between AALCO regions and the rest of the world. There's an exponential growth in trade. The fact that we are all sitting here to discuss such issues, suggests it's not going to end. Particularly the new initiatives that are coming up, such as the Belt and Road initiative, which is an ambitious project by the Chinese government; the concurrent investment by Japan, India, and even Malaysia, which I think is going both ways. Therefore, disputes are bound to arise, and this is where AALCO Arbitration Centres are meant to play a role, and act as neutral forum for both the recipient of the FDI, as well as the investors alike.

I would also like to speak a bit on the issue of foreign investment and prosperity. Even though it's a bit controversial, but I think it is axiomatic that investment is linked to the prosperity of a region. This seems to be almost inevitable. In fact the UNCTAD has dedicated an entire unit to the link between trade and poverty reduction. Therefore, the significance of international trade and investment to the lives of everyone in the AALCO States demonstrates the extreme importance of continually enhancing and improving the status of the region as a first rate destination for investment and commerce. One of the

difficulties encountered, however, has been that Africa as compared to Asia has not received the same amounts of foreign direct investment over the last decades. However, this is changing, and the growth in Africa has been equally impressive. For example, in 2016 Nigeria and Egypt were the most attractive FDI destinations in the world. Also, we mustn't forget that the returns that the foreign investor gets from investment in Africa are the highest in the world, which is 11.4%, taking from world figures. The returns from Asia stood at 9.1%, whereas the world average was only 7.1%. These high growth rates are expected to continue, and by 2030 it is expected that the poverty will reduce, and if the growth continues the growth of middle and upper classes will be greater, and the young people of working age will have employment. Therefore, the process of trade and investment has to be facilitated that when there are disputes they must be resolved in a manner that is satisfactory to all parties.

Of course, the New York Convention has played a great role in the facilitation of international commercial arbitration, including investment arbitration disputes. When my colleagues in the morning spoke about how the cases have increased, I think that is a testament to the position that I have taken here. I think the next point is that AALCO Centres are cornerstones today of promoting trade and investment. All AALCO Centres today have adopted the Model Law, and therefore, the countries are Model Law Countries. So they are all safe arbitral seats, where legislation is concerned. We are all building up Alternative Dispute Resolution capacity, both in terms of training arbitrators, building awareness, and also marketing the services that we do. I think competition good in some measures, but sometimes it can be overwhelming. Therefore, one of the things that the Centres are doing today is creating niche markets, creating them locally. Also, one of the things that you realize when you are dealing with the East is that there is more focus on dispute prevention, and less number of disputes is an indication of the success of the entire process.

Further, responding to the requirements of the market, AALCO Centres rules are not just in English, but also in the local languages. For example, am sure that the Tehran Centre has rules in Parsi. Similarly, the AIAC has rules in Arabic, Mandarin, Japanese, Korean etc., just to give reality to the flexibility that arbitration provides in choosing languages. We also cooperate with each other to build capacity, including looking into legislative reforms. For example, I'm pleased to inform you that this year the Malaysian government recently made efforts in cooperation with Attorney General Chambers managed to get amendments to the Arbitration Act 2018, to bring it in line with the 2006 UNCITRAL Model Law. Furthermore, AALCO Centres continue to cooperate with other Arbitration Centres in the region. For example, we have cooperation with Hong Kong, Singapore, Japanese, and even Korean institutions in this regard.

Providing capacity-building is one of the most important roles that AALCO's Arbitration Centres play. We have rules, and people need to know how those rules work. Hence we provide training courses. We, therefore, need to focus on ADR, and ADR means the process from negotiation, mediation, adjudication, arbitration, even dispute boards, and then to understand in the end how the court intervenes in these processes. It can only happen if we have regular events, conferences and outreach programs. One of the powerful tools in this regard is social media. We have Twitter, Instagram, Email, Facebook etc. In fact now the AIAC has an official Facebook page, for both the Centre and personalities, particularly so that we can market our services effectively.

It is important to reach out to the younger people, as they are the leaders of tomorrow. For example, by having moot court competitions we are training young lawyers, making them ADR savvy.

Another perspective is that it may always be better to have dispute avoidance, which is front end, and a very good idea, as arbitration, which is a rights based system, apportions blame (someone has to win and someone has to lose), which is not very good. AALCO Centres can settle disputes based on interest rather than rights. More importantly, they can educate parties on how to enter into contracts to avoid disputes. This will be really helpful especially for ambitious projects such as the Belt and Road Initiative as well as other infrastructure initiatives being taken up by various nations.

Concluding I may say that to promote trade and investment AALCO Arbitration Centres must not only cooperate with one another, but also with other Arbitral institutions and Centres in the region, and more importantly with the stakeholders. I think the AALCO Annual Arbitration Forum is a good step in this regard. I thank you for your time and attention.

President: Thank you, Dr. Rajoo for your very informative presentation and suggestion. Now I open the floor for comments by Member States and observers. Today is the last day and we have many topics to cover. Therefore, I request delegates to be precise and brief in their statements. At this point I have requests from Uganda, Thailand, China, Malaysia, Japan, Indonesia, Tanzania and also from Russian Federation. First, I would like to invite the delegation of Uganda. You have the floor, Sir.

The Delegate of the Republic of Uganda: Mr. President, the Ugandan delegation proposes to contribute to the discussions on international trade and investment law which is very important topic for Uganda considering her consistent policy on regional integration and trade liberalization since the 1990s.

The discussions under this topic will, as per the Explanatory Memorandum, relate to the following sub-topics:

1. Regional Trade Agreements and [their] effect on WTO;
2. Intellectual Property and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS);
3. AALCO's Regional Arbitration Centres.

Because of paucity of time we shall focus on Regional Trade Agreements and AALCO's Arbitration Centres.

Here the issue is whether regional trade agreements (RTAs) are stumbling blocks towards the full global trade liberalization, which is the *raison d'etre* of the World Trade Organization (WTO), or whether they in fact are building blocks towards the same objective. While some commentators hold the view that they are stumbling blocks, others maintain that they are in fact vital building blocks towards multilateral liberalization.

Uganda is a signatory of two RTAs, namely; the Treaty Establishing the East African Community, 1999 (the EAC Treaty) and all the protocols under it and the Treaty Establishing the Common Market for Eastern and Southern Africa, 1993 (the COMESA Treaty).

While both RTAs recognize the importance and primacy of the Marrakesh Agreement Establishing the World Trade Organization, 1995 (the WTO Agreement) as the primary framework for the advancement trade liberalization at the global level, they represent the Member countries' desire to take advantage of unique political, historical and cultural factors that make "localized" integration both desirable and undesirable. In this regard, it may be noted, for example, that the EAC Treaty was founded on economic bonds that were established when the three original members of the grouping fell under the rule of a single colonial master (the United Kingdom) and on the foundation laid by the post-independence economic union of the 3 countries that existed between 1967 and 1977, long before the WTO even came into being.

Uganda's view, therefore, is that RTAs are building blocks for multilateral liberalization, and not stumbling blocks. We therefore subscribe to the view that since integration improves economic relations between Members through removing trading and other barriers as envisaged under the WTO Agreement, and that since all these integrated regions are part of the world territory, the advancement of economic relations within regions can be understood as the advancement of global economic relations.

Moreover, RTAs make it easier to trade within regions and hence help increase the economic efficiency and the competitiveness among Member countries upon which the multilateral framework could build.

We also believe that given the different levels of economic development in different parts of the world, the shift by most countries, particularly on the African continent, from national to world economy at once would be too big a jump.

Further, we believe that the regional blocs could in fact facilitate future WTO negotiations by enabling the members speak with a single voice instead of every single country having to express its position.

Therefore, while we welcome further discussions on the effect of RTAs on multilateral trade as proposed by the Secretariat, we remain firm in our belief that RTAs (such as the EAC Treaty) are necessary baby steps towards total global trade liberalization and there is so far no convincing evidence that they hinder liberalization in a significant manner.

We fully associate ourselves with the efforts championed under the framework of AALCO to establish, develop and utilize regional arbitration centres in African and Asia oriented towards the needs of the two regions. In addition, we appreciate the importance of reputable arbitration centres in Africa and Asia in promoting trade and investment between the two regions. I thank you, Mr. President.

President: Thank you, distinguished delegate of Uganda. Next I invite delegate of Thailand to make her remarks.

The Delegate of the Kingdom of Thailand: Thank you, Mr. President. The delegation of Thailand would like to extend its gratitude to all the distinguished speakers for their valuable contribution. The importance of international trade and investment is acknowledged as the cornerstone of our inter-dependent global economy. Multilateral trading system depends on commitments to reducing tariff and non-tariff barriers to trade. This liberalization of individual economies has the increased the capacity to deliver on economic growth and development, as well as job creation. Thailand is engaged to its commitment in the multilateral trading and investment. To this end Thailand is party to 36 bilateral investment treaties (BITs), 3 free trade and economic partnership agreements, and 9 regional partnership agreements with investment chapters. Thailand is also a participating country of the Regional Comprehensive Economic Partnership.

Thailand recognizes that the multiplicity of international investment agreements present challenges in relation to Investor-State Dispute Settlement or ISDS. The overlap of treaties, where a State is party to a BIT and trade agreement with an investment chapter, leaves an investor with the choice of electing the more favorable treaty under which to initiate arbitral proceedings. This is also commonly referred to as treaty shopping. This overlap of treaties may also be interpreted in different ways; where the same obligation

within a comprehensive trade agreement with investment provisions may be given a broader interpretation as when the same obligation is interpreted within the context of the more specific BIT.

With more than 2,500 international investment agreements (IIAs) in force today, 95% of them concluded before 2010, most having been negotiated during the 1990s, and all the known investment arbitration claims arising from the older generation of IIAs; this is a common cause for concern. The old-generation of IIAs contain obligations that are unclear, undefined, and with few safeguards. It leaves arbitral tribunals with a margin for interpretation. The result of which has been the reliance of investors on these broadly worded obligations in particular as the basis for investment arbitration claims evidenced by the number of claims filed claiming an alleged breach of the fair and equitable obligation. The early IIAs that primarily focused on the protection of foreign investments failed to adequately balance the rights of investors on the one hand and the State's right to regulate and protect human rights and the environment on the other hand.

The challenge is compounded by divergent results reached by arbitral decisions from the interpretation and application of IIAs. The adjudicative process of arbitration which is not bound by a system of precedent or *jurisprudence constante* have led to different decisions from arbitral tribunals considering the same set of circumstances and alleged breach of treaty
obligations. Moreover, the procedural lacuna in the vertical and horizontal consolidation of claims; contractual and treaty-based or treaty-based arising from the same set of circumstances increases the potential for further inconsistencies in arbitral decisions. Where, at the same time, significantly increasing the costs of defending multiple but connected claims before different forums.

Thailand, therefore, encourages AALCO States to address this issue of mutual concern that requires mutual cooperation. As one option, Thailand finds the conclusion of joint interpretive statements as effective in clarifying the intended jurisdictional and substantive scope of the concerned IIA. The Vienna Convention on the Law of Treaties 1969 under Article 31(3) (a) makes it incumbent in interpreting the treaty to take into account together with the context, "any subsequent agreement between the parties regarding the interpretation of the treaty." It follows that arbitral tribunals shall take into account the joint interpretive statement as subsequent agreement and apply this where such a dispute is brought pursuant to that treaty.

