

**SUMMARY REPORT OF THE
FORTY-SIXTH SESSION
OF THE
ASIAN-AFRICAN LEGAL
CONSULTATIVE ORGANIZATION
2 – 6 JULY 2007
CAPE TOWN
REPUBLIC OF SOUTH AFRICA**

1. Introduction

- 1.1 The following 30 Member States participated in the Forty-Sixth Session of the Asian-African Legal Consultative Organization (hereinafter "the Session"): Arab Republic of Egypt, Bangladesh, Brunei Darussalam, People's Republic of China, Cyprus, India, Republic of Indonesia, Islamic Republic of Iran, Japan, Republic of Cameroon, Republic of Kenya, Republic of Korea, State of Kuwait, Malaysia, Nepal, Federal Republic of Nigeria, Sultanate of Oman, Pakistan, State of Qatar, Kingdom of Saudi Arabia, Senegal, Singapore, Republic of South Africa, Republic of Yemen, Sri Lanka, Sudan, Syrian Arab Republic, United Republic of Tanzania, Thailand, Uganda and United Arab Emirates.
- 1.2 The following Regional Arbitration Centres of AALCO were also present: Kuala Lumpur Regional Centre for Arbitration and Tehran Regional Arbitration Centre.
- 1.3 In accordance with Rule 18 of the present Statutory Rules of the Asian-African Legal Consultative Organization, the following observers were admitted to the Session:
- (i) Representatives of the following non-Member States: Brazil, Greece, Holy See, Lesotho, Morocco, Russian Federation and Swaziland.
- (ii) Representatives of the following regional, inter-regional and international organizations, specialized agencies and subsidiary bodies: Commonwealth Secretariat, International Law Commission

(ILC), International Tribunal for the Law of the Sea (ITLOS), Organization of Islamic Conference (OIC), United Nations Office for Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR) and United Nations Environment Programme (UNEP).

2. Inaugural Session

- 2.1 The Session commenced on 2nd July 2007 with the President of the Forty-Fifth Session of AALCO His Excellency Mr. Narinder Singh calling the Forty-Sixth Session of AALCO to order.
- 2.2 **His Excellency Amb. Dr. Wafik Zaher Kamil, Secretary-General of the Asian-African Legal Consultative Organization (AALCO)** welcomed all the delegates to the Session and thanked His Excellency Mr. Thabo Mbeki, the President, the Government and the people of the Republic of South Africa for convening the Forty-Sixth Session of AALCO. He stated that the commitment of the Republic of South Africa to ideals and objectives of AALCO was reflected from the fact that despite joining the Organization in 2004, it readily agreed to convene the Forty-Sixth Annual Session at a very short notice. This amply demonstrated the spirit of perpetual optimism and "can-do" attitude of the South African people. Amb. Kamil highlighted that AALCO as an Organization had come to stay on the international horizon and to strengthen its bases in the African continent was one of the remaining tasks before it. With the support of the South African Government, he was confident it would be possible to bring in more Members from the African continent into the AALCO family.
- 2.3 **Hon'ble Mr. Narinder Singh, Joint Secretary and Legal Adviser to the**

Ministry of External Affairs and the President of the Forty-fifth Session, in his statement highlighted some of the important events that took place during the course of his Presidency of the Organization. It included the inauguration of the Permanent Headquarters Building of the Organization in conjunction with the Forty-Fifth Golden Jubilee Session of Organization in New Delhi on 6th April 2006. Other important activities included the convening of the Meeting of International Experts on Human Rights in Islam, from 15-19 May 2006, in Kuala Lumpur Malaysia; AALCO-ILC Joint Meeting and Meeting of AALCO Legal Advisers' at the UN Headquarters in New York on 30 October 2006; and the Meeting of Experts on the Emerging Issues on the United Nations Convention on the Law of the Sea, on 24 November 2006 in New Delhi. Mr. Singh called upon the AALCO to continue to consider the item pertaining to the topics on which the International Law Commission had submitted its recommendations to the Sixth Committee of the UN General Assembly. In his view, such follow-up should take place until the culmination of the work on the topic at the UN General Assembly. In this regard, he said that the AALCO could play an important role in coordinating the views of the Member States on the topic of "State Responsibility" on which the ILC had submitted Draft Articles to the Sixth Committee.

- 2.4 **Her Excellency Ms. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development, Government of the Republic of South Africa**, in her inaugural address stated that it was a momentous occasion for the Government of the Republic of South

Africa to host the Forty-Sixth Session of AALCO. It was momentous because their country could be classified as an emerging democracy and was hard at work building democratic institutions addressing the challenges of poverty, disease and lack of skills. South Africa, like many African and Asian countries, faced similar socio-economic and development challenges in an unequal and fast globalizing world order and they had a common destiny.

The Minister observed that AALCO had held together the spirit of Bandung in the field of international law and as a forum for Afro-Asian cooperation in international legal matters and had contributed to substantive reform and promotion of international law whilst providing a vital platform for intellectual interaction amongst legal experts from all over the world. She believed that greater participation of African States in AALCO was needed and more African States should join AALCO as they would benefit from interaction at the numerous codification conferences that fed into treaty making bodies of the United Nations Organization.

The Minister underscored that peace, stability and development was as much a challenge today as it was during the early days of the League of Nations. Today, the international community was seized with new challenges such as combating terrorism, especially transnational crime. The new instruments, such as the United Nations Convention Against Corruption promoted good governance and contributed to combating corruption and organized crime. However, in order to make these instruments effective domestication was not enough. There was a need to act decisively against those who committed corruption and

were involved in organized crime. She also called for eradicating the scourge of trafficking in women and children. The Minister added that indigenous knowledge and folklore are important in the lives of many people in both Africa and Asia. Adding value and protecting of rights in indigenous knowledge could economically benefit many indigenous practitioners and crafters in Africa and Asia. She was particularly pleased that all these topics formed part of the substantive agenda of AALCO and would be thoroughly deliberated during the course of Conference. Finally, she wished the Conference every success and declared open on behalf of the President and the Government of the Republic of South Africa the Forty-Sixth Session of AALCO.

2.5 **Hon'ble Mr. S. Amos Wako, Attorney-General of the Republic of Kenya and the President of the Forty-Fourth Session of AALCO** proposed a Vote of Thanks to Her Excellency Ms. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development of the Republic of South Africa for gracing and inaugurating the Session. He highlighted that the Republic of South Africa agreed to convene the Session at short notice. The acceptance by South Africa to host the Session at such short notice was a record and could be achieved only because the matter was being handled personally by Minister Mabandla, a person of firm determination who had fought against apartheid and was active in the promotion of human rights.

Mr. Wako also took the opportunity to thank all the Member States of AALCO who had contributed to the successful election of 12 Members of the International Law Commission (ILC) by the United Nations General Assembly in 2006 from AALCO

Member States. He recalled that the unity forged at the Forty-Fifth Golden Jubilee Session of AALCO in April 2006 contributed to the success. He expressed his sincere appreciation to the outgoing President. He also thanked all the Honorable Ministers, and Delegations who had come from their respective capitals for the Forty-Sixth Annual Session of AALCO.

3. First and Second Meetings of the Delegations of AALCO Member States

3.1 Agenda:

The following agenda was adopted for the Forty-Sixth Session:

I. Organizational Matters

1. Consideration and adoption of Agenda
2. Election of the President and the Vice-President
3. Admission of Observers
4. Admission of new Members
5. Report of the Secretary-General on the Work of the AALCO
6. Report on the Work of the AALCO's Regional Arbitration Centres
7. Report on the AALCO's Centre for Research and Training (CRT)
8. Report on the AALCO Headquarters Building
9. Venue of the Forty-Seventh Session

II. Matters under Article 1(d) of the Statutes: Matters relating to the International Law Commission

Report on matters relating to the Work of the International Law Commission at its Fifty-Eighth Session.

III. Matters under Article 1(a) of the Statutes: Matters Referred to the Organization by Member States

1. The Law of the Sea
2. The Status and Treatment of Refugees
3. 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

4. Establishing Cooperation Against Trafficking in Women and Children
5. Human Rights in Islam

IV. Matters under Article 1(b) of the Statutes: Matters of Common Concern having Legal Implications

1. The International Criminal Court: Recent Developments
2. An Effective International Legal Instrument Against Corruption
3. Expressions of Folklore and its International Protection

V. International Trade Law Matters

WTO as a Framework Agreement and Code of Conduct for the World Trade

VI. Two half day Special Meetings

1. International Investment, Trade and Development
2. International Cooperation in Countering Terrorism

VII. Any Other Matter

- 3.2 **Election of President and Vice-President:** The Leader of Delegation of the People's Republic of China proposed the nomination of **Her Excellency Ms. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development** as President of the Forty-Sixth Session. The nomination was seconded by the Leader of the Delegation of the Republic of Kenya, and she was unanimously elected. The Leader of the Delegation from Republic of South Africa proposed the nomination of **Mr. Eddy Pratomo, Director General of the Legal Affairs and International Treaties, Ministry of Foreign Affairs,**

Republic of Indonesia as Vice-President of the Forty-Sixth Session. The proposal of the nomination was seconded by the Leader of the Delegation of Brunei Darussalam, and he was unanimously elected.

- 3.3 **The President of the Forty-Sixth Session, Her Excellency Ms. Brigitte Mabandla, Minister for Justice and Constitutional Development** in her statement after election, thanked the outgoing President Mr. Narinder Singh for his able leadership during the past year. The President observed that her Government, together with other African Member States of AALCO, would encourage more countries from the African continent to join AALCO. The Organization was not only an important professional body, but also a platform for friendship and solidarity.

- 3.4 **Admission of Observers:** The Admission of Observers to the Session, pursuant to Statutory Rule 18(1), was unanimously approved.

- 3.5 **Report of the Secretary-General on the Work of AALCO:** The Secretary-General in his Report on the work of AALCO, *inter alia*, highlighted the topics on the substantive agenda of the Organization. He stressed that for the Organization to contribute more effectively to international legal matters, a strong membership was essential and looked upon the African continent for more Members. As regards the activities of the Organization since the Forty-Fifth Session the SG, *inter alia*, mentioned about presenting before the International Law Commission the crux of the views of AALCO Member States during their deliberations at the Forty-Fifth Session; the biennial consideration of the item pertaining to "Cooperation between United Nations and the Asian-African Legal Consultative Organization" by the United Nations

General Assembly in October 2006; and the Joint AALCO-ILC Meeting and AALCO Legal Advisers meeting at the UN Headquarters in New York.

