

**VERBATIM RECORD OF THE FIFTH  
GENERAL MEETING HELD ON  
THURSDAY, 5<sup>TH</sup> JULY 2007 AT 1.00  
PM**

**Her Excellency Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session of AALCO in the Chair.**

**A. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949**

**President:** We now begin the Fifth General Meeting and I call upon Amb. Tabatabaei Shafiei, the Deputy Secretary-General to make the introductory statement on the topic "Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949"

**Amb. Mr. Reza Tabatabaei Shafiei, Deputy Secretary General of AALCO:** Madam President, Hon'ble Ministers, Excellencies, Distinguished Guests, Ladies and Gentlemen.

I have the honour to introduce the above stated item, which was introduced on our agenda by the Islamic Republic of Iran in 1988 and since then has been extensively deliberated in all our subsequent Sessions. Following the mandate adopted in the New Delhi Session last year in RES/45/S 4 the Secretariat has prepared Document No. AALCO/46<sup>th</sup>/CAPE TOWN SESSION/S 4 related to this item, which you all have received with the package of documents given to you at the registration.

Excellencies, 9<sup>th</sup> June 2007 marked the Fortieth Anniversary of the longest military occupation, in modern history, the tragic 1967 Israeli-Palestinian conflict.

Unfortunately, the history of forty years was the countless deaths and ongoing humiliation and degradation of the people living in the Occupied Palestinian Territory (OPT). The conditions in the Occupied Palestinian Territory, including East Jerusalem is grim and worsening and it is absolutely essential that concrete negotiations be taken up in earnest.

Madam President, it is also an undoubted fact that the Middle East Region would not experience peace unless the conflict between Israel and Palestinians ends. Only and only a two-State solution, including the return of all Palestinian lands and refugees, would lead to a fair and suitable solution. These views were also highlighted at the two-day United Nations African Meeting on Palestinian Rights, which took place in Pretoria, the Republic of South Africa, 9-10 May 2007, which aimed at strengthening the international and regional efforts to relaunch the Middle East peace process.

Madam President, since the Forty-Fifth Session of AALCO held in New Delhi last year, and despite the fact that at this juncture broad international and regional efforts are being made to relaunch the Israeli-Palestinian peace process, Israel has continued with its war crimes in the Occupied Palestinian Territories, particularly in the Gaza Strip. The Israeli Government's plan to remove troops and Jewish settlements from the Gaza Strip have not ended Israel's occupation of the territory and Israel continues to wield overwhelming power over the territory's economy and its access to trade. Indeed, subsequent Israeli actions had proved this point. The deliberate destruction of the Gaza Strip's only electricity power station, water networks, bridges, roads and other infrastructure including restrictions on movement of Palestinians is a clear violation of the provisions enshrined in the Fourth Geneva Convention of 1949 and has had major and long-term humanitarian consequences for the 1.5 million inhabitants of the Gaza Strip.

Madam President, the occupying power Israel has rejected the Advisory Opinion of the highest judicial power of the United Nations, as well as the will of the international community and continues with the construction of the separation wall, which is totally illegal and contrary to international law. People in the Occupied Territories had started facing the adverse consequences of the construction of the illegal barrier, which in essence was an “apartheid wall”, including loss of access to Palestinian land, affecting the agricultural production and water resources and rising unemployment, apart from the political implications. It is a welcome step that the United Nations Secretary-General has in compliance of a United Nations Resolution on 10 May 2007 appointed three international experts to begin work of establishing a Register of Damage caused by Israel’s construction of the separation wall in the Occupied Palestinian Territory.

Madam President, the reluctance on part of the Occupying Power, Israel not to respect the democratic choice of the Palestinian people is highly condemnable. Israel had gone to the extent of the arrest/detention of Ministers, Speaker and lawmakers of the Palestine Legislative Council. AALCO, which has been gravely concerned with the situation in the Middle East, should take this opportunity to appreciate the generous initiative of His Majesty, King Abdullah of the Kingdom of Saudi Arabia, for his efforts in reaching the agreement in the Holy City of Mecca to form Palestinian National Unity Government. The recent internal strife in the Palestinian territories is the outcome of the prolonged and deliberate policies of the Occupying Power, Israel. This has aggravated the situation and resulted in a major humanitarian crisis in the Occupied Palestinian Territories. Also, it would have serious implications on the Middle-East peace process. Israel should stop the policy of squeezing the legitimate movements and democratic initiatives of the Palestinian society.

Madam President, another noteworthy milestone in the Middle East Peace Process, was the Nineteenth Summit of the Arab League held in Riyadh, Kingdom of Saudi Arabia (28-29 March 2007) that re-emphasized the Arab Peace Initiative of 2002, proposed by the Kingdom of Saudi Arabia and adopted at the Beirut Summit of 2002. The Riyadh Declaration adopted by the Summit affirmed the opinion of just and comprehensive peace as a strategic option for the Arab nations; in accordance with the Arab Peace Initiative that draws the right path for reaching a peaceful settlement for the Arab-Israeli conflict based on the principles and resolutions of international legitimacy, and the land for peace formula.

Excellencies, let me also draw the framework of the points on which the deliberations could follow, namely violations of international law, particularly international humanitarian law and human rights law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT), with special focus on the recent Israeli military exercise in the Gaza; ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory and the adverse effect of the wall on the Palestinian people and the economy; the need to respect the democratic choice of the Palestinian people; and condemning the Israeli attempt to incapacitate the Palestinian leadership. The deliberations may also highlight on the role of the international and regional communities to pressurize Israel to comply with its international obligations, including the recent initiative of His Majesty, King Abdullah of Saudi Arabia and the League of Arab States; and also highlight the need for establishing an independent sovereign State of Palestine as a prelude to establishing everlasting peace in the Middle East.

To conclude, Madam President, lasting peace in the Middle East requires respect of all international law principles, norms and impartial implementation of innumerable United Nations Security Council and General Assembly Resolutions starting from 1949

onward such as resolutions 194 (1949), 242 (1967), 338 (1973), 425 (1978), 1397, 1402, 1403, 1405, 1435 (2002), 1515 (2003) and 1544 (2004). The accurate and fair implementation of these Resolutions was essential, because they had rightly designed the workable settlement of the very core of the problem, namely, the creation of peace and the independent Palestinian State, which is now long overdue. Thank you for your attention Madam President.

**President:** Thank you Deputy Secretary-General. Pakistan you have the floor.

**The Delegate of Pakistan:** Madam President, Hon'ble Ministers, Secretary-General, Excellencies, Delegates, Observers, Ladies and Gentlemen.

I am personally taking the floor for the first time, as I have joined the Session today as I had to attend to other assignments, however owing to the importance of this Session I felt it necessary to attend it even though I am late. Madam President, the topic under discussion is a very important topic. I congratulate the Deputy Secretary-General for the lucid report presented on this issue.

Madam President, Pakistan has consistently extended unequivocal and unreserved support to the Palestinian cause, the fundamental elements of which are total withdrawal of Israel from occupied Arab territories including Jerusalem and the restitution of the inalienable rights of the Palestinian people including establishment of an independent homeland, with Al Quds Al Sharif as its capital. Madam President, Pakistan supports the resolution of the Palestinian issue in accordance with UN Security Council Resolutions 242 and 338. Pakistan further supports the Quartet's roadmap and the Arab Peace Plan, which was reendorsed at the 19<sup>th</sup> Arab League Summit of March 2007 and, which offers establishment of normal relations of the Arab World with Israel, in return for Israeli withdrawal to 1967 borders, implementation of UN Security Council resolutions, 194,

242 and 338 which envisage creating Palestine, with East Jerusalem as its Capital, and right of return of the refugees.

Pakistan is also concerned over the immigration of Palestinians from the occupied territories, settlement of Jews, and construction of wall in the Palestinian areas and strongly supports the recognition of the rights of the Palestinian refugees to return to their homeland. Pakistan had been concerned over the inter-factional fighting as a result of which the Palestinian Government was dissolved recently. Pakistan hopes that new government would work to establish reconciliation between the Palestinian factions for onset of political process and economic development. Pakistan also welcomes the recent indications on lifting of economic sanctions on the Palestinian government by US and EU, the release of frozen tax funds to the Palestinian Authority and release of 250 Palestinian prisoners and hopes that these would contribute towards easing of economic constraints of the Palestinian people. I thank you very much Madam President.

**President:** I thank the Delegate of Pakistan and now we have noted the names of the Delegations who wish to make statements on this topic. However at this point we propose to break for lunch and return at 3'0 clock. The Delegations that will take the floor after lunch are: Islamic Republic of Iran, Arab Republic of Egypt, Republic of Indonesia, Syrian Arab Republic, Senegal, Japan, and Malaysia.

**The Delegate of the Islamic Republic of Iran:** Thank you Madam President. First of all I wish to thank the Deputy-Secretary-General Amb. Tabatabaei for presenting this item. Madam President, as it was mentioned in the statement of the Deputy Secretary-General this Delegation submitted this item to the Twenty-Seventh Session of the AALCO in 1988, and since then we are witnessing that Israeli regime continues to defy the will of the international community

particularly the numerous United Nations resolutions and decisions.

Madam President, the Israeli criminal acts against the Palestinians and other peoples in the region was the gravest threat currently posed to regional, as well as international peace and security. Indiscriminate use of military force, willful killing, collective punishing, racial discrimination and apartheid, family separation of the Palestinians, destroying their homes and infrastructures, trying to economically strangulate them, unrelenting expansion of Jewish settlements on the occupied lands, as a new colonialism, targeted assassinations and humanitarian crisis and the withholding of funds from the Palestinian Authority, prohibited under the international law, had continued during the year under review.

Madam President, the Wall that Israel is presently building largely in Palestinian territory, with its construction accelerated in the reported period, is clearly illegal. The International Court of Justice in its Advisory Opinion of 9 July 2004, asserted that it is contrary to international law and that Israel was under obligation to discontinue construction of the Wall and to dismantle those sections that had already been built. The Wall has serious humanitarian consequences for Palestinians living within the closed zone, that is, the area between the Green Line and the Wall. They were cut off from places of employment, schools, universities and specialized medical care, and community life is seriously fragmented. Moreover they do not have 24-hour access to emergency health services.

The Islamic Republic of Iran is of the view that establishing the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory by UN General Assembly, in its resolution (A/RES/ES-10/17) adopted on 15 December 2006, would serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the wall by

Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, can be a suitable mechanism to follow up the ICJ Advisory Opinion .

Madam President, according to different documents it is unfortunate that the Israeli regime had violated a number of rights proclaimed in the various International Human Rights Instruments. (The International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It has also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”, freedom from hunger, and the right to food (art. 11) and the right to health (art. 12)).

Madam President, the Zionist regime has in addition, violated the most fundamental rules of international humanitarian law, which constitutes war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians and civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, Israeli regime has violated the prohibition on

collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitutes a gross form of collective punishment.

Madam President, in the year under review 2006 the world has witnessed aggression of the Israeli regime against Lebanon, and its subsequent withdrawal, the Israeli regime has not stopped to continue threatening the Lebanese people and Government. As has been repeatedly indicated by UNIFIL, the Israeli regime continues to occupy the Lebanese lands in violation of Security Council resolution 1701, including through daily violations of Lebanese airspace and harassment of UNIFIL forces. Such dangerous practices would undoubtedly create more instability and serve to inflame tension and threaten to further destabilize the situation in that volatile part of the region.

The constitution of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1, (11 August 2006), entitled "The grave situation of human rights in Lebanon caused by Israeli military operations", highlights in its report (A/HRC/3/2, 23 November 2006) a significant pattern of excessive, indiscriminate and disproportionate use of force by Israeli Defense Force (IDF) against Lebanese civilians and civilian objects, failing to distinguish civilians from combatants and civilian objects from military targets. The Commission was able to verify for itself the circumstances of a number of incidents, which occurred during that conflict.

With regard to precautions taken by Israel to minimize civilian casualties, the

Commission came to the conclusion that IDF did not give effective warning as required under international humanitarian law. The Commission documented various cases of direct attacks on medical and relief personnel. The Commission received various testimonies regarding the obstacles and difficulties the medical and humanitarian relief personnel had to face in reaching civilians in need of medical care and humanitarian assistance due to IDF-imposed constraints. The concurrence system adopted to satisfy IDF requirements was not adapted for an efficient humanitarian assistance. On a number of occasions the IDF conducted hostilities either directly against relief assistance movements or indirectly.

The Commission considers that the excessive, indiscriminate and disproportionate use of force by the IDF went beyond reasonable arguments of military necessity and of proportionality, and clearly failed to distinguish between civilian and military targets, thus constituting a flagrant violation of international humanitarian law. The Commission has formed a clear view that, cumulatively, the deliberate and lethal attacks by the IDF on civilians and civilian objects amounted to collective punishment.

The Commission was able to verify that the IDF carried out attacks on a number of medical facilities in Lebanon, despite their protected character. The Commission also noted that the Red Cross Movement was not spared during the conflict, as indicated in several incidents reported by the International Committee of the Red Cross (ICRC) and the Lebanese Red Cross (LRC). In some cases, medical personnel were the victims of collateral damage.

Madam President, it is clearly evident that peace in the Middle East cannot be achieved through aggression, state terrorism, intimidation and occupation. It is indeed long overdue for the international community to take meaningful measures to

restore the legitimate rights of the Palestinian people. The Charter of United Nations has bestowed immense responsibility upon this world body to help find a fair, just and durable solution to this crisis, which constitutes the core of the Middle East conflict. We believe that a durable peace in Palestine will be possible only through the full restoration of the rights of the Palestinian people including the return of all Palestinian refugees to their homeland and establishment of a Palestinian state with Al-Quds- Al- Sharrif as its capital. Thank You Madam President.

**President:** Thank you. Egypt you have the floor.

**The Delegate of the Arab Republic of Egypt<sup>1</sup>:** Thank you Madam President. I would like to thank the Deputy Secretary-General for the introductory statement. I would also like to thank the Head of Delegation of the Islamic Republic of Iran for a lucid presentation on what is taking place in the Occupied Palestinian Territory, and I am not going to repeat what he said.

Madam President, the Palestinian cause has always been Egypt's pivotal issue for three reasons, namely: Egypt needs peace for its national security, Egypt abides to assist all people who have a right that is lost due to aggression and we ought to assist them in gaining their rights.

Madam President, the Palestinian cause was always Egypt's main concern. It has occupied us for the last six decades and even till today. The Palestinian cause is in the hearts of all Egyptians and Egypt would abide by three invariables, these invariables in addition to Egypt's commitment to its Arab duties. It has to preserve its national security as well as durable peace all over the world. We found these invariables in the different accords and Resolutions passed either by the General Assembly or the

Security Council of the United Nations or from the International Court of Justice. The first invariable, the non-legitimacy of occupying others land by force, and non permissibility of causing any demographic change or changes among the population on the Arab occupied territories as a result of an aggression of 1967. The settlements that were constructed by Israel in Palestine and Syria in violation of the international law and does not have any international legitimacy. These settlements are a real obstacle in realizing comprehensive, just and durable peace in the Middle East.

Also, Egypt confirms on a very basic principle that we stand against the coercive deportation of the Palestinians and we have to respect the right of return for the Palestinians. Egypt is the main partner in the peace process, we want to reach just, lasting and comprehensive peace. However, Israel still impedes this process towards peace. The main violations of the Israel have already been stated by the Head of Delegation of Iran.

Israel has also violated the Ibrahim, Holy Child squeezing the prayers and violating the sanctity of such places at the same time. Also, the Israeli occupying forces have been constructing the Separation Wall to encircle the Palestinians and to push them into coercive deportation. Israel has grabbed the Palestinian lands, practiced arbitrary brutalities against the Palestinians, and Syrians in the Golan which is contrary to all law. It is the right of all peoples to defend their lands. Imposing settlements cannot give a right to the aggressor at the same time we cannot deprive the owners of the lands of their rights. Egypt wants justice for all peoples and all countries including Israel.

The question here is how can peace take place even for Israel while it continues to violate the rights of the Palestinian peoples. The answer to this question is that all who care about the fundamental principles of law, and every person who cares about peace and all people who need economic

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

and social prosperity have to abide by the principles of international law. This is the only way through peace can be gained in the Middle East.

**President:** Thank you. Indonesia you have the floor.

**The Delegate of the Republic of Indonesia:** Thank you Madam President. Madam President, Excellencies, Distinguished Guests, Ladies and Gentlemen.

The Palestine autonomous region issue had been a fundamental and lasting dispute between Israel and Arab countries. Despite the fact that the Road Map to Peace as a blueprint for peaceful co-existence for Palestine and Israel remains unsettled despite many efforts that had been made by different quarters so far. It remains one of the most volatile conflicts on the globe today, and continues to pose a clear and present danger to international peace and security.