The result of clarifying the precise scope of the IIA at the same time releases the uncertainty over the right to regulate. In other words, where the standard for a breach is more clearly identifiable *a priori* by the State, it does not slow down the exercise of

authority. This strikes a more concordant balance in the regime of investment protection between the State's regulatory powers and the rights of foreign investors under an IIA.

Beyond restoring a proper balance, joint interpretive statements provide more certainty. As treaties with unclear standards are brought onto the same standard as treaties with more clearly drafted obligations, this reduces the chances of treaty shopping. It also mitigates the risk of regulatory measures interfering with investments where those standards of potentially adverse interference were previously unclear.

In moving from clarifying older generation IIAs, Thailand encourages States to modernize its IIAs in order to ensure its sustainability. Thailand in its 2015 Model BIT has in its preamble the right to regulate for public policy objectives, and clearly excludes regulations in good faith for the pursuit of a public purpose as an expropriation. The draft text also encourages compliance with corporate social responsibility and a definition of investment where covered investments are made for the long term "to establish lasting economic relations".

Thailand notes that this shift, as reflected through the joint interpretive statement and 2015 draft model BIT, moves the IIA regime from guaranteeing investment protection to an instrument for governance. IIAs support the Rule of Law not only for the investor, but for the State in regulating foreign investments. Thank you for your kind attention.

President: Thank you, distinguished delegate of Thailand. Now I invite the distinguished delegate of People's Republic of China, to be followed by Malaysia and then Japan. Now I invite the delegation of China.

The Delegate of the People's Republic of China: Thank you, Mr. President. I thank the distinguished speakers for their informative presentations. Today we have three comments.

Firstly, China firmly supports the multilateral trading system. The multilateral trading system, with the WTO at its core, is the cornerstone of international trade and underpins the sound and orderly development of global trade. The multilateral trading system is a historic choice that follows the trend of global economic development. The WTO advocates the principles of rules, openness, transparency, inclusiveness and non-discrimination, and it will remain the main channel to address global trade issues.

At present, the "anti-globalization" trend of thought and protectionism are intensifying globally. Some WTO Member blocked the selection of members of the WTO Appellate Body, and adopted unilateral and protectionist measures, severely threatening the authority and effectiveness of the multilateral trading system. It runs counter to the

fundamental principles of the WTO. China explicitly opposes unilateralism and protectionism.

China supports the integration of the regional economy. China believes that rule-based regional trade agreements are a useful complement to the multilateral trading system, and can promote its continuous improvement and development. Regional trade agreements help establishing a stable and transparent policy framework, which is conducive to improve international trade and investment rules, which can finally promote global economic prosperity.

China has signed 17 free trade agreements (FTA) with 25 countries and regions, including with ASEAN and Pakistan. In addition, China is conducting 12 free trade zone negotiations or escalation negotiations with 27 countries, including the Regional Comprehensive Economic Partnership Agreement (RCEP), and China - Japan - Korea FTA.

Sir, regarding Intellectual Property and TRIPS - after joining the WTO, China actively revised intellectual property laws and regulations, strengthened law enforcement, and fully fulfilled the obligations of the TRIPS Agreement. China has actively participated in the regular meetings of the TRIPS Council, exchanging views with other Members on topics such as TRIPS and the Convention on Biological Diversity, non-violation complaints, intellectual property rights and public interests.

On 23 January 2017, the revision of the TRIPS Agreement officially entered into effect. This is the first time that the WTO has successfully revised the existing agreement since its establishment. The amendments help to export generic drugs to Members who lack pharmaceutical production capacity to address the public health problems. China accepted the amendment as early as 2007 and urged other Members to approve the agreement on the TRIPS Council and other occasions, which has made a positive contribution to the final entry into force of the amendment.

China believes that intellectual property rights play a positive role in driving technological innovation and promoting social progress. China will further strengthen the protection of intellectual property rights and create a better business environment. In addition, China also emphasizes that the intellectual property system should be compatible with the development stage and development level of each country. A reasonable, scientific and differentiated intellectual property protection system can help promoting the innovation and development of all countries.

China agrees in principle with the recommendations of the Secretariat.

President: Thank you distinguished delegate of China. Now I invite the distinguished delegate of Malaysia. You have the floor, Sir.

The Delegate of Malaysia: Thank you, Mr. President. Mr. President, Malaysia thanks the Secretariat for the report on this topic. Our intervention is in response to the recommendations presented in relation to the three areas of focus in the report.

Malaysia has no objection to the recommendation in paragraph 25 (a) to organize a seminar subject to availability of resources. In this regard, it is viewed that the Secretariat should undertake a more analytical study of the RTAs and MRTAs concluded by the AALCO Member States. Specifically, more analysis is needed to better understand and showcase potential conflicts that RTAs introduce alongside the existing multi-pronged commitments under the WTO framework, even if the commitments under the RTAs themselves are not direct violations of a State's WTO obligations.

Since Malaysia is currently an active negotiator and participant in upcoming RTAs and MRTAs namely the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP), it is pertinent for Malaysia not only to ensure that these agreements reinforce the WTO principles and safeguards, but also that they will be fair to Malaysia and its regional partners in the long term so as not to cause diversion from our own internal and domestic traders.

Irrespective of the emergence of new RTAs and MRTAs, Malaysia takes cognizance that the risk of trade diversion remains significant in many developing countries who have already reduced tariffs to low levels if not already to zero on a vast majority of imported goods. Malaysia also observes that internal trade diversion as opposed to diversion to third States is also a key concern, more so among the many developing and emerging economies in AALCO. As such, other measures to preserve policy and regulatory space should be considered in so far as they do not undermine existing WTO obligations.

Mr. President, in relation to the recommendation in paragraph 25(b), Malaysia will constantly uphold and will not backtrack from its WTO level commitments when embarking in new RTA negotiations. For Malaysia, there is no doubt that the WTO will remain a benchmark in future rule-making for trade. The WTO remains increasingly important because it enhances transparency through the dissemination of information on trade policy changes that are expected to affect trading partners' access to new and existing markets.

As signatory to the CPTPP, Malaysia remains committed to the pact so as to reap the advantages and benefits of this agreement, especially to promote economic growth and to

provide opportunities for skilled employment and technology transfer. Nevertheless, the Malaysian Government understands that open trade must be balanced by necessary safeguards and the retention of its right to regulate, especially in the more sensitive sectors and industries.

Another RTA that Malaysia is actively involved in negotiating currently is the Regional Comprehensive Economic Partnership (RCEP) among the 10 ASEAN nations and their 6 FTA partners, namely Australia, China, Japan, Korea, India and New Zealand. Malaysia will continue to be guided by the RCEP's principle to underscore the centrality of ASEAN in the economic architecture of ASEAN. Malaysia expects the RCEP to be a testing ground for advancing collective responsibility among regional partners in an open, rules-based, and inclusive trade environment, amidst escalating trade frictions between certain powerful trading nations. In this context, Malaysia endeavors to achieve trade liberalization for RCEP in a manner that it is consistent with the WTO rules and complements multilateral trade.

An RTA like the RCEP could also provide positive results such as reducing the "noodle bowl" effect of overlapping existing bilateral and regional agreements among RCEP countries.

In accordance with the recommendation in paragraph 42(a), Malaysia has no objection to any workshop, seminar or inter-Sessional meeting on review of the TRIPS Agreement including any future amendments to it, as well as the optimal use of the "flexibilities" in the TRIPS Agreement for access to technology, subject to the availability of AALCO resources.

Malaysia also takes note of the Secretariat's proposal in paragraph 42(b) as regards progressive liberalization of trade grounded on the WTO rules. Indeed, Malaysia being a signatory to TRIPS provides adequate protection to both local and foreign investors. Malaysia's intellectual property laws are in conformity with international standards and are reviewed by the TRIPS Council periodically. Malaysia will nevertheless need to consult its domestic stakeholders to identify specific priority areas for Malaysia when it comes to TRIPS practice and implementation in line with progressive trade.

Further, in meeting the objectives of the present Government, Malaysia in looking to revitalize its automotive and manufacturing industries will strive to secure benefits in technology access and transfers under the TRIPS as well as in ongoing FTA negotiations.

With reference to recommendations in paragraph 47, Malaysia as host to the Asian International Arbitration Centre (AIAC) (previously known as the Kuala Lumpur Regional Centre of Arbitration (KLRCA)) will continue to work closely with the AIAC

as part of the Government's ongoing process of active engagement with the local and international Alternative Dispute Resolution (ADR) practitioners to improve and enhance rulemaking in commercial and international arbitration. In addition, Malaysia does not doubt that other AALCO host governments of RACs too strive to ensure that such RACs continue to provide timely, cost-effective and efficient services for the disputes administered by them.

Malaysia has no objection for the Secretariat to coordinate with the RACs to organize joint activities or projects for purposes of ensuring that the RACs continue to provide world class, cost-competitive dispute resolution services. Be that as it may, Malaysia would nevertheless seek clarification from the Secretariat on the types of joint activities and consultations proposed to be held between the RACs and the aims intended for such activities so as to avoid duplication of activities and efficient use of resources.

Malaysia observes that the Secretariat may build upon activities already undertaken by respective RACs as were appropriate; obtain views from those RACs on inter-RAC activities to create better value and to minimize the overlapping of topics and programs, as these respective RACs receive independent funding and income, for cost-effective purposes. Malaysia is of the view that the Secretariat may wish to look into tapping into the resources of the RACs themselves. Proposals can be presented and discussed in conjunction with the RACs' separate report to AALCO.

Mr. President, Malaysia takes pride as host to the freshly rebranded AIAC (formerly the KLRCA) and commends the AIAC's expansion initiatives as a multipurpose hub for an array of alternative dispute resolution (ADR) mechanisms. The AIAC has developed modern rules for cost and time efficient ADR proceedings based on the UNCITRAL Rules. These rules consisting of the Arbitration Rules, i-Arbitration Rules, Fast Track Arbitration Rules and Mediation Rules were launched in March 2018 and are complete with streamlined services, whilst maintaining their distinct features. This puts the Centre on par with international jurisdictions already offering modern and innovative facilities.

In this connection, Malaysia believes that AALCO will continue to play a vital role in the development of the RACs, including by promoting the use of ADR in Asia and Africa. Indeed, AALCO through its collaboration with our RACs will continue to play an important part in providing practical guidance in dispute resolution and management, especially to investors venturing into industry and business opportunities across Asia and Africa. Thank you, Mr. President.

President: Thank you, the distinguished delegate of Malaysia. Now I invite the distinguished delegate of Japan, to be followed by Indonesia and then Tanzania.

The Delegate of Japan: Thank you, Mr. President. I would like to join previous speakers in thanking the distinguished speakers for their valuable presentations. Today there is a growing concern over trade-distorting measures introduced by some emerging economies and introduction of protectionist policy measures. To carve the new way in this era of severe trial for free trade, we need to maintain and strengthen a free and open international economic system based on the Rule of Law. As free trade has been the engine of growth for our country in the post-war period, Japan has been strenuously advancing negotiations on Mega-FTAs, such as TPP (Trans-Pacific Partnership), Japan-EU EPA (Economic Partnership Agreement) and RCEP (Regional Comprehensive Economic Partnership).

Mr. President, comprehensive, high standard and balanced broad economic partnerships, such as bilateral or regional initiatives, can be useful in complementing the multilateral trading system. I believe, in particular, that the experiences of FTAs can provide WTO with excellent references with regard to rule making.