The Secretary-General outlined his vision regarding making operational the Cooperation Agreements and Memorandum of Understanding signed with sister Inter-governmental Organizations by conducting training and internship programmes with the cooperation of these Organizations after moving to the Permanent Headquarters Building. The SG also mentioned the various publications brought out by the Organization and the constant endeavor of the Secretariat in enriching them by improving their quality and content. Further, the SG thanked the Government of India for providing the Organization with its Permanent Headquarters Building and hoped that the Secretariat would be able to move to the Permanent Headquarters Building at the earliest possible date.

- 3.6 **Budget:** The **Secretary-General** introduced the Draft Budget for the year 2008. The SG informed the Session that it had been discussed at the 294th Meeting of Liaison Officers of AALCO Member States, held on 18th June 2007 at the AALCO Secretariat in New Delhi. The SG stated that as the Organization would start functioning from the new Headquarters Building soon, the draft budget kept provisions for additional expenses related to the maintenance of the building, as well as for the envisaged enhancement in the activities, keeping in view the facilities provided in the new building. The SG underlined that the deficit in the budget was on account of a gap between the income and the expenditure, in the figures of 2008 budget.

The SG explained that there were many reasons for variation between income and expenditure, namely: (i) Non receipt of contributions from 20 Member States, (ii) A sharp decrease

in the US Dollar rate compared to the Indian Rupee (12%) had negatively affected the budget as all the receipts were in dollars, (iii) As the term of the current Secretary-General would end after eight years in 2008, an allocation of US\$ 25,000 had been made to meet the expenses related to the transfer of belongings and other expenses of the incoming and outgoing Secretaries-General. This amount he said would occur once in eight years, and from 2009 onwards he proposed, that a specific sum be kept aside every year in the form of fixed deposits, so that at the end of the eighth year the expense would not be a burden on the 2016 budget. This proposal was suggested to the Liaison Officers, (iv) Increase in expenditure due to annual inflation in all prices, and (v) The SG highlighted that the contributions from Member States had remained the same for the past 14 years.

Touching upon the arrears problem, the SG urged Member States with arrears to make their contributions at the earliest. In this regard he said that Member States who paid their annual contributions and the non-paying Members received same services from the Secretariat, and many Member States in the former category had expressed their displeasure as they felt it was unfair. The SG stressed that he personally kept a strict control over the expenses and had tried his level best to streamline the expenses of the Secretariat, and underlined that he did not request to increase contributions during his mandate. The SG maintained that he wanted to hand over to his successor a budget which would help him to steer the activities of the Organization to greater heights, while being aware that his predecessor, out of honesty, had to clear enough financial problems of AALCO before the end of his mandate.

Delegations from **the Japan, the Kingdom of Saudi Arabia, the Republic of Kenya, Malaysia,**

Uganda, the United Arab Emirates, the Sultanate of Oman, Sudan, the Islamic Republic of Iran, Senegal, the Arab Republic of Egypt, the State of Kuwait and the Republic of South Africa made statements on the Draft Budget for the year 2008. All the delegations while appreciating the efforts of the Secretary-General to place AALCO on a sound financial position, as well as efforts made to streamline the budget, gave further inputs on streamlining the budget. Some of these delegations stated that the budget should be adopted without all these discussions.

The delegate of Japan stated that he was not agreeable to the 18.7% increase in the draft budget. However, in the spirit of cooperation they could agree to a 5% increase compared to the 2007 budget, provided the following two conditions were met. Firstly, the increase in the draft budget for 2008 was exceptional and a one time affair only and secondly, the eventual deficit be covered from the Reserve Fund of the Organization without thinking of future increase of the contribution. However, if the budget was approved as presented, they would not associate themselves with this consensus for the draft Budget of the year 2008. However, other delegations observed that as compared to other international organizations, the draft budget was very modest and reasonable, bearing in mind that the Secretariat would soon commence working from its new headquarters building, where expenses would increase.

The major problem faced by the Organization related to the surmounting arrears to the tune of US\$ 1.4 Million. Some delegates recommended the constitution of a Committee to tackle the problem of arrears. As a first step they could be requested to pay up and if they did not comply as a last resort, membership could be withdrawn. Some delegations suggested that a

part of the new building be rented out; this could generate additional income for AALCO. Another delegation suggested that instead of a US Dollar account, a Euro account could be maintained, this step could provide a more stable financial base. Yet another delegation stated that research was a very important activity of the AALCO and the budget heads should be prioritized. Lastly, with relation to the allocated sum of US\$ 25,000 for the incoming and outgoing Secretaries-General, the sentiment expressed was that it was the right of both the Secretaries-General to which they were entitled.

The Chair then noted that the general feeling was to adopt the budget as presented by the Secretary-General and expressed that Japan's comments would be reflected in the records of the Session. Thereafter, the Budget for the Year 2008 was adopted by acclamation by all the Member States of AALCO, except Japan, and applauded.

- 3.7 ***Signing Ceremony of the Agreement for the Establishment of the Regional Centre for Arbitration in Nairobi, Republic of Kenya:*** The Secretary-General of AALCO and the Attorney-General of the Republic of Kenya signed the Agreement for the Establishment of the Regional Centre for Arbitration in Nairobi, the third such Centre in Africa. This highlighted the growing importance of these Centres as viable alternatives to the traditional arbitration institutions.

The Attorney-General (AG) noted that the need to setup a regional institution to promote the resolution of international commercial disputes outside the jurisdiction of national courts and to offer arbitration services within the region remained urgent, in view of the need to guarantee more stability, reliability and certainty in dispute settlement in light of regional economic integration in the Eastern and Southern African

sub-region. The AG also noted that the necessary legal framework to cater for international and regional arbitration was already in place in Kenya, what remained to be done was the setting up of the institutional framework for the Centre, which includes framing of the rules and the appointment of the Director of the Centre.

The Secretary-General welcomed the establishment of the Nairobi Centre, and assured that AALCO Secretariat, as well as the Directors of the other four Centers would render all possible help in framing the rules of the Regional Centre for Arbitration in Nairobi.

- 3.8 **Report on AALCO's Centre for Research and Training:** Dr. Xu Jie, Deputy Secretary-General (DSG) of AALCO while introducing the item stated that in pursuance of the resolution RES/45/ORG.4 adopted at the Forty-Fifth Golden Jubilee Session in 2006, the following activities were undertaken by the Centre, first, a one-day Meeting of Experts on "Emerging Issues on the UN Convention on the Law of the Sea" held in New Delhi on 24th November 2006. Second, informative research studies had been released at earlier Sessions and also a volume titled "Commemorative Essays in International Law" in commemoration of the Golden Jubilee of the Organization would be released during this Session. Third, the website of AALCO had been significantly modified and upgraded in order to make it more user friendly, interactive and informative. A new domain name of *www.aalco.int* had been assigned to the website recently. Member States were requested to provide electronic addresses and URL of the Ministry concerned and officials in charge of AALCO. Finally, in pursuance of the key objectives of the Centre to impart training to the officials from the Member States, he said that the Centre was resolved to organize

training programmes and seminars in cooperation with other international organizations. However, in order to concretize these plans it was necessary to put the Centre on a sound financial footing, as it was currently dependant on the regular budget of AALCO, which itself was facing many difficulties. He requested Member States to adequately fund the 'Research and Training Fund'.

- 3.9 **Report on AALCO's Permanent Headquarters Building:** Amb. S. R. Tabatabaei, DSG of AALCO, highlighted the progress report on the Headquarters Building and said that during the Forty-Fifth Session, the Member States realizing that some of the works had been pending and some technical requirements needed completion, had requested the Secretary-General to expedite, in coordination with the concerned authorities of the Government of India, the completion of the building in order to enable the Secretariat to move to its Permanent Headquarters. Accordingly, the Secretary-General and the Deputy Secretaries-General had been reviewing the progress in the work with the officials of the Ministry of External Affairs (MEA) in order to expedite the completion of the building. He noted that all the works, including the furnishing of the building were in the final stages and it was hoped that the completed building would be ready for shifting soon. Regarding the furnishing of the Secretary General's Residence, he said that it was the sole responsibility of the Secretariat. In this context, keeping in view the heavy burden on the Organization and the financial situation, the Secretary-General urged and welcomed from the Member States appropriate support on a voluntary basis.

4. First and Second General Meetings

- 4.1 Delegations from the following Member States made statements during the First and Second General

- Meeting: **Thailand, the Republic of Indonesia, Japan, the United Arab Emirates, Malaysia, the People's Republic of China, Uganda, Pakistan, the State of Kuwait, Sri Lanka, the Arab Republic of Egypt, the Sultanate of Oman, the Kingdom of Nepal, the Arab Republic of Syria, the United Republic of Tanzania, the Republic of South Africa, the Republic of Kenya, the Republic of Korea, the Islamic Republic of Iran, Sudan and Senegal.** Observer delegations from Holy See, Lesotho, Commonwealth Secretariat and UNEP also made general statements.
- 4.2 All the delegations congratulated Her Excellency Ms. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development on her election as President of the Forty-Sixth Session of the Asian-African Legal Consultative Organisation. Many delegations expressed confidence that under her able leadership and the concerted efforts of the delegations of the various Member States, the Session would achieve complete success. Delegations also congratulated H.E. Mr. Eddy Pratomo, Director General, Legal Affairs & International Treaties, Ministry of Foreign Affairs, Republic of Indonesia on his election as the Vice-President of the Forty-Sixth Session of AALCO.
- 4.3 Delegations also sincerely thanked the Government of Republic of South Africa for the warm welcome and hospitality that was accorded to the delegations. They also appreciated the efforts of the Secretary-General of AALCO and the Secretariat for the well-organized preparations for the Session. Some Delegations welcomed the new member, the Republic of Cameroon, to the Organisation. Many delegations commended the effort of AALCO in galvanising Asian-African cooperation in the field of international law. Many delegations also appreciated the initiative of the Host Government and the AALCO Secretariat for the two half-day Special Meeting on important items, namely, "Investment, Trade and Development" and "International Cooperation in Countering Terrorism".
- 4.4 Several delegations stated their position on the items on the AALCO's agenda and the contribution of the respective countries. One delegation supported the suggestion by His Excellency Mr. Narinder Singh that AALCO should continue to deliver its significant contribution towards the work of the Sixth Committee of the United Nations. One delegation was of the view to call upon Asian-African Countries to create a best practice on Mutual Legal Assistance and Extradition in order to ensure the supremacy of law in combating corruption. The Indonesian delegation proposed that in the near future, AALCO could organize legal training programmes for Asian-African lawyers, in collaboration with the WTO or UNITAR. The Delegation believed that the endeavor could make a significant contribution towards the empowerment of the Asian-African States in the WTO forum.
- 4.5 Another delegation expressed hope that a reasonable initiative to solve the financial problem, taking into account various factors surrounding financial matters would be drawn up. The delegation earnestly hoped that this question would be tackled as an important task of AALCO in the coming months.
- 4.6 Yet another delegation expressed their happiness regarding the broad participation of experts and participants from AALCO Member States at the Meeting of International Experts on Human Rights in Islam (MIEHRI) which was held in Kuala Lumpur from 15-19 May 2006. The delegations thanked the AALCO Secretariat and the Kingdom of Saudi Arabia for collaborating in the