As regards this situation, my delegation would like to express deep concern about the continuing dangerous deterioration of the situation in the occupied Palestinian territory. In this context, we reaffirm Indonesia's long-standing and relentless commitment to support and contribute in the process towards finding a peaceful solution that would fulfill the rights of the Palestinians to self-determination and statehood, to independently define and conduct its foreign relations, and to live in peace, and the rights of every Palestinian refugee to return to his or her homeland.

Madam President, it is imperative that the international community, especially the Asian and African governments, takes action at this juncture to prevent a further deterioration of the situation. Therefore, the Indonesian Government also urges the parties concerned to renew their efforts towards facilitating the resumption of the interrupted peace process and the

implementation of the Road Map. My delegation would like to underline that failing to address the present stalemate is to run the risk of a critical worsening of the humanitarian situation in the Palestinian territories, which was already dire as a result of the cutting off of the international financial aid. Indonesia also supports the United Nation's initiative to conduct the international conference on the question on Palestine.

Madam President, distinguished guests, ladies and gentlemen, my delegation would also like to draw your attention on the fact that Israel is a party to the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. However, time and again, Israel refuses to apply the Fourth Geneva Convention to the Occupied Palestine Territory even though international community called on the Israeli Government to accept *de jure* application of the Fourth Geneva Convention in Palestine. Since Palestinian Territories are not part of Israel, it should strictly follow these principles, not only towards its nationals but also in protecting the rights of Palestinians. Israel should accept the applicability of international human rights and humanitarian law. Israel should also incur international responsibilities arising from a continuing violation of international obligation. Therefore, Israel is under obligations to stop its grave breaches of international human rights law, and to bring all the perpetrators of human rights atrocities to justice.

Madam President, distinguished delegates, ladies and gentlemen, Indonesia welcomes both the November 2006 cease-fire agreement between the Government of Israel and the Palestinian Authority and the understanding reached at the Summit between Israeli Prime Minister Ehud Olmert and Palestinian Authority President Mahmoud Abbas on 23 December 2006. The meetings of the Quartet in Washington, DC on 2 February 2007 and in Berlin on 21

February 2007 are also commendable developments. In this regard, we stress on the vital role of the Quartet in reviving the peace process and in the implementation of the Road Map. Indonesia also welcomes the appointment of the new United Nations special envoy for the Middle East, Mr. Tony Blair, tasked with mobilizing international aid and overseeing the development for the Palestinians. Indonesia hopes that he would bring continuity and intensity of focus to the work of the quartet in support of the Palestinians, within the broader framework of the quartet's efforts to promote and end to the conflict in conformity with the roadmap.

My Delegation also underlines the urgent need for the Palestinians to agree to establish a unity government. My Delegation therefore, welcomes the signing of the Mecca Declaration by President Mahmoud Abbas and Hamas Leader Khaled Meshaal on 8 February 2007, which lays the foundation for the formation of a national unity government in Palestine. It is our fervent hope that this agreement would immediately be implemented and supported by the international community.

Madam President, distinguished delegates, ladies and gentlemen, my delegation believes that peace can not be fully obtained by diplomacy alone, but it also requires the commitment of the parties concerned to the conflict to cease the use of force and begin to develop collaboration. Thus my Delegation encourages the Israelis and Palestinians to exercise restraint and avoid any action that would obstruct the cease-fire and the implementation of the understanding between them, which is critical to the fulfillment of the economic and social rights of the Palestinians. Thank you.

**President:** Thank you. Now Syria you have the floor.

**The Delegate of Syrian Arab Republic<sup>2</sup>:**

Thank you Madam President. I would also like to thank the Secretariat of AALCO and the Deputy Secretary-General for his lucid introduction to the topic. Ladies and Gentlemen, the appearance of this item on the agenda of AALCO during this Session and since 1988 gives two indications, first, that our Organization feels very strongly about the rights of peoples specially the Palestinians and thus believes in defending these rights through shedding light on the legal aspects, especially the violation and breaches which befall on these people and people in general. The second indication is that Israel is not serious in the application of the UNGA and Security Council Resolutions, which require that Israel withdraw from the Palestinian territory occupied by it since 1967, either through negotiations or without negotiations.

Further, Israel did not heed to the Advisory Opinion of the International Court of Justice on the Legal Consequences of Building the Wall in the Occupied Palestinian Territories. This opinion was adopted by the General Assembly in April 2004 and called upon Israel to abide by it, and to stop building the wall and remove the parts that have been built.

While discussing this item it is important to underscore the point that, the Member States were obliged – by necessity- to tackle and discuss the issue of terrorism, “State terrorism” in particular which was being practiced on the lands of others. State terrorism, was closely connected to the Israeli practices in the occupied Palestinian lands.

Madam President, ladies and gentlemen, Israel has increased its violations and atrocities on the Palestinian people, these violations are being carried out despite the call of the international community to stop them. Israel is carrying out daily atrocities

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



that cannot be overlooked from the legal point of view. My country Syria hopes that our Organization would stand by the legitimate rights of the Palestinian people, and by the rights of the Syrians to get back the occupied Golan Heights, the rights, which have been incorporated by the international law, treaties and agreements. Maybe standing by the cause of Palestinians would be an incentive for other Members joining our Organization. I thank you for your attention.

**President:** Thank you. Now Senegal you have the floor.

**The Delegate of Senegal<sup>3</sup>:** Thank you Madam President. At the outset I would like to express my thanks to the Secretariat for the introduction regarding the situation in Palestine. I would also like to thank the Secretariat for bringing out a detailed report on the Occupied Palestinian territory and the Israeli aggression on the Palestinian people. Madam President, Senegal has been chairing the Commission on Palestinian rights, and we are really worried regarding what is taking place in Palestine.

As for the current position in the occupied territories, there are daily human rights violations of the Palestinians by Israeli authorities. In fact the Israeli regime is violating the will of the international community and continues to build the separation wall in Palestine and this position cannot be accepted. The construction of the wall is a shame on the history of humanity.

Madam President, in addition to all violations that are taking place in Palestine, the Israeli practice of forceful taking of Palestinian land and forceful deportation of the Palestinians is deplorable. This is a clear violation of all norms of international law. Thus, the only solution is to have an independent State of Palestine with Al Quds as its capital. Thank you.

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

**President:** Thank you. Japan you have the floor.

**The Delegate of Japan:** Thank you Madam President. We would like to introduce Japan's position on the current situation in the Palestinian territories. In referring to the Press Release of the Ministry of Foreign Affairs dated 19 June 2007, there are three elements. Firstly, the Government of Japan expresses its deep concern over the current situation in the Palestinian territories, particularly in the Gaza Strip where Hamas seized control and humanitarian situation continued to deteriorate. Such a situation curtails the hopes of those who wish to achieve Peace in the Middle East based on the two-state solution. Secondly, the Government of Japan supports the efforts of President Abbas of the Palestinian Authority to promptly end the crisis, such as the formation of an emergency government, and strongly calls on all the parties concerned to cooperate with the President's efforts in order to prevent further worsening of the situation. Thirdly, the Government of Japan is considering providing direct economic assistance to the Palestinians through the Office of President in order to show its support for the President's efforts in a tangible manner. Thank you for your attention.

**President:** Thank you.

**The Delegation of Malaysia<sup>4</sup>:** Madam President, the Hon'ble Secretary General, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

This item has been on the AALCO agenda for the 20<sup>th</sup> time since the Twenty-Seventh Session held in 1988 on reference made by the Government of the Islamic Republic of Iran. It has remained on the AALCO agenda, with the Secretariat being tasked to monitor legal developments in the Middle

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<sup>4</sup> Written Statement of the Delegation of Malaysia was circulated and deemed to have been read.

East including Israeli Practices in Arab Occupied Territories. We commend the efforts of the Secretariat for its comprehensive reporting on this issue over the years.

Malaysia reiterates its previous positions on this issue in its paper submitted last year at the Forty-Fifth Session in New Delhi concerning the plight of the Palestinian people. Malaysia notes with regret that there has been little progress in terms of the Palestinian peoples' right to self-determination and their inalienable right in Palestine.

Numerous United Nations resolutions, individual and collective calls from the international community have been ignored by Israel whereby no action has been taken to enforce them by the Security Council. Israel further continues to ignore the Advisory Opinion of the International Court of Justice (ICJ) in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory/OPT* with the continuing construction of the Wall in other parts of the Occupied Palestinian Territory. Israeli acts of violence, use of force against Palestinians resulting in injury, loss of life and destruction, coercive migration and deportation continue to violate the Fourth Geneva Convention of 1949 and human rights law. However, Malaysia notes with satisfaction that a GA resolution (A/RES/ES-10/17) to establish a Register of Damage and an office to serve as a comprehensive record (in documentary form) of the damage arising from the construction of the Wall by Israel in the Occupied Palestinian Territory was adopted on 15 December 2006 by the GA in its 10<sup>th</sup> Emergency Special Session on Israeli actions in the Occupied Palestinian Territory (and is being implemented).

One of the latest instances of Israeli hegemony is the attack on a residential area in Beit Hanoun on 8 November 2006 that resulted in the deaths of at least 18

Palestinians, including 8 women and 7 children. Malaysia notes that a GA Emergency Special Session resolution (A/RES/ES-10/16) passed on 17 November 2006 calling for the establishment of a fact-finding mission by the Secretary-General is being implemented<sup>5</sup> although the success of the mission remains to be seen. The resolution also reiterates the call for Israel to abide by its obligations under the Fourth Geneva Convention of 1949; it is yet to be heeded, demonstrating Israel's blatant disregard of Palestinian sovereignty and the rules of international law.

Madam President, Malaysia notes that although Security Council Resolution 242 of 22 November 1967 together with the principle of returning land in exchange for peace is the basis of the Middle East peace process, certain parts of the Occupied Palestinian Territory remain under occupation. Malaysia's concerns remain that the Palestinian issue warrants serious international commitment. In this regard, Malaysia re-urges AALCO Member States to enhance their efforts in enforcing existing

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<sup>5</sup> Former Anglican Archbishop of Cape Town Desmond Tutu, Head of the Fact-Finding Mission on Beit Hanoun reported to the Human Rights Council on 13 June 2007 that "significant" human rights violations occurred there and called for an independent probe by national authorities. He said fairness and even handedness had been essential to the mission's aims, and it was distressing that the mandate could not be carried out fully. The mission was not able to travel to Beit Hanoun for reasons outlined in the Report (*Report of the High-Level Fact-Finding Mission established under resolution S-3/1 (A/HRC/5/7)*). The mission has, however, provided a number of conclusions and recommendations based on available information. Israel said it had expressed to Archbishop Tutu Israel's continuing dismay that the work of the Council was being held captive by the politicised agenda of a few States. The Government of Israel had already examined the events of 8 November 2006, and issued an apology for the tragedy. (Excerpts from the UN Human Rights Council Press Release, 13 June 2007)

UN Resolutions on Palestine and support efforts towards achieving a lasting peace in the Middle East.

At the Forty-Fifth Session, Malaysia expressed its concern over the reactions of certain States to Hamas' victory in the Palestinian Elections in January 2006, particularly the withholding of financial and other aid to the new Government as it undermined basic principles of democracy. This is tantamount to interference in the internal affairs of a State as prohibited by the principles of the United Nations Charter.

Madam President, Malaysia welcomes the signing of the Mecca Agreement on 8 February 2007 and the formation of a Palestinian Unity Government where Fatah and Hamas agreed on the urgency to take constitutional measures to form this government. It demonstrates that Parties who are at differences with each other are able to set aside those differences for the sake of unity to benefit the Palestinian people.

However, Malaysia notes with alarm the recent development on the dissolution of the Palestinian Unity Government by President Mahmoud Abbas and the sacking of Prime Minister Ismail Haniyeh and his government<sup>6</sup> following Hamas' bloody seizure of the Gaza Strip in between 9-15 June 2007. The fighting between these two groups has damaged the very fragile truce and relationship that was formed in the Holy City of Mecca; it also has direct bearing on the already desperate situation of the Palestinian people.

A year down the road and in the wake of President Mahmoud Abbas' sacking of the Hamas-led unity government, aid is beginning to trickle into the Occupied Palestinian Territory. The United States has lifted its 15-month embargo on direct aid; USD86 million is unblocked for the restructuring of security forces loyal to the

president while USD40 million is being channeled through the UN Relief Works Agency (UNRWA)<sup>7</sup>. The European Union has similarly pledged to resume direct aid to the new Palestinian Government of newly appointed Prime Minister Salam Fayyad<sup>8</sup>. Israel, on 24 June 2007 agreed to release desperately needed funds to the Palestinian President starting with the USD550 million in frozen Palestinian tax revenue that it collected on behalf of Palestine.

Madam President, although the much needed financial aid would be welcomed, the actions of the US, the EU and Israel have not only undermined democracy and the Palestinian people's freedom of choice but also formented and contributed to the disintegration of Palestinian society into civil war.

Malaysia also notes with interest the outcome of the meeting in Sharm-El-Sheikh on 25 June 2007, between President Abbas, Israeli Prime Minister Ehud Olmert, Egypt's President Hosni Mubarak and Jordan's King Abdullah II which attempts to rally Palestinian support behind Abbas. The Israeli Prime Minister has promised to release 250 Palestinian prisoners as a sign of goodwill and to improve life in the West Bank. However, the Prime Minister did not promise an immediate resumption of peace negotiations, but merely said the steps he was announcing aimed to prepare the ground for them.

In this regard, Malaysia believes that action on previous Israeli and Palestinian commitments, such as the removal of roadblocks, the release of prisoners and the evacuation of settlement outposts, must be undertaken immediately to alleviate the desperate situation of the Palestinian civilians. Malaysia also calls for the end of violence and reform of the Palestinian Authority institutions, which would contribute to ensure the achievement of

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<sup>6</sup> The Star, Friday 15 June 2007.

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<sup>7</sup> The Star, 19 June 2007

<sup>8</sup> The Star, 19 June 2007

peace and lasting stability in the Occupied Palestinian Territory. Thank you.

## **B. International Criminal Court - Recent Developments**

**Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General:** Madam President, Hon'ble Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen.

I have the honour to introduce the Secretariat's Report on the International Criminal Court-Recent Developments, Document AALCO/46<sup>th</sup>/CAPE TOWN SESSION/2007/S 9.

Madam President, it may be recalled that the Organization has been following with great interest the developments related to the adoption of the Rome Statute of the International Criminal Court, on 17 July 1998, and its entry into force on 1 July 2002, since its Thirty-Fifth Session, held in Manila (Philippines) in 1996.

The ICC represents one of the most significant opportunities the world has had to prevent or reduce the deaths and devastation caused by conflicts. Since 2002, much progress has been achieved in the establishment of the Court, which is located in The Hague, the Netherlands. With all of the senior officials of the Court in place, the receipt of one Security Council and three State referrals, and the formal launch of investigations, the Court is now a fully-functional judicial institution.

Madam President, it is noteworthy that as of 1<sup>st</sup> May 2007, 104 States Parties have ratified the Rome Statute. The Statute recognizes that States have the primary responsibility for investigating and punishing the crimes and also the Court is complementary to the efforts of States in investigating and prosecuting international crimes, guaranteeing fair public trials consistent with internationally recognized human rights principles. It is the focal point

of an emerging system of international criminal justice, which includes national courts, international courts and tribunals with both national and international components.

Madam President, the Court is in the process of building the Relationship Agreements with the United Nations, and engaged with States like Austria, other international organizations and regional organizations. I am happy to inform that the Court also concluded negotiations on agreement with the African Union. The Secretary-General of AALCO has finalized the text of the Memorandum of Understanding with Ambassador Philip Krish, President of the ICC and they would soon sign it. Moreover, the Court also expects the necessary cooperation from the civil society to facilitate the proper functioning of the system. Nonetheless, substantial challenges still remain. If trials are to be held, States and international organizations would have to assist the Court by arresting those persons against whom warrants have been issued, and surrendering them.

Excellencies, despite all these noteworthy developments towards the effective functioning of the ICC, it is pertinent to note that the *definition of the Crime of Aggression, one of the core issues under the ICC remains elusive*. The Statute mentions the time frame for providing the definition of the Crime of Aggression under Article 121. According to this Article, the Statute can be renewed seven years after the entry into force, and a review conference shall convene either in 2009 or 2010 with a view to consider any amendment to the Statute. Work on elaborating an acceptable definition of the Crime of Aggression is in progress in the Special Working Group on the subject constituted by the Assembly of States Parties. The informal meeting of this group and later deliberations in the Fifth Session of the Assembly of States Parties, are important developments, which require careful follow-up.

