

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



Verbatim Record

**THE MEETING OF LEGAL ADVISERS OF AALCO MEMBER
STATES & AALCO-ILC JOINT MEETING**

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New York**

Prepared by:

**The AALCO Secretariat
29-C, Rizal Marg,
Chanakyapuri Diplomatic Enclave
New Delhi- 110021
(INDIA)**

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LEGAL ADVISERS MEETING & AALCO-ILC JOINT MEETING

24 OCTOBER 2008

AGENDA

I. AALCO's Legal Advisers Meeting: 3:00 PM – 4: 30 PM

1. Adoption of Provisional Agenda
2. Opening Statement by Dr. Neeru Chadha, Counsellor, Permanent Mission of India, United Nations Headquarters, New York, on behalf of the President of AALCO, H. E. Mr. Narinder Singh, Joint Secretary and Legal Adviser Ministry of External Affairs, Government of India
3. Welcome and Introductory Statement by H. E. Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO, including on AALCO's Work Programme
 - i. Enhancing the Role & Activities of AALCO in the coming years
 - ii. International Criminal Court: Recent Developments
4. Statements by Special Invitees
 - i. Mr. Scott Sheeran, Vice-Chairman of the Sixth Committee
 - ii. Judge Rosalyn Higgins, President of the International Court of Justice
 - iii. Ms. Patricia O'Brien, Under Secretary-General for Legal Affairs and Legal Counsel of the United Nations
5. General Comments (if any)

II. AALCO-ILC Joint Meeting: 4:30 PM to 6:00 PM

1. Briefing by Amb. Rohan Perera, Member, International Law Commission on the Work of the International Law Commission at its Sixtieth Session
2. Briefing by Amb. Chusei Yamada, Special Rapporteur of the International Law Commission on the topic "Shared Natural Resources"
3. Statement by Prof. Rahmat Mohamad, Secretary-General, AALCO
4. General Comments (if any)

VERBATIM RECORD OF THE LEGAL ADVISERS MEETING OF AALCO MEMBER STATES AND AALCO-ILC JOINT MEETING, HELD AT THE UNITED NATIONS HEADQUARTERS IN NEW YORK, FRIDAY, 24TH OCTOBER 2008

I. BACKGROUND

1. The meeting of Legal Advisers of AALCO Member States, took place at the United Nations Headquarters, in New York, on Friday, 24th October 2008. The proposal for holding this periodic meeting of the Legal Advisers for exchange of views on current problems and issues were initiated at the Fifteenth Session of the Organization, held in Tokyo, in 1974. Since then a number of such meetings have been held in New York, during the regular session of General Assembly of the United Nations.

2. It may be recalled that one of the primary objectives of AALCO as envisaged in Article 1 (d) of its Revised Statutes is “to examine subjects that are under consideration by the International Law Commission and to forward the views of the Organization to the Commission”. Thus, in the year 2003, in furtherance of this objective, the Secretary-General has been convening an AALCO-International Law Commission (ILC) joint meeting along with the Legal Advisers Meeting. Since then it has become a practice to convene such a joint meeting as both AALCO and ILC have found it to be mutually beneficial.

3. Dr. (Mrs.) Neeru Chadha (India), Counsellor in the Permanent Mission of India, at the United Nations Headquarters in New York, on behalf of the President of the Forty-Seventh Session of AALCO Mr. Narinder Singh, chaired the meeting. In addition, to Dr. Chadha, Prof. Rahmat Mohamad, Secretary-General, AALCO, the meeting was also attended and addressed by Mr. Scott Sheeran (New Zealand), Vice-Chairman of the Sixth Committee; Judge Rosalyn Higgins (United Kingdom), President of the International Court of Justice; Ms. Patricia O’ Brien (Ireland), Under Secretary-General for Legal Affairs and the United Nations Legal Counsel; Members of the International Law Commission Amb. Chusei Yamada (Japan), and Amb. Rohan Perara (Sri Lanka).

4. Legal Advisers from **48 States** were represented at the Meeting, out of which 33 were from AALCO Member States and 15 from Non-Member States.

5. Legal Advisers of the following **33 AALCO Member States** participated in the Meeting: Bahrain, Botswana, Brunei Darussalam, People’s Republic of China, Cyprus, Egypt, Ghana, India, Indonesia, Islamic Republic of Iran, Iraq, Japan, Kenya, Kuwait, Malaysia, Mauritius, Myanmar, Nigeria, Pakistan, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Turkey, Uganda, United Arab Emirates, and Republic of Yemen.

6. Legal Advisers of the following **15 Non-Member States** were represented at the meeting: Austria, Bhutan, Greece, Lao People’s Democratic Republic, Madagascar, Morocco, New Zealand, Philippines, Russian Federation, Slovakia, Togo, United States of America, Vietnam, and Zambia.

II. MEETING OF LEGAL ADVISERS

1. **Chairperson: Dr. (Mrs.) Neeru Chadha, Counsellor, Permanent Mission of India, United Nations Headquarters, New York, on behalf of Mr. Narinder Singh, Joint Secretary and Legal Adviser, Ministry of External Affairs, Government of India and the President of the Forty-Seventh Session of AALCO:** I think we shall start the meeting now. The first item on the agenda is the “Adoption of Agenda”. If any delegation has any objection. I see no objection. The agenda is adopted.

2. His Excellency Professor Rahmat Mohamad, Secretary-General of the Asian-African Legal Consultative Organization, Hon’ble Members of the International Law Commission, Mr. Scott Sheeran, Vice-Chairman of the Sixth Committee who is representing the Chairman of the Sixth Committee, Distinguished Legal Advisers, Excellencies, Ladies and Gentlemen. It is my privilege to welcome you all to the Asian-African Legal Consultative Organization’s (AALCO) Legal Adviser’s Meeting and Joint Meeting of International Law Commission (ILC) and the AALCO. Mr. Narinder Singh our Legal Adviser and President of the Forty-Seventh Session of AALCO could not be with us today due to some unavoidable circumstances. He conveys his greetings to all of you.

3. Today we are honoured to have with us a very distinguished panel. To begin with, I take the opportunity to congratulate the new Secretary-General of AALCO, Prof. Dr. Rahmat Mohamad on his election. Dr. Mohamad brings with him vast experience in various branches of international law, including international trade law, international economic law and international humanitarian law. He has been a Member of various expert and advisory panel at the national and international level. He has authored several books and articles. We are hopeful that with his vast academic and administrative experience he would enthuse more vitality to the work of AALCO and make it more relevant to the needs of Asian and African States. We wish him success in all his endeavours and as a host State assure him of our full cooperation.

4. The Secretary-General of AALCO began his term in the new Headquarters Building. I am pleased to inform that the Secretariat of the AALCO has shifted to its new Headquarters Building provided by the Government of India. The Building is fully equipped to meet the demands of an inter-governmental Organization. Its modern conference facilities would, we hope motivate the AALCO to organize more programmes for the benefit of its Member States.

5. I would also like to take this opportunity to thank the former Secretary-General of AALCO, Amb. Dr. Wafik Kamil for his immense contribution to the work of the Organization.

6. Over the last fifty years, AALCO has acquired a unique stature in promoting legal cooperation amongst Asian and African states in the field of international law. The Annual Session of AALCO is a major event dedicated to the promotion of international law. The Forty-Seventh Annual Session of AALCO, was held from 30th June to 4th July

2008, at the Headquarters, in New Delhi. It was well attended by Ministers and Senior Officials of Member States besides several Observer Delegations and representatives of International Organizations.

7. The exchange of views that took place on current issues of international law, including subjects under consideration of the International Law Commission proved highly beneficial for the participants. A one-day special meeting on “Contemporary Issues in the International Humanitarian Law was also organized during the Session in cooperation with the ICRC.

8. Reports of the AALCO and other declarations adopted at the Annual Session are an important source for the development of international law and are an expression of the views and interests of Asian and African States. AALCO has been dedicating its efforts in identifying the common interests of Asia and Africa on variety of contemporary issues before the United Nations and other world bodies, thus contributing to the process of codification and development of international law. These views are fully communicated by the Secretary-General of AALCO to the United Nations and the International Law Commission. We are optimistic that in the years to come AALCO will achieve greater success in clarifying and consolidating the common interest of Asian and African States. It will also surely enhance the activities in training and dissemination of international law expertise among them. In this context, I would like to inform that AALCO will be organizing a Training Programme on International Law from 3rd November to 14th November 2008 for Diplomats and Officials of AALCO Member States.

9. Furthermore, the AALCO would be convening an Extraordinary Session of Member States on 1st December 2008 and a Seminar commemorating the Sixtieth Anniversary of the International Law Commission on 2nd December 2008. The venue would be the AALCO Secretariat in New Delhi.