- organization of that event. They believed that the outcome of the meeting contributed substantively to the better understanding of the subject matter as well as enhancing international cooperation, mutual respect and the dissemination of human rights principles and practices.
- 4.7 The delegation of the People's Republic of China proposed that in order to expand and enhance the influence of AALCO the following points could be considered: firstly, AALCO should continue to pay close attention to important international affairs, and provide its Member States with profound international legal analysis; secondly, AALCO should continue to strengthen its cooperation with other international organizations especially the relevant legal bodies of the United Nations, and support the role of United Nations' in safeguarding world peace and security and promoting common development; thirdly, AALCO should follow closely the new issues, new trends and new developments in the field of international law and prepare reports on these topics; and finally, AALCO should continue to hold seminars or workshops for the legal officers of Member States.
- 4.8 The delegation of Uganda inquired whether it was possible for AALCO to conduct research analysis on the concept of "dispensing justice under traditional justice system". The delegation also appreciated the signing of the Agreement between AALCO and the Republic of Kenya for establishing a Regional Arbitration Centre in Nairobi, Republic of Kenya which the delegation considered to be an important landmark for the entire East African region. Another delegation stated that the evil of terrorism cannot be combated without the active cooperation of all the Member States of AALCO which would ensure that all means are utilized in that objective.
- 4.9 The delegation from the Republic of Korea wished to recall the fact that the Forty-Second Session, which was held in Seoul in 2003, considered and adopted proposals concerning the rationalization of AALCO's Work Programme. The delegation emphasised that it attached a great importance to the continued implementation of such rationalization. In that regard, the delegation was of the opinion that the number of items to be deliberated should not be unduly expanded.
- 4.10 One of the delegations observed that both Asians and Africans have had a long tradition of working and living together and recognized in each other a common humanity and common destiny as they had suffered the same afflictions and humiliations imposed by colonialism. Hence, the delegation reiterated that active engagement with each other regarding human resource development, technical training, capacity building and knowledge sharing was urgently needed. Some delegations were highly appreciative of the Model Legislation Against Trafficking in Persons Especially Women and Children prepared by the AALCO Secretariat. In this regard they stated that this could prove to be a very useful reference point when Member States of AALCO deal with the problem of trafficking domestically.
- 4.11 The delegation from the Islamic Republic of Iran informed that a ministerial meeting of Non-Aligned countries on the issue of Human Rights and Cultural Diversity would be convened in Tehran on 3-4 September 2007. This initiative, which came from the Islamic Republic of Iran, would explore ways and means to realize human rights while taking into account cultural diversity.
- 4.12 Another delegation welcomed the collaboration that AALCO has had with various UN agencies and specialized agencies concerned with

different subject matters. The delegation added that this would go a long way in dealing effectively with the matters found on the agenda of AALCO. Another delegation reiterated the need to increase the voice of Asian-African countries at those fora where international law making takes place.

- 4.13 The Observer delegate from the United Nations Environment Programme (UNEP) *inter alia* drew attention to the Memorandum of Understanding (MoU) signed between the UNEP and the AALCO at the Forty-Fourth Session of the Organization in Nairobi in 2005. The MoU established a renewed framework for cooperation and collaboration between the two Organizations, in particular, in the area of promoting the development and implementation of environmental law, as a branch of international law. The Delegate noted with interest the activities of the AALCO-CRT and said that the UNEP saw the Centre as an important institution to build and/or strengthen the capacity of enforcement officials of the Member States for both the development and implementation of international law, which they considered to include environmental law. CRT could also very well be used by UNEP for its capacity building and training programmes on environmental law benefiting the AALCO Member States based on modalities which could be further discussed and agreed upon. The delegate suggested that the CRT could be one of the partner institute or centre of excellence, for UNEP's capacity-building and training programmes, if AALCO Member States so desire and the AALCO followed up with UNEP Administration.

The Third General Meeting

5 Agenda Item II: International Law Commission

- 5.1 **Amb. Reza Tabatabaei Shafiei, Deputy Secretary-General (DSG)**

of AALCO introduced the item. The DSG congratulated members who had been elected to the International Law Commission (ILC) from AALCO Member States. The DSG briefly presented the report on the work of the Commission at its fifty-eighth session.

- 5.2 **Mr. Narinder Singh, Representative of the International Law Commission** made a statement on behalf of the International Law Commission. In his statement Mr. Singh focused on the activities of the Commission since last year. The Representative said that this year's session of the Commission was the first of the new quinquennium which followed the election of its members by the General Assembly of the United Nations last year. 16 of its 34 members, almost half, were new. The first part of the Fifty-Ninth Session of the ILC, convened from 7 May to 5 June, and would be convening later this July for the second segment until the second week of August. The Representative underlined that the year 2006 saw fruitful completion of 4 topics. Firstly, the Commission concluded the second reading of the draft articles on Diplomatic Protection. Secondly, the Commission completed the second reading of the draft principles on the "Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities". Thirdly, the Commission adopted Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations. Fourthly, the Commission completed its work on 'Fragmentation of International Law'. Further he focused on the substantive part of the current programme of the work of the Commission, which consisted of six topics. These were 'Reservations to Treaties', 'Shared Natural Resources', 'Expulsion of Aliens', 'Effects of Armed Conflicts on Treaties', 'Responsibility of International Organizations', and 'the

Obligation to Extradite or Prosecute (*aut dedere aut judicare*)’.

- 5.3 The delegations from **the Islamic Republic of Iran, the Republic of Korea, Japan, the Republic of Kenya, Malaysia, the People’s Republic of China, the Republic of Indonesia, Thailand, the Republic of South Africa, and the Arab Republic of Egypt** made statements on the work of the Commission. One delegate observed that extending diplomatic protection to corporations in most cases was unnecessary as the circumstances in which the corporations perform their activities and the procedures for settlement of disputes was largely regulated by the bilateral and multilateral treaties signed between States. Another delegate mentioned that the scope of draft Article 19 (the rule on the exhaustion of local remedies, actions or procedures other than diplomatic protection and recommended practice) was of concern. He expressed the hope that draft Article 19 would be excluded from the set of draft articles, while bearing in mind that it was the consistent practice of his country to respond to legitimate requests for diplomatic protection from its nationals abroad.
- 5.4 On the topic of ‘Responsibility of International Organisations’ one delegate observed that successful completion of this work would be comparable to the ILC’s accomplishments in the Vienna conventions on the law of treaties, which established a single system of inter-state treaties, as well as treaties allowing for the participation of international organizations. On the topic of Shared Natural Resources delegates generally welcomed the timely completion of the first reading of the set of 19 draft articles on the law on transboundary aquifers.
- 5.5 In respect of the topic of “Effects of Armed Conflicts on Treaties” one delegate said that on the issue of ipso facto termination or suspension, they

opposed the Special Rapporteur’s proposal to replace “ipso facto” with “necessarily”, on the ground that “necessarily” was less incisive. The delegate agreed that the draft articles should not rule out the possibility of automatic suspension or termination in appropriate cases. Although the delegate acknowledged the difference between the concept of termination and suspension, he viewed that the exigencies of particular situations might render difficulties in any attempt to identify or apply the two concepts. Another delegate pointed out that in draft article 4, the Special Rapporteur had elevated the “intention” of the parties as the main criterion for the determination of suspension or termination of treaties. The delegate considered that there was a need to examine the question of intention further, as well as other possible criteria. The delegate mentioned particularly that the Commission should consider other criteria, determined in accordance with articles 31 and 32 of the Vienna Convention on the Law of Treaties, as well as the nature of the armed conflict.

- 5.6 Concerning the topic of “Expulsion of Aliens”, one delegate believed that there should be a balance between rights of States to expel and the protection of rights of aliens. Illegal immigrants, he stated, should be covered by the draft articles. On the topic of ‘the obligation to extradite or prosecute’ (*aut dedere aut judicare*) one delegate said that it was important that States incorporate offences of international character and transnational crimes to be extraditable offences under their domestic laws. Furthermore, a more harmonized approach should be adopted when considering requests for international legal cooperation, whether for extradition or mutual legal assistance. Double criminality and the political offence exceptions should be applied resiliently in a way that did not impede international

cooperation and the application of emerging norms of customary international law.

- 5.7 One delegate said that the support and unity of purpose from AALCO Member States made it possible for the election of 12 candidates from its Member States to the ILC. One delegate suggested that AALCO could organize workshops on topics that were referred to the UN General Assembly by the ILC.

6 Special Meeting on “International Investment, Trade and Development”

- 6.1 The first half-day Special Meeting on “International Investment, Trade and Development” was held in the morning Session on 4 July 2007. The President invited **Mr. Vincent Saldahna, President of the National Democratic Lawyers Association**, the Republic of South Africa to chair the Meeting.
- 6.2 Mr. Vincent Saldahna before commencing the Meeting gave the floor to the Secretary-General for his introductory remarks.
- 6.3 **Ambassador Dr. Wafik Zaher Kamil, the SG of AALCO** noted that wider interaction among nations and the need for economic cooperation had enhanced the role of international trade and investments. He recalled that historically, international law on trade and investment was perceived by the developing countries as an instrument that guaranteed favorable rights to the colonizer over their colonies. The SG noted that now developing countries had begun to view trade and foreign investments in the spirit of partnership rather than confrontation. This was because of the growing realization that foreign investment and trade were essential components of sustainable development strategies. The SG added that the tendency to attract investment had brought with it new challenges which need to be

studied. Further, the host States should exercise judiciously their right to regulate with a view to promoting domestic development priorities and linkages, and protect the public welfare from possible negative impacts.