The Secretariat Report on this topic, at page 4, provides an overview to the core issue “Concept of Aggression”, and some issues have been identified for focused consideration at the present Session, they are:

- (i) *General vs Enumerative approach of the Concept of Aggression,*
- (ii) *which wrongful acts can be included under the definition of aggression,*
- (iii) *Individual vs State responsibility under the concept of crime of aggression,*
- (iv) *what role can ICC play in enhancing the Security Council's responsibility with regard to maintenance of international peace and security,*
- (v) *what is the alternative mechanism in case of Security Council's failure or declining to identify the act of aggression.*

Madam President, the time is ripe for exploring the possibility of convening an “Inter Sessional Meeting of Experts on International Criminal Law from the Asian-African Region” to formulate an acceptable definition of the Crime of Aggression for AALCO Member States, which could then be placed for consideration of the Special Working group. I hope with the consent of the Member States this proposal materialises before our next Annual Session. Thank you very much for your kind patience.

**President:** I thank the Deputy Secretary-General for a brief presentation on the subject. Now the floor is open for the discussion. We have seven speakers in the following order, Japan, Republic of South Africa, Sultanate of Oman, Islamic Republic of Iran, Republic of Kenya, Republic of Indonesia, People's Republic of China, and Malaysia. Now the floor is open for the distinguished Delegate from Japan.

**The Delegate of Japan:** Madam President, at the outset, I would like to make an important report on this agenda item. As I touched upon in my General Statement

earlier, Japan has been taking the domestic procedures to accede to the Rome Statute of ICC and in April this year Japan's accession to the ICC has been approved by the Japanese Diet. This month marks the 9<sup>th</sup> anniversary of signing of the Rome Statute. Japan intends to deposit its accession document with the UN Secretary General on July 17<sup>th</sup> which happens to be “World Day for International Justice”. As a result, Japan will become officially party to the ICC and will participate as member in the Sixth Session of the Assembly of State Parties of the ICC to be held in New York at the end of this year.

After its accession, Japan intends to cooperate with the ICC to contribute to the maintenance of peace and security in the international community and to the building of international criminal law and humanitarian law, including the discussions concerning the definition of crime of aggression. Japan's contribution to the ICC would, specifically, be first of all its financial contribution which is going to be the largest approximately 25 million US dollars among all the members of the ICC and would also take the form of offering human resources commensurate with its role there.

From this viewpoint, Japan wishes to contribute to supporting the activities of the ICC by way of sending a judge and other Japanese personnel for its staff. For this end, Japan will nominate its candidate for the election of judges to be held at the forthcoming Sixth Session of the Assembly of State Parties of the ICC in December this year. We would be approaching in due course the AALCO Member States of the ICC to request a most favourable consideration of a Japanese judge candidate who will be decided officially very soon.

It is earnestly hoped that Japan's accession to the ICC would lead to further increase in membership of the ICC through the further accession of countries in Asia and other regions. Japan, for its part, wishes to

endeavour for the universalization of the ICC in cooperating with its outreaching activities.

Many African Member States of AALCO are parties to the ICC and four cases are currently being dealt with by the ICC. This shows that the ICC is playing a role of implementing the consolidation of observance of international humanitarian law in Africa. Since AALCO is a common fora for the States in Asia and Africa, it would be very significant and useful to conduct the exchange of information on the experiences. Japan would like to contribute so that the occurrence of tragic events in international humanitarian law would not be repeated in Asian and African regions.

Now I wish to turn briefly to the subject of Definition of Crime of Aggression. It would be important to determine the definition of Crime of Aggression at an early date in order to ensure the effective functioning of the ICC against such crime. Japan, as party to the ICC, would like to actively participate furthermore in the discussions on the subject.

Article 5(2) of the Rome Statute stipulates that its provisions concerning the Crime of Aggression shall be consistent with the relevant provisions of the UN Charter. It is also to be noted that Article 16 provides that the UN Security Council can request the postponement of the investigation or prosecution by the ICC. It could therefore be assumed that the basic thinking underlying the provisions of Rome Statute is that the ICC activities be carried out, fully respecting the judgments of the UN Security Council.

On the other hand, upon dealing with specific cases of Crime of Aggression, it could happen that the views of the ICC differ from those of the UN Security Council, which might prevent the ICC from taking effective action against the said Crime of Aggression. Consequently, it would be necessary to consider duly that the

action taken by the ICC and by the UN Security Council be consistent with each other. Thank you very much.

**President:** I thank the delegate of Japan. And now the floor is open for Sudan.

**The Delegate of Sudan:**<sup>9</sup> In the name of God, the Most Merciful, the Most Compassionate. Thank you Madam President, The ICC is not one of the specialized agencies of the United Nations. It's a Tribunal that has been established by consensus of some countries in the Netherlands. There are some major countries did not ratify the Rome Statute such as United States of America, Russia, China, and Other Arabian and African countries. It is sufficient to say that the countries who ratified the Rome Statute and who are Members in our AALCO are less than 1/3 of the Members of the Organization. The fifteen countries who are Members of the AALCO ratified the Statute are Botswana, Nigeria, Gambia, Kenya, Mauritius, Uganda, Senegal, Sierra Leone, South Africa, Ghana and Tanzania from African continent; and Cyprus, Jordan, Mongolia, and Yemen from the Asian continent. The Asian continent has the population that exceeds 1/3 of the population of the world and only four Asian countries ratified the Rome Statute. This means more than 2/3 of the Members of this Organization have not ratified the Rome Statute. Ratifying the Rome Statute is the only criteria for any country being subject to the procedures of the ICC. Sudan is not ratified the Statute. Hence, the ICC is not having the jurisdiction against the citizens of the countries that have not ratified the Statute.

I say that the jurisdiction of the ICC is not independent. It is not an alternative for the national courts of any country. Even the countries who have ratified the Rome Statute could not accept the ICC as an alternative for the national courts. The ICC

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<sup>9</sup> Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

is complementary to the national jurisdiction, quoting to the Rome Statute is “complementarity”. We have to take special consideration of this fact. The national courts are having the priority, and the ICC is a complementary to the national jurisdiction. Secondly, the ICC does not have any jurisdiction except if any country has accepted in writing that it should be subjected to the procedures of the ICC or with this ratification it has to be proven that the courts of these countries do not wish or not able to try the criminals in this country. This matter is not left as such and the results having evidences, proofs, and evident statistics. The desire and ability are realistic methods. These are not mere words. Rulings cannot be implemented into political considerations. We in Sudan did not ratify the Rome Statute and our Courts are well known for the integrity, justice, honesty, competence and ability as well. We have different trials for individuals who committed crimes in Darfur. We have passed capital sentence against those who have proved guilty and the capital sentence was implemented and enforced. Mr. Luis Moreno Ocampo, Prosecutor from ICC mentioned clearly in his statement at Security Council that it was no doubt the integrity of the Sudanese Court. In spite of this, he can not try any Sudanese committing crime in any place rather than Sudan. If so, how can he request for the trial of two Sudanese.

We have an investigation authority included a Judge from the High Courts, and judges from the Courts of Appeals, and we consult the Ministry of Justice to do the investigation of the crimes committed in Darfur. This authority has presented different perpetrators and criminals before the Court. The Sudanese Courts has been passed sentences against those who committed the crimes at Darfur. Moreover, the authority also arrested Ahmed Haroun and Ali Kushayb based on the peoples request. The ICC is not having any right to try these people because we have the investigation committee that did

investigation with other authorities. The Sudanese Court did not find any evidence against Ahmed Haroun nor has any relationship ever with those events taken place in Darfur. Ali Kushayb an accused arrested by the authority and now he is to stand in front of the Sudanese Courts. This is very clear that the situation of the ICC is a political one. There are some western countries backing this, and as a proof that there were never any difference in Sudan with the Security Council. And whenever the United States of America passes unilateral sanctions the ICC should move strictly against that decision. We do not agree that the ICC should have any competence with us and we are independent country, we have our sovereignty, we are the members of the United Nations and we are acknowledged internationally and we have our responsibility inside our country according to our constitution and to our laws that we are sticking to and we will never accept that ICC would interfere in our legal, judicial and internal matters.

Madam President, we are requesting from this Session, which is very important, that the AALCO to pass a Resolution. It is very clear that more than 2/3 of the Members of the AALCO have not ratified the Rome Statute. So, we are requesting that we should stand together to implement the international law principles and to abstain from accepting imposing the procedures of the ICC and protecting our citizens, the citizens of the countries which have not ratified the Rome Statute.

Madam President, we should keep our principles and we should not follow the special agenda of some countries because our people are expecting us to protect them and to protect their independence and sovereignty, and to protect the right to take their decisions and our people have to make sure of our strength and solidarity. Thank you very much.

**President:** I thank delegate of Sudan. And now the floor is open for Republic of South Africa.

**The Delegate of the Republic of South Africa:** Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, I once again commend and congratulate the Deputy Secretary-General, for his concise and clear introduction of the topic under discussion.

South Africa ratified the Rome Statute of the International Criminal Court on 27 November 2002. On 16 August 2002, South Africa enacted the Implementation of the Rome Statute of the International Criminal Court Act, to provide a legislative framework to ensure that the Statute is implemented effectively in South Africa. As we approach the tenth anniversary of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and are starting to focus on the first Review Conference in the near future, it is necessary again to remind ourselves of the massive step forward that the establishment of the International Criminal Court represents for the international community and for humanity in general. For the first time in the history of the world we have a judicial institution aimed at terminating impunity for the perpetrators of the most serious and heinous crimes which are of concern to the international community. Madam President We have also noted with satisfaction the large numbers of countries which have ratified the Statute, as the Deputy Secretary-General indicated as 140 of them, secondly, the entry into force of the Rome Statute and thirdly, the subsequent operationalisation of the Court. Needless to say, the Court needs the support from all States in order to maximise its efficiency, and we call on States that have not yet ratified the Rome Statute, to do so expeditiously.

However, to complete this historic process, we need, apart from full ratification, to also find mutually acceptable solutions to the

definitional and jurisdictional issues surrounding the crime of aggression, in order to ensure that the upcoming Review Conference can amend the Rome Statute to include such a definition. Article 5(1) of the Rome Statute lists the Crime of Aggression as one of the crimes under the jurisdiction of the ICC. However, the exercise of that jurisdiction depends on article 5(2), which provides that the Court “shall exercise jurisdiction over the Crime of Aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”. A Special Working Group on the Crime of Aggression was established in 2002 by the Assembly of State Parties to continue discussions on the definition, elements and jurisdictional conditions of the Crime of Aggression.

Madam President, South Africa has noted with satisfaction the progress that has been made in this regard within the Special Working Group on the Crime of Aggression, especially during the latest intercessional meeting that took place under the auspices of the Liechtenstein Institute on Self-determination at Princeton University from 11 to 14 June 2007. We wish to express our appreciation to the Institute as well as to the Government of Liechtenstein for taking the lead in this regard, as well as, all other Governments that have been supporting the process financially.

Madam President, During the Princeton meeting, which proceeded on the basis of a paper presented by the Chairperson, good progress has been made with regard to defining the individual's conduct or responsibility within the Crime of Aggression, and this has to be welcomed. Furthermore, there appears to be an emerging consensus that the issues of attempt to commit an act of aggression and command responsibility will not be required,



in view thereof that these issues are of mere theoretical relevance to the Crime of Aggression. Broad support has also been reached on text that will require a minimum threshold for the crime of aggression. This is in line with the injunction that the Court has jurisdiction with regard to the most serious crimes of international concern, as well as with practical realities.

Regarding the important question of the definition of the act of State, diverging opinions still exist, with no clear indication yet of whether an approach of defining the crime in general, or an enumerative approach, repeating the specific acts amounting to aggression contained in General Assembly Resolution 3314 (XXIX), must be followed.

However, Madam President, Serious differences remain among States about the way in which the jurisdiction of the Court will be triggered when an act of aggression is committed. On the one hand, some States have taken the position that approval by the Security Council must be a pre-condition for exercise of jurisdiction by the Court over the Crime of Aggression, while others prefer that the General Assembly, the International Court of Justice and the Prosecutor must also have roles in this regard unfettered by what will in effect amount to a determination by the permanent members of the Security Council. We believe that if due regard is given to the principles of equality before the law and the independence of the Court, consensus on appropriate roles for the General Assembly, the International Court of Justice and the Prosecutor could be obtained, allowing for a revision of the Statute at the upcoming Review Conference.

In conclusion it seems to me that the very sensible and rationale suggestions by the Deputy Secretary-General, for AALCO's role in the future should be positively considered by this conference. I thank you for your kind consideration.

**President:** I thank the Leader of Delegation of Republic of South Africa. And now the floor is open for Sultanate of Oman.

**The Delegate of the Sultanate of Oman<sup>10</sup>:** Thank you Madam President for giving me the floor for making a statement on the topic "International Criminal Court: Recent Developments". I also thank Deputy Secretary-General of AALCO for introducing this topic for discussion.

Secretary-General, distinguished delegates, the Sultanate of Oman closely followed the developments in the establishment of the International Criminal Court since the decision at Rome was taken by the Constitution of the Court at the Diplomatic Conference for those concerned in 1998. This was a great achievement in history in materializing the will of the international community in combating the most dangerous crimes to humanity and these are war crimes, genocide, crimes against humanity and aggression.

To the extent that the efforts of the international community at the Conference reflected the visions and opinions in preserving international criminal justice, and it guaranteed that the system encompasses a complete framework of organization of the envisioned level. This meant the inclusion of the Crime of Aggression as a crime that falls within the competence/jurisdiction of the Court, considering it is the basis of committing all other crimes. This is what inclined the Sultanate to sign the final document of that Conference and to consider Rome Statute of the ICC thoroughly to look into all its legal and political aspects.

Oman's efforts and following up of this resulted in its establishment of a Permanent National Committee concerned with

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<sup>10</sup> Statement delivered in Arabic. Secretariat acknowledges with gratitude for the official translation provided by the Delegation of Sultanate of Oman.

following up the developments in the ICC through specialized experts from concerned authorities in the country. The Committees first decision was a recommendation to sign the Rome Statute of the Court. This was at the end of the year 2000. Since then, the Sultanate has made a point to diligently have effective presence in various conferences, seminars and meetings concerned with the Court, and actively participated in drafting concerned provisions with elements of crimes that fall within the jurisdiction of the Court and their procedural guidelines, as well as other constitutions and agreements that work of the Court dictates. The Sultanate also makes a point of submitting numerous suggestions aimed at guaranteeing the independence of the Court and enabling it to conduct its components in the manner stated in Rome Statute.

After the ICC completed its legal system, the Sultanate closely followed the working group formed to define the Crime of Aggression – through its following up of the works of member States' Association – based on Article 5 of Rome Statute which provides that the Court should pursue defining this crime and its constituents together with the provisions of the United Nations. As we know, this Article has created a legal problem that was not easy to solve or overcome, as some considered that the ICC's jurisdiction to consider the Crime of Aggression conflicted with the International Security Council's jurisdiction in determining the act of aggression and the necessary measures to fight it in accordance with the provisions of Chapter 7 of the United Nations, while others were of the opinion that the Court's jurisdiction to punish the perpetrators of that crime is only natural of the Court considering it is a legal institution and not from a political view point that forms the basis of the international Security Council jurisdiction. The Sultanate recognises the difficulty of the task ahead of the group concerned with defining the crime and drafting a willing definition of the Crime of Aggression that achieves the ICC's effectiveness in pursuing those who commit

this crimes without prejudice to the provisions of the United Nations because of the great importance to people generally that the crime of aggression represents and to Arab countries specifically which some have been in the past – and still are victim to this crime, and because of what the pursuance of this crime presents as an incentive to join the Court as members.

In conclusion, we reiterate the Sultanate's diligence at following the developments of the ICC, believing that preserving international safety and security, protecting humanity blood and ensuring a future for coming generations character by safety and peace will not be achieved unless a legal institution in the form of the ICC is found that is capable of pursuing those who commit dangerous crimes on an international level.