10. As regards, today’s meeting, two topics have been identified for deliberations, namely, first, “Enhancing the Role and Activities of AALCO in the Coming Years”; and second, “International Criminal Court: Recent Developments”. The Secretary-General of AALCO would be briefing you on these topics in his remarks. Thank you very much. I now give the floor to the Secretary-General of AALCO.

11. **Welcome and Introductory Statement by Prof. Dr. Rahmat Bin Mohamad, Secretary-General, AALCO:** Thank you very much Madam Chairperson. Distinguished Legal Advisers of AALCO Member States, Her Excellency Judge Rosalyn Higgins, the President of the International Court of Justice, His Excellency Mr. Scott Sheeran, Vice Chairman of the Sixth Committee, Her Excellency, Ms. Patricia o’ Brien, Legal Counsel of the United Nations, Ladies and Gentlemen. Madam Chairperson, I thank you for your kind words to me. It is indeed an honour and privilege for me to be given this opportunity to serve as the Secretary-General of AALCO. Our Organization is an outstanding symbol of Asian-African solidarity in cooperation on legal matters and I am very proud to stand before you as the new Secretary-General of the AALCO.

12. Convened on the sidelines of the annual session of the United Nations General Assembly, this meeting renders a valuable opportunity to the Secretary-General to seek guidance from the eminent Legal Advisers of AALCO Member States for steering the work of AALCO. The valuable guidance and inputs received here have time and again proved to be very beneficial for the work of AALCO.

13. Madam Chairperson, has in her opening statement informed this distinguished gathering about the very successful convening of the Forty-Seventh Annual Session of the AALCO in New Delhi. I take this opportunity to profoundly thank the Government and people of India for providing all support to the Secretariat for convening the Session at the Headquarters.

A. Enhancing the Role and Activities of AALCO in the coming Years

14. Since, as the Chief Executive of the AALCO, this Meeting is my first formal meeting with the eminent Legal Advisers of our Member States, as well as several other high-ranking dignitaries present here who have wide experience in handling international law matters, we at the Secretariat thought that it would be highly appropriate to solicit guidance from this meeting in formulating an “Action Plan” for enhancing the role and activities of AALCO in the coming years.

Madam Chairperson, guided by the Bandung spirit, the AALCO has in fifty two years of its journey, established itself as an outstanding forum of Asian-African solidarity. As a truly unique regional organization, it has aimed to disseminate through its research oriented work, wider appreciation and application of international law by organizing annual meetings, seminars and workshops on topics of international law. The voice of the Asian-African States is quite often reflected in the progressive development and codification of international law taking place in various UN fora, by the AALCO.

15. This dynamic Organization needs to be nurtured and strengthened by its Member States, so that it is able to render them a better service. In addition, to the existing role it performs, I suggest that in the coming years, AALCO should take more proactive measures to:

- Promote Capacity-building among its Member States to address International Law issues, including assisting them in strengthening their respective legal systems;
- Organizing training programmes in various streams of International Law for the benefit of officials of its Member States;
- Conduct special studies on topics of contemporary relevance in international law, particularly, in the area of International Trade Law; and
- Taking up of Legal Advisory Services for interested States or Inter-governmental Organizations;

16. It is my duty to inform our Legal Advisers that the Secretariat is presently seriously handicapped by the precarious state of finances. It is presently functional with bare minimal facilities. Many of the initiatives that we visualized taking up have been hampered because of lack of monetary resources. I request our eminent Legal Advisers to

take up with their Governments on a priority basis the cause of AALCO and provide it with sufficient financial resources and put it on a firm financial footing.

17. Madam Chairperson, our President has convoked an Extraordinary Meeting of AALCO Member States on Monday, 1st December 2008, in New Delhi to address AALCO's acute financial crisis, as well as formulate an action plan to put the Organization on a sound financial footing, so that it serves its Membership in a better manner. This would be followed by a one-day seminar to commemorate the sixtieth anniversary of the International Law Commission. On behalf of the Secretariat, I request you all to kindly participate in both these meetings.

B. International Criminal Court

18. The next topic identified for our discussion is about the International Criminal Court. Proceedings by the Office of the Prosecutor of the ICC against the Head of one of our Member State, has been a cause of grave concern. Proceedings against that State are taking place, despite it not being a Party to the Rome Statute of the ICC. In claiming jurisdiction over nationals of countries that are not members of the court, it displaces the State as the conduit of democratic representation without providing an alternative.

19. One of the most important tasks of defining the mother of all crimes, the "Crime of Aggression", despite all efforts, remains elusive. As the Review Conference of the ICC is fast approaching, there are many tasks that need to be accomplished, including the "Definition of the Crime of Aggression". The Review Conference is scheduled to be held in the year 2010. It is felt that the success of the Review Conference should not solely rely on amendments and that it should also be an opportunity for stocktaking, benchmarking and evaluating the work of the international criminal justice system established by the Rome Statute. One of our Member States, Uganda has offered to host the Conference and the choice of location could have a significant impact on the scope, influence and results of the Review Conference.

20. Excellencies, as regards hosting the Forty-Eighth Session, we are at an advanced stage of negotiations with one of our Member States and I am very hopeful that these arrangements would be finalized very soon and then accordingly the Secretariat would inform the Member States about it.

21. Madam Chairperson, as regards, the tentative topics for deliberations at the forthcoming Annual Session, I would like to bring to the attention of this august Assembly that there are at present 15 items on the agenda of our Organization. However, based upon the policy of rationalization of agenda items and available time at the Annual Session about 8-9 of these items are normally discussed. The agenda items would be finalized in consultation with the Liaison Officers of the AALCO Member States and host Government. On my part, I would suggest the consideration of the following items:

- International Law Commission

- 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
- The International Criminal Court: Recent Developments
- Establishing Cooperation Against Trafficking in Women and Children
- Human Rights in Islam
- An Effective International Legal Instrument Against Corruption
- WTO as a Framework Agreement and Code of Conduct for World Trade
- Environment and Sustainable Development

22. Finally, I would like to recall that AALCO was created as a medium for articulating and conveying the Asian-African perspectives on international legal matters. In this connection, identifying and renewing our common purpose must be linked to the expansion of our membership. Together we can become a strengthened advocate for our regional concern, sharing our expertise and defending our interest in the international legal arena. I thank you. Madam Chairperson.

23. **Chairperson:** Thank you for your remarks. The next speaker is Mr. Scott Sheeran who is representing the Chairman of the Sixth Committee. You have the floor Sir.

24. **Statement by Mr. Scott Sheeran (New Zealand), Vice-Chairman, Sixth Committee:** Thank you. Madam Chair. Your Excellency, the President of the International Court of Justice, the Under Secretary-General for Legal Affairs, the Secretary-General of the Asian-African Legal Consultative Organization, Hon'ble Members of the International Law Commission, Distinguished Legal Advisers, Ambassadors, Professors and Delegates, I have the honour to provide some comments on behalf of the Chair of the Sixth Committee, the Permanent Representative of Iraq to the United Nations, Amb. Al Bayati to this meeting. I wish to thank the Secretary-General of AALCO Prof. Mohamad and AALCO Members including the facilitators, the delegation of India for the invitation today. Amb. Al Bayati provides his regrets that he was unable to attend this meeting due to prior travel commitments.

25. I wish to make a few remarks on the work of the Sixth Committee during this Session. A key item for the Sixth Committee added last year was the "Administration of justice at the United Nations". It is very pleasing that just prior to this AALCO meeting, the Sixth Committee agreed to the draft statutes of the United Nations Disputes Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT). The Sixth Committee's work would be forwarded to the Fifth Committee for their consideration and eventual adoption. This should permit the General Assembly to adopt the draft statutes by its deadline of 1st January 2009. The draft statutes represent a great deal of hardwork and compromise by delegations. The implementation should lead to a vastly improved system of United Nations internal justice which might contribute significantly to a better United Nations.

26. Regarding the item "The rule of law at the national and international levels", the Committee has continued discussion on the important work of the Rule of Law Coordination and Resource Group and the Rule of Law Unit. The Committee's resolution

this year provides further guidance to the United Nations on-going work. It is also hoped that the Committee would agree to a sub-topic or sub-topics on which to focus our work in the immediate future.

27. Under the item “Measures to eliminate international terrorism” the Committee strives to complete the Draft Comprehensive Convention on Terrorism. Delegations have this Session for further discussion about the issues and the potential application of the Draft Convention. In this regard, the Committee also considered the suggestion for a high-level Conference on terrorism.

28. On the topic of “Criminal accountability of United Nations officials and experts on mission”, the Committee continued to take steps forward in accordance with its resolution of last year. This year we benefited greatly from Secretary-General’s Report which included information provided by Member States. During the current Session the focus is on improving coordination between United Nations and States to facilitate appropriate action.