Since its establishment in 1995, the WTO has played its part in making new rules such as the Agreement on Trade Facilitation, or TFA. The global economy, however, has gone through much broader structural changes since 1995. Such structural changes include the rise of emerging economies and digitalization. The rules under the multilateral trading system centered on the WTO, on the other hand, have not sufficiently adapted to such change of the global economy. In light of this I believe new rules developed in FTAs can serve as a valuable reference for the future WTO legal framework, including the two areas I mentioned. We should pay more attention to the role of FTAs as a potential source of rule-making in the WTO.

Mr. President, the TRIPS Agreement has made a significant contribution to consolidation and harmonization of global Intellectual Property system (IP), as a fundamental rule of IP protection and Japan highly appreciates the significant roles of the Agreement. After entering into force of the TRIPS Agreement, built-in agenda of the Agreement and other new issues have been discussed in the TRIPS Council. It is one of the outcomes of the discussions that the Agreement has been reviewed in light of public health and the Protocol amending the TRIPS Agreement has been adopted in 2005, and entered into force last year. However, there is a discrepancy on a number of issues among the Members, and no concrete progress has been made so far. In such a situation Japan has made its efforts through negotiations of economic partnership agreements to strengthen IP protection and to harmonize global IP system. The results of these efforts are, in principle, applied indiscriminately to the nationals and enterprises of WTO Members under Most-Favored Nation clause of the TRIPS Agreement.

Since the necessity of acquiring right holders' IP rights at the global level is increasingly important, it is desirable that each country's IP system is harmonized. And in order to promote innovation and creation which contributes to the economic growth, it is necessary that all Members provide adequate and effective protection of IP rights. From this point of view the agreement and harmonization of system at global level such as the TRIPS Agreement is very important. Therefore, Japan would like to continue its active participation to discussions on IP systems under TRIPS agreement. Thank you, Mr. President.

President: Thank you, Sir. Now I invite the distinguished delegate of Indonesia.

The Delegate of the Republic of Indonesia: Thank you, Mr. President. Distinguished delegates, first of all I would like to thank the distinguished speakers for their great presentation.

On the topic of Regional Trade Agreements and their effect on WTO, Indonesia believes that AALCO has its own capability to be the platform for the purpose of supporting WTO in fostering global trade order. We will keep on supporting that Regional Trade Agreements should be consistent with and compliment to multilateral trade regime under WTO. On the similar resolution, we invite AALCO Member States to work together to find the solution for a number of issues that arise as the effect of implementing multilateral trade agreement.

In this regard, Indonesia has ratified WTO Trade Facilitation Agreement (TFA) through Law Number 17 Year 2017. TFA is a WTO multilateral agreement which was firstly agreed after concluding WTO in 1994. This agreement regulates trade facilitation aspects to WTO Member States. In relation to Indonesia's interest in agricultural subsidies, we already considered some prominent issues, such as overfishing, overcapacity and fight against Illegal, Unregulated and Unreported (IUU) Fishing, without taking aside the obligation to subsidize the agriculture industries.

Amid the event of Indonesia Africa Forum (IAF) on 10-11 April 2018 in Bali, Indonesia has decided to initiate the negotiation of Preferential Trade Agreement (PTA) with 3 (three) African countries, namely Mozambique, Tunisia and Morocco. The extension of trade access in countries as the destination of non-traditional export, particularly in the area of Africa, becomes the main focus of Indonesian trade policy. After the meeting between the President Joko Widodo with some Heads of States in Indian Ocean Rim Association (IORA) Summit in March 2017, as a way forward, Ministry of Trade of Republic of Indonesia collaborated with the Ministry of Foreign Affairs, used the IAF as a means to have a PTA plan to cooperate between Mozambique, Tunisia and Morocco.

With regards to e-commerce field, Indonesia takes the position that the moratorium on e-commerce should apply to electronic transmission, and not to any product transmitted electronically. The State will impose import duty for any digital product. Our Minister of Trade has already submitted an official letter to the Director-General of the WTO with regard to the said issue.

Mr. President, on the topic of Intellectual Property and TRIPS, Indonesia feels that TRIPS Council meetings should be held back to back with the IGCGP Archive meeting. In this regard a proposal has already been summarized by TRIPS Council in TRIPS Council Meeting Minutes on 13 June. 2017. Our proposal of extending moratorium on the basis of non-violation principles as a result of 11th Ministerial Conference at Buenos Aires has been well approved. This will benefit Indonesia in its domestic policy which is not fully an example of best practice and opens a possibility of being brought into court.

To avoid disputes the TRIPS Council Meeting on 1-2 March 2017 in Geneva, some countries expressed concerns on Indonesian Patent Law no. 13 2016, especially Article 20 paragraph 1, which was presumed inconsistent with WTO. The Republic of Indonesia welcomes the concerns of Member States by enforcing President Regulation that exclusively regulates the mechanism to implement Article 20 of Indonesian Patent Law.

Mr. President, Indonesia highly supports the work of AALCO's Regional Arbitration Centre to facilitate and assist the conduct of arbitral proceedings, including the enforcement of awards made in the proceedings held under the auspices of the Centre. We also support AALCO's Regional Arbitration Centres ought to be updated with the best practices of the arbitration institutions of the world.

One of sample development recently is in ICSID. ICSID has launched the current amendment process of the rules and regulations in October 2016 and invited its Member States to suggest topics that merited consideration. For that process, Indonesia put concern to the rules and regulations regarding among others review provisions on provisional measures, improve time and cost efficiency, provision on transparency in relation to third party funding and the provision of security for cost. On the proposal provision of security for cost, Tribunal must consider the relevant party's ability to comply with an adverse decision on costs and any other relevant circumstances. If a party fails to comply with such an order, the Tribunal may suspend the proceeding for up to 90 days, and thereafter, may discontinue the proceeding after consulting with the parties.

The existence of an arbitration institution is very crucial in the process of commercial dispute settlement in particularly investor State arbitration whereby the claim is privilege for investor. At this process, host State will always be a respondent and oblige to follow

the dispute settlement mechanism regulated in their bilateral investment agreement, unless it is agreed otherwise by both parties.

Mr. President, Indonesia experienced with several treaty based claim brought by investor before several arbitration institutions as part of international investment agreements and their implementation. It has brought us to the conclusion that there is a need to preserve policy space, strike a balance between investor protection and national sovereignty as well as a growing necessity to adopt sustainable development principle for investment. Therefore, in 2014 Indonesia decided to terminate all its bilateral investment treaties. After terminating all its bilateral investment treaties Indonesia is re-negotiating bilateral treaties with a number of countries such as United Arab Emirates and Singapore, on the basis of the new Model Treaty that covers elements which could be acceptable to not only investors but also host countries. Indonesia believes that AALCO Member have similar concerns and views on this issue, particularly the need to re-visit its investment treaty to provide room for host countries to set policies for the purpose of pursuing national development objectives, while at the same time preserving the rights of the investors. Thank you.

President: Thank you, the distinguished delegate of Indonesia for your statement. Now I invite the distinguished delegate of Tanzania.

The Delegate of the United Republic of Tanzania: Thank you, Mr. President. I thank you for giving me this opportunity to make contribution on this important topic of International trade and Investment Law. Allow me first of all to thank the speakers on this agenda for the insightful and informative presentations. Mr. President, Tanzania attaches great importance to this topic, especially in this contemporary era, where we are striving towards industrial economy to achieve Middle Class Economy by 2020.

Mr. President, Tanzania is party to the WTO and has enacted a number of legislations to implement the rules of Intellectual Property rights and Trade Related Aspects of Intellectual Property Rights.

In pursuance to implementation of International trade and Instruments laws in Tanzania, my country has recently enacted laws including the National Wealth and Resources (Permanent Sovereignty Act 2017), the National Wealth and Resources (Revenue and Re-negotiation of Unconscionable Terms) Act 2017, and other related trade and investment laws.

These laws aim to create a friendly and conducive environment to investors to harmonize dispute resolution mechanisms and to ensure mutual benefits to both parties. Mr. President, it is in this context that Tanzania is interested in cooperating with AALCO

Member States and other investors from around the world in the field of international trade and investment.

Mr. President, Tanzania commends the initiative of AALCO in organizing and conducting seminars on international trade and investment laws. In this respect we thank the AALCO Secretariat for organizing a seminar on trade and investment and dispute resolution, to be held in Arusha, Tanzania, from 19-21 November, 2018.

It is our belief and expectation that the seminar would contribute immensely in building capacity in Tanzania in this field. We call upon AALCO to invest more in capacity building in other Member States. I thank you, Mr. President.

President: Thank you for that statement. With that we come to an end of statements by Member States. Now I invite Observer State, Russian Federation to make its statement.

The Observer of the Russian Federation: Thank you, Mr. President. We are thankful to the speakers of today's session for their substantive presentations.

Within this agenda item I would like to touch upon briefly such an important issue as arbitration.
We welcome the activity of AALCO's Regional Arbitration Centres (RACs).

It's important to diversify access to arbitration justice in Asia and Africa, guarantee its affordability, as well as mitigate existing imbalances between the developed and developing countries in this regard.

Various aspects of arbitration, including investment one, are currently under consideration in different international bodies, including UNCITRAL. It's hard to argue that the existing system - both its material, as well as procedural elements – are under a lot of criticism. Among other problems, one could mention inconsistency of arbitral awards in similar cases, lack of transparency in appointing procedures, high costs and duration, third party funding, etc. These and other problems should be subject to in-depth research to ensure balanced, consensus-based, efficient and innovative solutions. We believe that AALCO and its RACs could make a valuable and practice-based contribution to these deliberations and distribution of best arbitral practices. However, one must avoid hasty and rash steps, which could undermine the existing system and damage its positive sides, including flexibility, confidentiality of process, regional oriented character, etc.

We also think that we should more actively promote non-judicial forms of dispute settlement, including consultations and mediation. UNCITRAL, for example, has devoted a lot of attention to the issue of commercial settlement agreements resulting from

mediation, and approved a model law and a draft convention on this topic this summer. Thank you, very much, Mr. President.

President: I thank the distinguished delegate of Russia for his statement. I invite the distinguished representative of the Lagos Arbitration Centre to make his intervention.

Honourable Mr. Wilfred Ikatari, Director, Regional Centre for International Commercial Arbitration, Lagos: Thank you, Mr. President. I would just like to comment in brief about the role of our arbitration centre as one of the oldest arbitration centres. The Regional Arbitration Centres, as correctly pointed out by Prof. Sundra Rajoo, sprang out of the Bandung Conference, which generated spirit of collective self-reliance and political and socio-economic growth and development of Member States, which emanated out of shared historical experiences, colonization, and realized on the values, economic sustenance, legal stability and commercial and trade co-ordination, balanced utilization of foreign direct investment, conservation of legal resources, against an increasing demand of equitable and fair distribution of work. In relation to the demographic dynamics the AALCO dispute resolution mechanism, carried out by the five current regional Centres, offer veritable pillars upon which the lubrication of trade, commerce and investment revolves. These Centres belongs to all Member States, for the benefit of all. This is why the harmonized and uniform model laws and rules are adopted by most Member States. These rules are crucial as they are reflective of a forum that can promote trade and investment.

I wish to make Member States realize that these Regional Centres as hosted in Malaysia, Lagos, Nigeria, Cairo and Tehran are for all Member States. We are all there to serve our common purpose, which is to realize the fact that we do not want to too much depend on the old existing institutions of the West, and to ensure that us Member states we have the resources, because of our population. Even we talk about bio-diversity – the Atlantic, the Pacific, as well as the Indian Ocean – we occupy a greater part of these end. For example, the population or the rise of countries such as Japan, China and India and others are making. So it is important that we operate these institutions to enhance our shared values for our own common good. Therefore, we request Member States to consider these institutions as part of their own, and make suitable use of them.