**President:** I thank the delegate of Sultanate of Oman. And now the floor is open for the Islamic Republic of Iran

**The Delegate of the Islamic Republic of Iran:** In the name of God, the Most Merciful, the Most Compassionate, thank you Madam President. During the Nuremberg and Tokyo Trial the Crime of Aggression has been characterized to be the supreme international crime. Nonetheless, within 34 days of discussion held in Rome, in 1998 which I had the privilege to represent my country in that Preparatory Conference and later on Preparatory Commissions held in New York and other venues till 2002. Unfortunately, the Member States could not reach the agreement as regard the definition of this supreme international crime, namely aggression, even though, we are getting close to the Review Conference. According to Article 121 of the definition and the condition for the exercise of jurisdiction of the ICC is subjected to the definition and conditions for such exercise is subjected to be accepted and accorded upon and it has not been done so far. It is a matter to be submitted to the Review Conference according to article 121 and 123, and should

be held seven years after enter into force of the Statute, i.e., in the year 2009. It might be in the year 2010 because in 2002 the Statute has been entered into force. Now we are going to prepare the rules of administration of the Review Conference. First of all we do believe that in order to expedite the work my delegation prefers that as regards the Rules of Procedure and Rules of Administration of this Review Conference could be taken as the rules of procedure of Assembly of State Parties *mutatis mutandis* with the different nature. This is my first proposal.

The second problem is that even in the meeting of the recent Non-Aligned Movement they do not have a common position as regards the definition and even conditions of the exercise of this jurisdiction. For example to the first point, we said the Non-Align Movement, most of the Asian-African countries having different views. The common point is that the ICC as a judicial organ should not be a subordinate to the political body, i.e., Security Council. This is a common point. But when it comes to the definition, there are different views. Taking examples, there are two main approaches, one is generic approach which has been accepted unanimously in 1974 by the Resolution 3314 of the General Assembly and another is enumerative approach listing the acts of aggression.

The other problem is the scope of the definition of the Crime of Aggression. To that regard there were different views in the recent Non-Aligned Movement meeting. For example, Cuba as a Chairman has a very broad reference and definition of the aggression. When it comes to Columbia it is restrictive. When it comes to Venezuela and Bolivia it is a vital. Therefore, Madam President, the second proposal of my delegation is that to have an Inter-sessional Meeting of Experts in co-operation with this august body under the leadership of Amb. Kamil, the Secretary-General with the co-operation of the Special Working group, which is so far held only in Princeton University, and it is out of reach for many

delegations. When I had the honour to share as Deputy-Secretary-General under the guidance of Amb. Kamil, even couldn't go and take part in that meeting due to a problematic system and procedure. Therefore, if we have such co-operation, we can send our opinion to such Inter-sessional Meeting of Experts by minimizing all different views at least within the Asian and African Countries. This is my second proposal.

With regard to the definition, my delegation, Madam President, prefers to have a generic approach as it has been done by some of the Non-Align Movement proposals submitted in this year to the Special Working Group held in Princeton, New Jersey, United States. In that context, there were two different views with regard to "aggression", i.e., "act of aggression" or "war of aggression". If we come to that point, enlisting the "act of aggression" we might not be coming to the conclusion. Aggression should be defined restrictively to the armed forces initiation, preparation, inducing by the people, by the persons, who are in such position. And to that effect, Madam President, coming to another proposal or another different view even within the Asian-African countries is how to take use of the exercise of Mandate of the Security Council. Although within the Non-Align Movement there is one position, as I have mentioned before, that it should not be a subordination of independent ICC, nonetheless the definition and taking into consideration of the Article 39 of the Charter and Article 16 of the Statute and the different views as regards to the mandate of Security Council. This is exclusively or is particularly or it is primarily, all of these determinations or matter of discussion which could be done if we are going to have such expert meeting and we could minimize those different views.

Allow me, Madam President, to go to some other points, which could be important for us. Now we have before us some views listened and expressed by distinguished

speakers preceding my intervention. Coming to the conditions of exercise of jurisdiction my delegation believes that the elements of crimes and rules of procedure which has been finalized in 2002 could be adamant and could be exercised to that exercise of jurisdiction by the Court. We don't need to prepare a new draft with regard to the elements of crimes and rules of procedure. Because all the elements are the same but some *mutatis mutandis* different acts, and rules of procedure are the same. Coming to the rules of procedure the principles of presumption of innocence, the principle of complementarity, the principle of admissibility, and treating mechanism are the same.

Commenting on the elements of the crimes, it seems that the elements of crime which have been finalized during the Preparatory Commission held since 1999 till 2002 are the best model and it should be taken as *mutatis mutandis*. Coming to the conclusion, Madam President, another problem even within the Non-Align Movement is taken into consideration is the act of the Security Council. We do believe that ICC is an independent judicial organ. If, Security Council has determined the act of aggression or war of aggression, accordingly could be referred to the ICC or be triggered by the ICC Prosecutor. If it has not been done, my delegation believes that it could be informed by the Prosecutor General of the ICC to the consideration and notice of the Secretary-General of the UN, namely, it is not subordination, and it is a co-operation between these two bodies which have co-operation agreement. Therefore, the faculty of the ICC should not be subordinate to other or even International Court of Justice. Even to the ICJ, of course, according to the Charter of the UN if there is a reference as regard to the advisory opinion it could be referred to the ICJ, but it should be in the form of co-ordination and co-operation. It is not subordination.

The last point Madam President, is the importance of the adherence and end to the

impunity of international crimes all of them which in the Review Conference, I do believe that for the Asian-African countries as it has been proposed all Member States, enlist even most critical terms or international dimensions which are considered with the international community could be dealt in that expert meeting. I do appreciate Madam President for patience hearing.

**President:** I thank the delegate of the Islamic Republic of Iran. And now the floor is open for Kenya.

**The Delegate of the Republic of Kenya:** Madam President, Distinguished delegates, The Statute of the International Criminal Court which entered into force on 1<sup>st</sup> July 2002 was ratified by Kenya on the 15<sup>th</sup> March 2005. War crimes, genocide and Crimes against Humanity are the most heinous crimes for which the perpetrators must be brought to justices.

Kenya published the International Crimes Bill, 2006, with a view to domesticating the Rome Statute. The Bill is currently being subjected to intensive discussion by the stakeholders with the intention of ensuring that it complies with our treaty obligation.

Madam President, Kenya welcomes the on going deliberations on the definition of the Crime of Aggression especially by the Special Working Group on the Crime of Aggression. Kenya supports the view of the International Law Commission to the UN General Assembly that it is undesirable to define aggression by detailed enumeration of aggressive acts, since no enumeration could be exhaustive. The review conference will also enable States to take stock of the operationalisation of the provisions of the Statute.

Madam President, Kenya has taken steps geared towards coining a country position on the matter. An Inter Ministerial Committee is now in place to deliberate on the matter of the definition of the crime of

aggression, the extent to which Kenya would exercise jurisdiction over acts of aggression as well as those elements that would acceptably constitute the crime of aggression. The results of this endeavour should be ready by the next session of the Assembly of States Parties to the International Criminal Court. Kenya looks forward to the Review Conference where the subject of definition of crime of Aggression will take centre stage.

Madam President, Kenya takes note of the fact that only fifteen Members States of AALCO have ratified the Rome Statute. Out of these, eleven are from Africa and only four from the Asian region. Kenya would like to encourage states to consider being State Parties to the ICC in order to send a clear signal of universal rejection of impunity.

Madam President, Kenya is aware that some the AALCO Member who are either signatories or State Parties to the Statute of the ICC have come under intense pressure to sign Non-Surrender Agreements. While Kenya acknowledges the sovereign rights of States to enter into agreements, the forum of AALCO offers an opportunity for guidance to its members to determine whether such Non-Surrender Agreements are in compliance with their obligations under the Rome Statute. Such guidance will ensure that perpetrators of the crimes covered under the ICC are not shielded from justice through bilateral arrangements.

**President:** I thank the delegate of Kenya. And now the floor is open for Republic of Indonesia.

**The Delegate of the Republic of Indonesia:** Madam President, distinguished Delegates, Before I begin my brief remarks, may I take this opportunity to extend our appreciation to the President, officials and staff of the ICC for their tireless effort to develop the ICC as a new institution. The ICC has become a reality. The Court is no longer an aspiration, but it is a functioning

institution. As we know, the most senior officials have been appointed and the Court is in the process of building its structures and devising its procedure. My delegation hopes that the ICC is able to meet the challenge set by the international community.

Madam President, distinguished delegates, my delegation attaches a great importance to the fundamental principles of the work of the ICC, namely independence, impartiality, the rule of law, and the professionalism. Just and effective operation of the Court which would facilitate general support and cooperation from the international community is of significance to the future of the ICC.

In this respect, the application of the principle of complementarity is the key to the survival and vitality of the ICC work. National juridical system, social tradition and culture deserve due respect. National Courts should be given the primary role in the prosecution of human rights violations. I believe that it would encourage universal – acceptance of the jurisdiction of the ICC without much concern that it might be abused for politically motivated purposes.

My delegation shares some concerns that ICC itself would decide whether a particular state is “unwilling or genuinely unable to carry out the investigation or prosecution”, in order to complement the jurisdiction of national court. The subjective interpretation by the ICC of what “unwilling or genuinely unable” may compromise the sovereignty of a state.

For that reason, my delegation reiterates that it would be prudent to observe at the first instance on the implementation of the Rome Statute and the operation of the ICC. However, it does not mean that Indonesia lacks commitment to stop human rights violations. Indonesia has concretely taken strategic steps to end human rights violations. Fundamental principles and provisions of Rome Statute, ICCPR,

ICESCR have been appropriately incorporated to our national law.

Madam President, distinguished delegates, the Crime of aggression is one of the four crimes within jurisdiction of the court. However, it is a complicated issue. With regard to the definition of aggression, my delegation consistently maintains that Definition of Aggression should be in conformity with the Charter of the United Nations. The Indonesian Government welcomes the development of the matter made by the Special Working Group on the Crime of Aggression. My delegation believes that there is a clear chance of establishing a successful definition on crime of aggression. Indonesia sincerely hopes that the international society will settle this issue in a practical and cooperative way.

In light of conditions for the exercise of jurisdiction the ICC over the Crime of Aggression, my delegation attaches much significance that the ICC shall exercise its jurisdiction in a manner consistent with the provisions of the United Nations Charter. Although the Security Council has primary role in the determination of an act of aggression, my delegation shares the view that lack of a determination by the Security Council as to the existence of an act of aggression committed by the State concerned shall not impede the exercise of the Court's jurisdiction with respect to referred to it.

Although Indonesia is not yet a party to Rome Statute, it has been keeping an eye on the development of the Court. We hope to see an independent, just and respectable international criminal court playing an important and positive role. Thank You.

**President:** I thank the delegate of Republic of Indonesia. And now the floor is open for People's Republic of China.

**The Delegate of the People's Republic of China:** Madam President, distinguished Delegates, at the outset, allow me to take

this opportunity to extend our sincere thanks to the Asian-African Legal Consultative Organization (AALCO) for its efforts to update all the Member States in a timely manner, on the latest developments in the International Criminal Court.

As known to all, the International Criminal Court is an outcome of decades-long relentless efforts by the international community to end impunity and punish the most serious international crimes, and also an achievement in mechanism-building after a century of hard work to ensure individual criminal responsibility for these crimes. Since the very beginning of the negotiation of the Rome Statute establishing the Court, China has taken an active and constructive part in every stage of the process to set up the court and made its due contribution.

Madam President, in our view, the Court's activities should be conducted in strict compliance with the principle of complementarity set forth in the Statute, and should be a true complement to national judicial systems. Investigation and prosecution of serious international crimes should be in the first place handled by national judicial systems rather than by the International Criminal Court. In this regard, we share the concerns of some Asian and African countries.

Madam President, As far as the question of the Crime of Aggression is concerned, the Special Working Group on the Crime of Aggression set up by the Assembly of States Parties to the Statute just met last month for the fourth informal inter-sessional meeting, and made progress in the definition of the crime. However different views still exist.

We hope that all those gaps could be solved properly within the framework of the UN Charter. China will continue to support the positive efforts made by the International Criminal Court to punish and deter the most serious international crimes, and we'll pay close attention to the Court's work. We sincerely hope that, the Court will

effectively address the concerns of Asian-African states, prove to the international community, through its operation and work, its just and independent role in strict compliance with the principle of complementarity, and win wider trust and support among States.

Thank you, Madam President.

**President:** I thank the delegate of People's Republic of China. And now the floor is open for Malaysia.

**The Delegate of Malaysia:** Madam President, distinguished Delegates, Ladies and Gentlemen, Malaysia reiterates its support for the establishment and operationalisation of the first permanent International Criminal Court (ICC). The success of the ICC is essential to ensure that the perpetrators of heinous crimes against unprotected civilian populations are brought to justice and that future actors are deterred from such acts.

Malaysia also reiterates that over and above the constitutional, legal and procedural issues of Rome Statute membership, Malaysia remains concerned on how the powers of investigation and prosecution will be exercised, particularly in relation to the Principle of Complementarity. Recent actions by the ICC to issue warrants of arrest against alleged Darfur war criminals when there are clear objections by Sudan (a non State Party) has done little to allay our concerns. Malaysia however welcomes the transparency of the ICC Prosecutor in providing his explanations on the basis for the ICC's claim to jurisdiction over those 2 cases. For the Rome Statute to be implemented effectively, there must be a clear understanding and mutual cooperation between the ICC and the States where the perpetrators are residing as well as the States where the evidence and witnesses are present. Malaysia is following the process of the ICC with keen interest and hopes that the legal issues surrounding the implementation of the Rome Statute could be addressed in a

manner where the concerns of all parties would be addressed satisfactorily.

Malaysia records its appreciation to the Special Working Group on the Crime of Aggression, for its untiring efforts to elaborate a realistic and practicable definition of the Crime of Aggression for the purposes of the Rome Statute and to tackle the arising ancillary issues. Malaysia also welcomes the Coordinator's Revised Paper on the proposed definition which has been deliberated during the 5<sup>th</sup> Resumed Session of the Assembly of State Parties held from 29 January – 1 February 2007 in New York and at the Inter-sessional Meeting of the Special Working Group on the Crime of Aggression held from 11 – 14 June 2007 in Princeton. Malaysia has greatly benefited from attending these deliberations and has gained a better understanding of the issues being discussed and the variants of the provisions under consideration.

Madam President, with reference to the issues highlighted by the AALCO Secretariat at paragraph 10 of its paper on this agenda item, Malaysia takes this opportunity to advance its views as follows.

Malaysia prefers the enumerative approach of the concept of "act of aggression" for the definition of the Crime of Aggression in the interest of clarity and certainty. In this regard, Malaysia views the exhortation in Article 5(2) of the Rome Statute that the definition of "crime of aggression" has to be consistent with the relevant provisions of the UN Charter as pertinent. This is because firstly, Article 39 of the Charter refers to the trigger element as "act of aggression" and not "armed attack". As such, Malaysia is of the view that this is the term that should be used in Article 8 bis paragraph (1).

Secondly, given that there exists no guidelines for the Security Council to determine whether there has been an "act of aggression" other than General Assembly Resolution 3314, it is clear that should the Security Council be called upon to make a

determination, it will refer firstly and primarily to that Resolution. On its part, General Assembly Resolution 3314 adopts both a generic definition and a non-exhaustive enumerative approach of instances of aggression. This definitional approach has stood as the unchallenged *de facto* definition of “act of aggression” since 1974.

For the same reasons, Malaysia would prefer the term “act of aggression” to “war of aggression” although it is recognized that almost all “acts of aggression” are necessarily caused by “aggressive wars” and therefore should be criminalized international crimes as offending the Charter of the United Nations. Malaysia notes that Article 5(2) of the General Assembly Resolution 3314 appears to draw a distinction between the consequences of a “war of aggression” and mere “act of aggression”. In the case of the former, it is a crime against international peace and entails international criminal responsibility. On the other hand “acts of aggression” only give rise to international responsibility of State. In Malaysia’s view, therefore, the drafting of the new Rome Statute definition is a timely opportunity to standardize and clarify our use of terms, and based on the current text of Art. 8 bis in the Coordinator’s Revised Paper, States should agree to adopt “act of aggression” as the standardized term with the agreed meaning.

On the issue of the role of the Security Council under the Rome Statute, Malaysia maintains its view that although it recognizes the role of the Security Council to make a determination on the existence of an “act of aggression” under Article 39 of the Charter of the United Nations and to suspend the investigation or the proceedings of the ICC indefinitely under Article 16 of the Rome Statute, all efforts should be made to ensure that the lack of such a determination and such power do not hinder the ICC in pursuit of justice. In this regard, Malaysia notes that the Discussion Paper proposed by the Chairman of the Special

Working Group on the Crime of Aggression contains some workable options that merit further consideration. Thank you.

**President:** I thank the delegate of Malaysia. I am going to propose break for tea, but before that Secretary-General would like to make an announcement.