29. In relation to the United Nations Commission on International Trade Law (UNCITRAL), the Committee’s resolution comprise of a number of issues. One to mention in that the Committee appears set to adopt the Draft United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. This is the result of the intensive work for the last six years and the Draft Convention consolidates the law relating to carriage of goods by sea and introduces a number of improvement to the pervious legislation on the subject.

30. As always the central focus of the Sixth Committee’s work is the Report of the International Law Commission in the accompanying International Law week. The Report of the Commission is an important opportunity for the Sixth Committee to review the work of this pre-eminent body on codification and progressive development of international law. The Commisison’s topics this year included “Shared Natural Reources”. I acknowledge the presence of Special Rapporteur Amb. Chusei Yamada in this regard here. The other topics that were considered were: Effects of Armed Conflicts on Treaties; Reservation to Treaties; Responsibility of International Organziations; Expulsion of Aliens; Protection of Persons in the Event of Disasters; Immunity of State Officials from Foreign Criminal Jurisdiction; and The Obligation to Extradite or Prosecute. The Committee will consider the just completed draft articles on “The Law of Transboundary Aquifers” in this Session and also the first Report of the Special Rapporteur on the topic of “Immunity of States Officials from Foreign Criminal Jurisdiction”.

31. This year the ILC’s interactive debate would take place on the 30th of October. The topic for discussion would be “Immunity of State Officials from Foreign Criminal Jurisdiction” and “Responsibility of International Organziations” and the potential future topic of the Most-Favoured Nation Clause, otherwise known as MFN. We will be fortunate to have the respective Special Rapporteurs who would apprise about their work that includes Amb. Perera from Sri Lanka.

32. Due to time constraint, I would not go into the details of other equally important items being considered by the Sixth Committee. There is the Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and its related work on sanctions. There has been this year the opportunity for the Committee to reinforce its work on the Status of Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflict. We also considered the Draft Articles on the “Nationality of natural persons in relation to the succession of States” as well as “Effective Measures to Enhance the Protection, Security and Safety of Diplomatic and Consular Missions and Representatives”.

33. The Committee would also consider the Report of the Committee on relations with the host country and a number of requests for Observer Status in the General Assembly. I hope that the Legal Advisers of AALCO will have ample opportunity to discuss with colleagues the work of the Sixth Committee during the course of next week. Finally, I must say that the Sixth Committee shares a warm and cooperative relationship with the AALCO as evidenced in a small way by arranging for the facilities for this afternoon’s meeting of Legal Advisers of AALCO at this time the opportunity for delegations, including, those that are not members of AALCO to participate in this meeting is most appreciated. I thank you Madam Chair.

34. **Chairperson:** Thank you for appraising the work in the Sixth Committee. The next speaker on our list is Judge Rosalyn Higgins, President of the International Court of Justice. She off-course needs no introduction. She is well known for her outstanding contribution to the development of international law, as an academic, judge and President of the Court. She is known for her numerous books, and articles. She is well known for her outstanding contribution to the development of international law, as an academic, judge and as the President of the Court. She is known for her numerous books, articles, writings and court decisions in defence of the rule of law and human rights and for her leading role in strengthening international law. You have the floor, Madam President.

35. **Statement by H.E. Judge (Ms.) Rosalyn Higgins, President of the International Court of Justice¹:** Mr. Secretary-General, Your Excellencies, Ladies and Gentlemen, I am delighted to address the Asian-African Legal Consultative Organization and to provide you with an update on the cases at the International Court of Justice concerning Asia and Africa. I congratulate Dr. Rahmat Mohamed on his recent appointment as Secretary-General of the Organization. I also congratulate Mr. Narinder Singh on his election as President of the Forty-Seventh Session held earlier this year in New Delhi. My special thanks goes to Ambassador Yamada for helping to arrange this opportunity to speak to you this afternoon.

¹ In view of time-constraints, a shorter version of the above statement was delivered by Judge Higgins. Complete version of her address was circulated at the Meeting and is also available on the website of the International Court of Justice: <http://www.icj-cij.org/>.

36. Last year, I informed you that the Court had managed to clear its backlog of cases by adopting a heavy schedule of hearings and undertaking measures to improve its efficiency. Last October we had reached the point where we were ready to schedule the oral hearings a short time after the deposit by the parties of the final written pleadings. The International Court of Justice has continued to work hard to maximize its through out in the past year. The clearing of the backlog has enabled us to respond swiftly to two requests for provisional measures, which we dealt with in addition to our planned schedule of cases. We have had the most productive year in our history. I will be reporting on the various Judgments and Orders that we have issued this past year in my speech to the General Assembly on 30th October. Today I would like to speak to you about the cases involving Asia and Africa.

37. Since the establishment of the International Court of Justice, we have had no fewer than 18 disputes involving African States and 13 involving Asian States submitted to us for resolution. Three of the cases on the current docket involve African States. This year we have decided two cases involving Asian and African States. The first involved Malaysia and Singapore, who came to us by special agreement. As I had previously given advice to one of the Parties, I rescued myself from the case and it was presided over by the Vice-President, Judge Al-Khasawneh.

38. The dispute involved sovereignty over maritime features. This type of dispute appears rather regularly before the ICJ and it has developed a strong expertise in this area. In the past 12 months, the Court has also decided questions of sovereignty over maritime features in the *Nicaragua v. Honduras* case and the *Nicaragua v. Colombia* case (in relation to preliminary objections). In the *Malaysia/Singapore* case, the maritime features in question were Pedra Branca/Pulau Batu Puteh (a granite island on which Horsburgh lighthouse stands), Middle Rocks (consisting of some rocks that are permanently above water) and South Ledge (a low-tide elevation). This was a very fact-heavy case, with over 4,000 pages of pleadings.

39. Malaysia contended that it had an original title to Pedra Branca/Pulau Batu Puteh (dating back from the time of its predecessor, the Sultanate of Johor) and that it continued to hold this title, while Singapore claimed that the island was *terra nullius* in the mid-1800s when the United Kingdom (its predecessor) took lawful possession of the island in order to construct a lighthouse. After reviewing the evidence submitted by the Parties, the Court found that the territorial domain of the Sultanate of Johor did cover in principle all the islands and islets within the Straits of Singapore and did thus include Pedra Branca/Pulau Batu Puteh. This possession of the islands by the Sultanate was never challenged by any other Power in the region and therefore satisfied the condition of “continuous and peaceful display of territorial sovereignty”. The Court thus concluded that the Sultanate of Johor had original title to Pedra Branca/Pulau Batu Puteh. This ancient title was confirmed by the nature and degree of the Sultan of Johor’s authority exercised over the Orang Laut (“the people of the sea”, who inhabited or visited the islands in the Straits of Singapore, including Pedra Branca/Pulau Batu Puteh and made this maritime area their habitat).

40. The Court then looked at whether this title was affected by developments in the period between 1824 and the 1840s, including various treaties and a letter from Sultan Abdul Rahman in which he “donated” certain territories, which were already within the British sphere of influence, to his brother. After careful consideration of the legal effects of these developments, the Court found that none of them brought any change to the original title.

41. The Court turned next to the legal status of Pedra Branca/Pulau Batu Puteh after the 1840s to determine whether Malaysia and its predecessor retained sovereignty over the island. In this regard, it examined the events surrounding the selection process of the site of the lighthouse, its construction, as well as the conduct of the Parties’ predecessors between 1852 and 1952, but was unable to draw any conclusions for the purposes of the case.

42. The Court placed great emphasis on a letter written on 12 June 1953 to the British Adviser to the Sultan of Johor in which the Colonial Secretary of Singapore asked for information about the status of Pedra Branca/Pulau Batu Puteh in the context of determining the boundaries of the “Colony’s territorial waters”. In a letter dated 21 September 1953, the Acting State Secretary of Johor replied that the “Johore Government [did] not claim ownership” of the island. The Court found that the reply showed that as of 1953 Johor understood that it did not have sovereignty over Pedra Branca/Pulau Batu Puteh.

43. The Court finally examined the conduct of the Parties after 1953 with respect to the island. It found that certain acts, including the investigation of shipwrecks by Singapore within the island’s territorial waters and the permission granted or not granted by Singapore to Malaysian officials to survey the waters surrounding the island, may be seen as conduct *à titre de souverain*. The Court also considered that some weight can be given to the conduct of the Parties in support of Singapore’s claim. The Court concluded that by 1980 (when the dispute crystallized) sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore and still lay with Singapore.

44. As for Middle Rocks, the Court observed that the particular circumstances which led it to find that sovereignty over Pedra Branca/Pulau Batu Puteh rested with Singapore did not apply to Middle Rocks. It therefore held that original title to Middle Rocks should remain with Malaysia as the successor to the Sultanate of Johor. As for South Ledge, the Court noted that this low-tide elevation fell within the apparently overlapping territorial waters generated by Pedra Branca/Pulau Batu Puteh and by Middle Rocks. As the Court had not been mandated by the Parties to draw the line of delimitation with respect to their territorial waters, the Court concluded that sovereignty over South Ledge belonged to the State in the territorial waters of which it is located. *Malaysia/Singapore* was the second case from Asia concerning sovereignty over maritime features to have come to the Court by joint agreement, the previous one being *Indonesia/Malaysia*.