- 6.4 Reflecting on the work of AALCO, the SG noted that Trade and Investment had been on its agenda for many years and several issues considered include: Promotion and Protection of Investment (1983); Promotional Meetings on Investments (1986); Legal Framework for Joint Ventures (1988-91) etc. In 1981, the Organization, through its Trade Law Sub-Committee, had also prepared the texts of three Model Bilateral Investment Agreements on Investment Protection. On trade law matters, AALCO had been involved and complemented the work of UN agencies, as well as the World Trade Organization (WTO).

Theme 1: Investment and Trade in Legal Services

- 6.5 **Mr. Wamkele Keabetswe Mene, Department of Trade and Industry, the Republic of South Africa**, was the first panelist. The panelist presented the South African Perspective on Investment and Trade in Legal Services. He highlighted the importance of investment and trade in legal services for the developing countries and noted that the growth and internationalization of economy, increase in multi-jurisdictional transactions, mergers and acquisitions, business to business legal transaction etc., had been a catalyst for globalizing investment and trade in legal services.
- 6.6 The panelist said that the WTO General Agreement on Trade in Services (GATS) provides an international legal framework for legal services. In the context of mode and type of supplying legal services, he noted that foreign legal consultants could provide services in

three situations – international law, home country law, and third country law. However, there were many barriers to international trade in legal services, particularly Market Access and National Treatment issues which need to be tackled. He added that there was also lack of participation from the African and developing countries.

- 6.7 While explaining the benefits for developing countries vis-à-vis legal services, Mr. Mene noted that it would lead to transfer of expertise and know-how, increased Foreign Direct Investment, access to global markets, transfer of technology, improvement in quality of services, vigorous competition in market and restructured domestic legal environment. The Doha Round of negotiations has recognized the importance and provides for further liberalization of legal services. The panelist also noted that the current framework under GATS provides flexibilities for the countries in formulating their commitments according to their domestic needs. A State could, for example, permit entry of foreign legal services in consultancy services, but could restrict permission in representative services.
- 6.8 **Mr. Nabil Lodey, Freshfields Law Firm, Paris**, fully agreed with the earlier panelist on the advantages of liberalization of legal services. The panelist said that there was a need to differentiate between regulation and liberalization. From the perspective of law firms, to enter the domestic market, there was a need to change the domestic setup and for dialogue, and the requirement of political and economic stability in the host country. The panelist noted that law firms are client driven and would emphasize these factors. The panelist noted that the liberalisation of legal services under the GATS was restrictive and there was a need for fair regulation and adopting investment agreements. The panelist

also highlighted a comparative study of the International Bar Association on the independence, confidentiality, ethical, and professional structure. However, the panelist agreed that there was misplaced apprehension that large multilateral law firms would take over the domestic practice, including the advocacy work in the country. The panelist emphasised the need for dialogue and change in the regulatory structure of the developing countries which protects the domestic law firms from competition. However, this could also lead to brain drain. The panelist noted that an international law firm brought with it international experience, would recruit locally and mostly do consultative services. The panelist pointed out that many countries were in the process of liberalizing their legal services as required under the GATS.

- 6.9 **Judge D. Davis, Judge of the High Court, the Republic of South Africa and former Professor of Law**, noted that when one talks about the liberalization of legal services the first question to be addressed was 'for whom?'. In South Africa and many other countries, the crucial issue was access to justice for poor people, especially the legal representation on their behalf. The second problem was that in the process of globalization, the interrelationship between national and international laws had become increasingly important. No country could now afford to have expertise in municipal law alone. Further, international law emerging from the practices and decisions of international institutions would be crucial. The panelist felt that law was not strictly a national issue, and it was important to understand comparative legal systems. In order to develop their jurisprudence, it was essential to understand other legal systems around the world. As regards GATS commitments, one should understand how to implement this agreement. While agreeing that

nobody wanted international law firms to replace domestic law firms, the panelist noted that there was vested interest and monopoly of market by very few firms in developing countries. There was also a need to develop local expertise in many crucial areas such as WTO, competition etc.

- 6.10 **The delegations from the Republic of Kenya, Uganda, the Sultanate of Oman, the Republic of South Africa, the State of Kuwait, the Republic of Indonesia, the Republic of Korea and the Kingdom of Saudi Arabia** participated in the discussion that followed. They also posed very important and comprehensive questions touching upon several issues which were discussed by the panelists, including the implications of signing the GATS by the developing countries.

Most delegations expressed their apprehension about the entire GATS system. It was observed that the negotiations held at WTO level were imbalance, as far as developing countries were concerned. Some Members felt that liberalization should first take place through regional economic cooperation and proceed towards universality. Some delegations supported the liberalization process, and requested Member States to look for legal jurisprudence based on international norms and that legal services should no longer be a national issue. Explaining their experience, the delegation of the Sultanate of Oman stated that they had opened the legal services for legal consultations and not for representative services, and enquired whether this position could be maintained. This was answered in the affirmative by the panelists as the GATS provides for that flexibility. The delegation from the State of Kuwait pointed out that most of the developing countries were facing domination and stressed the need to raise awareness within the developing

countries. He emphasized the AALCO's role in this regard. The Republic of Indonesia, sharing their experience, noted that in order to facilitate the transfer of knowledge and know how the domestic lawyers, Indonesia currently requires foreign lawyers practicing in Indonesia to provide pro bono legal advice and conduct lectures in international law for academic community.

- 6.11 The delegation from the Republic of Kenya recommended that the Centre for Research and Training (CRT) of AALCO could prepare a Guideline on the possible positive and negative implications of GATS on its Member States. Many delegates supported this view. The delegation from the Republic of South Africa suggested that the curriculum of legal education should be adjusted according to the situation and that lawyers should be trained not only in local laws, but also in international and comparative laws. They also suggested constitution of a three Member States committee to look into the real issues. The delegation of the Kingdom of Saudi Arabia, shared their experience of acceding to the WTO which took 12 years of negotiations, suggested establishing a Committee within Member States in order to provide legal advice and facilitate accession process to WTO.
- 6.12 **Mr. Mene** stated that one should recognize the inevitability of globalization. The question was how to integrate economy into that framework. Regulatory infrastructure should be the first requirement. Article VI of GATS refers to domestic regulation and it does not require any country to depart from their own regulations. Regional integration was a good idea. He emphasized that they should maintain a balance between national regulation and globalization.
- 6.13 **The Chairman** pointed out that if the South African Judges could cross borders to neighbouring countries,

the lawyers should be less concerned about the cross border legal service. While closing the session, the Chairperson summed up the deliberations and highlighted the practical suggestions put forward by the panelists. Finally, he thanked the panelists for their excellent presentations.

Theme 2: Right to Development: African NEPAD Strategy in Investment and Trade?

- 6.14 The **President of the Forty-Sixth Session Minister Mabandla** introduced the theme, as well as the panelists and requested Justice Dennis Davis to chair the Meeting.
- 6.15 The **Chairperson Justice Dennis Davis** in his introductory remark observed that the theme for deliberations was “Right to Development: African NEPAD (New Partnership for Africa’s Development) Strategy in Investment and Trade?”. The Chairperson expressed doubt on whether there existed a Right to Development. If it did exist then there was no need for the thematic title to be followed by a question mark. He introduced the three panelists.
- 6.16 **Professor Shadrack Gutto, Director, Centre for African Renaissance Studies, University of the Republic of South Africa, Pretoria** stated that the Right to Development was important, not only from an African point of view but also from the perspective of all the developing countries. As development was a continuous process, the Right was also important for developed countries. As regards the right to development, Africa had taken the lead as this right first received clear recognition and expression within the context of African regional human rights system. The African Charter on Human and Peoples Rights, 1986, in its Articles 20, 21, and 22 gave recognition to this right. The UN system recognized the importance of

the right to development in 1986 by adopting the Declaration on the Right to Development. A further step was the conceptualization of the notion of sustainable development by the World Commission on Environment and Development in 1987, which was recognized more recently at the World Summit on Sustainable Development in 2002.

- 6.17 Development was a real challenge and it was undermined by poverty. He noted that Africa as a continent was progressively moving ahead and regional institutions were getting strengthened, and that was evident from the transition of the Organization of African Unity into the African Union. Regional institutions such as the African Central Bank, African Investment Bank and African Monetary Union were being set up. Africa generated its own resources and the new shift in development paradigm evident in the NEPAD strategy called for fashioning the development strategy in a new way. Africa did not want its development policies to be dictated by the World Bank and the International Monetary Fund (IMF), rather the NEPAD called for the African people to take their destiny into their own hands. Both donor dependency and the donor driven agenda was sought to be rejected. Instead there was a call for partnership between different actors, as well as regional integration. International partnership based on the mutual benefit was sought to be made the cornerstone of Africa’s development.
- 6.18 The second panelist **Mr. M. R. Williams, Director, Department of Trade and Industry, Government of the Republic of South Africa** focused his presentation on matters relating to the World Trade Organization (WTO). The panelist stated that most of the developing countries, including that from the African continent were Members of the WTO; therefore, NEPAD had to

work within the dynamics of rule - based trading system of WTO. The panelist drew Member States' attention to the current Doha Round of Negotiations in which developed countries were trying to weaken the rule based trading system. It was in the interest of developing countries to strengthen the rule based trading mechanism. However, even then through the WTO forum developing countries were not benefiting. There was a substantial difference between the notions of "free trade" and "fair trade". While developed countries argued for free trade that could harm developing countries, the developing countries advocated a need for fair trade, as they did not have the requisite capacities for furthering their trade interests. In this context, the panelist drew attention to the massive subsidies that the countries of the European Union provided to their farmers. The developing countries were in no position to provide such subsidies and the developed countries were placed at a comparative advantage in terms of market access.

- 6.19 The panelist drew Member States' attention to the concept of "preference erosion" which imposed severe restrictions on developing countries. He proceeded to discuss the WTO Dispute Settlement System. In this regard, he stated that it was difficult for developing countries to take up matters before the WTO Dispute Settlement Bodies, as it was a very expensive procedure and the countries had to rely on lawyers from developed countries as they did not have the requisite capacities within their countries. Even if a dispute was taken before the Panel by a developing country and the Panel decided in favour of the developing country, and called for measures to be taken by the developed country, the measures were dependent upon the goodwill of that country. The developing country had the right to suspend concessions to that particular

developed country. However, this is not a remedy. He noted that the developing countries need to implement the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) by 1 January 2005. Only very few developing countries had enacted laws and created institutions for enforcing the TRIPs Agreement due to lack of resources and qualified personnel.