**Secretary-General:** Thank you Madam President. Just a very positive note. His Excellency, the Minister for the Justice, Sudan is with us today and he asked me to confirm all the Member States that the Financial Ministry has finalized the payment of all the arrears of Sudan and this will be done very soon. I also received the same confirmation from the Ministry of Justice, Minister of State of Senegal who also confirmed to me that very soon they will be finalizing all its arrears. So, on behalf of all of you I thank both the Ministers and I hope to receive the cheque very soon. Thank you.

**President:** Break for the Tea.

### C. Establishing Cooperation against Trafficking in Women and Children

**Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General:** Thank you Madam President. Madam President, Honourable Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen,

I thank you for bestowing me with the honour to introduce the agenda item “Establishing Cooperation against Trafficking in Women and Children” contained in Document AALCO/46<sup>th</sup>/CAPE TOWN SESSION/2007/S 8 and its Addendum. The Secretariat has been consistently following all the recent developments in the field of legal regulations for combating trafficking in women and children since its inclusion as an agenda item at its Fortieth Session in 2001 upon the request of Government of Republic of Indonesia.



Madam President, the report *inter alia* focuses on the international obligations of a State in combating trafficking in persons, which includes crime prevention, and protection of human rights of the trafficked persons. Additionally, the report envisages other regional initiatives specifically from African and Asian regions in combating trafficking. The regional initiative in Africa like the Joint Economic Community of West African States (ECOWAS)/Economic Community of Central African States (ECCAS) Conference of Ministers to combat Trafficking in Persons and the Bali Process are noteworthy at this instance. Hence, the fact remains that this topic is significant even after repeatedly and seriously being addressed at both international and regional levels.

Madam President, trafficking in human beings, also has acute security implications. The vicious circle of trafficking in persons and other organized crimes with steady increase in crime rates due to internationalization of work, trade, transport and communication makes it difficult for States to combat them effectively without the cooperation of other countries. It is therefore essential to coordinate among States to take initiatives for crime prevention. From a trafficked person's viewpoint, their basic human rights are violated and they are negated from enjoying their full freedom. On the definition aspect there is a description of 'self/voluntarily trafficked person'. The interpretation of the term 'consent' of the trafficked person, to a large extent is not 'self/voluntary' and hence the distinction between genuine victims and the self/voluntarily trafficked person may not be narrowed down to not to include them. The interface between different regimes in international law with the issue of trafficking has been dealt in detail. These issues have been highlighted in the present report and they need to be discussed in detail.

The United Nations Convention against Transnational Organized Crime has been

well received by the international community with 147 Signatories and 133 Parties and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children have 117 Signatories and 111 Parties to it. Till date 34 AALCO Member States are signatories to this Convention and 24 of them have ratified it. Moreover, 23 AALCO Member States are signatories to the Protocol and 19 have ratified or acceded to it. The subsequent important step, which a State must undertake, is to formulate rules and regulations in the form of national legislation to prevent and prohibit trafficking in persons besides including necessary provisions that shall prevent such crimes from occurring in future.

Madam President, recalling the mandate received vide RES/43/S P/1 and after a thorough study of the national legislations received from Member States to draft Model Legislation, the Secretariat had presented at the previous session a Preamble and a set of five draft articles. At this Session, the Secretariat presents before its Member States a set of revised draft articles as an addendum for consideration. The need for such a revision of the draft articles occurred because the earlier version was in the form of a draft Convention that may have been more binding on its Member States. Also keeping in view the mandate given, the Secretariat reformulated the previous draft articles in the form of Model Act, which can be adopted as a national legislation by Member States once it is finalized. However, some earlier model legislations, for example, "Model Legislation on the Status and Treatment Refugee", prepared by the Secretariat were in the form of Model Acts, which could easily be enacted in their national legislation by any State desirous of doing so.

Madam President, for the purpose of drafting effective Model Legislation it is expected that the Member States come out with concrete suggestions reflecting their experiences. The revised draft articles, as an

addendum is circulated for the kind perusal and consideration of Member States. The Secretariat requests the Member States to give their valuable comments and changes and send their comments on the Preamble and first set of revised draft articles of the proposed Model Legislation.

The Secretariat Report focuses on the following issues for deliberation at the present session, they are (i) distinguishing between genuine and self/voluntary trafficking, (ii) how to reduce demand and targeting only the criminals, and (iii) enforcing and protecting the human rights of the trafficked persons.

Looking forward for having a fruitful discussion and deliberation upon the issues highlighted. Thank you very much.

**President:** Thank you Amb. Tabatabaei. Now I give the floor to Senegal

**The Delegate of Senegal<sup>11</sup>:** Thank you, Madam President. Your Excellencies, Distinguished Delegates, Observers, Ladies and Gentlemen,

First of all, I would like to congratulate Her Excellency on her being elected as President for this Session. Trafficking in human beings especially women and children is a very delicate matter. I sincerely appreciate the Secretariat for carefully dealing with this issue which is of great significance and also to note that such a new phenomena like trafficking has been addressed with such vigour.

Madam President, this issue is of great concern as this menace has occurred due to the very political, economic and social changes or transitions that have taken place in Africa. The factors or reasons for such a growing menace are poverty, and special internal reasons of certain countries like fragmentation of political structures.

Destruction of family also leads to such crimes and it leads to grave human rights violations. There is a clear interphase between trafficking in drugs and arms, money laundering, corruption, etc. and the States in order to combat such crimes had signed the Palermo Declaration.

Senegal due to its geographical reasons is either a transit or destination country and hence, in order to combat this menace has incorporated various international norms and laws which aim at punishing the perpetrators of this crime. In this attempt, Senegal has ratified all the three protocols that are supplementary to the United Nations Convention against Transnational Organized Crime. I thank you all for your kind attention.

**President:** I now give the floor to Tanzania

**The Delegate of Tanzania:** Thank you Madam President. Your Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Trafficking in Persons especially Women and Children is a very multi-dimensional crime. This crime, at the outset, denies women and children their basic human rights like right to life, right to education and the right to make decisions that affect their lives. Consequently, they are reduced to mere profit making instruments by satisfying the lust of other inhuman mortals. The pretext that some of the victims expressed a choice to be trafficked in order to access employment has to be carefully weighted against all odds. Poor women, in order to increase their income and earn livelihood are invariably lured to accept unconscionable terms based on incorrect information at the time of departure from their homes. Their rights need to be protected and guaranteed. Therefore, any initiative to contain this problem and to ensure and uphold the social, cultural and economic rights of these vulnerable groups needs to be welcomed.

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<sup>11</sup> Statement delivered in French. Unofficial translation from the interpreter's version.

Madam President, the crime of trafficking is a predicate offence to sexual abuse in many countries and must be addressed in all its forms. It is essential to note that the jurisprudence on this area must evolve in order to provide protection for victims rather than criminalizing and penalizing them. The victims should be considered as witnesses rather than offenders or accused. They should be compensated for their sufferings instead of being punished and they should be reintegrated with their families.

One of the basic human rights that should be restored is the freedom of movement including that of women, which must not be compromised in any way. Women have the right to travel without unreasonable impediments in order to allow them to search for their education and employment in a legitimate manner. The protection of the vulnerable women and children should in no way be translated as meaning that they are denied of their basic freedom of movement. The right to freedom of movement and the needs of protecting the vulnerable sections is to be carefully balanced while searching for the framework of cooperation in this area. Tanzania would encourage the AALCO Secretariat in its work on this area and would assure unwavering support in order to realize a scheme of cooperation that guarantees the protection and decency of rights of women and children as they exercised their right of movement around the globe in pursuit of development, good life and advancement. I thank you for your kind attention.

**President:** South Africa, you have the floor.

**The Delegate of the Republic of South Africa:** Thank You Madam President. Your Excellencies, Distinguished Delegates, Ladies and Gentlemen,

May I once again congratulate the Deputy Secretary-General, as I have done few times a day, with the really excellent and concise introduction of the topic. On 20 February 2004 South Africa ratified the United

Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. This has placed an obligation on the South African government to bring its domestic laws and policies in line with the standards set by the Protocol. In order to comply with this obligation, the South African Law Reform Commission has commenced with an investigation which is aimed at addressing trafficking in persons within the South African context by recommending legislative and non-legislative measures in order to facilitate the effective prosecution of traffickers, the protection of victims of trafficking and the prevention of trafficking in persons. The Law Reform Commission has gone through an extensive consultation process, including the release of discussion papers, widespread workshops and so on over a period of time. The Law Reforms Commission now is in a position close to process of finalizing its report on the trafficking in persons, which we hope to receive in the course of the year.

Madam President, pending the finalization of the comprehensive legislation on trafficking in persons, a chapter on trafficking in children was included in our Children's Act of 2004. This Act although is not fully operational. The Children's Act criminalizes the trafficking of children and certain behavior facilitating trafficking in children. It provides for international co-operation between South Africa and foreign States. It deals with the reporting and referral of child victims of trafficking and the repatriation of such children. It further provides the courts with extra-territorial jurisdiction in respect of the offence of trafficking in children. Furthermore, the Criminal Law (Sexual Offences and Related Matters) Amendment Bill in the interim criminalises trafficking in persons for purposes of sexual exploitation. Pending the adoption of comprehensive legislation, in compliance with the United Nations Protocol on Trafficking, the transitional

provisions in the Bill relating to the trafficking in persons for sexual purposes are provisionally provided for in partial compliance of our international obligations and to deal with this rapidly growing phenomenon globally. This Bill was approved by the National Assembly in May 2007 and is now processed through the Council of Provinces. We hope to implement this Bill before the end of the year.

Madam President, the South African Prosecuting Authority in the interim pending the passing of the comprehensive legislation also prosecutes in terms of certain crimes. Firstly, in terms of common law we invoke crimes like Kidnapping, Abduction, Assault, Indecent assault, Assault with intent to cause grievous bodily harm and Rape. In the realm of statutory laws, we also have various pieces of legislations that assist us in the interim in dealing with matters of trafficking. I do not deal with it in details because of time constraints. But I will mention the legislations like Immigration Act, 2002, the Sexual Offences Act, 23 of 1957, the Basic Conditions of Employment Act, 75 of 1997; and the Prevention of Organised Crime Act, 121 of 1998.

Madam President, with regard to regional cooperation South Africa is engaged in efforts aimed at improving mutual legal assistance and the signing of extradition treaties to facilitate persons on trafficking. South Africa also believes that while exploring existing trafficking in persons interventions in the South African Development Community (SADC) region, a particular focus on border locations and cities with a higher proportion of commercial sexual activity must be maintained.

South Africa is one of the SADC member States that have proposed that a committee on trafficking in women and children be established within the SADC structures, as the trafficking of persons for exploitative purposes is a negative developmental issue

in the region. In this regard Interpol's Sub regional Bureau for Southern Africa (SARPCCO) and the African Prosecutors Association (APA) have been identified as some of the law enforcement regional and continental structures which can be utilised to counter trafficking in women and children.

South Africa has observed with keen interest the existing programmes in the region which are led by international organisations, such as the IOM's Southern African Counter Trafficking Assistance Programme (SACTAP), which provides, inter alia, training for law enforcement agencies and officials, victim assistance and public awareness and is of the view that valuable lessons can be learned from such organisations. The UNODC also coordinates legislation, development sessions and training for countries in the region. South Africa therefore believes that these initiatives could be used as an effective entry point into strengthening and formalising cooperation and coordination efforts around trafficking issues.

In conclusion Madam President, the first Regional Anti-Human Trafficking Conference in Eastern Africa was held in Kampala, Uganda from 19 to 22 June this year, to enable the start of harmonisation on aspects of trafficking like Prevention, Sensitization and awareness raising, Victim protection and assistance, Legislative framework and policy development, Law enforcement as well as Cooperation. It is hoped that the same process can be initiated within AALCO, in the not too distant future, to further allow for Asian-African harmonization on these aspects of trafficking. In conclusion, South Africa also welcomes the comments and proposals the Deputy Secretary-General raised in his introductory remarks, and we suggest that they require further consideration. I thank you for your kind attention.

**President:** Just to remind the speakers to please slow down and do not rush through

your presentations because the interpreters are requesting us not to read too fast our statements. But also to remind you that we would like you to give an overview or a summary of the essential elements of your presentations and within ten minutes. Indonesia you have the floor.

**The Delegate of the Republic of Indonesia:** Thank you Madam President. Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

On behalf of the Indonesian Delegation to this Session, allow me at the outset to shed some light on our current efforts to eradicate trafficking in persons, especially women and children. Currently Indonesia, conducts its efforts to prevent and combat trafficking in persons, especially women and children, through 3 (three) levels, namely (1) Legal Framework; (2) National Policy, and (3) Law Enforcement Process.

On Legal Framework level, the Government of Indonesia had already approved by the House of Representative Law Number 21 year 2007 on Eradication of The Criminal Act and Trafficking in Persons. The law was signed and entered into force on 19 April 2007. after this session we will submit the law to the AALCO secretariat. The formulation of this Law constitutes a manifestation of Indonesia's commitment to observe the UN protocol of 2000 on the Prevention, Suppress and Punishment of Trafficking in Persons, especially Women and Children (the Palermo Protocol), to which Indonesia is a signatory. In accordance with the UN protocol 2000, the coverage of regulation of this Law includes prevention and eradicates trafficking in persons especially women and children, punishes the traffickers of witnesses and victims and cooperation (could be national and international level).

The element of the criminal act of the trafficking in persons in this Law, is anyone who recruits, transports, harbors, sends,

transfers or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploitation or which causes the exploitation of a person, shall be punishable by prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years.

Exploitation shall mean an act committed with or without the consent of the victim which Includes but is not limited to prostitution, forced labor or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another person's labor or ability for one's own material or immaterial profit.

Government of Indonesia has also submitted the United Nations Convention against Transnational Organized and Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children to be ratified as soon as possible by the Indonesian House of Representative. At the same time, the Government had already prepared and submitted national regulations to be approved by the House of Representative to implement the UNTOC and its protocols with, inter alia, the Trafficking of Women and Children Act and the Protection of Witnesses and Victims Act. Other regulations related to the efforts to prevent and combat trafficking are also being submitted to be ratified/approved by the House of Representative, such as the ratification of the UN Convention against Corruption and the enactment of the Mutual Legal Assistance in Criminal Matters Act.

When UNTOC is already ratified by Indonesia, laws and regulations concerned with the efforts to prevent and combat trafficking of women and children must be integrated and coordinated into each other,

and each one of them shall have a mechanism to conduct international cooperation in view to maximum achievement in preventing and combating trafficking of women and children.

Madam President, Now, let me turn on the National Policy level. The Government of Indonesia has specifically endorsed a special Presidential Decree to set up a National Action Plan to Eliminate the Trafficking of Women and Children, including by establishing an intersectional Task Force to implement such action plan. The task force is constituted as a coordinating body with the duty to: first, coordinate efforts to prevent and address the criminal act of trafficking in persons; second, provide advocacy, socialization, training and cooperation; third, monitor developments in the provision of victim protection including rehabilitation, return, and social reintegration; fourth, monitor law enforcement; and finally to conduct report and evaluation. It is expected that all efforts to prevent and combat trafficking of women and children will be more integrated with the efforts to prevent the root causes of the trafficking of women and children, namely poverty, inadequate education, chronic unemployment, broken family, gender imbalance and patriarchal culture, consumerism, weak legal enforcement against the perpetrators. The Task Force is expected to collaborate with other Task Forces related to efforts to transnational organized crime such as the Money Laundering Task Force, which for example may present information regarding the occurrence of transnational crime in the form of money laundering which is indicated to come from the performance of trafficking of women and children.

Furthermore, on the Law Enforcement level, Indonesia's effort to prevent and combat trafficking are in two sub levels, namely, one at the national level and second at the bilateral/regional/international level. At the national level, the community shall participate in assisting in the prevention of

trafficking in persons as to save women and children and handling of the treatment of each victim. At the bilateral/regional and multilateral level, cooperation may be effective through an agreement on mutual legal assistance in criminal and all technical cooperation in accordance with preparing laws.

Finally, since the nature of trafficking of women and children is transnational/global, no country can ever successfully combat trafficking without the assistance of another country, therefore my delegation again reiterates the urgency of collaboration among nations through bilateral, regional and multilateral forum. I thank you Madam President.

**President:** Thank You. Qatar.

**The Delegate of the State of Qatar:** Thank you Madam President.<sup>12</sup>

In the Name of God, the most Merciful, the most Compassionate.