45. Just two weeks after the delivery of the Judgment in the *Malaysia/Singapore* case, the Court gave its decision in a case with an African State as the Applicant: *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*.

46. Forming a backdrop to this case was the death of Judge Bernard Borrel, a French national who had been seconded as Technical Adviser to the Ministry of Justice of Djibouti. On 19 October 1995, the body of Judge Borrel was discovered 80 km from the city of Djibouti. Various judicial investigations to determine the cause of Judge Borrel's death were opened in Djibouti and France. The case in France was known as the *Case against X for the murder of Bernard Borrel*. Both Parties agreed that it was not for the International Court to determine the circumstances in which Judge Borrel met his death. Rather, the dispute before the ICJ concerned the resort to bilateral treaty mechanisms that existed between the Parties for mutual assistance in criminal matters.

47. This was the first occasion it fell on the Court to pronounce on a dispute brought before it by an Application based on *forum prorogatum*. As you might know, a State, when submitting a dispute to the Court, may propose to found the Court's jurisdiction upon consent yet to be given or manifested by the State against which the Application is made, in reliance on Article 38, paragraph 5, of the Rules of Court. If the latter State expresses its consent, the Court has jurisdiction to decide the case.

48. In *Djibouti v. France*, Djibouti filed an Application against France claiming that the refusal by the French authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investigation in the *Case against X for the murder of Bernard Borrel* violated two bilateral treaties. The Application further referred to the issuing, by the French judicial authorities, of witness summonses to the Djiboutian Head of State and senior Djiboutian officials, allegedly in breach of the principles and rules governing the diplomatic privileges and immunities.

49. The French Minister for Foreign Affairs informed the Court in a letter that France "consents to the Court's jurisdiction to entertain the Application pursuant to, and solely on the basis of . . . Article 38, paragraph 5", of the Rules of Court, while specifying that this consent was "valid only . . . in respect of the dispute forming the subject of the Application and strictly within the limits of the claims formulated therein" by Djibouti.

50. In its Judgment, the Court stated that "the consent allowing for the Court to assume jurisdiction must be certain. That is so, no more and no less, for jurisdiction based on *forum prorogatum*." (Para. 62.) It went on to examine the extent of the mutual consent of the Parties, as evidenced by Djibouti's Application and the letter of France. It found that France's letter to the Court did not seek to limit jurisdiction to the refusal to execute the letter rogatory, but accepted jurisdiction over the Application as a whole, including claims relating to summonses. The Court did, however, exclude the arrest warrants issued for senior Djiboutian officials from its jurisdiction. These arrest warrants were issued after the filing of the Application and the Court found France's consent did not go beyond what was visible in that Application.

51. On the merits, the case raised a number of interesting legal issues including the role of the internal law of a State when there is a dispute as to compliance with a treaty which makes reference to internal law, the duty to give reasons for refusal to co-operate

as envisaged in a treaty, and the immunities of State officials from foreign criminal jurisdiction. I will outline the Court's findings on these issues.

52. Article 3 of the 1986 Convention on Mutual Assistance in Criminal Matters provided that a State to which a request for mutual assistance had been made "shall execute *in accordance with its law* any letters rogatory relating to a criminal matter and addressed to [them] by the judicial authorities of the requesting State . . .". The Court held that Article 3 did not require France to transmit the Borrel file to Djibouti because, while the obligation to execute international letters rogatory was to be realized in accordance with the procedural law of the requested State and while that State must ensure that the procedure is put in motion, it does not thereby guarantee the outcome.

53. The Court then considered the nature of the duty to give reasons for refusal of mutual assistance. It held that the reasons given by the French investigating judge for refusing the request for mutual assistance fell within the scope of Article 2 (c) of the Convention, which entitled the requested State to refuse to execute a letter rogatory if it considered that execution was likely to prejudice its sovereignty, its security, its *ordre public* or other of its essential interests. But the Court did not accept France's argument that the fact that the reasons have come within the knowledge of Djibouti during the proceedings meant that there had been no violation of the duty to give reasons. A legal obligation to notify reasons for refusing to execute a letter rogatory was not fulfilled through the requesting State learning of the relevant documents only in the course of litigation, some long months later. The Court added that the bare reference to the exception contained in the Convention (Article 2 (c)) did not satisfy the duty to give reasons; some brief further explanation was called for. This was not only a matter of courtesy, but also allowed the requested State to substantiate its good faith in refusing the request. It may also enable the requesting State to see if its letter rogatory could be modified so as to produce a better outcome.

54. The Court thus found that France's reasons for refusing to transfer the record of the investigation in the *Borrel* case to the Djiboutian authorities were in good faith and fell within the provisions of the 1986 Convention; but France did violate its obligation under the 1986 Convention to give reasons for its refusal to execute the letter rogatory. Since these reasons had, in the meantime, entered the public domain, the Court determined that "its finding of this violation constitute[d] appropriate satisfaction" there was no point in ordering their publication.

55. In addition to the claims regarding the letter rogatory, the Court considered Djibouti's claims that the immunities of Djibouti's Head of State and two senior State officials had been violated by France through the issuance of witness summonses. As regards the Head of State, the Court held that the summonses issued to the Head of State were not associated with measures of constraint; they were merely invitations to testify which the Head of State could freely accept or decline. Consequently, there was no attack by France on the immunities from criminal jurisdiction enjoyed by the Head of State. The Court nonetheless noted that the summons of 17 May 2005 was not issued in a manner consistent with the courtesies due to a foreign Head of State and for that "an apology would have been due".

56. In terms of the immunities of State officials, Djibouti claimed that the issuing of summonses as *témoins assistés* (legally represented witnesses) to the *procureur de la République* of Djibouti and the Head of National Security violated their immunities. Djibouti submitted that these senior officials were entitled to functional immunities. This was, in essence, a claim of immunity for the Djiboutian State, from which the *procureur de la République* and the Head of National Security would be said to benefit. France pointed out that the two senior officials never raised before the French criminal courts the immunities which Djibouti now claimed on their behalf. The Court observed that it had never been verified before it that the acts which were the subject of the summonses were indeed acts within the scope of the officials' duties as organs of State. It added that these various claims regarding immunity were not made known to France, whether through diplomatic exchanges or before any French judicial organ, as a ground for objecting to the issuance of the summonses in question. At no stage were the French courts (before which the challenge to jurisdiction would normally be expected to be made), nor indeed the International Court, informed by the Government of Djibouti that the acts complained of by France were its *own* acts, and that the *procureur de la République* and the Head of National Security were its organs, agencies or instrumentalities in carrying them out. The Court therefore rejected Djibouti's claims regarding the alleged violation of immunities.

57. We have another case on our docket, also involving an African State that concerns the immunities of public officials. In the case concerning *Certain Criminal Proceedings in France*, the Republic of the Congo seeks the annulment of the investigation and prosecution measures taken by French judicial authorities in response to a complaint of crimes against humanity and torture filed against, *inter alia*, the President of the Congo, the Congolese Minister of the Interior and the Inspector-General of the Congolese Army. The final written pleadings have just been filed and the case will soon be scheduled for hearing. Interestingly, this case has also come to the Court on the basis of *forum prorogatum*.

58. There is another point I would like to tell you about. In the *Djibouti v. France* case, the judge *ad hoc* nominated by Djibouti, Mr. Yusuf of Somali nationality, was appointed after the passage of General Assembly resolution 61/262. This resolution amended the conditions of service for international judges and would have required that Judge Yusuf be paid a salary that would, pro rata, be less than that of the sitting Members of the Court and indeed that of the judge *ad hoc* of France, who had been appointed before the adoption of that resolution. The resolution clearly contradicted Article 31 (6) of the Statute of the Court, which states that judges *ad hoc* shall be "on terms of complete equality with their colleagues". The Court was thus put in the unenviable position of either not conforming with the resolution, not conforming with the Charter and its own Statute, or declining to proceed with the case. I wrote to the Secretary-General to inform him that as the Charter and the Statute of the Court are our governing instruments, and as our role under the Charter is to settle legal disputes brought to us, the Court would proceed with the case and pay Judge Yusuf on an equal basis with all other judges. The Court was grateful for the decision of the General Assembly in April of this year to amend resolution 61/262 to ensure that the principle of equality among judges is respected. We feel it has been realized that the position we took regarding Judge Yusuf was the correct one.

59. The regions that AALCO represents are of great importance to the International Court, and I am pleased to contribute to the good relations between our two institutions. In the past year, I have undertaken official visits to Morocco and the United Arab Emirates where I gave a number of lectures. We have also welcomed delegations of judges and lawyers from China, India and Thailand to the Peace Palace for presentations on the work of the Court.