- 6.20 In the Doha Development Round while the issues relating to Non-Agriculture Market Access (NAMA) and Agreement on Agriculture were not settled, the developed countries were bringing in new generation issues such as investment, competition etc. Furthermore, good governance was another key issue regarding the manner in which the WTO was being run. The phenomenon of "green room" wherein the developed countries negotiated within themselves and then sought to impose their decision on developing countries was particularly disturbing. New alliances of developing countries such as G-20 or NAM were required to be strengthened in order to effectively challenge the might of developed countries within the WTO.
- 6.21 **Ms. Thuli Madonsela, Member of the South African Law Reform Commission** presented a paper on "Right to Development: Focus on Law, Gender and Development". Her focus was on the relationship between gender and development with emphasis on the global call for mainstreaming gender in development and the relationship between law and development. She pointed out that one of the encouraging developments in the global discourse on development was the paradigm shift from parochial perspectives on development which included focusing on economic progress instead of the betterment of the human condition. The Panelist observed that the global acceptance for the need to mainstream gender in

development also constitutes an important recent development. After presenting a utilitarian perspective on the need for gender mainstreaming, she observed that a utilitarian perspective has its limits as sometimes it was more expedient to undermine equality in the interests of broader national development interests. The Panelist pointed out that the law can be an important instrument of change. However, she cautioned that one needed to be realistic about the law and its limits. The Panelist put the following ideas for consideration of AALCO Member States: mainstreaming development; mainstreaming gender and other equality considerations; and ensure equal participation of women and men and other forms of inclusiveness in national and international legal and policy processes as well as trade agreements.

- 6.22 Many delegations commented on the panelist's presentation and raised thought provoking questions. Delegations included, the **Islamic Republic of Iran, Uganda, Sudan, the United Arab Emirates, the Republic of Korea, Japan, the Republic of Indonesia, the Sultanate of Oman, the Republic of Kenya and the State of Kuwait**. One delegation raised a pertinent question regarding the adverse impact on the Right to Development and its realization due to the unilateral sanctions by some countries. The delegation felt it necessary for AALCO to take up the issues related to the right to development and submit a report to its Annual Sessions. Another delegation highlighted the needs of developing countries in general and African countries, in particular, of self evaluation, without always blaming the colonial powers. The delegation cautioned that they had failed to come to terms with their own problems and challenges. One delegation emphasized that the developing world needs to look at

ways and means to administrative and economic restructuring. The delegation called for more partnership at the local, national, regional and international level to tap the vast potential and expertise. While opening the doors for more investment, the developing world had a national and moral responsibility to protect sovereign rights and national interests. The delegation of the Republic of Kenya suggested that AALCO could come up with a legal team to help the Member States facing problems like in the case of generic drug problems faced by the Government of South Africa. Another delegation observed that the world had to learn more from the advanced countries. Yet another delegation informed the Session of their economic reforms and the laws that they had enacted for encouraging more foreign direct investments. Another delegation expressed the view that more investment and foreign goods coming to domestic markets induce competition. One delegation raised a query to the panelist as to who was the holder of the Right to Development and who had the corresponding obligation.

- 6.23 **Professor S. Gutto** proposed that AALCO Member States could collectively work to raise the right to the development concept to a treaty form and incorporate it in their national laws and policies. He observed that if the unilateral sanctions had adverse impact on the people, then it constitutes human rights violations. He pointed out that according to the UN agreements, the holder of the right to development were individuals and people collectively, and the duty lies on the State and the people. Mr. M.R. Williams added that even though there were number of international instruments on right to development none were enforceable. Justice Dennis Davis made his concluding remarks and thanked the Panelists for

their lucid and thought provoking statements.

7 Special Meeting on “International Cooperation in Countering Terrorism”

7.1 AALCO-UNODC joint Special meeting on ‘International Cooperation in Countering Terrorism’ was held in the afternoon of 4 July 2007. The President of the Forty-Sixth Session of AALCO invited the Secretary-General of AALCO to introduce the topic. In his introductory statement the Secretary-General introduced the panelists, Counselor Dr. Iskander Ghattas, Global Consultant, UNODC, Vienna and Dr. Jonathan Lucas, Representative, UNODC Regional Offices for Southern Africa. In his introductory statement the Secretary-General highlighted the complex nature of terrorism and the necessity of countering it in all its forms and manifestations.

7.2 **Dr. Jonathan Lucas, Representative, UNODC Regional Offices for Southern Africa, Pretoria, South Africa** mentioned that terrorism posed one of the major international security threats to humankind. It was a threat that undermined peace, security, human rights, and sustainable development and was a scourge that threatened all nations, developed and developing, and all people, rich and poor. Its perpetrators came from all walks of life, all religions, all creeds, and all cultures.

7.3 The panelist pointed out that terrorist motivations, financing and support mechanisms, methods of attack, and choice of target were constantly surfacing, thus adding to the complexity of an effective strategy to counter it. Multilateral efforts must adjust to match the breadth and reach of the terrorist threat. In this regard, it had often been highlighted that a global and coherent response to this

threat should be the priority of all nations.

7.4 The panelist informed the session that the United Nations stood at the forefront of this international effort to provide a global response. The role of UN in countering terrorism was extensive. Through its mandate and expertise it was involved in almost every aspect of counter-terrorism, from broad-based prevention strategies, social and development projects, military responses, law enforcement mechanisms, to the development and implementation of international criminal justice norms and standards. The UN started working on the development of a multifaceted and coherent global response to terrorism well before the tragic events of September 11, 2001. The UN's counter-terrorism efforts spanned more than three decades, involving the General Assembly, the Security Council, the Economic and Social Council (ECOSOC) and the United Nations specialized agencies such as the International Atomic Energy Agency (IAEA), the International Civil Aviation Organization (ICAO), and the International Maritime Organization (IMO).

7.5 On the existing legal mechanisms against terrorism, the panelist informed the session that one of the most important contributions of the United Nations had been the gradual establishment of a common legal framework consisting of more than a dozen Conventions and Protocols that covered different kinds of terrorist acts, ranging from aircraft hijacking to nuclear terrorism. 16 instruments, together with several Security Council resolutions relating to terrorism (most notably Resolutions 1267 (1999) and 1373 (2001)), made up what was commonly referred to as the universal legal regime against terrorism. Another important counter-terrorism development in recent years was the elaboration of the United Nations Global Counter-Terrorism

Strategy that was adopted unanimously by the General Assembly on 8 September 2006.

- 7.6 While focusing on the activities of the UNODC against terrorism, the panelist apprised that the UNODC, through its Terrorism Prevention Branch (TPB), was one of the UN's lead providers of counter-terrorism technical assistance. It was mandated to assist requesting countries to enhance their counter-terrorism legal regimes and related criminal justice capacity. To enhance the effectiveness of its counter-terrorism technical assistance, UNODC strove to develop operational partnerships with international, regional and sub-regional organizations in support of existing bilateral arrangements for technical assistance and to assist countries to strengthen their counter-terrorism legal regimes and related criminal justice capacity.
- 7.7 The panelist summarized the UNODC activities as follows: promoting the ratification and implementation of the universal counter-terrorism legal Conventions and Protocols; analyzing national legislation and regional/sub-regional counter-terrorism conventions and providing advice on effective implementation and application of the laws; assisting, where required, with legislative drafting of counter-terrorism legislation; training criminal justice officials on the implementation and practical application of the new laws; and organizing regional and sub-regional workshops on counter-terrorism.
- 7.8 The panelist was of the view that international counter-terrorism measures would have to keep pace with the growing threat of terrorism in its multiple manifestations. It was found that many countries urgently required assistance to strengthen their counter-terrorism legal regimes to bring them in line with international obligations, and establish laws and effective criminal justice structures

that were able to deal with terrorists and the threats they pose and, where required, bring them to justice. Dr. Lucas observed that the United Nations could not build this capacity alone. Partnerships must be built at all functional levels with clearly identified aims and goals. Longer-term and sustainable capacity building should never be sacrificed at the altar of expediency. Building effective counter-terrorism required commitment and political support at all levels.

- 7.9 **Counselor Dr. Iskander Ghattas, Global Consultant, UNODC, Vienna** mentioned that the threat of terrorism was considered by the United Nations Security Council as a threat to peace and security. International community's efforts against terrorism started during the first half of the last century. In 1937 international consensus against terrorism was crystallized in the form of Convention for the Prevention and Punishment of Terrorism along with another Convention for the Creation of an International Criminal Court. These instruments did not come into force as they did not get required ratifications/accessions. However that was a beginning of efforts against terrorism. While referring to the prosecution of terrorists, the panelist mentioned that International Criminal Court (ICC) established through the Rome Statute should have jurisdiction over all terrorist acts. But because of fear among some States about the politicization of terrorist acts, these acts were kept out of the jurisdiction of the International Criminal Court. The Madrid Declaration also requested for inclusion of terrorism under the jurisdiction of ICC. The impact of terrorism was destructive at the individual and community level. While referring to the response of States, the panelist informed the session that prior to September 2001 the ratification of international conventions was not that

- encouraging, but after 2001 situation had changed and some conventions against terrorism attracted more than 150 ratifications. Apart from these international conventions there were several resolutions adopted by the United Nations Security Council and the General Assembly seeking States to cooperate and counter terrorism in all its forms and manifestations. They also sought States to adopt the necessary national legislation to give effect to international obligations.
- 7.10 The panelist informed the Session that in addition to conventions under the auspices of the United Nations there were also regional instruments addressing terrorism. These included Arab Convention for the Suppression of Terrorism, 1988, Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999 and the OAU Convention on the Prevention and Combating of Terrorism, 1999. All these efforts testified that Member States could not individually face the problem of terrorism. The panelist opined that States should not be complacent with mere ratification/accession of international instruments. They should undertake domestic initiatives to effectively implement their intentional obligations. These included adopting national legislation, and developing executive and judicial infrastructure.
- 7.11 The panelist referred to the efforts being undertaken by the European Union to counter terrorism. The panelist mentioned that the establishment of the EUROPOL and the EUROJUST to enhance the effectiveness of the competent authorities within Member States when they were dealing with the investigation and the prosecution of serious cross-border and organised crime. In the case of transnational crimes extradition presented major hurdle for the prosecution of perpetrators. To overcome these hurdles EU had introduced the system of European Arrest Warrant.
- Valid throughout the European Union, European Arrest Warrant had replaced extradition procedures between Member States. The panelist believed that this model would be followed at the regional and sub-regional levels in the Asian and African context.
- 7.12 While referring to the necessity of adopting stringent national measures the panelist mentioned that any national measure could face certain challenges. One of them was the definition of terrorism. There was no definition of terrorism at the international level but only a definition of certain terrorist acts was available. The other challenge to national legislative measures was related to preventive measures that could inhibit certain rights stipulated in respective constitutions. Therefore, there was a need to maintain balance between security and protection of fundamental rights and freedoms.
- 7.13 The panelist suggested that every State should have an internal mechanism on the issue of countering terrorism. This mechanism should have representation from the concerned ministries and departments dealing with terrorism at various levels, for example, Ministry of Foreign Affairs, Ministry of Home/Internal Affairs and other investigating agencies. This system would help share the experiences of various ministries and departments periodically and also would help them keep themselves abreast of the developments at international, regional and national levels on the issue of countering terrorism.
- 7.14 After the presentations by the panellists, delegates presented their comments and observations. These delegations were from **Japan, Pakistan, the Syrian Arab Republic, the Islamic Republic of Iran, Indonesia, the Arab Republic of Egypt, Kuwait, Thailand, the State of Qatar, People's Republic of China, Sri Lanka, South Africa,**

India, Senegal, the Republic of Korea, Commonwealth secretariat and the Organization of Islamic conference. The views expressed by delegates are summarised as follows.