Reinforcing from the rules of justice, equality, freedom, charity and ethics which are called for by Islam, and on which our Constitution of Qatar is being based and being keen on realizing stability and enhancing the equality of opportunities among citizens in harmony with the international approaches and rules of International Humanitarian Law, the State of Qatar gives this subject of trafficking in persons and the legislative measures significant importance and strategic care. Because on the legislative level, the Qatari legislature was so keen to find basics to preserve the basic dignity of human being and pinpoint the importance of his rights and holding all acts to combat trafficking in persons. That is why our Constitution embedded a number of democratic acts through popular participation and has guaranteed the public and private freedoms

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<sup>12</sup> Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

and adheres to the importance of respecting the international covenants and instruments and has also called for the combating of sexual exploitation, prostitution, homosexuality, kidnapping, slavery and forced labour and for the working of women and children in proper conditions. Also the Juveniles Law prohibit the working of children under 16 and also prohibits the participation of children in camel races due to the hazards which they can suffer from and has set up committees which carry out field visits to find any contraventions in this connection. At the international level the State is so keen to protect the human rights in line with Sharia and international instruments through certain authorities such as the Office of Human Rights and the Qatari Institution to protect child and women and family consultations and the national office to combating trafficking in persons as well as the Qatari House for shelter with human care and social care. Also, the State formed a committee to carry out and follow the strategy and guiding steps which can combat this trafficking in persons and approve the resolutions in this connection for the year 2003 - 07. Thank you.

**President:** Thailand

**The Delegate of Thailand:** Thank you Madam President. Madam President and Distinguished Delegates,

On behalf of the Thai delegation allow me to express my sincere appreciation to the Secretariat of AALCO for their endeavour to develop a Draft Model Law for Criminalization of Trafficking in Persons as well as the Protection of Victims of Trafficking For, During and After the Criminal Proceeding. I am confident that the outcome of this document will facilitate all Member States in their quest to improve their national legislation in line with international standards for crime prevention and human rights protection in this area.

Madam President, the issue of Trafficking in Persons especially Women and Children has received world wide attention and was highlighted at one of the recommendations contained in the Bangkok Declaration which was the outcome of the Eleventh United Nations Congress Crime Prevention and Criminal Justice Congress held in Thailand from 18-25 April 2005. The rapid expansion of the multi-dimensional nature of this problem made it imperative that the countries adopt precautions and more integrated approach in dealing with trafficking in persons. As in the case of Thailand, the Draft Act on Prevention and Suppression of Human Trafficking will be promulgated in the near future. This new Act will cover all aspects of the trafficking in Persons we call it or not whether they are genuine or self/voluntary trafficking cases. In other words, consent of the trafficked person is not a defence against such crimes. Trafficked persons are considered to be victims and not subject to further prosecution in relation to trafficking offence as well as violation of other immigration laws. The basic civil rights protection and due process should be given to all trafficked victims particularly the rights to be protected from potential retaliation and intimidation. The victimized person identification shall be kept confidential and this shall be put in the witness protection programme. The Law enforcement officials are also armed with new powers such as interception of information and the penalization of the legal persons on networking bodies which commit human trafficking offences and discriminate criminalisation or obstruction of justice against the so called persons of influence as well as others who intentionally interfere with judicial process.

Madam President, in addition to the above mentioned Act on Prevention and Suppression of Human Trafficking, Thailand, is now in the process of amending the Thai Penal Code to incorporate offences related to the travel document which will criminalize the production, possession, use, distribution and procurement of fraudulent

travel document both foreign and domestic to be punished for by heavy fine and long term imprisonment. This we hope will efficiently tackle the travel document and identity frauds which are the two means used by criminal groups in its illegal smuggling as well as effectively eradicating manufacturing and illegal trade in fraudulent travel document. Further, trafficking is currently listed as an offence for money laundering under the Thai Penal Code.

Madam President, despite the progressive domestic legislation of this country, we still need to deepen our level of cooperation both regionally and internationally in the fight against this problem. They have proved to be fruitful and effective in the cooperation framework and the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and the related Transnational Crime or the so called Bali Process. As evidently seen in the area of legislative development, information sharing and public awareness campaigns on this issue are in countries within the region. I therefore, hope that within the AALCO framework we will again have strong and successful cooperation among our members in the area of Human Trafficking which is our common and global concern.

Madam President, Thailand gives top priority to this issue, since, unfortunately Thailand is considered as a sending country, transit country and receiving country for the trafficking in persons. In dealing with this issue at bilateral level, we have found that the effective international cooperation is the key to effectively fighting the transboundary and organized nature of such crimes. Bilateral Agreement with our neighbours who share mutual concern has proved successful. Moreover, it is encouraging that we have concerted effort in setting standards, raising public awareness towards the plight of trafficking victims and poverty alleviation.

Lastly, the involvement of all public sectors to cooperate with one another in monitoring

and supporting the work of authorities concerned is also necessary in the long run.

Madam President, last but not the least, Thailand is of the view that every effort should be made in order to work towards long term solutions in preventing this heinous crime. Thailand believes that we will eventually control and suppress trafficking in persons and help the victims to resume their normal lives. Thank you Madam President.

**President:** Now I call upon Malaysia.

**The Delegate of Malaysia:** Madam President, Honourable Secretary General, Excellencies and Distinguished Delegates,

Malaysia notes the increasing global profile accorded to the Trafficking in Persons (TIP) issue. Malaysia also acknowledges that this scourge must be addressed from both a criminal perspective in relation to the traffickers while humanely dealing with trafficked persons who are often rescued or found in untenable living conditions with little regard for their basic human dignity.

Malaysia reiterates that TIP can only be addressed effectively if the source and destination countries take the necessary preventive measures. In source countries this means addressing conditions of economic poverty and unemployment. In the case of destination countries, this means addressing the demands of the sex industry, forced labour and servitude and demands for human organs.

Madam President, Malaysia has just enacted its comprehensive Anti-Trafficking in Persons Act (ATIP) 2007 which is compliant with the TIP Protocol. In this process, Malaysia had recourse to the Bali Process Model Laws as well as the UNODC Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols thereto (2004).



Madam President, Malaysia notes the issues identified by the Secretariat for focused deliberations at this Forty-Sixth Session of AALCO and Malaysia's comment on this issue is as contained on the statement that has been given to the Secretariat. Apart from the enactment of the ATIP 2007, Malaysia is also involved in ASEAN's efforts to combat TIP. All these various efforts include the action lines for the implementation of the 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children and participation in the 7<sup>th</sup> Senior Officials Meeting on Transnational Crime in Vientiane from 25 to 28 June 2007.

At the 4<sup>th</sup> China-ASEAN Prosecutors General Conference held in Macau from 10-12 April 2007, Malaysia urged the Attorneys General/Prosecutors General to work together to combat TIP in the region and to realise the vision of the various ASEAN instruments on transnational crime, including TIP.

Malaysia would like to emphasize again the importance of formulating a regional legal framework to facilitate co-operation to combat trafficking in persons as domestic law by itself cannot curb trafficking. It will take enforcement, and not just by Malaysian authorities.

Malaysia also emphasizes that the underlying causes of the trafficking in persons needs to be effectively dealt with to prevent the offence from occurring and to ensure trafficked persons who are rescued in transit and destination countries can be repatriated to their home countries as soon as possible. Measures are also required to prevent re-victimization.

In conclusion, Malaysia supports the continued efforts of AALCO to combat TIP. Thank you.

**Mr. Eddy Pratamo, Vice-President of the Forty-Sixth Session of AALCO in the Chair.**

**Vice-President:** Thank you Malaysia. I give the floor to Islamic Republic of Iran please.

**The Delegate of the Islamic Republic of Iran:** Thank you Mr. Vice-President.

In the Name of God, the Merciful, the Compassionate.

Mr. Chairman, at the first I would like to thank Amb. Tabatabaei for the introductory remarks and the Secretariat for preparing this Report and especially the Model Legislation against Trafficking in Persons especially Women and Children.

Mr. Chairman, Trafficking in persons especially women and children is a most inhuman transnational organized crime, appropriately called as "modern slavery". Any strategy for fighting human trafficking should also target the breeding and the feeding grounds. At the same time the public, especially the potential victims, shall be informed of the phenomenon and its consequences. States shall also be encouraged and assisted to adopt appropriate legislation and support victims, on the one hand, and both to fight trafficking in human beings and to facilitate multilateral cooperation, e.g. mutual legal assistance and law enforcement cooperation, on the other hand. Nevertheless, it should be noted that organized crime, in general, and trafficking in persons, in particular, follows the principle of demand and supply. The supply of human beings for prostitution, forced labor or removal of organs could not be stopped unless demand for them is controlled. The issue of pornographic films and pictures, especially child pornography, should also be seriously dealt with in the same vein.

Mr. Chairman, the Islamic Republic of Iran is ethically, religiously and legally committed to prevent and fight any manifestation of human trafficking. Act against trafficking in human beings was passed by Iranian Parliament in mid 2004. The adoption of the new law is expected not

only to strengthen the domestic legal regime against human trafficking but also to prepare the legal base for probable accession to the Protocol against Trafficking in Persons especially Women and Children. Moreover, the judiciary has taken extensive measures to support and assist victims and the vulnerable groups.

Mr. Chairman, my country, as a signatory to the "United Nations Convention against Transnational Organized Crime", attaches great importance to this Convention and has actively participated in different sessions of the Conference of State Parties of the mentioned Convention. In the third session of the COP held on 9 to 18 October 2006 in Vienna, my delegation declared its point of views on protection of witnesses and victims; assistance to and protection of victims of trafficking in persons and the status of such victims in receiving States; and repatriation of victims of trafficking in persons. My delegation is of the view that human rights norms and obligations must be observed for the victims of trafficking in various stages of investigation and prosecution in receiving states. This position was reiterated by some of speakers who made reference to the report and recommendations of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children in document E/CN.4/2006/62.

Mr. Chairman, last but not the least, the Islamic Republic of Iran, as a transit country, has taken serious steps in the implementation several projects on border control, in order to enhance the control and support of the transitional organized crimes including human trafficking. Thank you Mr. Chairman.

**Vice-President:** Thank you, Iran. Now I give the floor to Japan please.

**The Delegate of Japan:** Thank you Mr. Chairman. My delegation also wishes to speak very briefly on this important subject before us.

Japan considers trafficking in persons a serious crime and a grave violation of human rights and dignity. From such a stand point, the Inter-Ministerial Liaison Committee at the Prime Minister's Office in April 2004 and adopted the Comprehensive National Action Plan of Measures to combat trafficking in persons in December of the same year and has been implementing numerous necessary actions for that purpose. In that context, the Japanese Penal Code was already amended to criminalize and punish severely all acts of trafficking in persons. The Japanese Diet also approved already the conclusion of the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime on 8 June 2005. After the other necessary measures are taken, the Government will ratify the Protocol in due course.

Secondly, the Japanese Government has sent for consultations to various countries in May 2006, the Japanese governmental team to Thailand, Indonesia, and in January this year to visited Laos and Cambodia. With Thailand, we have reached agreement for setting up a joint task force for cooperation for prevention, law enforcement and protection of victims.

Thirdly, it is necessary to promote cooperation with various international agencies and for that purpose, September last year in Tokyo, there was organized an International Inter-agency coordination meeting for collaborative interventions to counter trafficking in cooperation with IOM, ILO, UNICEF, UNIFEM, UNIDO, UNHCR and UNODC.

With regard to the very commendable exercise of making a Model Act, we think it is advisable that to avoid some duplication which might be caused with the Bali Process and it is important for AALCO to be in touch with those who are involved with the Bali Process. I just wonder if any action has

been taken in this regard. Thank you very much.

**Vice-President:** Thank you Japan, I give the floor to Sudan.

**The Delegate of Sudan:** Thank you Mr. Vice-President.<sup>13</sup> In the Name of God, the Merciful, the Compassionate.

At the outset, the phenomena of Trafficking in Women and Children, infact is a humiliation of humanity and human being as well. It is a phenomena that is rather complicated. It has several reasons, it starts by fragmentation in societies and families and non-existence of good raising up of children since childhood. Parents giving up their responsibility at the early age of their children and the collapse of values and traditions and then comes poverty in order to push some women to practice prostitution and to sell their bodies. In addition to this, this crime has developed lately and this is practiced by gangs using the most developed technology and lot of money in order to benefit from this job.

Secondly, it is very important that we would punish the perpetrators of such crimes and our actions should be a deterrent for repeating this crime. But probably this is not enough in order to fight this phenomenon. Any emotional support is not feasible; countries should cooperate together in combating such crime that is transnational organized crime. Particularly, there should be an element of confidentiality which is very important in order to reach a successful result.

Thirdly, this cooperation would require exchange of information and data; and share the statistics and exchange experiences; and we should have bilateral agreements among the countries in addition to raising awareness and training in attempting to

combat such crime in the prosecution, in the police and in the courts.

Mr. President, I do remember that I have participated in two international conferences, the International Summit for combating transnational crime and we were astonished when a country like Italy and their Foreign Affairs Minister saying that 'the mafia have conquered us'. This is a proof that individual effort to combat such crimes would not be sufficient and we should have international cooperation. We should furnish the police parties with adequate equipments. This is within international cooperation to give them technical assistance, effective means of communication in order to assist the police in following up the criminals. In order to protect children and women, these efforts should be accompanied by unifying our procedural laws to be able to handle such crimes because there are different laws in different countries which would be an element to combat this crime.

Lastly, it is very important that we should all be aware in AALCO about the methodology of curriculum in schools. We should introduce subjects of ethical nature and hence we could raise the awareness among our children in order to ensure that they would not be victims of such crimes. We are denouncing this but this is not sufficient we have to act collectively, seriously in order to stand against such a phenomena that would harm our societies and ethics. Thank you Mr. President.

**Secretary-General:** Excellencies now we are very much behind the schedule. I would like to take your advice to how to go on. We will try to finish tonight two items 'Human Rights in Islam' and 'Corruption'. As for the WTO since we had a Half-Day Special Meeting on Investment, Trade and Development within which we have touched a lot on WTO and GATS. I would like to seek your advice if we can give to the Secretariat the statements of countries relating to the WTO, so that we can consider

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<sup>13</sup> Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

WTO as a non-deliberated item and we can give to the Secretariat the full text of those countries that have a statement for WTO. So, if we finalise Human Rights in Islam and corruption and we leave WTO, then we have only one substantive item for tomorrow, which is Expressions of Folklore and its International Protection and the Reports of the Directors of the Arbitration centres. Two Directors are with us who would give us a quick report on their activities. So if this is acceptable we can go on and we can try and see to finish two more items, since we do not have any dinner tonight and postpone the third one for tomorrow morning. If this is acceptable, Ok. I see no comments which means yes. Thank you.

**Vice-President:** Thank you Secretary-General. We are very sorry. May be because of the strong light we cannot see the participants. State of Kuwait, you have the floor.

**The Delegate of the State of Kuwait<sup>14</sup>:** Thank you Mr. Chairman.

In the Name of God, the Merciful, the Compassionate.

At the outset, we would like to state that the State of Kuwait always abides and respects human rights because of the full belief that Almighty God has defined a person and in our Holy Quran it is said that we have created human being in best form and hence due to these values, to abide by international documents the Constitution of Kuwait in Article 29 stipulated that people are equal in dignity and they are equal in front of law. We do not discriminate between human beings in the name of race, gender or religion. The Constitution of Kuwait and all national legislations speak about the human dignity and should not be used in non-dignified functions either voluntary or by force like prostitution, for instance, is

against the ethics and is prohibited by Islam and by the Kuwaiti Constitution. State of Kuwait would like to confer that our Constitution and all other national legislations would prohibit trafficking in human beings, violence and sexual abuse in addition to what has been presented and State of Kuwait wishes in order to give more legal protection to individuals, we have joined different international conventions dealing with human rights on this topic. All those include such rulings that prohibit such practices trafficking such as Convention of 1929 and the complementary Convention on Prevention of Slavery, 1929, and Convention in Trafficking in Individuals and Using Them for Prostitution, Convention on Elimination of All Discrimination against Women and on Convention Concerning Child's Rights. We have ratified 18 international conventions that we are going to refer later on and all these agreements are considered to be as national laws and are mandatory according to Article 70 of our Constitution. As for the procedures adopted by the Kuwaiti Government to prevent trafficking in individuals there is a protection in addition to what has been mentioned regarding Kuwaiti laws and Constitution in slavery, kidnapping, abduction and prostitution and all procedures in order to protect individuals from abuse and exploitation, we have to refer that different organs of the State of Kuwait complements rights as in the Constitution and all laws to all individuals living in Kuwait and all authorities are working in Kuwait to punish all those who are trying to violate such rights, whatever may be his capacity. One of the guarantees in State of Kuwait is the independence of judiciary and its authorities.