60. The Court is aware of the important issues being considered by AALCO. I note that at your Forty-seventh Annual Session, AALCO held a special one-day meeting on “Contemporary Issues in International Humanitarian Law” and also adopted numerous resolutions on substantive matters, including the United Nations Convention against Corruption, Terrorism, and Climate Change.

61. On behalf of all the Members of the International Court of Justice, I wish you every success in pursuing your work programme and in performing your important role in the Asian and African regions.

62. **Chairperson:** Thank you Madam President for updating us on cases relating to the Asian and African regions. President Higgins will soon be completing her term in Court. On behalf of the AALCO Member States, we wish you all the best in your future endeavours and hope that the international community would continue to benefit from your expertise. Thank you.

63. The next speaker on our list is the Legal Counsel of the UN, Ms. Patricia O’ Brien. Ms. Brien is the first woman in the history of the United Nations to occupy this position. We warmly congratulate you on this achievement and assure you of our full cooperation. We hope that your appointments would be the harbinger on achieving 50-50 gender balance in the United Nations system, especially at senior and policy making levels. You have the floor Madam.

64. **Statement by Ms. Patricia O’ Brien (Ireland), Under Secretary-General for Legal Affairs and the United Nations Legal Counsel:** Thank you very much Madam Chairperson of the Asian-African Legal Consultative Organization. Mr. Secretary-General of the AALCO, Madam President of the International Court of Justice, Mr. Representative of the Sixth Committee, Excellencies, Distinguished Representatives. I would like to commence my short speech by acknowledging the degree to which active Observers in the General Assembly such as the AALCO contribute greatly to the work of the United Nations and I am therefore very pleased to see the Legal Advisers of AALCO coming here in the Trusteeship Council Chamber to your annual meeting at the United Nations. I am also pleased to address you for the first time as Legal Counsel of the United Nations.

65. In keeping with well-established traditions allow me to say a few words on the perspectives of the Office of UN Legal Affairs, on the main topic that you have identified for your meeting today, i.e., Recent Developments regarding the International Criminal Court. We are well aware that the creation of International Criminal Court represents one of the major achievements in international law during the past century. Since the entry

into force of the Rome Statute, in July 2002, the Court has completed an important transition from the set-up phase to the commencement of its judicial functions to put an end to impunity of the perpetrators of the most heinous crimes of concern to the international community as a whole. We believe that amongst its achievements the activities of the Court and its Prosecutor have had a discernible deterrent effect on potential perpetrators of international crimes. The Secretary-General had recently recalled on the Tenth Anniversary of the adoption of the Rome Statute that the UN was proud of its relationship with the ICC. The Organization provided crucial assistance and support to UN Member States who created the Court. Ever since UN-ICC cooperation has expanded steadily to the point that now our two independent institutions fully complement each other's work. Today the UN's work to promote peace, development and human rights is heavily dependent on ICC's efforts to advance justice and establish the rule of law.

66. If you will allow me to use this opportunity to repeat the Secretary-General's exhortation to Member States that we work together to further improve the cooperation between the Court and UN in ways that take into account the legitimate interests of both partners. The UN is prepared to take all necessary action with due respect to applicable rules to facilitate the Court's noble and important mission.

67. The Court is an independent international judicial institution. The United Nations and in particular, the Office of Legal Affairs played a major role in assisting States in creating this institution. For full respect of its independent character, the United Nations continues to support the ICC. From the outset, for our cooperation with the ICC, the Office of the Legal Affairs has been designated by the Secretary-General as point of entry for all UN-ICC related matters. In its struggle to fight impunity, the ICC cannot succeed on its own. As the President of Court, President Phillippe Kirsch once said: "The Court is independent, but inter-dependent". Unlike domestic mechanisms, ICC does not have any enforcement powers. It can neither enforce its own arrest warrants nor its own judgments. It depends on others to carry out its mandate successfully. The primary support and cooperation for the Court's activities must come from States. As a secondary resort the Court can also turn to the International Organizations and other Organizations.

68. The United Nations does its share in assisting the Court through providing assistance and logistics in conformity with the UN Charter and its mandates, on the basis of Special Agreement between the UN and the Court. This Agreement is off-course the Relationship Agreement which entered into force on the 4th of October 2004 and which forms the legal basis for cooperation to and assistance to the Court. It is now clear that the single most important determinant of success for any International Tribunal is cooperation. This includes cooperation from States, cooperation from the UN and other International Organizations, cooperation from the NGO and civil society and cooperation to victims and assistance to other individuals. Cooperation that results in financial support, political backing and which flows from expression of support in public as well as behind closed doors. It is cooperation that fundamentally determines the effectiveness of the ICC. The UN continues to cooperate with the ICC under our Relationship Agreement. The UN assists the Court in many ways. It provides documents and information. It supplies logistical and other technical support to Court filed operations

and even accommodates the Court in its security arrangements. Of course, the arrest and surrender of indicted individuals can only be undertaken by States, even where peacekeeping operations have been mandated to assist with the task. That is why the cooperation of States is essential to the work of the Court. Without it the International Criminal Court cannot function. The Court needs the support and assistance of all States Parties for the important work that is underway and we in the UN are fully conscious that cooperation with UN continues to be essential to the Court, both institutionally and in the different situations of different cases.

69. In its still very young existence, the International Criminal Court has already made some impressive gains. The Prosecutor of the Court is currently investigating four situations. In the Democratic Republic of Congo, where during one of the bloodiest conflicts in Africa, thousands of civilians have fallen victims to mass atrocities and hundred of children have been abused. In Darfur, where unspeakable crimes on a massive scale are still being committed, in Northern Uganda, where the Lord's Resistance Army abducted thousands of children, turning them into child soldiers and sex slaves. And in the Central African Republic where there are in particular many allegations of rape and other acts of sexual violence against women.

70. The UN supports the activities of the Court and those of the Prosecutor, in particular, all of these situations. Some of these situations are still unstable and peace has yet not been achieved. Under such circumstance, questions arise about the relationship between peace and justice. The tension arising in the pursuit of each is unavoidable. As the Secretary-General has put it, there are no too easy answers to this morally and legally charged balancing acts. However, the overarching principle is clear. There can be no sustainable peace without justice. Peace and justice, accountability and reconciliation are not mutually exclusive. To the contrary, they go hand in hand and more recently described they must move in parallel. While we all applaud these principles, the challenge is to find the right balance between each instance when the situation arises. Justice and peace must be regarded as complementary requirements. The problem should not be one of choosing between peace and justice, but of the best way to inter-link one with another in the light of specific circumstances without ever sacrificing the duty to preserve justice. And so the work of the ICC goes hand in hand with that of the United Nations. The UN's struggle for peace cannot succeed without International Criminal Court's efforts for justice.

71. In closing, let me reassure you that the International Criminal Court can continue to count on the support of the United Nations in the future, just as it could count on your support in the past. Thank you very much.

72. **Chairperson:** Thank you very much for appraising the meeting of the UN's support to the work of the International Criminal Court. Now I open the floor for Member States. The first speaker on my list is the distinguished representative from the People's Republic of China.

73. **The Legal Adviser of the People's Republic of China:**² Thank you Madam Chairperson. I wish to thank you for convening this meeting. At the Forty-Seventh Session of AALCO, in July 2008, AALCO elected Prof. Rahmat Mohamad as its new Secretary-General. I would like to extend my warm congratulations to Prof. Mohamad. I thank him for his presence and his statement. I wish to thank the President of the International Court of Justice and also the Chairman of the Sixth Committee and the Legal Adviser of the UN for their respective statements.

74. Madam Chair, AALCO is an influential, important inter-governmental legal organization in the Asian and African region. This international organization has a unique influence in the field of international law. We have noted that at its last Annual Session, AALCO discussed eight important items at its Session, including Counter Terrorism, Domestic Law and Extraterritorial Application and also held the Seminar on Contemporary International Humanitarian Law, jointly with the ICRC. All these activities played a significant role in promoting the development and codification of international law and for facilitating cooperation and interaction between Asian and African countries. There is a concentration of developing countries in the Asian and African region and also of the large population and these countries share broad interest and common concern in the area of responding to various crises and in promoting sustainable development.

75. Madam Chair, how to respond to current challenges requires not only political dialogue but also consultations amongst countries. But also we need interaction and exchanges in international law areas. As a major forum for Asian and African countries, AALCO can provide countries with a platform for such interaction and cooperation in international law area and for enhancing their consensus as well as in narrowing their differences for promoting the formulation and application of the international norms. Furthermore, a greater role for AALCO in its sphere of work is called for. We suggest that the future work of AALCO should develop in great width and depth to continue its focus on the development of international law and at the same time, it shall focus its concern on the issues of most concern for Asian-African countries and in-depth discussions and studies are conducted in those areas. The Chinese Government attaches great importance to the work of AALCO. We are highly satisfied with the role that the AALCO has played. Before the Annual Session, the Chinese Government contributed a batch of office equipments, including computers to AALCO. We congratulate AALCO on relocation of its Headquarters. Chinese Government will continue to support the work of AALCO and will contribute to the enhancement of the work of AALCO and also to increase influence of this Organization in international affairs. I thank you Madam Chair.