President: With this statement, I conclude this session, after thanking the distinguished speakers for their presentations. I propose a break here.

XVI. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.)

XVI. VERBATIM RECORD OF THE FOURTH GENERAL MEETING (CONTD.) HELD ON FRIDAY, 12 OCTOBER 2018 AT 12:20 PM

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

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, President of the Fifty-Seventh Session of AALCO in the Chair.

President: Distinguished Delegates!

I would like to resume the meeting. We are going to take up the last substantive topic on our agenda and I intent to take a short break after this meeting maybe 10 minutes or so before, we proceed to the final meeting of today before lunch. As I said, we are running behind the schedule very much so once again I would like to ask all the speakers to be efficient in your remarks. I now invite the Secretary-General for his introductory remarks on the 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". Secretary-General, please.

His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: Mr. President, Mr. Vice-President, Excellencies, Distinguished Guests, delegates, ladies and gentlemen. The topic of "Violations of International Law in Palestine and other Occupied Territories by Israel and other legal issues related to the question of Palestine", which is contained in the Secretariat Document AALCO/57/Tokyo/2018/SV/S4, was included in the agenda of the Organization in the year 1988 upon the recommendation of the Islamic Republic of Iran. Over the span of the past thirty years, AALCO has closely recorded and reflected on numerous legal issues surrounding the Middle East. The illegal military occupation of the Palestinian territory and the human rights abuses perpetrated on the people of Palestine has been ongoing for nearly half a century. Despite international consensus expressed through the binding resolutions of the Security Council and those of the General Assembly of the United Nations, the occupying power continues to defy international law and the will of the international community. More recently in 2017, the Secretariat of AALCO had prepared a Special Study titled "the legality of Israeli's wronged occupation of Palestinian Territories and its Colonial practices" in accordance with the mandate given to it, the Fifty-Fifth Annual Session in New Delhi 2016. This year has been particularly challenging for the State of Palestine on many

fronts. The brief prepared by the Secretariat exclusively focuses largely on the legal status of Jerusalem.

Mr. President, one of the concrete Secretariat proposals before this plenary under this topic is for the Secretariat to engage in a Special Study on the Continued Violations of International Law in the Palestinian Territories covering the legal status of Jerusalem among other critical issues with an aim for more clarity and aid Member States in their efforts to find long- lasting solutions to the dispute. Thank you Mr. President.

President: Thank you Secretary-General for your introduction. Now, I take note of the proposal by the Secretary-General to conduct a Special Study. Now I would like to open the floor for deliberations. I would first like to invite the State of Palestine to speak to be followed by Qatar, Libya, then Indonesia. But first, the State of Palestine please.

The Delegate of the State of Palestine: Thank you, Mr. President.

Mr. President, distinguished delegates on behalf of the State of Palestine allow me to thank the Member States and the Secretariat of AALCO for keeping the item of Israel's violation of International law in Palestine to be discussed in the Fifty-Seventh Annual Session of AALCO and for publishing a special document on this regard, this year.

Mr. President, I regret to inform you that, in the absence of any serious measures of accountability to bring to an end its more than half-century occupation, Israel, the occupying Power, continues with its deliberate and systematic breaches of international law, including humanitarian and human rights law, grossly violating the human rights of the Palestinian people, including their right to life and liberty, and methodically destroying the two-State solution for peace.

Mr. President, Israel, the occupying power, continue its aggression against our people in the occupied Palestinian territories, in the West Bank including east Jerusalem and the Gaza strip, where the civilian people protesting peacefully against the occupation and the blockade. An occupying power should feel immune from scrutiny in a situation where it is killing innocent civilians, children, women and men, violating the most basic principles of international law and human morality, and causing extensive human suffering and devastation, undoubtedly leads to ever-growing cynicism, particularly among the Palestinian people, who have been deprived from the protections of the Rule of Law and subjected to glaring double standard for decades. That an illegal occupation, which can only subsist through the breach of humanitarian and human rights law, should last for more than 51 years, with no concrete action to precipitate its end, undoubtedly risks destroying the credibility of the international system and of the whole edifice of

international law for which the world has gone through wars and colossal human and material sacrifices to build, assert and defend.

What we demand an end to this occupation and historical injustice-is no more than a call on the international community to respect and defend the universal principles and moral standards that it has itself developed and accepted as basic canons, all of which are in grave jeopardy at this critical moment.

Mr. President, while families mourn their dead, the medical structures in Gaza are barely functional under the weight of the shocking number of injuries, compounded by more than a decade of Israel's illegally-imposed blockade and restrictions on patients to leave Gaza to receive lifesaving medical treatment not available there. Hospitals are overwhelmed, relying on only four hours of electricity a day, and faced with fuel shortages, critically low levels of medical supplies, exhausted medics and nurses, and a lack of specialist surgeons and doctors to carry out emergency limb reconstructive surgical interventions needed by the wounded.

At the same time, the socio-economic situation in Gaza continues to deteriorate on a daily basis. On 25 September, the World Bank described Gaza's economy as being "in free fall" as a result of "a decade long blockade and a recent drying up of liquidity, with aid flows no longer enough to stimulate growth" leading to "an alarming situation with every second person living in poverty and the unemployment rate for its overwhelmingly young population at over 70 percent. The economic and social situation in Gaza has been declining for over a decade, but has deteriorated exponentially in recent months and has reached a critical point. Increased frustration is feeding into the increased tensions, which have already started spilling over into unrest, and setting back the human development of the region's large youth population. "

Mr. President, the continuation of this violation is illustrated most starkly in these days in the case of the Palestinian Bedouin community in Khan Al Ahrnar, east of Jerusalem, which today received yet another an ultimatum by the Israeli occupying forces to leave their lands and homes or else face the demolition of their village and forcible transfer of its inhabitants. As stated by Amnesty International, "This act is not only heartless and discriminatory; it is illegal. The forcible transfer of the Khan al-Ahmar community amounts to a war crime. Israel must end its policy of destroying Palestinians' homes and livelihoods to make way for settlements." This unlawful act would also totally destroy the territorial contiguity of the occupied West Bank and the physical possibility of the two-State solution, proving yet again that this act constitutes part and parcel of Israel's illegal colonization campaign of our land.

The international community must not remain silent in the face of these blatant crimes being committed by Israel's brutal occupation machine and must ensure accountability and justice for the Palestinian people. It is shocking that, despite Israel's occupation constituting one of the most well-documented situations in the world, with scores of eminent United Nations experts, lawyers and scholars alleging and proving that international crimes have been committed, no Israeli politician, military personnel or settler responsible for such crimes has ever been brought to justice.

While domestic Israeli investigations are wholly inadequate, with Israeli courts serving solely the interests of the occupier and rubber-stamping Israeli crimes, the ICC is a viable independent judicial body capable of ending impunity for crimes committed against the Palestinian people and we call upon all States to fully support its work. In light of Israel's ongoing premeditated killing and maiming of unarmed protesters in Gaza and its imminent destruction of the village of Khan AlAhmar, we again call on the international community to uphold its obligation to ensure the protection of the Palestinian civilian population.

Mr. President, last July, Israel adopted a racist law that crossed all the red lines and called it the "Nation-State Law of the Jewish People". This law denies the connection of the Palestinian people to their historic homeland and dismisses their right to self-determination and their history and heritage, as well as the United Nations resolutions relevant to the Palestine question and the agreements concluded with Israel. This law will inevitably lead to the creation of one racist State, an apartheid state, and nullifies the two-State solution.

This law discriminates against the Palestinian-Arab citizens in Israel, granting the right to self-determination exclusively to Jews in Israel and legislating discrimination against those Arab citizens, who constitute 20% of the population of Israel, in addition to other non-Jews who have immigrated to Israel. This law strips them of their rights as citizens. This law constitutes a gross breach and real danger, both politically and legally, and reminds us of the apartheid state that existed in South Africa. We therefore reject and condemn it in the strongest terms. We further call on the international community and this session to act to reject it and condemn it as a racist, illegal law and deem it null and void, just as the United Nations condemned apartheid South Africa in several resolutions in the past, bearing in mind also that thousands of Jews and Israeli citizens have rejected and protested this law and 56 Knesset Members out of 120 voted against it. Moreover, we shall continue to insist that the broader historical context be addressed.

The international community must finally make Israel acknowledge that injustice and oppression are the cause of the cycles of crisis and conflict, and that only an end to its occupation and illegal policies can ensure peace and security not only for Palestinians

and Israelis, but for the entire region. We thus appeal again to the international community, to act, with responsibility and conscience, to bring an end to Israel's illegal occupation and to all of its crimes against the defenceless Palestinian civilian population and their land so that this cruel and tragic chapter of conflict and occupation can end and a chapter of peace, security and freedom can finally be opened.

Mr. President, we are looking forward for having the Item of "Israel's violations of international law and its violations of the rights of our people" on the agenda of the next annual session. We hope that AALCO will utilize its potential, expertise and close relations with the UN bodies, agencies, legal committees and specialized commissions to find legal means to implement international law and agreements, to oblige Israel to stop its violations of international law and conventions, to consider the Israeli Nation-State Law as a discriminatory law, to materialize the resolutions of the General Assembly of the United Nations and the Security Council regarding the illegality of settlements, to provide the international protection to our people, to continue supporting and funding UNRWA, to oblige the US Administration to respect its international legal obligations and to reverse its decision regarding the relocation of its embassy into Jerusalem.

Finally, I hope that this session of AALCO will have important conclusions to the level of challenges, that will contribute to enhancing the legal guarantees of protecting human rights and basic freedoms, fighting crime at national and international levels, ending all forms of discriminations and all forms of occupation and aggression, and applying rules of international law and international humanitarian law, as well as international conventions and treaties on all countries and peoples without exception. I thank you.

President: I thank the distinguished delegate of Palestine for his Statement. I now invite the delegation of Qatar.

The Delegate of the State of Qatar[22]: Mr. President, Excellencies, H.E. the Secretary-General of AALCO, Respected Members of the Organization, Distinguished guests, In the name of Allah the Most Merciful, The position of the State of Qatar vis-à-vis Palestine issue and peace process has been firm and unwavering, that is support for the rights of Palestinian people and condemnation of illegal Israeli practices in respect of Palestinian people. Qatar believes that just cases cannot be resolved by limiting them to the balance of power between occupying forces and occupied people, but they must be resolved respecting the international legitimacy. Ensuring stability in Middle East is linked with the resolution of Palestinian issue in a just manner in line with the principles, resolutions and charters of the United Nations, which recognizes the right of the

[22] This statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

Palestinian people to self-determination and declares the usurpation of other people's land illegal.

The barbaric aggression by the Israeli forces has resulted in the deterioration of the situation in Palestinian territories particularly the inhuman situations in Gaza Strip and the suffocating siege suffered by the Palestinian people and continuation of settlements in West Bank and other blatant violations of International Humanitarian Law specially the 4th Geneva Convention. All such things must be condemned by all States.

Qatar reiterates the importance of resolution of Palestinian issue by peaceful means and diplomacy based on resolutions of international legitimacy, on top of the Principle of Two States solution and Arab Peace Initiative.