- 7.15 Delegates unanimously condemned terrorism in all its forms and manifestations. They were of the view that terrorism, wherever it took place, was a threat to the international community as a whole. They were against the use of terrorist activities as ways and means of achieving political purposes. There was general approval for the existing legal regime against terrorism which constituted international conventions at the global and regional levels and also the resolutions adopted by the United Nations Security Council and the General Assembly. There was also a general consensus among delegates that a clear distinction should be made between terrorism and the legitimate struggles for self-determination which was a well recognised right under international law.
- 7.16 It was observed that for the fight against terrorism to be effective, measures should be taken simultaneously in the fields of prevention, legislation and enforcement, and both the manifestation and root causes of terrorism should be tackled, with efforts focusing on the solution of underlying problems such as conflict, poverty, social unrest and injustice. As for monitoring and reporting systems by the UNSC Counter Terrorism Committee, it was viewed that any reporting system should not put an excessive burden on States which were already struggling with the technicalities in implementing the UN anti-terrorism conventions and protocols. A suggestion was made to adopt an integrated approach in monitoring and evaluating the work of States.
- 7.17 Delegations also observed that in countering terrorism it was also necessary to comply with other obligations respecting the fundamental rights and freedoms of people. It was felt that any preventive or other measures should respect the judicial guarantees accorded in accordance with national and international obligations. Another important observation was that terrorism should not be identified with any particular civilization, ethnic group or religion. The use of double standards should also be avoided.
- 7.18 There was also general approval for enhancing international cooperation at the level of concluding international instruments and also at the level of establishing bilateral and regional coordination particularly in the fields of investigation, extradition and prosecution. There was a general consensus for the adoption of a comprehensive convention combating international terrorism. Delegations expressed their wish that consensus would emerge among the international community to conclude the comprehensive convention.
- 7.19 The question of convening a high level conference on combating terrorism was raised. It was pointed out that the issue of convening such a conference had been on the agenda of the UN General Assembly. It was suggested that convening such a conference should not be linked with the finalisation of the draft comprehensive convention on intentional terrorism. It was further suggested that the proposed high level conference could address two important issues involving terrorism, namely: the underlying causes of terrorism; and the definition of terrorism.
- 7.20 Several delegates explained the national measures that were taken up by their governments in the fields of domestic legislation, investigation and capacity building of the personnel.

The Fourth General Meeting

8 *Agenda Item III: The Law of the Sea*

8.1 **Dr. Xu Jie, DSG of AALCO** while introducing the item, recalled the substantial contribution made by the AALCO in the negotiation and implementation of the United Nations Convention on the Law of the Sea 1982 (UNCLOS). He highlighted that Golden Jubilee celebrations of AALCO culminated with the convening of its Meeting of Experts on the Emerging Issues on the United Nations Convention on the Law of the Sea, at the AALCO Headquarters in New Delhi on 24 November 2006. The DSG then drew attention to the following points for focused deliberations: (i) Development of legal principles for the preservation and protection of marine environment in the area beyond national jurisdiction with reference to the principle of sustainable development; (ii) Balancing coastal States' efforts to protect marine and coastal environment with the right of passage in straits used for international navigation; (iii) Increasing international efforts to meet the challenges posed by continuing transnational organized crime and threats to maritime safety and security; (iv) Problem of marine scientific research vis-à-vis freedom of navigation.

8.2 **Judge Albert Hoffman, Observer of the International Tribunal for the Law of the Sea**, mentioned that the Tribunal valued the longstanding relationship with AALCO and followed with great interest the important work that it was doing towards strengthening the rule of law in international relations. The Judge commended the important role that AALCO and its Member States continued to play in the various institutions established under the Convention and the commitment they showed to dealing with the many challenges confronting Asian and

African States with regard to issues concerning the law of the sea. The Judge mentioned that in its 10-year existence the Tribunal had delivered decisions in 13 cases on several issues concerning the law of the sea, including the prompt release of vessels and their crews, protection and preservation of the marine environment, fisheries, the commissioning of a nuclear facility and the movement of radioactive materials, reclamation activities, freedom of navigation, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between a vessel and its flag State.

8.3 The delegations from **Japan, the People's Republic of China, the Islamic Republic of Iran, Malaysia, the Republic of Kenya, the Republic of Indonesia, the Arab Republic of Egypt, Bangladesh, and the Republic of Korea** made statements on the agenda item. Several delegations recalled the important contribution made by AALCO in development of the UNCLOS and hoped that the Organization would continue to remain active on this very important agenda item. The delegations appreciated the convening of the Meeting of Experts by the AALCO Secretariat and observed that the discussions proved to be very fruitful.

8.4 Several delegations emphasized upon the protection of marine environment and marine biodiversity beyond areas of national jurisdiction. A delegation noted that the rising temperature of sea water would have devastating impact on coastal States, particularly his country. A delegation highlighted that the sustainable development of ocean resources was important for ensuring food security, alleviating poverty, promoting economic growth and preserving social stability in all countries, especially developing countries. Another delegation welcomed the consideration of "marine genetic resources" issues.

Several delegations drew attention to maritime safety and security issues. A delegation noted the important role played by regional efforts in the implementation of and compliance to that effect. A delegation noted that under UNCLOS coastal states had the right to regulate, authorize and conduct marine scientific research in their Exclusive Economic Zone (EEZ) and Continental Shelf. Some delegations noted that the question of maritime delimitation constituted one of the most important themes in the law of the sea. However the UN Convention on the Law of the Sea did not provide clearly enough for the methods of delimitation of maritime boundaries.

- 8.5 Delegations also took note of the progress of work under the institutions established under the Convention. In this context, several delegations expressed concern at increasing workload of the Commission on the Limits of the Continental Shelf (CLCS) and one delegation pointed out that it was further saddled by the constraints of time and funding. As regards, the Meeting of States Parties to the UNCLOS, some delegations were of the view that it constituted the appropriate forum for the discussion on all aspects related to the implementation of the Convention.

9 *Agenda Item III: The Status and Treatment of Refugees*

- 9.1 **Amb. Dr. Wafik Z. Kamil, SG of AALCO**, while introducing the item, narrated briefly on the distinguished record of contribution of AALCO in the area of protection of refugees by enumerating of legal instruments that AALCO has adopted so far. Commenting on the importance of the item, he stated that it could be realized from the fact that the problem of refugees has found its way to the global policy agenda. While trying to explain the shortcomings of the international refugee protection regime that was

established at the end of the second world war, he noted that, though the UN Convention Relating to the Status of Refugees and its 1967 Protocol constituted the fulcrum around which the refugee protection regime revolved, it was inadequate to cover all the situations that trigger the refugee flows. He added that large scale refugee movements, protracted refugee situations and the 'secondary movement of refugees' were some of the issues that were not adequately taken care of by the 1951 Convention and its 1967 Protocol. He further added that, this was compounded by the practice of some States that interpreted the provisions of the 1951 Convention and its 1967 Protocol very restrictively. While releasing the joint special study conducted by AALCO and the UNHCR entitled; "Statelessness: An Overview from the African, Asian and Middle Eastern Perspective", he observed that the study was conducted with a view to assist Member States in dealing with the problem of stateless persons found in their territories. He added that this was only the first step in a 'series' of studies to be undertaken by both the AALCO and UNHCR in future. He expressed hope that this study would be utilised by the Member States of AALCO as a useful reference point when they deal with the problem of stateless persons domestically.

- 9.2 Delegations from **the Islamic Republic of Iran, the United Republic of Tanzania, Pakistan, the Republic of Indonesia, Japan, Senegal, the Republic of South Africa, the Republic of Korea, the Arab Republic of Egypt, Malaysia, Bangladesh and the UNHCR** as an Observer, presented their views on the item. All the delegates highlighted the need to address the root causes of the refugee flows in order to deal with the problem of refugees in a comprehensive and holistic manner. Several delegates reaffirmed the importance of the

1951 Convention and its 1967 protocol in addressing the issues encountered by the international community. The salience of the principle of burden sharing in reducing the burden of developing countries vis-à-vis hosting of refugees was also stressed by a number of delegates. One delegate noted that since the nature of refugee movements had undergone change from that of the earlier era, any proposal to revisit the principal aspects of the 1951 Convention and its 1967 Protocol in the light of contemporary challenges should be welcomed. Another delegate opined that the space available to asylum seekers was increasingly getting reduced on account of the mixed migratory movements which forced States to adopt stringent immigration laws to prevent bogus asylum seekers. The delegate of the Islamic Republic of Iran stressed the necessity of expanding the definition of the term 'refugee' contained in the 1951 Convention so as to take into account the views and aspirations of Asian African States. He added that the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 and the Cartagena Declaration of Refugees of 1984 could be utilised in this regard. He further maintained that the principle of non-refoulement, which forms the cornerstone of the refugee law, should not be interpreted narrowly. The delegate of the Arab Republic of Egypt made a proposal that an international conference be convened which could focus on three issues; first, to try to define the term 'refugee', in a manner agreeable to all the members of the international community. Second, to explore more ways and means within the ambit of the 1951 Convention and its protocol to enhance the protection available to refugees under them, and third, to deliberate upon the problem of financial assistance to be given to the poor countries.