76. **Chairperson:** Thank you very much. The next speaker is the Permanent Representative of Sudan.

77. **The Permanent Representative of Sudan to the United Nations:** Thank you very much Madam Chairperson. At the outset, I would like to extend my sincere appreciation for the Government and people of India for continuing to generously

² Statement delivered in Chinese. Unofficial translation from the Interpreter's version.

contribute to AALCO and to host our august Organization. I was witness to the inauguration of AALCO's Headquarters Building and Secretary-General's residence in the prestigious Chanakyapuri area in New Delhi. This demonstrates India's commitment to this important vehicle in our legal cooperation between the two continents of Asia and Africa. We also take this opportunity to thank Amb. Wafik Kamil for ably guiding the work of Organization through the past years. Indeed, we also congratulate Prof. Rahmat Mohamad for his brilliant election. Sudan wishes to assure him of its full support and cooperation. We listened with interest to the statement by Prof. Mohamad. We thank him for that. We also took note of the very important presentation of the statement by the President of the International Court of Justice, as well as the representative of the Sixth Committee. However, we are dismayed at the statement of the Legal Counsel of the United Nations advocating the International Criminal Court and speaking as the voice of ICC abusing this forum.

78. Madam Chairperson, it is pertinent to indicate that AALCO is playing a pivotal role in the process of progressive codification and development of international law. Since its inception, AALCO became an indispensable forum that provides for its Member States in Asian and African regions a unique opportunity to consult and coordinate our common understanding to issues pertaining to international law. The Organization continues to work in the spirit of transparency and professionalism towards the establishment of a rule based international system governed by international law. In this context, I wish to commend the Secretariat for its tireless effort, especially in organizing events and preparing solid legal studies pertaining to important issues before the General Assembly. It might be useful if those studies are ready before the convening of the General Assembly Session to enable the Member States to disseminate and make use of this invaluable source of information. I would also like to emphasize the importance of training programmes in building the capacities of Member States and harmonizing their mutual endeavours at the United Nations. We call on the AALCO's new leadership to give due consideration to the issues of providing training to Member States in consultation with countries that are in a position to do so in a spirit of solidarity and South-South cooperation. We took note of the important statement to that effect by both Madam Chairperson and His Excellency the Secretary-General of AALCO.

79. Madam Chairperson, the agenda of this meeting contains issues of relevance to Member States. We are confident that the time allocated to the meeting though short would give us the opportunity to exchange views on issues of vital importance to the continents of Asia and Africa of particular importance in this regard to my country is the issue of the International Criminal Court. The unprecedented action taken by the Prosecutor of the ICC against the President of Sudan sets dangerous precedent in the history of international relations and violates UN Charter and International Law. It also infringes Rome Statute, which stipulates that the provisions of the Statute should not contradict the established principles of international law, in particular the relevant concept of immunity of Heads of States. Resolution 1593 referring the situation in Darfur to the International Criminal Court has exempted others from the jurisdiction of the International Criminal Court raising grave concerns about double standards and so called universality. Moreover, Sudan is not a party to the Rome Statute of 17th July 1998. The

action by the Prosecutor constitutes a flagrant violation of the Vienna Convention on the Law of Treaties, 1969 which provided for the principle of *pacta sunt servanda*. It also stipulates that a treaty does not create either obligation or rights for the third states, without its consent. It is worth mentioning that regional or international organization, namely the African Union, the Arab League, Organization of Islamic Conference (OIC), the African, Caribbean and Pacific (ACP) Group of States and the Non-Aligned Movement (NAM) have strongly deplored the Prosecutor's action, as it adversely affects the stability of Sudan and the whole region along with its legal deficiencies. It is also pertinent to recall in an important decision by the African Union Summit, recently, held in Sharm El-Shaikh, in Egypt, the African Union expressed its grave concern as regard the abuse of the principle of universal jurisdiction in the continent of Africa. The judicial system of Sudan as everybody knows is known for its independence, integrity and its ability to prosecute any crimes that might have been committed in Darfur. Steps have already been taken earlier to ensure that crimes when found were investigated and prosecuted in accordance with the Rule of Law and due process.

80. In conclusion, Sudan is quite confident that AALCO would take necessary measures in support of Sudan and in its endeavour to resist politicization and double standards. Thank you. Madam Chairperson.

81. **Chairperson:** Thank you. The next speaker is the distinguished delegate from the Republic of Korea. You have the floor Sir.

82. **The Legal Adviser of the Republic of Korea:** Thank you Madam Chairperson. With respect to the agenda item "Enhancing the Role and Activities of AALCO in the Coming Years", I wish to recall the fact that at the Forty-Seventh Session which was held in New Delhi, this year, adopted the resolution on the Report of the Secretary-General on Organizational, Administrative and Financial Matters, which requested Secretary-General to study and to report at the Forty-Eighth Session on the possible measures that AALCO can take to further rationalize its work programme, including consideration of the agenda items during its Annual Sessions. I would like to urge AALCO to continue to make effort to implement this rationalization. In this regard, we believe that the number of items to be deliberated at Annual Sessions should not be unduly expanded and that AALCO Secretariat should consider much more specific measures to rationalize AALCO's work programme. In conclusion, I would like to reaffirm my Government's commitment to the AALCO. The Republic of Korea has been an active and ardent supporter of AALCO, since becoming full member in 1974. The Korean Government was honoured to host the Annual Session twice, in Seoul, first in 1979, and more recently in 2003. The Korean Government took great pride in the accomplishments of the two Sessions that it hosted and is very pleased to see that the various initiatives taken along with the AALCO Secretariat at that time continues to contribute to more productive and effective AALCO Sessions. Madam Chairperson I thank you for your kind attention.

83. **Chairperson:** Thank you. The next speaker on my list is Iran. You have the floor Sir.

84. **The Legal Adviser of the Islamic Republic of Iran:** Thank you very much Madam Chair. The delegation of the Islamic Republic of Iran would like to begin by congratulating you for chairing this meeting of the Asian-African Legal Consultative Organization. We also thank the President of the International Court of Justice as well as the Chair of the Sixth Committee for their statements. My delegation wishes to express its gratitude to the Government of India for hosting the Forty-Seventh Annual Session of AALCO, which was held from 30th June to 4th July 2008, in New Delhi. We are delighted to hear that the Forty-Seventh Annual Session of AALCO was a success. The Forty-Seventh Session was a special occasion since the new Secretary-General of the Organization was elected. My delegation warmly congratulates Dr. Rahmat Mohamad for his election to preside over our Organization and assures him of my Government's full support. We are looking forward to a more dynamic and creative Organization under the new leadership.

85. Madam Chair, cooperation between the United Nations and its various organs and bodies and the Asian-African Legal Consultative Organization serves the needs and mutual interest of the two Organizations. We believe that prospects for future cooperation between the UN and the AALCO are promising. A wide range of topics under consideration in the AALCO is indicative of this Organization to contribute to collective efforts aimed at finding solutions to the international problems and tackling challenges of our time. While we appreciate the continuation of the comprehensive approach of AALCO towards legal issues we call on the Secretariat to take a more focused stand based on the common interest of the Member States. We deem advisable that this Meeting of the AALCO, in the margin of Session of General Assembly, be convened well before the beginning of the Sixth Committee Session so that the Member States would be able to coordinate their positions with respect to issues of common concern. This would allow the Organization to consolidate its role in the international legislative processes.

86. Madam Chair, our Organization comprises of 47 developing Asian and African States which constitutes almost one-fourth of the membership of the UN. AALCO has the potential of having a more active and effective role in developing and disseminating international law. AALCO should provide a forum for Member States to contribute to international law making and strengthening of the rule of law at international level. We encourage the new Secretary-General to identify this potential and try to revitalize it. The first step is to identify Organization's priorities, based on the needs and suggestions of Member States. The Member States could make use of the Organization to discuss issues of common concern or interests, with a view to reaching general understanding on them before they are placed in other international fora. The establishment of a legal expert committee consisting of prestigious lawyers from Asian and African States of this Organization, including members of International Law Commission and International Courts and Tribunals can provide the institutional framework for pursuing such end. The proposed Committee may hold a meeting before the Annual Session and consider matters of importance for the member States and then give advice to the Organization. The AALCO also needs to reflect on ways and means to raise awareness about its role and functions.