We are grateful to AALCO, for discussing this important item and unifying the viewpoints of Asian and African continents. We hope that the efforts of this Organization become fruitful by achieving its desired objectives. May Allah grant success. May the Peace, mercy and blessings of Allah be upon you.

President: Thank you for your Statement. I have 6 more requests. The next speaker is the delegation of Libya.

The Delegate of Libya[23]: Thank you Mr. President for this opportunity to speak on this important item. In this regard, I would like to say that the expression of our solidarity with Palestinian people for their suffering from the excesses by the occupying forces in the occupied land is the least we can do. As International Humanitarian Law is aimed at strengthen the protection of the victims of disputes and wars.

Today and since a long time we see that the occupying power has been committing serious violations of international humanitarian law in the occupied Palestinian land. It has been violating The Hague Convention of 1907 and the 4th Geneva Convention of 1949. It has been imposing mass sanctions against the Palestinian people and resorting to forced evacuation and destruction of homes as a form of mass punishment, in addition to the targeting of geographic and demographic status of Jerusalem with a view to its judaization.

On this occasion, my country calls upon other Member States and AALCO Secretariat to condemn the methodological violations in the occupied land of Palestine.

[23] This statement was delivered in Arabic. This is an unofficial translation done by the Secretariat.

I also suggest to include an item on Israeli violations in the agenda of the next annual session and to prepare a new legal study which includes the recent US action and resolutions with regard to the recognition of Jerusalem as the capital of Israel and illegitimacy of shifting the embassy to Jerusalem from the point of international law.

- We urge the States in this forum to reject the suspension of help to The United Nations Relief and Works Agency which was playing an important role in assisting the Palestinian refugees numbering 6 million people.
- To deplore the curbing of peaceful demonstrations in Gaza and killing of civilians, use of excessive force against unarmed civilians.
- To reiterate the need of ending the unjust siege in Gaza going on since more than 11 years.
- To support the efforts of Human Right Commission to put an end to the serious violations of international humanitarian law and human rights.

President: Thank you for your Statement. The next speaker is the delegation of Indonesia to be followed by Iran and then Viet Nam but first the delegation of Indonesia please.

The Delegate of the Republic of Indonesia: Salam Alaiekum**,** Mr. President, Distinguished delegates, first of all, allow me to convey Indonesia's unwavering support for the right and legitimate struggle of Palestinian people for their self-determination and the establishment of an independent, sovereign and viable Palestinian State under the two-state solution based on the United Nations resolutions. Our strong support and commitment is reflected among others with the establishment of the Indonesian honorary consulate in Ramallah, Palestine in 2016.

Indonesia's support for Palestine not only consists of political support, but also involves economic support as well as technical cooperation. In December 2017, Indonesia and Palestine have signed an MoU in the field of trade that allow a number of products made in Palestine into Indonesia, free of tax. Recently, in order to assist the social economic development of the Palestinian people, Indonesia has already announced US $2 million commitment for Palestinians in capacity building programs, under the Conference on Cooperation among East Asian Countries for Palestinian Development (CEAPAD). The capacity-building programme will cater to Palestinians' needs in agriculture, entrepreneurship, women's empowerment, education and communications and information technology. To date, Indonesia has organized 169 capacity-building programs for Palestine, involving almost 2,000 Palestinians. For the purpose of inviting support and enhancing the public awareness on the issue of Palestine, Indonesia will hold an event named "Solidarity Week for Palestine", 15 - 21 October 2018 in Bandung, the historical city for AALCO member states.

Mr. President, my delegation appreciates AALCO Secretariat to raise the issue of Legal Status of Jerusalem as focused deliberation at this Annual Session. Indonesia is strongly against any unilateral move to recognize Jerusalem as the capital city of Israel. It is not only unleashes overwhelming global criticism but also violates several UN resolutions and could likely trigger political and religious turmoil in the Middle East as well as in the rest of the world. At this point, Indonesia supports the initiative of AALCO Secretariat to commence a "Special Study" on the legal status of Jerusalem to further expound on the topic in pursuance of bringing more clarity and aid Member States in their efforts to find long-lasting solution to the dispute over the city.

Mr. President, Indonesia also urges all member state to support and contribute to this effort, in line with the spirit of the Asian African Conference, where many countries were freed from colonial powers and foreign occupation. I thank you. Salam Aleikum.

President: Thank you for your Statement. I would like to invite the delegation of Iran.

The Delegate of the Islamic Republic of Iran: "In the name of God, the Compassionate, the Merciful". Mr. President, at the outset, I would like to thank the Secretariat for preparing the comprehensive report on the item "Violations of International Law in Palestine and other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine" contained in document AALCO/57/TOKYO/2018/SD/S4, especially in light of the recent developments on the issue. However, an addendum might have been useful due to the recent measure taken by the State of Palestine concerning application instituting proceedings against the United States over the relocation of the latter's Embassy to Al-Quds Al-Sharif.

Mr. President, the desperate attempt by the President of the United States to change the legal status of Al-Quds Al-Sharif by relocating the US Embassy, which is itself established in an occupied territory in violation of international law, is not only illegal but runs counter to numerous UN Security Council and General Assembly resolutions. While the Islamic Republic of Iran has clearly and consistently emphasized the Statehood of Palestine and the illegitimacy of any claims of sovereignty or statehood by the Occupying Power in the occupied territories, the legal status of Al-Quds Al-Sharif has remained unchanged for decades and this has been confirmed by UN Security Council, General Assembly, and the International Court of Justice.

Mr. President, since 1967, the UN Security Council has repeatedly and consistently asked the Israeli regime, and *a fortiori,* other States to refrain from taking any measures which could alter the legal Status of the Al-Quds Al-Sharif. The Security Council Resolution 252 of 21 May 1968, for instance, asked the Israeli regime to cancel all

activities in Al-Quds Al-Sharif while condemning the occupation of any land through armed aggression.

The Security Council further reaffirmed, via resolution 476 of 30 June 1980, in stronger terms, that there was an "overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967" and that all measures which had altered the status of Al-Quds Al-Sharif were "null and void" and had to be rescinded. And more pertinently yet, the Security Council Resolution 478 of 20 August 1980 condemned the enactment of Israeli law proclaiming a change in status of Al-Quds Al-Sharif and also called on all states "that have established diplomatic missions" there to withdraw them from the city.

Last but not least, on 18 December 2017, draft resolution S/20 17 II 060 of the Security Council which failed to be adopted due to the veto of the United States in clear defiance of its obligations and responsibilities, reiterated that "any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council".

Mr. President, there is no doubt about the applicability of the Fourth Geneva Convention on the occupied territories. The UN General Assembly has time and again affirmed the illegality of measures taken by the Israeli regime aiming at altering the legal status of Al-Quds Al-Sharif and has even called them "flagrant violation of the principles of international law". In the most recent attempt, the UN General Assembly condemned US decision to shift its embassy to Al-Quds Al-Sharif on 21 December 2017 by declaring that "any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council".

Numerous calls by the UN General Assembly to UN Member States to refrain from recognizing any changes in the legal status of the Al-Quds Al-Sharif is just the tip of the iceberg and is indicative of a more abominable disregard for principles of international law by certain States. While States are under an obligation not to recognize situations created as the result of violations of peremptory rules of international law, the defiance of the Israeli regime in the face of the well-established principles of international law is not repudiated in due terms by certain State. While some purport to aid the existence of such an illegal situation, others unwillingly help by demonstrating silence.

Mr. President, we take note of the application instituting proceedings, by the State of Palestine, in the International Court of Justice against the United States of America, on 28 September 2018, over the relocation of the embassy of the United States of America

in Israel to the Holy City, relying on 1961 Vienna Convention on Diplomatic Relations and the Optional Protocol thereof. As, on 23 December 2016, the UN Security Council adopted resolution SlRES/2334 (2016) whereby the Security Council, for the first time, recalled the advisory opinion rendered on 9 July 2004 by the International Court of Justice on "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", we hope that another statement by the ICJ on the status of the Occupied Territories could take the issue one step further in condemnation of the long-held defiance of the Israeli regime and certain States in this regard.

In this context, we also welcome the proposal forwarded by the Secretariat of AALCO to conduct a "Special Study" on the legal status of Al-Quds Al-Sharif to further expound on the topic. I thank you Mr. President.

President: Thank you for your Statement. I now invite the delegation of Viet Nam to be followed by China and then Malaysia.

The Delegate of the Socialist Republic of Viet Nam: Honourable President, Distinguished Delegates, Ladies and Gentleman, our Delegation would like to express its concerns over the escalating violence in the Gaza Strip in recent days, which causes death and casualties to innocent Palestinians. Once again, Viet Nam calls on parties to denounce and refrain from the use of force, cease violent escalation, settle conflicts through peaceful means, to make efforts to seek a comprehensive, fair and sustainable solution, which protects life of the civilians and legitimate interests of relevant parties as well as peace and stability in the region.

Mr. President, Viet Nam is of the view that all solutions relating to Jerusalem must comply with international law, in particular the resolutions of the United Nations, and with consent of relevant parties. On this occasion, Viet Nam reiterates and reaffirms its recognition of the State of Palestine and along this line, has supported the Palestinian Embassy in Ha Noi since 1988. Viet Nam maintains a consistent policy to support the legitimate struggle of the Palestinian people as well as the two-State solution. In this regard, Viet Nam supports all international and regional efforts for the establishment of a State of Palestine with full independence, sovereignty and peacefully co-existing with the State of Israel with the boundary established before June 1967 and East Jerusalem as its capital. Accordingly, Viet Nam supports all international and regional efforts by relevant parties to seek peaceful resolution of the conflict, in order to bring sustainable and lasting peace for the Middle East, for benefits and development of countries in the region, contributing to the peace in the region and the world at large. I thank you, Mr. President.

President: Thank you for your Statement. The next speaker is the delegation of China.

The Delegate of People's Republic of China: Thank you Mr. President. China has paid close attention to the developments of the situation since the end of last year, and always firmly supports and promotes the Middle East peace process and Palestinian people's just cause to restore their legitimate national rights. China supports the establishment of an independent Palestinian State that enjoys full sovereignty, with East Jerusalem as its capital and based on the 1967 borders. We support all efforts to ease tensions and realize the two-state solution at an early date.

Mr. President, settlements issue has become the most serious real threat to the viability of the two-State solution. The UN Security Council has demanding that Israel stop all settlements activities in the occupied Palestinian territory. China's position is clear and consistent. Israel's construction of settlements in the occupied Palestinian territory violated international law. This was confirmed in the 2004 International Court of Justice's Advisory Opinion on "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" and a series of UN General Assembly and UN Security Council resolutions. China calls on Israel to comply with relevant UN resolutions and rules of international human rights law and international humanitarian law, immediately stop the expansion of settlements and extend the necessary goodwill for resuming peace talks.

Mr. President, it's been 71 years since the UN General Assembly adopted the resolution of the Plan of Partition for Palestine. This year marks the 70th Anniversary of the founding of the State of Israel, while Palestine has not yet been established as an independent State, and the peace between Palestine and Israel has not yet been achieved. During Palestinian President Mahmoud Abbas', State visit to China last July, Chinese President Xi Jinping made a four-point proposal for the settlement of the Palestinian issue. That proposal calls for firmly advancing a political settlement based on the two-state solution; upholding a common, comprehensive, cooperative and sustainable security concept; further coordinating efforts of the international community strengthening the concerted efforts for peace; and adopting a multi-pronged approach to promote peace through development.