Mr. Vice-President, in addition to what has been mentioned, State of Kuwait has acceded to different agreements and we have ratified all agreements referred to according to following. According to the Convention for Preventing Forced Labour, 1930 and Convention concerning coercive work and Worst Form of Child Labour, Convention

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<sup>14</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

number 182 concerning violence against children and women, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, etc. In Kuwait we are investigating against those who would practice such methods as this is violation against human being and we hope that AALCO will adopt measures in fighting this crime, assisting the victims to guarantee their human rights and to strengthen cooperation among Member States in order that we will realize all our objectives. We as parties of the United Nations Convention against Transnational Organized Crime and to try to give protection to women and children and as for smuggling of women and children, we are against it. We have an internal law in Kuwait that stands against slavery and also prostitution in different forms. The State of Kuwait has signed the agreements pertaining to this. In addition the Ministry of Justice in Kuwait formed a committee for revising and preparing legislations in this concern.

In conclusion, State of Kuwait wants to have a close cooperation among all Members in the AALCO and also in the international community in order to realize our objectives. Thank you Mr. Vice-President.

**Vice-President:** Thank you Kuwait.

**The Delegate of the Republic of Kenya<sup>15</sup>:**  
Thank you Mr. Chairman.

Mr. Vice-President, Recognizing that addressing the growing problem of trafficking of women and children requires a multi-faceted approach, the Government of Kenya has taken significant steps in strengthening its legislative framework, as well as taking concrete actions to prosecute offenders, protect the vulnerable victims and to take preventative measures.

Kenya recently enacted in July 2006 the Sexual Offences Act which criminalizes the trafficking of children and adults for sexual exploitation. This law prescribes penalties that are considerably stringent. The office of the Attorney General is, in collaboration with other Government Ministries and civil society, in the process of drafting a law to prevent, penalize and eradicate Trafficking in Persons.

Mr. Vice-President, since the beginning of 2007, the Government of Kenya has increased law enforcement activity and investigations of trafficking incidents and reports. The Kenya Police Service's has a newly created community policing and child protection unit, which, in February 2007 obtained indictments - its first indictments - of two men for allegedly trafficking two Ethiopian minors to Kenya for domestic servitude.

Earlier in June 2006, the Minister for Tourism led the Kenyan police and other officials on a raid of a resort hotel suspected of hosting children in prostitution; two young girls were removed from the premises.

Mr. Vice-President, the Government of Kenya has also widened the support services given to issues of trafficking, and has improved its assistance to protect children facing labor exploitation. The Department of Children Services launched a free hotline for children to report abuses. The Department has also been involved in private sector initiatives to curb the practice, and has participated in various meetings on trafficking, such as those convened by the Kenya Hotel & Caterers Association, which has come up with a Code of Conduct for its members in the hotel and tourism sector.

In 2006, the Social Services Departments of the City Councils of Nairobi, Mombassa, and Kisumu established shelters to rehabilitate street children vulnerable to forced labor and sexual abuse. In 2006, 5,026 children were removed from labor and

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<sup>15</sup> The Statement was circulated and deemed to be read.

4,178 at-risk children were kept in school through the involvement of labor inspectors, police, and district child labor committees in two programs to combat the worst forms of child labor conducted by international perpetrators; some of these children were victims of trafficking. The Government has assisted with the repatriation of Kenyans recruited to work as domestic servants, from countries where they have faced exploitation.

Mr. Vice-President, the Government has also taken various preventive actions to counter the problem. The Ministry of Home Affairs and UNICEF conducted joint research on child sex tourism and commercial sexual exploitation of children on the coast, which underpins a Kenyan Government report released in December 2006. In response to the study's findings, steps to address human trafficking were incorporated into the Ministry's annual work plan. In early December, 2006, government ministries formed a National Trafficking Task Force to draft a National Plan of Action.

In early 2006, the Tourism Ministry began requiring owners of private villas in tourist beach areas to register their properties as hotels and submit to inspections; and by August 2006, 1,200 villas were registered. Officials from the Ministries of Home Affairs, Tourism, and Labor participated in various training events conducted for hotels that are already signatories to the Code of Conduct.

The Ministry of Labor reviewed the contracts of approximately 600 Kenyans traveling to work abroad and provided workers' rights counseling to those appearing for approval in person.

As a result of the increased sensitization and training, the Kenyan media, especially the government-owned Kenya Broadcasting Corporation, has increased the quantity and quality of coverage of human trafficking cases.

Mr. Vice-President, Kenya commends the AALCO Secretariat in the production of the model law and appreciates the opportunity provided by this Forty-Sixth Session to deliberate on the issue and share information on country practices applied in combating this growing crime.

#### **D. Human Rights In Islam**

**Vice-President:** I will now give the floor to Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General to introduce the item on Human Rights in Islam.

**Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General:** Thank you, Mr. Chairman, Hon'ble Ministers, Excellencies, Distinguished Delegates and Observers, Ladies and Gentlemen,

It is indeed my great honor to introduce the Secretariat document: AALCO/46<sup>th</sup>/CAPETOWN SESSION/2007/S 15 on the topic "Human Rights in Islam", which we all know was included on the agenda of the AALCO at the initiative of the Kingdom of Saudi Arabia at its Forty-First Session held in Abuja, Nigeria, in 2002. Since then the item has been deliberated upon during the successive Sessions of AALCO.

Mr. Chairman, the AALCO Secretariat has been seriously involved in the research for the past five years on this topic. All the studies were prepared in a comparative framework involving international and national legal systems. During the process of research we found that the Islamic legal system is unique in various aspects, even though there might be no fundamental differences in several aspects with the international and national human rights framework. The Secretariat Report for the year 2003 set out the framework for further study in the coming years. The Secretariat report for 2004 included the distinctive characteristics of human rights in Islam, and specific human rights in Islam, which include civil and political rights; and

economic, social and cultural rights. In the years 2005, and 2006, the Secretariat had examined the criminal law; and criminal procedural laws of Islam, respectively, from a human rights perspective.

In continuum of our previous work, the present report is divided into two parts. In Part One, it examines the overarching theme of peace over human rights in Islam, to emphasize that Islam is a religion of peace in general and, human rights in Islam is nourished from the Theme of Peace. The first implication is to show how wrong are those advocates of Western propaganda that link Islam with acts of terrorism. Part two of the report contains a summary of the Meeting of International Experts on Human Rights in Islam, held in Kuala Lumpur, Malaysia (15-19 May 2006)

Mr. Chairman, In the Forty-Fourth Session of AALCO held in Nairobi, the Member States adopted Resolution [RES/44/S 16 (1 July 2005)] which highlighted the Malaysian Delegation's preparedness to host the meeting of the experts on human rights in Islam. Pursuant to this resolution a Meeting of International Experts on Human Rights in Islam (MIEHRI) was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006. It was organized by the Government of Malaysia in collaboration with the Government of Kingdom of Saudi Arabia and Asian-African Legal Consultative Organization (AALCO) Secretariat.

Mr. Chairman, The Meeting was a great success in highlighting the human rights principles in Islam. The Meeting covered almost all important aspects relating to the topic which included, General overview on Human Rights-Islamic Law and International Law; Islam and Human Rights-Managing Diversity; Civil and Political Rights; Social, Economic, and Cultural Rights from Islamic Perspective, International law perspective and possible area of convergence; Human Rights of Women and Children; and Islam and War on Terrorism. Apart from the Plenary Sessions, the each topic were discussed

thoroughly in detail in the working groups, by a galaxy of experts and purposeful recommendations were made.

Mr. Chairman, Peace is a central theme in Islamic teachings. However, Islam is often stereotyped as aggressive and violent in the Western discourse. Western media often projects the violent and aggressive images of Islam and links this religion to the acts of terrorism. Also, certain historical writings make negative depictions of Islam. An objective research can reduce the negative characterizations of Islamic society and religion in both popular and academic literature, particularly to eliminate ill-founded generalizations about Islamic ways of thinking, believing or living. This Report and subsequent deliberations are an endeavor to explore the concepts of peace and human rights in Islam and to highlight its significance in the contemporary world.

Mr. Chairman, in order to highlight Islam as a religion of peace and that this overarching theme is a necessity for promoting "human rights", AALCO wishes to propose that the deliberations could be focused on the following points: Islam as a religion of peace; Key Islamic principles related to "Peace"; Human Rights in Islam stems from the notion of Peace; and Highlighting the Islamic principles of peaceful resolution of conflicts. Thank you very much.

**Vice-President:** Thank you Ambassador Reza Tabatabaei Shafiei. I will give the floor to Pakistan

**The Delegate of Pakistan:** Mr. President, Distinguished delegates, It is well justified to claim that the first regular international Manifesto of the fundamental human rights is found in the Last Sermon of the Holy Prophet Hazrat Muhammad (Peace Be Upon Him), in which Holy Prophet (PBUH) imposed the duty upon every Muslim to give rights to all other human beings and to protect their honour, life and property, i.e. the right of leading an honourable and pious

life, freedom of expression, getting instant and cheap justice, protection of social, political and economic rights, rights of living an independent life according to the creed and belief. Hence minor or major, poor or rich, male or female are equal in an Islamic State, Islam also provides safeguards to the rights of the minorities.

Mr. President, Human rights in Islam have been granted by Allah (God) and no worldly authority has the right to amend, change or withdraw them. This conviction has been clearly reflected in the Cairo Declaration on Human Rights of August 5, 1990. Every Muslim or administrator who claims to be Muslim must accept, recognize and enforce these rights.

Islam grants certain basic human rights to all people, Muslims and non-Muslims, and regardless of their race, nationality, ethnic origin or language. The first of these rights is the right to live and respect human life. Only a proper and competent court of law can decide to take a life in retaliation for murder or punishment for spreading corruption on the earth. Only a properly established government can decide to wage war. No human being has the right by himself to take a human life for retaliation or for causing mischief on the earth.

Mr. President, Islam grants the individual the right to freedom. It is categorically forbidden to capture a free person and make him a slave or sell him into slavery. Every human has the right to the safety of life.

Mr. President, Islam recognizes absolute equality between people. All people are descended from Adam and are brothers and sisters. Each human being has inherent value and distinction as God creation. Apart from these general human rights that Islam gives to all, there are other rights set down by Islam dealing with issues such as the rights of citizens in an Islamic state, basic standard of life to all individuals, rights of women

and the rights of enemies during times of war.

Mr. President, my delegation considers it necessary and recommends that under the auspices of AALCO this item may be promoted for further understanding by the member states in order to clarify the concept of human rights in Islam. Thank you Mr. President.

**Vice-President:** Thank You Pakistan. Now I give the floor to Indonesia.

**The Delegate of the Republic of Indonesia:** Mr. President, Distinguished delegates, Ladies and Gentlemen

My delegation is pleased to have the opportunity, time and again, to touch the issue of much importance under the agenda item "Human Rights in Islam". It is of our view that this forum should be able to provide delegates an arena for sharing best practices and lessons learned on advancing human rights norms and standards, be it universal or from the perspectives of Islam.

In this regard, my delegation would like to convey our profound appreciation to the Government of Malaysia for the successful organization of the Meeting of the International Experts on Human Rights in Islam in collaboration with the Government of Kingdom of Saudi Arabia and the AALCO Secretariat in Kuala Lumpur from 15-19 May 2006. The Indonesian government is looking forward to the continuation of any effort for open course on the problems and challenges in upholding the principles of human rights in Islam. My delegation considers the importance of the international community for having the right perspective on the issue since Islam is the religion that embrace the principles of peace, harmony and tolerance.

Mr. President, even though the Vienna Declaration and Plan of Action is universally accepted, there is still frequent contention on the way it is applied,



including the notion of the indivisibility of all human rights – civil, political, social, economic and cultural. This can contribute to politicization and selectivity. Accordingly, my delegation would be more content to see our exchange of views and experiences would contribute further to establish a common understanding on perceptions and concepts, through a commonality of interpretation of and priorities on the notion of “right”.

In order to guarantee this commonality of perception of the notion of right, it is very important, I believe, to give the two main groups of rights – civil and political rights on the one hand, and economic, social and cultural rights on the other – equal value. These two sets of rights must be treated on a par. If we omit to do this - either accidentally or deliberately - we hobble the core concept of human rights, including the fundamental notion of the interrelationship between all human rights. This is a principle that Indonesia considers fundamental, as exemplified in the simultaneous ratification by the government of the two Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights, in 2006.

Mr. President, distinguished delegates, ladies and gentlemen, Having experienced a transition towards a democratic Indonesia, we are now seriously engaged in the efforts for the promotion and protection of human rights at the national level. The practical application of this process is reflected in the two successive National Plans of Action (1998-2003, and 2004-2009) that we have initiated with the beginning of the reform era. Within this time frame, Indonesia has ratified several human rights conventions.

We are currently party to six core Conventions and will be ratifying further conventions in the near future, among others the Convention on Migrant Workers. Indonesia will also be signing the Convention on the Rights of Persons with Disabilities and the Convention against

Enforced Disappearance. Furthermore, Indonesia has recently enacted its new Citizenship Law No. 12 of 2006. This new law is a landmark for providing equal citizenship rights for all Indonesians highlighting non-discriminatory approach towards the citizenship of women and children. As a State Party to the Convention on the Elimination of Racial Discrimination, Indonesia is in the process of formulating a draft bill on anti-discrimination which is expected to become law this year.

In another aspect of this philosophy, we have invited a number of Special Rapporteurs to visit Indonesia as we believe their input is valuable in strengthening our own human rights institutions and domestic promotion and protection mechanisms. This willingness, I hope, demonstrates our full support for the human rights mechanisms, as well as our desire to fulfill the pledges and commitment we have undertaken in this regard. The reforms that we have undertaken in the framework of this National Plan of Action in recent years, and the pledges that we have undertaken in respect of its implementation have, I believe, convinced the international community of our strength of purpose.

Mr President, Societal issues keep emerging as a result of man's progress on the planet. Indeed, technological change, medical advances and sundry other issues and their applications are always liable to threaten man's fundamental freedoms, wellbeing or survival. In response to this progress, we must focus our common efforts to attend to the major existing issues that have yet to be resolved. Among these, violations of important civil and political rights such as human trafficking, torture, extra-judicial killings, enforced disappearances, or violence against women and children, must remain at the forefront of its preoccupations and efforts.

Among some of the strategic objectives that AALCO must keep in its sights, poverty must surely rank as one of the most

pressing. Attainment of the Millennium Development Goals remains a crucial key to the fulfillment of the basic human rights of millions of the world's poorest, yet so much more ground still needs to be covered before we can claim to have truly reached our goal. Indonesia looks to the AALCO and its mechanisms to approach this problem in a holistic manner since extreme poverty is the mainspring of most of the worst human rights abuses.

In this regard, economic, social and cultural rights have a big part to play. My delegation is of the utmost interest to call upon AALCO to promote further the deliberations of these rights and the right to development. We know that there is a close correlation between development and poverty and that to neglect this aspect is to jeopardize the capacity to promote and protect human rights effectively.

Another of our visions for AALCO is to see it spearhead efforts to promote a more systematic dialogue between different cultures and religions. Indonesia, for its part, is and will continue to be actively engaged in interfaith dialogue with various stakeholders at national, regional and international levels, since we believe that there are many unexplored avenues for greater understanding in this respect. We hope to work closely with you and delegates in expanding this idea. The government of Indonesia also puts great emphasis on dialogue in the spirit of partnership that AALCO wants to foster with member states. Where there is genuine dialogue, there is progress. In this regard, we look forward to expanding and strengthening our co-operation and dialogue with like-minded delegates. Thank You, Mr. President

**Vice-President:** Thank you Indonesia. Now I give the floor to Malaysia, please.

**The Delegate of Malaysia:** Mr. Vice-President, His Excellency the Secretary General, Excellencies and Distinguished Delegates, Ladies and Gentlemen.

On behalf of my delegation, allow me to express Malaysia's appreciation to the AALCO Secretariat for the comprehensive report prepared on Human Rights in Islam. Malaysia has been following closely the deliberations on this topic since its inclusion at the 41<sup>st</sup> session of AALCO in 2002. We took note that at the 43<sup>rd</sup> session of AALCO our focus was to analyse Human Rights in Islam from the civil law perspective. At the 44<sup>th</sup> session the Organisation analysed the criminal law of Islam through the prism of human rights and at the 45<sup>th</sup> session last year, we looked at criminal procedural laws from human rights perspectives.

At this session, the Secretariat put up an informative paper on this agenda item to draw specific attention of Member States on two areas, firstly on the concepts of peace and human rights in Islam; and secondly on the Meeting of International Experts on Human Rights In Islam which was held in Kuala Lumpur, Malaysia on 15-19 May 2006.