9.3 The Leader of Delegation of Malaysia stated that Malaysia would submit its written response in due course on the Joint UNHCR-AALCO report on "Statelessness: An Overview from the African, Asian and Middle East Perspectives" in Chapter 2 – Case Study "Statelessness and Refugee Flows in South East Asia" which dealt with the case study of Malaysia, at page 25 under the heading "The categories of potentially stateless people and stateless people", in the statistics provided for Sabah wherein, it was stated "that in April 1999, a National Registration Department official in Sabah stated that over two million people living in Sabah did not have birth certificates (footnote 26)", was an incorrect figure. The Leader of Delegation very strongly criticized the inaccuracy of the information, and said that he is a native of Sabah, where the population was only about a million, and that he did possess a birth certificate. He mentioned that the voluminous authorities from the joint publication seemed to be based on *Malaysiakini*, an internet newspaper, and *Tenaganita*, an NGO, apart from a few other sources. There are other newspapers and NGOs whose views are completely independent and more cited. He further strongly urged the Secretariat and the Secretary-General to maintain the exclusivity of the legal aspects and not to allow any political manipulation. The Leader of Delegation of Senegal also expressed its displeasure over this inaccuracy in the factual information and said that studies prepared by AALCO in conjunction with any international organization should be verified factually. The SG assured the delegations that he would take up the matter with the UNHCR and would issue a corrigendum to rectify this inadvertent error.

The Fifth General Meeting

10 Agenda Item III: 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

10.1 **Amb. Mr. Tabatabaei Shafiei, DSG of AALCO** in his introductory remarks stated that 9 June 2007 marked the Fortieth Anniversary of the longest military occupation, in modern history, the tragic 1967 Israeli-Palestinian conflict. The DSG observed that the history of forty years was of the countless deaths and ongoing humiliation and degradation of the people living in the Occupied Palestinian Territory (OPT). The conditions in the OPT, including East Jerusalem were grim and worsening and it was absolutely essential that concrete negotiations be taken up in earnest. The DSG outlined the various violations committed by the State of Israel against the Palestinian people in violation of all norms of international law, including international humanitarian law and human rights law. The DSG highlighted that the Israel had continued with its war crimes in the OPT, particularly in the Gaza Strip. The Israeli Government's plan to remove troops and Jewish settlements from the Gaza Strip had not ended Israel's occupation of the territory and Israel continued to wield overwhelming power over the territory. While condemning the construction of the separation wall, the DSG welcomed the step by the United Nations Secretary-General of appointing international experts to begin work of establishing a Register of Damage caused by construction of the wall. The DSG also observed that the Israel should stop the policy of squeezing the legitimate movements and democratic initiatives of the Palestinian society. The DSG appreciated the generous initiative of His Majesty, King Abdullah of the Kingdom of Saudi Arabia, for his effort in reaching the agreement in

the Holy City of Mecca to form a Palestinian National Unity Government and the Arab Peace Initiative of 2002, which was reaffirmed in the nineteenth Arab Summit in Riyadh (2007).

- 10.2 The delegations from **Pakistan, Islamic Republic of Iran, the Arab Republic of Egypt, the Republic of Indonesia, Syria, Senegal and Japan** presented their views on the item. The delegation of Malaysia submitted its statement to the Secretariat for the purpose of official records. The delegations highlighted the violations of international law, particularly international humanitarian law and human rights law, committed by the Government of Israel in the OPT. The delegations also condemned the Israeli stand of not respecting the Advisory Opinion of ICJ on Legal Consequences of the Construction of a Wall in the OPT. The delegations emphasised the adverse effect of the wall on the Palestinian people and the economy. The deliberations also highlighted the role of the international and regional communities to pressurize Israel to comply with its international obligations. The delegations welcomed the initiative of the Kingdom of Saudi Arabia for concluding the Mecca Agreement. The delegations emphasised the need for establishing an independent sovereign State of Palestine with *Al Quds Al Sharraf* as its capital as a prelude to establishing everlasting peace in the Middle East.
- 10.3 The delegation of Japan stated in the Session that the Government of Japan is considering to provide direct economic assistance to the Palestinians through the Office of the President in order to show its support for the President's efforts in a tangible manner. One delegation observed the atrocities committed on the Palestinian people by the State of Israel constituted State Terrorism.

11. Agenda Item IV: International Criminal Court: Recent Developments

- 11.1 **Amb. Mr. Tabatabaei Shafiei, DSG of AALCO** informed the Session that the Organization had been following the developments related to the International Criminal Court since its Thirty-Fifth Session, held in Manila (Philippines) in 1996. The DSG informed that as of 1st May 2007, 104 States Parties had ratified the Rome Statute. The Statute recognizes that States had the primary responsibility for investigating and punishing the crimes and the Court was complementary to the efforts of States bringing to justice perpetrators of international crimes. The DSG also informed that the Secretary-General of AALCO has finalized the text of the Memorandum of Understanding with the President of the ICC, and they would soon sign it. The DSG noted that consensus on the core issue of "Definition of the Crime of Aggression", under the Rome Statute remains elusive. The Statute mentions the time frame for providing the definition of the Crime of Aggression under Article 121 and the review conference would convene in near future 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 DSG also made a proposal for 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 and hoped that the proposal materialises before the next Annual Session.
- 11.2 The delegations from **Japan, Sudan, the Republic of South Africa, the Sultanate of Oman, the Islamic**

Republic of Iran, the Republic of Kenya, the Republic of Indonesia, the People's Republic of China and Malaysia presented their views on the item. The delegations stated that the Court's activities should be conducted in strict compliance with "the principle of complementarity" set forth in the Statute, and stressed that National Court's should be given the primary role in the prosecution of crimes. With regard to "Definition of the Crime of Aggression" the delegations noted that it would be important to define the aggression at an early stage for the effective functioning of the ICC against such crime, consistent with relevant provisions of UN Charter. The delegation of Sudan requested AALCO to adopt a declaration questioning the jurisdiction of the ICC with respect to non-parties to the Rome Statute, as two third of the Member States of AALCO had not ratified the Statute. The delegation of Japan informed that its government would ratify the Rome Statute in the middle of July 2007 and recommend a Japanese candidate as Judge for election at the end of this year.

12. Agenda Item III: Establishing Cooperation Against Trafficking in Women and Children

- 12.1 **Amb. Mr. Reza Tabatabaei Shafiei, DSG of AALCO** in his introductory remarks stated that the Secretariat report, *inter alia*, focused on the international obligations of a State in combating trafficking in persons, which included crime prevention, and protection of human rights of the trafficked persons. He emphasised that trafficking in human beings, had acute security implications since the crimes and the criminal activities were not restricted to one State alone and transcended national borders. The vicious circle of trafficking in persons and other organized crimes had steadily increased the crime rates which could be attributed to internationalization of work, trade, transport and communication. Such

internationalization made it difficult for the States to combat these crimes effectively without the active cooperation of other countries. It was therefore essential to actively coordinate, among Member States, initiatives for crime prevention in this matter. He also presented a different perspective, through the prism of protection of victim's basic human rights, which needs to be guaranteed by the States. Further, DSG stated that the term 'consent of the victim', whether or not it is self/voluntary, should not be a criterion for States to exempt such person from the category of 'genuine victims'. He presented before the Session, the revised Model Legislation against Trafficking in Persons Especially Women and Children, which the Secretariat had prepared complying with the mandate given to it by the Member States in one of its previous Sessions. He stated that the need for such revision arose since the previous Model Legislation which the Secretariat had prepared was in the form of a model convention. On behalf of the Secretariat, DSG urged the Member States to send their valuable comments and suggestions on the Preamble and the first set of revised draft articles of the proposed Model Legislation.

- 12.2 The delegations from **Senegal, Tanzania, the Republic of South Africa, the Republic of Indonesia, the State of Qatar, Thailand, the Republic of Malaysia, the Islamic Republic of Iran, Japan, the Republic of Kenya and the State of Kuwait** presented their views on this item. The delegates reiterated that trafficking in human beings, especially women and children was a very heinous crime and even after being repeatedly addressed at international, regional and bilateral levels, it still remains a significant issue and need to be effectively combated through cooperation among Member States. They also highlighted the legislative and non-

legislative measures adopted in their respective domestic spheres for combating this crime. The delegates stated that it was a grave violation of human rights and deprived the trafficked persons of their human dignity, freedom of movement, among other basic human rights. While appreciating the Model Legislation prepared by the Secretariat, some of the delegates stated that it is a relevant and timely initiative and it should be adopted once it was fully finalized. The delegate of Japan suggested that there should not be any duplication of work already undertaken by other regional initiatives like the Bali process. The Delegation of the Republic of Indonesia submitted to the Secretariat its national law No. 21/2007 on the eradication of the criminal act and trafficking in persons as a proposed model law for AALCO. The Delegation of the Islamic Republic of Iran stated that the human rights norms and obligations should be observed, for victims and witnesses who are trafficked in different stages of investigations and prosecutions in the receiving States.

13. *Agenda Item III: Human Rights in Islam*

- 13.1 **Amb. Reza Tabatabaei Shafiei, DSG of AALCO** in his introductory remarks stated that the AALCO Secretariat had 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 the Secretariat found that the Islamic legal system was unique in various aspects, even though there might be no fundamental differences in several aspects with the international and national human rights framework. The DSG explained that the report examined the overarching theme of peace over human rights in Islam, to emphasize that Islam was a religion of peace in

general, and human rights in Islam was nourished from the theme of peace. The implication was to show how wrong were those advocates of Western propaganda that link Islam with acts of terrorism. The DSG informed that the report contained a summary of the Meeting of International Experts on Human Rights in Islam (MIEHRI), held in Kuala Lumpur, Malaysia (15-19 May 2006) co-organized by the Governments of Malaysia and the Kingdom of Saudi Arabia in collaboration with the AALCO Secretariat. 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. The DSG highlighted that an objective research could 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.