87. Madam Chairperson, we recognize that the Organization would not be able to discharge its mandate without necessary financial resources. We urge all the Member States to pay their share of contribution to the Annual Budget of the Organization as well as any other existing due or backlog. A review of financial crunch and activities of the Organization during the past years is recommended. In conclusion, my delegation reiterates that it would spare no effort in promising and promoting the role of AALCO in the development of international law based on the concerns and interest of Asian and African States. I thank you Madam Chair.

88. **Chairperson:** Thank you. The next speaker on my list is Yemen. You have the floor Sir.

89. **The Legal Adviser of the Republic of Yemen:**³ Thank you Madam Chairperson. This is a good opportunity for us to welcome Prof. Mohamad the new Secretary-General of AALCO, as also to welcome him here at the Sixth Committee. I was lucky enough to attend a number of meetings organized by AALCO. There was the opening of Headquarters in New Delhi, for example. We believe in recent years, this Organization, the AALCO has played a major role in developing international law. The Organization has reflected the position of Asian and African countries. So we would like to take this opportunity for voicing such support to the legal view set forth by the Organization. We wish to continue to supporting the Organization under the new Presidency of Prof. Dr. Rahmat Mohamad. We wish him success in his work as the head of this Organization, so that it continues its work in the context of its new work programme in international fora. Thank you.

90. **Chairperson:** Syria has asked for the floor. You have the floor Sir.

91. **The Legal Adviser of the Syrian Arab Republic:**⁴ Thank you Madam Chairperson. We are happy to see you presiding over this meeting. My delegation would like to thank the Vice Chairman of the Sixth Committee for his presentation, describing the work currently being done in that Committee. We would also like to congratulate Dr. Mohamad on being elected new Secretary-General of AALCO. We would also like to thank the President of the International Court of Justice who has told us about recent developments at the International Court. We would also like to thank the Government of India for continuing to support the Organization. We trust that AALCO would continue to be successful in its work as it takes up all the very important and relevant topic of concern to all Members of this Organization-AALCO. We advocate cooperation between AALCO and the United Nations also. Thank you.

92. **Chairperson:** Thank you very much. Is there any other delegate wishing to take the floor. Nigeria you have the floor.

93. **The Legal Adviser of Nigeria:** Thank you Madam Chairperson for this meeting. My delegation would also like to congratulate your country for the successful hosting of the Forty-Seventh Annual Session of the Organization in New Delhi. Also we are grateful

³ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

⁴ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

to your country for the provision of the Secretariat of this Organization. We would like to congratulate Dr. Rahmat Mohamad for his election as Secretary-General of our Organization. We are grateful for the comments made earlier by the President of the ICJ, the Legal Counsel of the UN, the Chairman of the Sixth Committee. My delegation considers AALCO as a very important forum because of the critical opportunity it provides for cooperation between African and Asian countries, as well as the function it plays of contributing towards the development of international law and we urge for stronger and firmer action in this direction. Finally, we would like to restate my Government's commitment to this Organization and we wish especially that it becomes stronger in the area of cooperation amongst the Afro-Asian countries. I thank you.

94. **Chairperson:** Thank you very much. South Africa has asked for the floor. You have the floor Sir.

95. **The Legal Adviser of Republic of South Africa:** Thank you Madam Chair. Let me also join others in congratulating yourself Madam Chair for chairing this meeting and in expressing our gratitude to your Government for hosting AALCO and for taking over the rotating chair of AALCO. We know how important duty it is you have taken on, as we ourselves had taken on this responsibility earlier, and had the honour of chairing the AALCO in its work. We wish to also take this opportunity to congratulate Dr. Rahmat Mohamad the Secretary-General of AALCO for having taken over his duty as the Secretary-General and to assure him of our cooperation and on-going support in your work. We want to also thank very much the Chairman of the Sixth Committee for his statement presented by our very good friend. We want to thank both the President of the International Court of Justice for her statement and we had the opportunity to hear the Under Secretary-General for Legal Affairs and also wish to thank her for apt statement.

96. Now the topics which you have chosen for our discussion are very appropriate. As regards the topic of "Enhancing the Role and Activities of AALCO in the Coming Years". What my delegation has found very useful is the compilation of the documentation which AALCO comes up on the subject which are either coming up in the Sixth Committee or the International Law Commission and also it usually covers the issues in the Law of the Sea. We found that the documentation is quite helpful in preparing ourselves for engagement in these fora and we will wish to encourage AALCO to continue its effort in that area because it does enhance the ability of Member States of AALCO, particularly those with relatively constrained capacities to engage in the issues that are happening in international legal fora.

97. On the recent developments, regarding the International Criminal Court, we believe in the importance of ending impunity. We have an unfortunate history in our own country for having suffered in the apartheid regime which was very brutal and the lessons from that era was the international community coming together and establishing institutions of justice to assist States that were either unable or unwilling to act. We see within the construct of the International Criminal Court a mechanism to enable to resolve any challenges that may arise between the whole issue of peace and justice, because within the construct of the International Criminal Court's Statute, there is an obvious compromise to a peace process, where the Security Council can take action to request the

International Criminal Court to defer a stance. We have as member of the Security Council; ourselves have taken this opportunity to request the Security Council to act consistent with this provision of the International Criminal Court under Article 16. We still continue to believe that it is meritorious of the Security Council to consider acting consistently with Article 16, particularly with reference to request of the Prosecutor regarding the indictment of Hon'ble President of Sudan. We are hoping that our interaction with the members of the Security Council that they would find it necessary because already there is Peace and Security Council of the African Union that has taken the decision that the Security Council should exercise the power accorded to it by the ICC Statute to defer or rather to request the ICC to make a deferral. So we will engage in this process in the various forums that we are working on and we believe that exchange of ideas between Members of AALCO in terms of how best we can work within the system already established in international law to hear and enable the principles of justice and advance peace will be very helpful and that we work together in this way. Thank you very much.

98. **Chairperson:** Thank you very much. The next speaker on the list is Kenya. You have the floor Madam.

99. **The Legal Adviser of the Republic of Kenya:** Thank you very much Madam Chair for convening this meeting. I wish to express my delegation's appreciation to the Government of India for its generosity towards the activities of AALCO. I also wish to thank the Vice-Chair of the Sixth Committee for his statement delivered on behalf of the Chairman of the Sixth Committee. We also wish to welcome Dr. Mohamad as chair of the AALCO and I wish to assure him of my delegations' full support. Since joining the Organization in 1970, Kenya has always been in the forefront of deliberations within AALCO. Two Sessions of AALCO have been held in Nairobi. The Twenty-Eighth and the Forty-Fourth Sessions were held respectively in 1989 and in 2005. AALCO is a very important forum for my country because it provides a forum within which African countries can cooperate with Asian countries on issues of mutual concern such as international terrorism and others. We, therefore, reiterate our commitment to the goals of the Organization. In particular, we support the Organization's effort to cement its presence in our region through the establishment of a regional office and with this I thank you for this meeting and assure you of our support to the Organization's goal. Thank you Madam Chairperson.

100. **Chairperson:** Thank you so much. I don't see any more speakers. So we will move on to the next agenda item which is the joint meeting of AALCO and International Law Commission.

III. AALCO-ILC JOINT MEETING

1. **Chairperson:** The first speaker for AALCO-ILC Joint Meeting would be Amb. Rohan Perera who would be briefing the meeting about the recent developments in the Sixtieth Session of the International Law Commission. You have the floor Sir.

2. **Statement by Amb. Rohan Perera (Sri Lanka), Member International Law Commission on “An overview of some of the current topics on the ILC agenda and the key issues which require reflection by the Member States of AALCO”:** Thank you Madam Chair. Madam Chair, Secretary-General Prof. Mohamad, Distinguished Vice-Chairman of the Sixth Committee, Distinguished colleagues of the International Law Commission, Distinguished Legal Advisers and Delegates of the Sixth Committee, the ILC attaches great importance to its co-operation with other bodies concerned with the progressive development of International Law, such as the AALCO. The briefings by the Secretary-General of AALCO at the ILC Sessions on the current work of the Organization and the Annual Joint ILC/AALCO Meetings provide a unique opportunity for an inter-active dialogue between the two bodies, which are mutually beneficial and could serve as a model for other regional organizations and other UN geographical groups. The ILC would certainly stand to benefit by a wider discussion of the substance of its work and suggestions concerning various topics before it, by Member States of the AALCO.

3. During the Special Event to mark the 60th Anniversary of the ILC, a Panel Discussion on “Sharing Experiences with other bodies” engaged in an overview of recent meetings with other bodies such as AALCO and underlined the impact of the dialogue on the work of the Commission.

4. The current Agenda of the Commission has 8 substantive topics. The oldest is “Reservation to Treaties”. The newest topics included on the Agenda last year which came up for discussion this year were:- (a) The Protection of Persons in the event of Disasters; and (b) The Immunity of State Officials from Foreign Criminal Jurisdiction.