Mr. Vice-President, Malaysia regards the discussion on the concept of peace and human rights as enshrined in Islam as an extremely important area for us to deliberate upon. This is particularly so, as the Secretariat's Paper rightly pointed out, due to the present trend in many parts of the world, in the West or in the East alike, to argue a case against Islam by creating an unfounded nexus between religion, particularly Islam, with terrorism and violence.

We took note of the five issues for our focused consideration on this matter as suggested in the Secretariat's Paper. On the first issue that is suggested by the Secretariat for our focused consideration, we found that paragraphs 6-45 of the Secretariat's Paper had provided us with a good basic understanding on the concept of peace as propounded in Islam. Thus, this Delegation does not intend to dwell much on this first issue, except to share what Malaysia is currently undertaking with respect to

fulfilling its duty in administering social and economic justice and empowerment through the institution of Zakat.

The AALCO Report highlights the importance of providing economic justice which is a major component of the Quranic teachings. The Report also stated that in addition to individual Zakat or charity, the State is obligated to provide for the poor population through Zakat and Bayt-al-mal (public treasury).

The eradication of poverty using Zakat fund was highlighted by the Right Honourable Prime Minister of Malaysia at the Extraordinary Summit of the Organisation of Islamic Conference (OIC) held in Mecca from 6 – 8 December 2005. In his speech, the Right Honourable Prime Minister has suggested that a special fund with the resources coming from Zakat be established to tackle poverty. The Zakat fund is proposed to be utilized for the development of resources especially in the area of human capital development. Zakat should not be viewed merely as charity or as a means for short term relief for those in need. Zakat should be issued as a means of providing assistance that will have a lasting effect. This call was reiterated at the 33<sup>rd</sup> OIC Foreign Minister's Meeting held in Baku, Azerbaijan, from 19 – 21 June 2006.

Following this, Malaysia organized an International Conference on Zakat on 28 November 2006, with the objectives, inter alia:

- (i) To generate and pool ideas and thoughts from representatives of OIC Member States during the Conference;
- (ii) To share the experiences with the participating nations on matters pertaining to management, collection and the disbursement of the Zakat fund;
- (iii) To establish and promote global discourse and identify areas of

cooperation to strengthen the management of Zakat; and

- (iv) To solicit views, comments and support for the establishment of an International Zakat Organisation.

Malaysia is in the midst of establishing the said international Zakat organization and we hope the relevant member states would consider the proposal positively.

Mr. Vice- President, we are of the view that the third, fourth and fifth issues suggested by the Secretariat for our focused consideration on this topic are inter-linked. The issue relating to the Islamic principles of peaceful resolution of conflicts merits serious consideration and deliberation by Member States. In this respect, my Delegation suggests that the Secretariat provide us with detailed analysis on this matter in its Paper on this Agenda Item at the 47<sup>th</sup> AALCO Session.

Thus my delegation would emphasize on the second issue suggested by the Secretariat, which is on countering the attempt by the Western world to associate Islam with violence, aggression and terror.

My Delegation is of the view that the oft-quoted contention that associating Islam with violence, aggression and terror is within the exclusive domain of the Western world is not always accurate. It is a global phenomena, as we stated earlier.

The United Nations Commission of Human Rights at its 55<sup>th</sup> session in 1999 adopted by consensus the much-debated but now-forgotten Resolution E/CN.4/199/L.40 Rev.1 on the subject of "Defamation of Religions" in which it reaffirmed that discrimination against human beings on the grounds of religion or belief constituted an affront to human dignity and a disavowal of the principles of the Charter of the United Nations. The Resolution was particularly historic and important based on the following:

- (i) it reaffirmed the call of the World Conference on Human Rights for all Governments to take all appropriate measures to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including desecration of religious sites;
- (ii) underlined the importance of creating conditions to foster greater harmony and tolerance within and among societies and conscious of the importance of education in ensuring tolerance of and respect of religion and belief;
- (iii) emphasized that non-governmental organizations, religious bodies and communities had an important role to play in the promotion of tolerance and the protection of freedom of religion or belief;
- (iv) expressed deep concern at negative stereotyping of religions;
- (v) expressed deep concern that Islam was frequently and wrongly associated with human rights violations and with terrorism; and
- (vi) urged all States to take all appropriate measures to combat hatred, discrimination, intolerance, and acts of violence, intimidations and coercion motivated by religious intolerance.

Seven years has passed since the adoption of that Resolution and we are still discussing the same issue. This Delegation is highlighting this Resolution only to remind us all to reflect at our sincerity in dealing with the crux of the issue – discrimination, hatred, intolerance against human beings on

the grounds of religion or belief; and the commission of acts of violence, intimidations and coercion motivated by religious intolerance. The Resolution is not merely addressing the Western world but the international community as a whole.

My delegation believe that this Resolution is still relevant to this day and we must return to our capitals being reminded of the commitments we made in 1999 and the fact that we still have not moved much from that day, and we owe it to ourselves, our family, neighbour and friends and our future generation to fulfill that promise and commitment we made through consensus.

Mr. Vice- President, We also noted that the issue relating to violence, aggression and terror and their linkage to Islam was discussed during Plenary Six of the Meeting of International Experts on Human Rights in Islam (MIEHRI). As this discussion had been elaborated so eloquently in the Report of MIEHRI by the Secretary General, my Delegation does not intend to elaborate in great detail. We only wish to highlight that the Plenary Session emphasized on the fact that Islam is a religion of peace, tolerance and respect for human life in all its variation and that Islam with all its diversities as a religion has never propagated violence. The Plenary Session and the Working Groups highlighted the need to provide numerous fora for further discussion to promote understanding of the precepts and tenets of Islam and remove all attempts to link Islam to terrorism. Islam, as a matter of fact condemns terrorism as it is a religion of peace. There is also a need to identify and address the underlying causes of terrorism.

It should be highlighted that the experts of the Plenary Session stated that the Islamic concept of jihad has more meaning than one generally portrayed by the West. Its main emphasis is on the greater jihad rather than the smaller jihad. Even so, Islam endorses smaller jihad only under a special condition and within set perimeters. In Islam, you are supposed to be defensive not offensive. Of

course, not everybody in Islam is empowered to declare jihad. Only those who have reached the highest stage of ijihad or independent reasoning in commanding widest spread of respectability in following across the Muslim world can declare jihad.

Mr. Vice-President, It is also observed that AALCO comprises 47 Member States from both Muslim and non-Muslim countries. Malaysia believes that deliberations on the paper entitled "Human Rights in Islam" in the manner that has been prepared by the Secretariat at this session of AALCO could further assist all parties concerned to better understand each other. In the same manner that we must understand existing norms and principles that has been accepted by the international community in respect of human rights, the discussion on the concept of Islam as a religion of peace would serve as an effective mean to demonstrate a true picture of Islam.

Allow me to turn to the second part of the Secretariat Report on this Agenda Item on the Meeting of International Experts on Human Rights in Islam organised by the Government of Malaysia in collaboration with the Government of the Kingdom of Saudi Arabia and the AALCO.

Mr. Vice-President, the main theme of the meeting was "Understanding Human Rights as Understood in Islam". Based on this theme, MIEHRI was set to serve as a platform for experts from various fields to examine the Islamic principles of human rights with the main purpose to dissuade misunderstanding of Islam and the Muslims, predominantly against the backdrop of the current tensions between the Muslim and the non-Muslim worlds. Experts were able to identify and develop practical recommendations that could be used to enhance international cooperation based on mutual respect, tolerance and understanding.

There were six (6) Plenary Sessions preceded by 18 Working Groups. Apart from having the benefits of the presentation

by the speakers at the Plenary, the experts were able to utilize the time allocated for each Working Group to engage in substantive discussions on the topics chosen. Amongst the key conclusion and recommendations of MIEHRI were as follows:

- The Universal Declaration of Human Rights is generally in accord with Islam;
- The Islamic fiqh (jurisprudence) for minorities should be developed to address the rights of Muslim minorities living in non-Muslim countries and the OIC should adopt a project to deal with the development of Islamic fiqh (jurisprudence) for minorities;
- A balance should always be sought between the rights and freedoms of individuals and the security requirements of a State. Legislation must be proportionate to the protection of individual liberties;
- There is a doctrine of reciprocity and mutual respect embedded in Islam that must be observed in relations between Muslims and non-Muslims wherever they are;
- It is important for Muslims to unite in projecting Islam as a religion of peace, renewal and reform as its true teachings reflect;
- Terrorism is not an act that can be attributed to any religion, Islam in particular;
- Although everyone is at liberty to maintain divergent views, Muslims should not allow those differences to undermine the religion of Islam or to have it misunderstood;
- The equality of rights of women is a major concern in Islam. The equal rights for women in all fields, existing in the human rights instruments must be implemented, as long as they are not opposed to Islam;
- States should enact and strictly enforce laws to prohibit all forms of

- violence against women and children including honour killings;
- The social, economic and cultural rights must be ensured to individuals and groups in all Muslim societies in keeping with the Shariah principles;
  - The Government in all the Muslims countries must faithfully discharge their responsibilities under the human rights law in respect of distributive justice in all its aspects;
  - Proper economic growth for all sections of the society must be ensured in all Muslim countries since that it is a must for guaranteeing the protection of human rights.

Mr. Vice-President, the summary of the deliberations, discussion, suggestions and recommendations at the Plenary Sessions and the Working Groups are as contained in paragraphs 54 - 120 of the Secretariat Report. A summary record of the proceedings could also be found in AALCO Quarterly Bulletin Volume 2, Numbers 1 & 2 (March - June 2006).

As a follow up to Resolution "RES/45/S16" of 8 April 2006 adopted at the 45th Session of AALCO on this Agenda Item, my Delegation had submitted the official copy of the Report of MIEHRI to the AALCO Secretary General. My Delegation noted that the Secretary General had published the Report as contained in document "AALCO/EGM/REP/Human Rights in Islam/15-19 May 2006" and disseminated to all Member States in December 2006.

Mr. Vice-President, my delegation wish to express our sincere gratitude to the Government of the Kingdom of Saudi Arabia for their support, particularly in financial aid and the attendance and participation of key scholars from Saudi Arabia at the meeting. Our appreciation also is extended to the Secretary General of AALCO and other officials of the AALCO Secretariat for their immense contribution to ensure the success of MIEHRI. We also must thank the Ministry of Women, Family and Community

Development of Malaysia for co-sponsoring the meeting. Our appreciation also is extended to all member states of AALCO and the invited speakers and scholars whom had participated at the meeting.

Mr. Vice-President, I must not fail to state that to my Delegation, the measure of success of such an important meeting deliberating on topics with such great magnitude to human kind is not merely on the account of congratulatory messages and kind words on the successful organization of the event. More importantly, we must ensure that we would together work to achieve and implement most, if not all, of the recommendations adopted at MIEHRI. Thank you.

**Vice-President:** Thank you Malaysia. I now give the floor to Islamic Republic of Iran.

**The Delegate of the Islamic Republic of Iran<sup>16</sup>:** The Delegate appreciated the Secretariat report for rightly bringing out the concepts of peace in Islam. The delegate also commended on the Deputy Secretary-General's lucid introduction on the topic. The delegate also thanked the Government of Malaysia and H.E. Mr. Abdul Gani Patail, Attorney-General of Malaysia for the successful conclusion of the MIEHRI. The delegate pointed out the certain mass media had Islamphobia. There was a deliberate attempt to project Islam as enemies of democracy. The delegate quoted one instance in which how a non-Muslim neighbor should be treated. The delegate highlighted that the basic teaching of the Holy Quran was to have mercy and forgiveness. The God had created human being as vicegerent in this earth. The delegate also emphasized on the sacredness on human life and quoted the Quranic verse, which says that if a man kills another person without valid reason, he stands before God as if he had killed the entire humanity. The delegate focused on the differences between

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<sup>16</sup> Reproduced from the Report of the Forty-Sixth Session of AALCO

the Islamic perspective on human rights and western concept on human rights: while the western philosophy is based on individual rights, Islam concentrate on group rights and in Islam there is no immunity/impunity for any section of the society, and human beings are responsible for all words and deeds.

**Vice-President:** Thank you Iran, Now I give the floor to Qatar.

**The Delegate of the State of Qatar:**<sup>17</sup> Thank you Mr. Chairman. In the Name of Allah, The Most Merciful, the Compassionate. Human rights have been provided in the Holy Quran and Hadith which highlighted two important principles of human dignity and human rights. Allah had created Man in the most dignified manner and superior to all other creations. Further more, Prophet Mohammed, May God's Peace and Blessings be Upon him, has preached much about human rights and freedom. We can see that the most important human rights has been made in the Farewell Speech of Prophet Mohammed, May God's Peace and Blessings be Upon him, called for principles of equality, among people, between men and women and the sovereign and the people, in rights and duties and the divinity of the law to which people should be adhered to, which is the Holy Quran and Sunnah.

According to the Shariah, human being is subject to divine dignity and human beings had a pivotal role in the society and through Shariah God addresses human beings. The human rights have been laid down by a wise legislator and preserving it is the crux of religion and going against it is being against religion for which men should be punished. In the absence of human rights human being's life is strenuous and suffering. Shariah has come to eliminate this embarrassment and to preserve life in the best manner and the aim of Shariah is to protect the life and dignity of human beings.

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<sup>17</sup> Statement delivered in Arabic. Unofficial translation from the interpreter's version.

Accordingly, Qatar has acceded to Convention against all forms of racial discrimination, and Convention against torture. Qatar has acceded to Convention on the Rights of Child and also to first and second voluntary Protocols to the Child Rights Convention, related children participation in the armed conflict, exploitation of children and selling of children for prostitution and pornography. Qatar has also acceded to the agreement on forced labour, agreement on prohibiting discrimination in work places, and agreement related to the worst form of child labor. Qatar had made reservations to some agreements to which it had acceded to and which are in contradiction with the principles of Islamic Shariah. As regards the regional agreements, Qatar adopted the Cairo Declaration on Human Rights in Islam issued by the Foreign Ministers of the OIC. Qatar has also adopted the amended Arab Charter on Human Rights adopted by the Arab League Summit in 2004. Qatar had build up domestic institutions to implement the international obligations at the domestic level, for instance, Supreme Council for Family Care, to probe and monitor all complaints of human rights. Thank you

**Vice-President:** Thank you Qatar, now I give the floor to the Secretary-General

**The Delegation of the Arab Republic of Egypt\*** presented a written paper on the agenda item Human Rights in Islam, in which they underlined that recently many voices were denying on Islam and its protection of human rights. Not only that, few of this voices went up to saying or pretending that Islam doesn't provide any right for human beings and also deny the rights of non-Muslim minorities; and women and civilians during armed conflicts.

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\* Due to the paucity of time at the Session Statement in Arabic was handed over to the Secretariat and deemed to be read. Unofficial translation by the Secretariat.

The Paper referred to two basic points:

a). that Islam should not under the item human rights, be compelled to apply an agenda which does not match with its priorities, and values of our regions: Asia and Africa, in general and Islamic world, in particular.

b). we should when applying and protecting human rights keep in mind our heritage, whether religious or cultural and also our social values.

There is a very basic difference between Islamic view to human rights and the view of western civilization to it. Western civilization believed in achieving great heights in human right field by transforming natural human rights to political demands. Islam, on the other hand, in its divine disposition considers human rights according to the Holy Quran and the Islamic *Shariah*. Therefore, there might be rights for individuals but they are at the same time duties on the ruler which he cannot deny.

The legislative rules of Islam are general rules and they are applied to every body, without any difference between human beings, their nationality, language or religion. All are equal. This principle is reflected very clearly in the Holy Quran as well as in the sayings of the Prophet.

Regarding the Law of War during an armed conflict, Islam has been applying code of conduct, much before the humanitarian law emerged. Islam strictly prohibits, among others, cruel way of killing, killing of non-combatants, killing of prisoners of war, mutilation of human beings as well as animals, unnecessary destruction of harvest and cutting of trees, adultery and fornication with captive women, killing of envoys, massacre in the defeated territory and the use of poisonous weapons. Prisoners must be fed in accordance with the Quranic injunctions and their dignity is to be respected. These rights had been very much reflected in the Holy Quran and *Sunnah*.

**Secretary-General:** Excellencies, Ladies and Gentlemen. I am sorry to inform you that interpreters have expressed their inability to continue as they are very tired because of the amount of work. We will proceed tomorrow morning. Please be here at 9.30 AM, because we have two more items and the report of the directors of the arbitration centers.

**Deputy Secretary-General:** May I have your attention please. The drafting committee will meet right after this Session.

**Vice President:** May I have your attention please. Tomorrow we will be meeting here at 9.30 AM.

**The Meeting was thereafter adjourned**