- 13.2 The delegations from **Pakistan, Republic of Indonesia, Malaysia, Islamic Republic of Iran, the Arab Republic of Egypt and the State of Qatar** presented their views on the item. The delegations highlighted the human rights principles enshrined in Islam. The delegates felt that Islam is a religion of peace and condemned linking religion to terrorist acts. Some delegations observed that the first international manifesto of the fundamental human rights was found in the Last Sermon of the Prophet Muhammad (Peace be upon him). The delegates pointed out that Islam granted certain basic human rights to all people, irrespective of their race, nationality, ethnic origin or language and Islam recognized equality between people. The delegate of Malaysia focused on the outcome of the MIEHRI and expressed its sincere gratitude to the Kingdom of Saudi Arabia, Secretary-General of AALCO and the AALCO Secretariat,

all Member States and experts who had participated in the Meeting. Malaysia also acknowledged the financial contribution of the Government of the Kingdom of Saudi Arabia and noted that Saudi Arabia's unwavering support and interest in the issues had largely contributed to the success of the meeting. One delegate highlighted the sacredness of human life. Another delegate was of the view that AALCO 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. Some delegates explained the specific laws in their domestic legal system that protects human rights. Other delegates explained their participation in the international and regional human rights instruments and initiatives.

14. Agenda Item V: WTO as a Framework Agreement and Code of Conduct for World Trade

The Secretary-General stated that as the Meeting was behind schedule and as the issues had been extensively discussed during the Special Meeting on "International Investment, Trade and Development" held on 4 July 2007, he suggested that the item on 'WTO as a Framework Agreement and Code of Conduct for World Trade' could be considered as a non-deliberated. However, the Member States were requested to submit their written statements to the Secretariat for being reflected in the Summary Record of the Forty-Sixth Session.

The Reconvened Fifth General Meeting

15. Agenda Item IV: An Effective International Legal Instrument against Corruption

- 15.1 **Dr. Xu Jie, DSG of AALCO** in his introductory remarks recalled the Secretariat studies namely, *Combating Corruption: A Legal Analysis* (2005) and *Rights and Obligations under the United Nations*

Convention against Corruption (2006) prepared during the Forty-Fourth and Forty-Fifth Sessions, which were well received by the Member States. The DSG noted that the UN Convention against Corruption (UNCAC) which entered into force on 14 December 2005, would indeed become the global standard for a strong international anti-corruption regime, and its adoption marked the larger trend towards greater international regulation of corruption in public and private life. The DSG noted that in order to realize the objects and purpose of the Convention, it should be effectively implemented. The most important issues for the Convention were the implementation mechanism, asset recovery and technical assistance. He suggested that as recommend by some Member States during the earlier Sessions, a Group of Legal Experts could be established to prepare a Model Law in line with the UN Convention against Corruption, so that the objectives of the Convention could be implemented at the national level.

- 15.2 The delegations from the **Islamic Republic of Iran, the State of Qatar, the Republic of Indonesia, Thailand, Nepal, Pakistan, the Republic of South Africa, the State of Kuwait, the Republic of Kenya, the People's Republic of China, Sudan** and the **Kingdom of Saudi Arabia** presented their views on the topic and the **Arab Republic of Egypt** and **Malaysia** circulated their statements to be reflected in the Report of the Forty-Sixth Session. All the delegates highlighted the urgent need to combat corruption at the national, regional and international levels. The delegates also welcomed the adoption and entry into force of the UNCAC and agreed that the Convention would certainly become a universal instrument in the fight against corruption. The delegates noted that the First Conference of Parties to the UNCAC have before it

considerable work to be done for the effective implementation of the Convention. Some delegates noted there was urgent need to provide for an implementation mechanism, which the current text was lacking. Further, the delegates noted that States should enhance their international cooperation in asset recovery. One delegate noted that the proceeds of corruption were utilized to fund terrorism, trafficking etc.

- 15.3 All delegations shared their national experiences in providing a legal framework for combating corruption, particularly the implementation of obligations under the UNCAC. Some delegates explained the efforts currently undertaken by them for the ratification of the Convention. Some delegates urged Member States to ratify the Convention as soon as possible and proposed the establishment of regional cooperation among the Asian and African countries. One delegate noted that there was a need for bilateral agreements for extradition and mutual legal assistance to enhance their ability to combat transnational crimes, including corruption. Most delegates expressed the need for technical assistance and capacity building and in this regard, noted that AALCO's international experience and expertise could be utilized.

16. *Agenda Item IV: Expressions of Folklore and its International Protection*

- 16.1 **Amb. Dr. Wafik Kamil, Secretary-General of AALCO** in his introductory remarks informed that the IGC had so far convened ten sessions and made considerable progress in formulating flexible policy objectives and core principles for the protection of expressions of folklore. SG called on the developing countries, which were the owners of the major resources, to be able to agree among themselves a best possible protection model. Further, SG informed the Member

States that the Sultanate of Oman had agreed in principle to organize an expert group meeting/seminar on this agenda item. He drew the attention of the Session to focus their deliberations on three heads: (i) Prevention of the misuse, misappropriation and protection and expressions of folklore, (ii) Establishing an international binding legal instrument to safeguard the rights of expressions of folklore, and (iii) creating awareness amongst the Member States to utilize the voluntary fund setup by the WIPO for the indigenous communities and other international organizations to participate in the IGC meeting.

- 16.2 Delegations from **the Islamic Republic of Iran, the Sultanate of Oman and the Republic of Indonesia** presented their views on the item. The **Arab Republic of Egypt** circulated their statement to be reflected in the Report of the Forty-Sixth Session. The delegates highlighted that the expressions of folklore cover many forms of folkloric expressions and developing countries have traditionally given more importance to these expressions of folklore as they form an integral part of their cultural identity. The delegates said that the existing IPR regime for the protection of folklore was insufficient for protecting against abuses and misappropriation of expressions of folklore and traditional knowledge. One delegate called for proper means to face up illicit and unfair exploitation of folklore and traditional knowledge and further emphasized that the principle of prior informed consent and benefit sharing should be recognized and applied. Another delegate explained the importance of the agenda item and their country's active involvement to protect and promote the expressions of folklore. The delegate stressed the need for *sui generis* right in the legal instruments to protect expressions of folklore and emphasized the need to take into

consideration different culture and other issues related to them before affording the protection, by laying down guidelines and model provisions rather than strict rules. The delegate of the Republic of Indonesia hoped that the AALCO recommends an in-depth study on the exploitation of intangible expressions of folklore. This study was expected to give recommendation on the measures which could be taken by the Members of AALCO in providing effective protection for the intangible expressions of folklore.

17. Agenda Item I: Report on AALCO's Regional Centre for Arbitration

17.1 **Dr. Xu Jie, DSG of AALCO** briefed the work and development of the AALCO's Regional Centres for Arbitration and invited the Directors of the AALCO's Regional Arbitration Centres to present their reports.

17.2 The report of **Dato's Noorashikin Binti Tan Sri Abdul Rehim, Acting Director, Kuala Lumpur Regional Arbitration Centre**, highlighted the activities of the Centre since the last Session.

17.3 **Mr. Moshkan Mashkour, Director, Tehran Regional Centre for International Commercial Arbitration**, presented his report on activities of the Centre since the last Session.

18. The Third Meeting of the Delegations of AALCO Member States

Adoption of the Resolutions

18.1 The following Resolutions were adopted at the Third Meeting of the Delegations of AALCO Member States on 6 July 2007:

RES/46/ORG 1 Report of the Secretary-General on Organizational, Administrative and Financial Matters
RES/46/ORG 2 AALCO's Budget for the year 2008

RES/46/ORG 3 Report on AALCO Regional Centres for Arbitration
RES/46/ORG 4 AALCO's Centre for Research and Training
RES/46/ORG 5 Report on the AALCO's Permanent Headquarters Building
RES/46/ORG 6 Admission of Republic of Cameroon as a Member State of the Organization
RES/46/S 1 Matters Relating to the Work of the International Law Commission at its Fifty-Eighth Session
RES/46/S 2 The Law of the Sea
RES/46/S 3 The Status and Treatment of Refugees
RES/46/S 4 The 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
RES/46/S 5 Legal Protection on Migrant Workers
RES/46/S 6 Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties
RES/46/S 8 Establishing Cooperation Against Trafficking in Women and Children
RES/46/S 9 The International Criminal Court: Recent Developments
RES/46/S 10 Environment and Sustainable Development
RES/46/S 11 An Effective International Legal Instrument against Corruption
RES/46/S 12 Report on the Work of UNCITRAL and Other International Organizations Concerned with International Trade Law
RES/46/S 13 WTO as a Framework Agreement and Code of Conduct for World Trade
RES/46/S 14 Expressions of Folklore and its International Protection
RES/46/S 15 Human Rights in Islam

RES/46/SP 1 Resolution on the Special Meeting on "International Investment, Trade and Development"
RES/46/SP 2 Resolution on the Special Meeting on "International Cooperation in Countering Terrorism"

Venue of the Forty-Seventh Session

- 18.2 The Secretary-General noted that as the Forty-Seventh Session would be of special nature, he was still in consultation with many Member States regarding the venue. As soon as he receives a final invitation from any Member States for holding the Session, or any other substantive information, he would duly inform the same to the Member States.

Adoption of Summary Report

- 18.3 The Summary Report of the Forty-Sixth Session of the Asian-African Legal Consultative Organization was adopted.
- 18.4 The Provisional Summary Record of the First and Second Meeting of the Delegations of AALCO Member States and the First to Fifth General Meetings were distributed. Member States were requested to review the Provisional Summary Record and submit their views/suggestions to the Secretariat within the next two months, i.e., by 21 August 2007, after which the Summary Records would be finalized.

19. The Sixth General Meeting

- 19.1 During the Sixth General Meeting the President summarized the accomplishments of AALCO at its Forty-Sixth Session and thanked all those who made the Session a success.

Closing Statements

- 19.2 Several delegations, on behalf of the Member States, Observer States and International Organizations, expressed their appreciation to all the delegations, the President and Vice-President, the Secretary-General, the

AALCO Secretariat and the Government of the Republic of South Africa for hosting the Forty-Sixth Session.

- 19.3 Ambassador Dr. Wafik Z. Kamil, Secretary-General of AALCO, delivered a "Message of Thanks" addressed to His Excellency Thabo Mbeki, President of the Republic of South Africa. He also expressed his gratitude to all the delegates, the President and the Vice-President of the Session, the Secretariat and all those involved with organizing and hosting the Session.
- 19.4 The President of the Forty-Sixth Session, Her Excellency Ms. Brigitte Sylvia Mabandla, Minister for Justice and Constitutional Development, Government of the Republic of South Africa closed the Session.