In July this year, at the opening ceremony of the Eighth Ministerial Conference of the China-Arab States Cooperation Forum, President Xi reiterated China's position on the Palestinian issue and announced new measures of assistance to Palestine. China stands ready to work with others to promote a comprehensive, just and lasting solution to the Palestinian issue at an early date.

Thank you very much, Mr. President.

President: Thank you for your Statement. I now invite the delegation of Malaysia.

The Delegate of Malaysia: Mr. President, Malaysia wishes to express its appreciation and gratitude to the AALCO Secretariat and acknowledges the work done by the AALCO Secretariat in preparing a brief report on the topic.

Mr. President, Malaysia notes the proposal by the AALCO Secretariat to conduct a Special Study on the legal status of Jerusalem in light of the decision made by the President of the United States to shift the US Embassy from Tel Aviv to Jerusalem. In this regard, Malaysia reiterates the statement made by our Honorable Prime Minister during the recent General Debate of the 73rd session of the UN General Assembly on 28 September 2018, who firmly condemned the decision made by the US, which deliberately provoked Palestine by recognizing Jerusalem as the capital of Israel.

Mr. President, on the proposed Special Study on the legal status of Jerusalem, Malaysia observes that this issue has been discussed at length in various publications. Malaysia also observes that the proposed Special Study on the legal status of Jerusalem may be a useful reference to the Member States, particularly to Palestine in view of the recent application by Palestine to institute proceedings against the United States before the International Court of Justice with respect to a dispute concerning alleged violations of the Vienna Convention on Diplomatic Relations of 18 April 1961. Noting the facts above, Malaysia views that it is essential for the AALCO Secretariat to ensure that the proposed Special Study on the legal status of Jerusalem will not be a duplication of existing publications, which may result in a waste of resources. Hence, although Malaysia looks forward to the outcome of the proposed Special Study on the legal status of the Jerusalem, we would like to recommend for the AALCO Secretariat to provide a clear outline on the scope of the Special Study so as to facilitate Malaysia and other Member States in providing positive input wherever necessary. Thank you, Mr. President.

President: Thank you for your Statement. I recognize that the Palestinian delegation wishes to speak again. I wish to invite the delegation of Palestine.

The Delegate of the State of Palestine: H.E. Mr. President, H.E. the Secretary-General, Distinguished guests, brothers and sisters, and all the member countries. First of all, on behalf of Palestinian people and its delegation, we extend our sincere thanks to all of you firstly for inviting us as a member of this Organization, which we are proud of and cherish its role, and we are also thankful for putting this important item of discussion on the agenda of this Fifty-Seventh session of AALCO. This item has great and special importance, which is on the Israeli violations in Palestine, persistent violation of international law. On behalf of my colleagues and on behalf of Palestine, I would like to thank all the delegations who put forward these comprehensive and important visions in

support of the Palestinian cause. We extend our thanks to you for supporting Palestine on all international forums as we are thankful to you for these important legal, political and moral interventions that contribute to the realization of the aspirations of the Palestinian people towards freedom and independence and the establishment of an independent Palestinian state with Jerusalem as its capital.

We offer our thanks to Japan for hosting this conference, the Fifty-Seventh session and for its continuous support to Palestinian people at all levels and on all forums and its support for development in Palestine, especially the Peace Corridor project, which contributes to the revival of the Palestinian economy and all other support. We thank all countries that support the steadfastness of Palestinian citizens and support the Palestinian cause on all international forums.

We on the behalf of this delegation and on the behalf of Palestine would like to emphasize the decision, proposal and recommendation of the Secretariat and the Secretary-General and all the delegations, which were recommended to work on the legal study about Palestine on the legal status of Jerusalem. This study should include the study of violations of international law, international conventions and agreements by Israel, along with the study of violation of International law by American administration with its decision to move its embassy to Jerusalem. This decision is contrary to international law and violates the most basic rules of international law and international conventions and charters, including the Vienna Convention and all agreements and all resolutions issued by the United Nations, both the General Assembly and the Security Council of 1967, which affirms that East Jerusalem is part of occupied Palestinian territories, and this is the capital of the State of Palestine. The occupation would not be allowed to take control of Jerusalem. No State in the world can act contrary to international law and treat Jerusalem as the capital of Israel. We have taken the necessary steps to bring the case before the International Court and International Court of Justice for United States' violation of international law by moving its embassy to Jerusalem. There is a great pressure on the Palestinian people to accept the so-called Deal of the Century and the Trump deal, and so on. These names are presented as an alternative to international legitimacy, but we affirm that we rely on international legitimacy and uphold the resolutions of international legitimacy and the UNO. Through you and your relations with all institutions of the United Nations, agencies and committees, we invite you to stand by the Palestinian people to implement international law in Palestine and ensure the guarantee of human rights in Palestine.

There are ongoing violations. There are ongoing crimes against the children of our Palestinian people. We do not want to repeat, since you all know about the crimes, which are committed against our Palestinian people. Settlement itself is a war crime and a crime of aggression in accordance with the definition of the Rome Convention and which falls

under the jurisdiction of the International Criminal Court. Occupation itself is a crime that is, continuing war crime. The so-called Jewish nation-state law is a racial law. Through this session, we call upon you to adopt a clear position on the national law adopted by the Israeli Knesset as a law of racial discrimination that establishes apartheid and codifies the system of racial discrimination.

We call upon you to stand by our people to face the project of liquidating the Palestinian issue and to face all the actions and crimes committed against Palestinian people. We are only committed to the implementation of international law and international conventions. We are a people that uphold international conventions and international agreements, but at the same time, we do not remain solely committed to agreements based on these international conventions and charters. We have rights under these conventions and all the conventions Palestine joined and became a part of it. We have rights and obligations. We carry out our obligations clearly and provide reports confirming the commitment of the State of Palestine to all agreements, charters and treaties to which we adhere. At the same time, we demand that we obtain our rights under these agreements, which includes rights of Palestinian People to self-determination and its right to establish its independent Palestinian state with Jerusalem as its capital.

We thank you again and God bless you and we wish this session success and it should be at the level of the challenge that engulfs the entire region and Palestine in particular. Thank you.

President: I thank the distinguished delegate of Palestine for his statement. If there is no other request from Member States or the Observer States, I would like to close this meeting to have a break for 10 minutes. I propose that we will start the final meeting at 01:10 PM for our final meeting. We break for 10 minutes. Thank you.

The Meeting was thereafter adjourned.

XVII. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND CONCLUDING SESSION

XVII. VERBATIM RECORD OF THE FIFTH GENERAL MEETING AND CONCLUDING SESSION HELD ON FRIDAY, 12 OCTOBER 2018 AT 01:40 PM

His Excellency, Mr. Masahiro Mikami, Assistant Minister and Director-General of International Legal Affairs Bureau of Ministry of Foreign Affairs, Japan, and President of the Fifty-Seventh Session of AALCO in the Chair.

President: Distinguished delegates, it is already time but we are waiting for the resolutions to come. So please wait for a while.

Distinguished delegates, I would like to remind you that there will be three resolutions on financial and administrative matters to be adopted. The only resolution which has had some changes from the original document is that on the budget for the year 2019. The amended resolution on Budget has already been distributed. Please make sure that this new amended Budget resolution is in front of you. The other two resolutions have no changes from the original proposals. We are now waiting for the summary report coming to this room. The three draft resolutions are already ready for adoption. Please wait for a while.

Distinguished delegates, we now would like to start the Fifth and Final General Meeting. First, a message of thanks to the Prime Minister of Japan, on behalf of all the participating delegations will be read out by Prof. Dr. Kennedy Gastorn, Secretary-General.

His Excellency, Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO: 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 the 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 own 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 the 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 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.

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.

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

President: Thank you Mr. Secretary-General for your very kind words. The message will be duly communicated to His Excellency Mr. Shinzo Abe, Prime Minister of Japan. Our next item is the Venue of the next Annual Session. I give the floor to the Secretary-General.

Secretary-General: Mr. President, Excellencies. The discussions on the countries that have shown interest to consider hosting the next Annual Session are still going on. There is no final decision as of now. Thank you.

President: Okay. In that case I would ask the Secretariat to continue its consultations with Member States on the next venue.

Now, the next item is the **adoption of Resolutions (Financial and Administrative Matters) and the Summary Report of the Session**.

We should now adopt the following Resolutions, namely, RES/57/ORG1: Report of the Secretary-General on Organizational, Administrative and Financial Matters; RES/57/ORG2: AALCO's Budget for the Year 2019; RES/57/ORG3: Report on AALCO's Regional Arbitration Centres. The draft resolutions, I am sure, are already distributed. I hope every delegation has had sufficient time to go through them and to conduct informal consultations. We will adopt the Resolutions one by one.

As for RES/57/ORG1: Report of the Secretary-General on Organizational, Administrative and Financial Matters, are there any comments on this Resolution? I see none. The Resolution is adopted.

Next, RES/57/ORG2: AALCO's Budget for the Year 2019. Does anyone want to make a comment? I see none. The Resolution is adopted.

Lastly, RES/57/ORG3: Report on AALCO's Regional Arbitration Centres. Are there any delegations wishing to speak? I see none. This Resolution is also adopted.

Now, we come to the adoption of the Summary Report of the Fifty-Seventh Annual Session. A draft Report of this Session including an element that I explained earlier has been circulated by the Secretariat. I would like to remind delegates that a period of 30 days from today will be given to the Member States to go through the Summary Report carefully and revert back to the Secretariat, where after the Summary Report will stand finalized. That said, if any Member State has any comment or correction to the draft at this point of time, please feel free to do so. Are there any delegations wishing to speak here? I see none. I deem the Summary Report adopted.

My feeling is that the AALCO Secretariat has taken careful note of the views expressed during this Annual Session in the Summary Report. Member States are also reminded that the work plan of the AALCO Secretariat for the coming year will be prepared in accordance with AALCO's Statutory Rules, paying due regard to the views expressed during this Annual Session, with close consultations with the Liaison Officers of Member States, also bearing in mind available resources.

With that, I would like to make **closing statement** as the President of this Annual Session.

Hon'ble Ministers and Attorney-Generals, distinguished delegates and guest speakers, let me begin my concluding statement by expressing my gratitude to all AALCO Member States for your support and cooperation during this Fifty-Seventh Annual Session. As I aimed at and referred in my opening remarks, we have been able to conduct our business efficiently and productively. Without your cooperation, it would not have been possible.

Working together with the AALCO Secretariat, we managed to gather a number of highly qualified guest speakers at this Session. I would like to express my appreciation to the guest speakers for sharing their expertise with us to assist our deliberations and stimulating exchange of views. I believe that we should continue to strive to explore the ways towards more interactive discussions among legal experts at the annual sessions and I hope that this session marked a good first step for the future sessions.

It has been over 60 years that AALCO was established in 1956 by seven founding members including Japan. I believe that the question needs to be constantly pondered by each one of us: what is an added value of AALCO for Member States for it to remain relevant in the current rapidly changing international environment? For this end, as the President, I continue to commit myself to making my efforts to promote dialogues among Member States as well as with the AALCO Secretariat during my presidency. Last but not the least on behalf of all participants I would like to express my appreciation for the AALCO Secretariat for their hard and dedicated work to prepare for this Annual Session. My gratitude also goes to the interpreters for facilitating our discussions. I also extend my appreciation to many other staff working behind the scenes, including the staff members from the Tokyo Prince Hotel, officers of the Ministry of Justice and my own team from the Japanese Foreign Ministry. With these words, I would like to close the Fifty-Seventh Annual Session. Please enjoy the rest of your stay in Japan. I wish you a safe journey back home.

Finally, just one housekeeping announcement. Lunch is served in the Magnolia Hall.

Now, I declare the Fifty-Seventh Annual Session of AALCO closed. Thank you very much.

XVIII. TEXT OF THE DOCUMENTS ADOPTED AT THE FIFTY-SEVENTH ANNUAL SESSION

A. SUMMARY REPORT

FINAL REPORT*

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, State of Palestine, Syrian Arab Republic, United Republic of Tanzania, Kingdom of Thailand, Republic**

* 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.**

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 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, including perhaps a Declaration on International Law in Cyberspace, 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 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, 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 Herandez 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 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 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 Minster 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.

B. RESOLUTIONS

AALCO/RES/DFT/57/ORG 1
12 OCTOBER 2018

REPORT OF THE SECRETARY-GENERAL ON ORGANIZATIONAL, ADMINISTRATIVE AND FINANCIAL MATTERS

The Asian-African Legal Consultative Organization at its Fifty-Seventh Session,

Recalling the functions and purposes of the Organization as stipulated in Article 1 of the Statutes of AALCO,

Having considered the Report of the Secretary-General on Organizational, Administrative and Financial Matters pursuant to Rule 20 (7) of the Statutory Rules as contained in Document No. AALCO/57/ TOKYO/2018/ORG 1,

Having heard with appreciation the introductory statement of the Secretary-General on the Report of the Secretary-General on organizational, administrative and financial matters,

Also having heard with keen interest and appreciation the statements of the Heads of Delegations of AALCO Member States on the Report of the Secretary-General,

Recognizing the need to take forward the spirit of Bandung Conference in the current era which has witnessed many international legal challenges for the States of Asia and Africa,

Appreciating the efforts of the Secretary-General to enhance the activities of the Organization and to implement its work programme as approved at its Fifty-Sixth Annual Session held in Nairobi, Republic of Kenya from 1 to 5 May 2017,

Also appreciating the continued practice towards the rationalization of its work programme, including consideration of the agenda items during its Annual Sessions,

Reiterating the mandate of the Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization, and the Action Plan as explained in Document No. AALCO/ES (NEW DELHI)/2008/ORG.1 adopted by the Extraordinary Session of AALCO Member States held on 1 December 2008, in New Delhi (Headquarters), India,

Welcoming the efforts by the Secretary-General for revitalizing and strengthening AALCO,

Noting with satisfaction the increased co-operation between the Organization and the United Nations and its Specialized Agencies, other international organizations and academic institutions,

1. **Approves** the work plan of the Organization as set out in the Report of the Secretary-General and urges Member States to extend their full support to the implementation of that work plan;

2. **Encourages** Member States to make voluntary contributions to support the capacity building activities under the approved work plan of the Organization;

3. **Requests** the Secretary-General to continue his efforts and explore the ways and means to enlarge the Membership of the Organization in Asia - Africa, in particular, to increase the representation from the African States and Central Asian States;

4. **Also requests** the Secretary-General to discuss with African Member States to depute at least one senior official to the Secretariat as Assistant Secretary-General or Deputy Secretary-General;

5. **Further requests** Member States, in their bilateral relations to encourage non-Member States to join AALCO;

6. **Requests** the Secretary-General to take appropriate actions in accordance with the Action Plan adopted on 20 August 2009;

7. **Mandates** the Secretariat to prepare a review of the existing assessed scale of contributions, and make recommendations based on such review to be considered by the Liaison Officers, and thereafter submit it to the Annual Session for its consideration and approval; and

8. **Further requests** the Secretary-General to report on the activities of the Organization at its Fifty-Eighth Annual Session.

AALCO/57/RES/ORG 2
12 OCTOBER 2018

AALCO'S BUDGET FOR THE YEAR 2019

The Asian-African Legal Consultative Organization at its Fifty-Seventh Session,

Having heard with appreciation the introductory statement of the (Deputy) Secretary-General on the Proposed Budget for the Year 2019 as contained in the Document No. AALCO/57/TOKYO 2018/ORG2,

Taking note of the comments of the Member States on the Proposed Budget,

Noting further the Proposed Budget for the year 2019 was placed before the 341st, 342nd and 343rd Meetings of the Liaison Officers held on 15th December 2017, 15th February 2018 and 26th April 2018 respectively at the Headquarters, New Delhi, and was submitted to the Fifty-Seventh Annual Session for final approval,

Considering that the Proposed Budget for the year 2019 is a realistic budget depending on the actual contributions to be received,

Acknowledging the need to replenish the Reserve Fund of the Organization, with the objective of ensuring that it always has a six-month operational fund for the functioning of the Organization,

Considering all the above-mentioned reasons to place the Organization on a firm financial footing,

1. **Approves** the Budget for the year 2019 as proposed;

2. **Approves** the long-term implementation of the recommendations of the 7th Pay Commission of the Government of India in the context of the salaries and allowances of the locally recruited staff of AALCO beyond 31 December 2018;

3. **Decides** to apply the recommendations of the 7th Pay Commission of the Government of India in the context of the salaries and allowances of the locally recruited staff of AALCO from 1 January 2016 to 4 May 2017 which will not be considered as a precedent in the future. The method and source of payment will be

decided by the Secretary General of AALCO provided that it will not affect the six month viability of the Reserve Fund;

4. **Requests** Member States who have not paid their annual contribution for the year 2018, to do so at the earliest in order to ensure the effective functioning of the Organization;

5. **Strongly** urges Member States, who are in arrears, to fulfill their financial obligations in accordance with the Statutes and Statutory Rules of AALCO, in order to expeditiously clear the same and directs the Secretary-General to report on the status thereon in the next Annual Session;

6. **Encourages** Member States to make voluntary financial contribution in order to improve the financial situation of AALCO;

7. **Mandates** the Secretary-General to explore ways and means of raising funds by additional sources in accordance with the Statutes and Statutory Rules of AALCO; and

8. **Decides** to place this item on the provisional agenda of the Fifty-Eighth Annual Session.

AALCO/57/RES/ORG3
12 OCTOBER 2018

REPORT ON THE AALCO'S REGIONAL ARBITRATION CENTRES

The Asian-African Legal Consultative Organization at its Fifty-Seventh Session,

Considering the Report on the AALCO's Regional Arbitration Centres contained in Document No. AALCO/57/TOKYO/2018/ORG 3,

Noting with appreciation the introductory remarks made by the Secretariat and the report of the Directors of the Regional Arbitration Centres,

Reaffirming the commitment by the Governments of the Member States towards enhancing the role of the Regional Arbitration Centres,

Recalling decision relating to the Integrated Scheme for the Settlement of Disputes in Economic and Commercial Transactions adopted at its Doha Session in 1978,

Expressing satisfaction over the increasing use of the facilities and the opportunities offered for both domestic and international arbitrations under the auspices of its Regional Arbitration Centres,

Appreciating the efforts and contributions of the Governments of the Malaysia, Arab Republic of Egypt, Federal Republic of Nigeria, the Islamic Republic of Iran, and the Republic of Kenya for hosting the respective Regional Arbitration Centres,

Further appreciating the promotional activities undertaken by the Directors of the Centres, including organization of seminars and training programmes, to promote international commercial arbitration in the
Asian and African regions;

Reiterating the earlier decision of the AALCO on the necessity for the Governments of the Member States to promote and support the use of the Regional Arbitration Centres;

Further reiterating its proposal, after consultation with the Directors of the respective Regional Arbitration Centres, for the holding of International Arbitration Conference biennially, by rotation in each of the Centres, with the support of the Member States;

1. **Requests** the Member States to continue their support to the Regional Arbitration

Centres and use the AALCO's Regional Arbitration Centres for resolving their disputes and in particular to consider in their contracts, the inclusion of the Arbitration Clause of AALCO's Regional Arbitration Centres;

2. **Urges** the Regional Arbitration Centres to consider to the extent possible, among themselves, the formation of a common system both administratively and financially between the Centres and common standards for the qualification of arbitrators;

3. **Requests** the Secretary-General to take an initiative towards establishment of another Regional Arbitration Centre in any interested Member State in the South-African, East-Asian and South Asian regions;

4. **Directs** the Regional Arbitration Centres to meet at every AALCO Annual Session to enable an exchange of ideas and to report the outcome to the Organization; and

5. **Decides** to place this item on the provisional agenda of the Fifty-Eighth Annual Session.

C. SUMMARY REPORT OF THE THIRD MEETING OF THE OPEN-ENDED WORKING GROUP ON INTERNATIONAL LAW IN CYBERSPACE

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

SUMMARY REPORT OF THE THIRD MEETING OF THE OPEN-ENDED WORKING GROUP ON INTERNATIONAL LAW IN CYBERSPACE*

Monday, 8 October 2018
TOKYO JAPAN

1. Introduction

24 Member States of Asian-African Legal Consultative Organization (AALCO) participated in the Third Meeting of the Open-ended Working Group on International Law in Cyberspace, namely, **Kingdom of Bahrain, People's Republic of China, Republic of Ghana, Republic of India, Republic of Indonesia, Republic of Iraq, Islamic Republic of Iran, Japan, Republic of Kenya, Malaysia, Mauritius, Nepal, Islamic Republic of Pakistan, Republic of Korea, Kingdom of Saudi Arabia, Singapore, Republic of South Africa, Democratic Socialist Republic of Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Uganda, Socialist Republic of Viet Nam, and the United Republic of Tanzania.**

Representatives of the following Non-Member States and International Organization also attended the meeting**: Russian Federation, Tunisia** and **Saudi Fund for Development** respectively.

The members of the Bureau of the Open-ended Working Group who participated in the Meeting are as follows: (1) **Chairman: H.E. Mr. Abbas Bagherpour Ardekani (HOD)**, Director-General for International Legal Affairs, Ministry of Foreign Affairs, Islamic Republic of Iran and (2) **Rapporteur: Dr. Huang Zhixiong**, Professor, Wuhan University, People's Republic of China.

* DRAFT

2. Inaugural Session

H.E. Prof. Dr. Kennedy Gastorn, in his opening remarks, spoke briefly on how the Open-ended Working Group had been established within AALCO, and the deliberations that had taken place within it. Thereafter, he stated that based on the mandate of the Fifty Sixth Annual Session held in Kenya in 2017 the Rapporteur was asked to prepare a Report on the Future Plan of Action of the Working Group that was sent to all Member States for their comments and observations. Comments from a number of Member States were received by the Secretariat, and on the basis of that the Rapporteur prepared a revised report, which has also been circulated to all Member States. Thereafter, he invited Member States who had not commented previously, to present their views and observations, as well as those Member States who had commented, to add to their comments or clarify the same, in order for the Working Group Meeting to decide the future plan of action of the Working Group.

H.E. Mr. Abbas Bagherpour Ardekani (HOD), the Director-General for International Legal Affairs, Ministry of Foreign Affairs, Islamic Republic of Iran, and the Chairman of the Working Group, in his opening remarks remarked on the establishment and functioning of the Open-Ended Working Group in Cyberspace. He then briefly introduced the Report of the Rapporteur of the Working Group, including its broad components, and also spoke in brief on the comments of the Member States that have been received by the Secretariat.

3. Proceedings of the Working Group Meeting on Cyberspace

H.E. Abbas Bagherpour Ardekani, the Chairman of the Working Group, firstly invited the Rapporteur to present his Report.

The Rapporteur stated that he wanted to divide his presentation into two main parts: the first regarding how the Report was prepared, and secondly regarding the contents of the Report, as well as revisions carried out based on the comments by the Member States. Firstly he stated how the international community is increasingly being involved in issues relating to international law in cyberspace. While commencing the Report he bore in mind firstly that AALCO is principally an inter-governmental organization, and therefore, he had to pay attention to the views of Member States. In preparing the Report he also relied on the Secretariat in this behalf, including Verbatim Records of the previous Annual Sessions (including the Resolutions and Briefs), as well as the Open-ended Working Group Meetings. He stated that he sent his Report to the Secretariat on 19 March 2018, to be sent to Member States for their views and observations. Based on the comments he sent a revised report to the Secretariat in the end of July, 2018. He mentioned that the Secretariat's Brief on International Law in Cyberspace of 2018

contained all the documents and facilitated the Member States in preparing for their meetings. He further stated that Islamic Republic of Pakistan also made important comments after the submission of the revised Report. He thanked the Member States for their valuable comments and the Secretariat for its assistance.

Regarding the Report he firstly stated that the Report was divided into 3 parts: a) Development of International Law in Cyberspace; b) Progresses within AALCO so far; and c) Suggestions as to the Future Pan of Action of the Working Group. Even though he revised the Report based on the comments received by the Member States, the broad structure of the Report continues to remain the same. Regarding the first part, Development of International Law in Cyberspace, he mentioned that the international law and processes have in the recent times touched upon the development of international law in cyberspace. As an example, he mentioned the work done by the UN Group of Governmental Experts on Developments in the field of Information and Telecommunications in the Context of International Security (UNGGE), and the Open-ended Intergovernmental Expert Group established by the Commission on Crime Prevention and Criminal Justice (CCPCJ). He also mentioned the Draft UN Convention on Cooperation in Combating Information Crimes, which was recently submitted by the Russian Federation to the UN General Assembly as an UN official document. As regard the second part, Progresses within AALCO so far, he stated that the Report summarizes how the topic, International Law in Cyberspace, was incorporated as a regular agenda item, and thereafter how the discussions progressed in the various sessions.

On the future plan of action of the Working Group the Rapporteur offered three broad suggestions. The first was on AALCO Member States' cooperation in countering cybercrime. He stated that it is essential that existing mechanisms must be harmonized and improved. This is the reason why some Member States who are contracting parties to one or several existing instruments have stressed on a global comprehensive instrument on cybercrime. Therefore, he had proposed in his first Report, the establishment of guidelines or model provisions on preventing and combating cybercrimes. Based on the comments of Japan, paragraph 16 of the Report was amended to include the following "Given this background, Member States are encouraged to continue discussion on possible cooperation in countering cybercrime, including adopting a set of model provisions, which will meet the need of AALCO Member States on preventing and combating cybercrime as well as contribute to the ongoing efforts in other international platforms such as CCPCJ. For that purpose, inputs from all Member States of AALCO as to the basic framework and core elements of the Model Provisions are to be welcomed."

Secondly he suggested that there should be deepening of discussions on some key issues of international law in cyberspace among AALCO Member States. One such issue is setting up cross-cutting sub-topics such as sovereignty on data and equal participation in

international governance of the Internet under the topic of sovereignty in cyberspace. Another issue could be conducting research on such key terms. A third issue could be adding new topics where appropriate. He also suggested on strengthening capacity building in AALCO. As there had been no substantive disagreement between Member States on this part, it had not been amended in the revised Report.

Lastly he stated that based on the comments of People's Republic of China, he further added a suggestion in his revised Report to adopt a Declaration on Principles of International Law in Cyberspace, that would essentially summarize and identify core and common position of AALCO Member States on cyberspace, such as respecting State sovereignty in cyberspace, promoting a culture of establishing a common future for cyberspace etc.

Thereafter, the Chairperson of the Working Group thanked the Rapporteur and opened the floor for Member States for their comments.

The delegation of the *People's Republic of China* welcomed the report of the Special Rapporteur that reflected the outcome of the deliberations of the first two working group meetings and the written comments and suggestions submitting by some Member States including the People's Republic of China. At the outset, the delegate from the People's Republic of China reminded the meeting that technology in cyberspace evolves rapidly and consequently the evolution of cyber-crime has also been rapid. Therefore the working group was encouraged to continue its work to raise the awareness on cybercrime, enhance capacity building and promote cooperation among the Member States to tackle the problem of cybercrime.

With a view to highlight the rationale some of their suggestions that were also echoed by other member states three key points were raised by the delegate of the People's Republic of China.

Firstly, the need to prioritize the international cooperation in combatting cybercrime was emphasized for which a suggestion was made to develop model provisions on combating cybercrime. In this regard it was also stated that the acceptance or rejection of the principles of Budapest Convention would not become an impediment in the development of such model provisions as scope for revision of these provision would be left open for member states to consider in their bilateral relations, thus making the proposal without prejudice to difference in positions on the Budapest Convention. Further, the working group was also encouraged to follow the major international processes relating to cybercrime especially the UN Inter-governmental Expert Group on Cybercrime (IEG), and actively participate in these processes on behalf of AALCO.

Secondly, it was expressed by the delegation of the People's Republic of China to that the working group should broaden its scope of study to identify the major risks associated with cyber and internet technology and compile best practices to prevent them. It was also observed by the delegation that the legal response to those challenges of the Asian African states was sometimes not at par with Western states therefore there is a need to develop legal responses that cater to the needs of AALCO Member States.

Thirdly, it was suggested by the delegation of the People's Republic of China that AALCO may consider the adoption of a "Declaration on Principles of International Law in Cyberspace", which would summarize and identify core common positions and values of AALCO Member States in application and development of international law in cyberspace. It was also stated that the declaration could also serve as basis for the wide international community to engage in constructive dialogues on the principles of international law in cyberspace. The delegation also placed confidence in the work of AALCO by reminding the meeting of the success of the Bandung Principles adopted some 60 years ago that had made a significant contribution to the development of international law.

As regards, some of the concerns of the Member States regarding the duplication of the work on the topic the view was expressed by the People's Republic of China that these concerns were misplaced in as much as they would draw upon the existing work and not duplicate the same. Further it also expressed that much like the Friendly Relations Declaration adopted by the General Assembly the AALCO declaration on the principles of international law in cyberspace would not go beyond the status quo in international law.

The delegation of *Japan,* appreciated the efforts of the Special Rapporteur on the preparation of the Report. As regards, the suggestion to prepare model provisions it was expressed by the delegation that it was premature to commence with the same as comments from other Member States were still awaited. It was also not clear whether consensus on the same had been achieved amongst the Member States. The views of the UN Group of Government Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UNGGE) were also to be considered by the working group in order to ensure its comprehensive scope of work. He further encouraged more and more Member States to accede to the Budapest Convention on Cybercrime. Further it was expressed that the views of other state holders should also be considered and that it was important to take into consideration the views of private industry as well as non-governmental organizations, especially with regards to cyberspace governance. As regards, the declaration on the principles of international law applicable to cyber space it was stated that the delegation of Japan was not opposed to the

declaration in principle but expressed that further discussion was required regarding the terms of that declaration.

The delegation of the *Islamic Republic of Iran* firstly stated that the sui generis character of cyberspace does not preclude it from regulation of existing rules and principles of international law. It remains to be highlighted, however, that the intricacies and complexities of the Cyberspace still require further regulation at the international level to which AALCO could make important contributions. As regards, the Report of the Special Rapporteur the delegation expressed that although the report expressed concrete suggestions more international cooperation was needed in this regard. Further, the delegation of the Islamic Republic of Iran requested the working group to also consider doing research on the terminology prevalent in this area of international law. As regards, the proposal for adoption of a declaration on the topic the delegation of the Islamic Republic of Iran was in agreement with the suggestion, and expressed that it would be well suited as instrument of guidance to the AALCO Member States. He suggested that AALCO should continue its work in the dark corners in international law such as these.

The delegation of the *Republic of India* expressed that the working group should consider the work on the topic that is being conducted within the auspices of the UN, with a view to avoid duplication of work. It was also expressed that AALCO being the only Inter-Governmental Organization for cooperation on legal matters between States from Asia and Africa, it could provide a meaningful platform to achieve consensus amongst the differing interpretations and views prevalent. Further, the delegate of the Republic of India expressed that it was not in favor of adopting a declaration on the topic due to lack of consensus amongst Member States on the topic and its premature nature.

The delegation of the *Republic of Korea* stated that the working group should focus on doing more ground work and prepare meaningful concrete conclusion that are practically applicable. In this regards, it was expressed that the topic concerns procedural issues such mutual legal assistance and mechanisms for state to state cooperation as well as substantive issues on the defining of the various cyber-crimes. In this regard it was also expressed that the work of the Open-Ended Intergovernmental Expert Group (IEG) established by the Commission on Crime Prevention and Criminal Justice (CCPCJ) should be considered and all efforts to avoid fragmentation of the law in this topic should be made.

As regards the proposal for the adoption of the declaration on the principles of international law on cyber-crime, the delegation of the Republic of Korea stated that it would await the comments of Member States and other stake holders before fixing its position on the issue. It was also stated that the feasibility of the desirability of these

principles should also be considered and whether the approach precluded the working group from exploring other options.

The Chairperson in the end invited the Rapporteur to express his views on the comments by the Member States. The Rapporteur had two main points to make. The first that the topic, international law in cyberspace, was an important one, touching upon all aspects of the human lives today. Secondly, he stated that on many of the issues countries had different understanding and ideas, wherein there continues to be a need that consensus needs to be forged. Therefore, the work of the Working Group continued to be invaluable. He stated that as this is not a correct forum for responding to each opinion expressed, yet he assured that he would personally consider all views and come up with a revised report.

4. Chairman's Concluding Remarks

The chairperson in his final concluding remarks at the outset stated that the discussions during the Working Group Meeting indicated towards the continued relevance of the topic, International Law in Cyberspace, especially for an inter-governmental organization like AALCO. He stated that there seemed to be a clear consensus in the Meeting on the continued relevance of the Working Group, and that further in-depth discussions were required to finalize the way forward for the Working Group on this topic. He remarked that there also seems to be a broad agreement to have a concrete outcome of the Working Group Meeting, including perhaps a Declaration of Principles on International Law in Cyberspace. However, as the Meeting presently did not have concrete decisions in this regard, he looked forward to the comments of Member States during the plenary session on cyberspace on Wednesday after consideration of the report of the working group towards the development of its future programme of work.

The Chairman expressed his gratitude on behalf of the meeting to the Special Rapporteur, the Secretary-General of AALCO, and the AALCO Secretariat on their work on the topic in general and thanked the Special Rapporteur in particular for his detailed report.

The Third Meeting of the Open-ended Working Group on International Law in Cyberspace was thereafter adjourned.

XIX. LIST OF PARTICIPANTS

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3.	African Union	Amb. Dr. Namira Negm Legal Counsel Africa Union Ms. Betelhem Arega Asmamaw Associate Legal Officer Africa Union
4.	Saudi Development Fund	Mr. Mohammed AlThakafi Legal Researcher
5.	Hague Conference on Private International Law	Mr. Christophe Bernasconi Secretary-General
6.	International Humanitarian Fact Finding Commission	Prof. Shuichi Furuya Member of the Commission

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5. Mr. Alexander Proelβ
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7. Mrs. Rena Lee
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8. Mr. Yoshihisa Shirayama
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