5. Given the time constraint that we are facing this afternoon, it is my intention to give you a broad overview of these two new topics.

A. **Protection of Persons in the event of Disasters**

6. Recent events in the various parts of the world in the form of Tsunamis, hurricanes, cyclones, earthquakes and flash floods had brought to focus the timeliness of the consideration of this topic by the ILC and the magnitude of the problems to be addressed.

7. The Preliminary Report presented by the Special Rapporteur Mr. Eduardo Valencia Ospina identified a range of core and complex issues that would need to be addressed in the consideration of the scope of this topic by the ILC. These were the following:-

(i) Scope of the Topic

8. There was considerable discussion on the general scope of the topic. One view favoured a broad approach to be followed, so as to include both natural disasters and man-made disasters on the basis that the goal underpinning protection applied to all disasters irrespective of the cause and recognising that many disaster situations involved complex emergencies, making the determination of the issue whether a disaster was man-made or natural, a difficult one.

9. The other view favoured primary focus of the study being placed on natural disasters, recognising the more immediate need to consider activities undertaken in the context of natural disasters with emphasis being placed on response and assistance in the immediate aftermath of the disaster.

10. While the debate was reflective of general support towards a broad approach to cover both types of disasters, the Special Rapporteur nevertheless recognised that it was feasible to proceed by focussing initially on natural disasters, without losing sight of the possible subsequent consideration of the international principles and rules governing actions undertaken in the context of other types of disasters. This was consistent with the via media approach suggested by some members on the possibility of adopting a step by step approach in the elaboration of the topic, commencing with natural disasters.

(ii) A Right based approach to the Topic

11. The issue which raised considerable controversy during the Commission's debate on the item was in relation to a possible "rights based approach" in the consideration of the topic as suggested by the Special Rapporteur together with the related issues, of the existence or otherwise of a right to humanitarian assistance and the possible application to the topic of the concept of "Responsibility to Protect".

12. Those who expressed support for a "rights based approach" in the consideration of the topic, underlined the importance of attaching permanent value to the human needs, giving rise to obligations and responsibilities of society towards the affected individual. Several members viewed the concept of right to humanitarian assistance as an individual right, though exercised collectively, which should be recognised as implicit in international humanitarian law and international human rights law. Its non-fulfilment, according to this view, was considered a violation of fundamental rights to life and human dignity.

13. The contrary view which emerged in the debate was that there was also a need to be respectful of the rights of the affected States, in particular, their sovereignty and consistent with the "principle of subsidiarity", their primary role in the initiation, organization, co-ordination and implementation of humanitarian assistance, which should not be taken unilaterally. The need for the consent of the affected States in providing humanitarian assistance and in principle on the basis of an appeal by the affected country,

as stipulated in the relevant General Assembly Resolutions, including Resolution 46/182 (Annex) was particularly emphasized in this regard.

14. A further argument that was adduced was that the concept of a right to humanitarian assistance was unsupported by the State practice and that cogent policy considerations also militated against reflecting such a right as it could be easily abused. A middle ground which emerged in the debate stressed the importance of “a human rights oriented approach” rather than an exclusive human rights approach. This approach, while recognizing that the rights of persons affected by disasters were an important element of the topic, contended that the real focus ought to be on obligations necessary to facilitate action to protect such persons. This obligation would involve many actors, including the affected State, States offering assistance, as well as international and non-governmental organizations.

15. Several members emphasized in this regard, the necessity to underline the primary role of the affected State as a general principle and the contributory and subsidiary role of other actors as part of an over-arching umbrella of international co-operation and solidarity.

16. Similar divergency of views existed on the possible underpinning of the topic on the basis of the concept of “Responsibility to Protect”. Members supporting the invoking of this concept pointed to the inevitability of considering the concept in the light of the broad approach to the topic and the humanitarian considerations involved. Other Members however, doubted the existence of a responsibility to protect as a legal obligation and its applicability in the context of disasters. Its emergence as a norm was confined to extreme circumstances as envisaged in the World Summit Outcome Document, namely, situations of persistent and gross violations of human rights.

17. These members urged caution in involving a concept, which was primarily a political and moral concept, the legal parameters of which were yet to be developed. Some other Members stressed that the topic could be elaborated independently, without any consideration of whether or not there was a “responsibility to protect”, as a legal concept.

18. In the concluding observations, the Special Rapporteur emphasized that a Codification effort, that takes into account the rights of the victims, had a stronger foundation in law. He pointed out that it gave rise to justiciable rights, with co-relative rights and duties on other actors, against the backdrop of the Principles of Sovereignty, non-intervention and co-operation, Principles re-affirmed in the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States” in accordance with the Charter of the United Nations (Resolution 2625) (xxv) (1972). He emphasized that accordingly the affected State has not only the primary responsibility to provide assistance to affected people, but also its consent was essential in the provision of humanitarian assistance.

19. The Topic “Protection of Persons in the event of Disasters” is a complex one, posing many challenges to the Commission in setting its precise parameters. The Topic would also involve an element of progressive development. It calls for a careful balancing of contending principles.

20. It is a timely and vital topic in the context of recent developments in various parts of the world. The response of member States, to the range of issues, which have arisen in relation to this topic, in particular these countries which have had the experience in providing humanitarian relief and assistance, in disaster situations would be invaluable to the future work of the Commission.

B. Immunity of State Officials from Foreign Criminal Jurisdiction

21. The Preliminary Report of the Special Rapporteur, on the topic Immunity of State Officials from Foreign Criminal Jurisdiction, Mr. Roman Kolodkin, in de-limiting the scope of the topic, underlined the fact that the Commission was to examine only the immunity of State officials from foreign criminal jurisdiction. Thus questions of immunity from international criminal jurisdiction, which were governed by special regimes, and the immunity from the jurisdiction of domestic courts of the State of nationality of the State official, were excluded from the scope of the topic.

22. Two critical issues, which arose during the consideration of this item related to (a) persons covered under the topic and (b) questions of possible exceptions to immunity.

(i) Persons Covered

23. The Report of the Special Rapporteur pertinently observes that, Heads of State, Heads of Government and Minister of Foreign Affairs constitute the ‘basic threesome’ or the ‘*triumvirate*’ of State officials who enjoy personal immunity (*ratione personae*) from foreign jurisdictions. Under international law it is these three categories of officials who are accorded special status by virtue of their office and of their functions. Their special status is evidenced by the provisions of key international conventions, in particular the Vienna Convention on the Law of Treaties, which accords this category of persons, by virtue of their functions, the competence to perform all acts relating to the conclusion of a treaty. This position was also confirmed in the judgment of the ICJ in the *Arrest Warrant Case (Democratic Republic of Congo v. Belgium – ICJ Reports 2002)*.

24. Some members of the Commission, however, took the view that enjoyment of such immunity by Ministers of Foreign Affairs did not have a firm basis in Customary International Law and sought support for this position in several dissenting Opinions in the *Arrest Warrant Case*.

25. Other members pointed to the centrality of the role of the Foreign Minister in the conduct of international affairs, on behalf of the Sovereign and his representative character, as justification for treatment of the Foreign Minister on the same footing as the Head of State, for purposes of according immunity.

26. The Commission moved into somewhat unsettled terrain in dealing with the issue what other categories of ‘high-ranking officials’ other than the well-recognized ‘*triumvirate*,’ enjoyed personal immunity. The Commission is confronted with a situation here, where key international conventions, such as the Convention on Special Missions and the Convention on the Representation of States in their Relations with International Organizations, acknowledge the existence of a category of ‘other persons with high rank’ without proceeding to elucidate such categories. The *Arrest Warrant* judgment, while confirming the existence of such category, did not proceed to elaborate on them.

27. In this situation, the Special Rapporteur recommended in his preliminary Report that an attempt maybe made to determine which other ‘high ranking officials’ in addition to the ‘threesome’ mentioned, enjoy immunity *ratione personae*, and that it would be possible to single out such officials, from among all high ranking officials, if the criterion or criteria justifying special status for this category could be defined.

28. During the debate in the Commission, several members supported a criteria based approach rather than an enumerative approach. In the identification of such criteria, the representation of the State in international relations being an indispensable part of the functions of the official was stressed as being paramount. Reference was also made to the submission of Counsel in the recent case of *Djibouti v. France* (Certain Questions of Mutual Assistance in Criminal Matter) before the ICJ where the element of the representation of the State in international relations being an indispensable and inherent part of the functions of the officials seeking to invoke immunity had been stressed. Some members, during their interventions in the debate underlined the necessity of a very high degree of involvement in the conduct of foreign affairs by such officials in order to avoid a liberal expansion of the scope of immunity.

29. The challenge before the Commission is to strike a correct and delicate balance between the expansion, albeit cautiously, of categories of ‘other high ranking officials’ who are increasingly involved in the conduct of international relations in the modern world having regard to the need to preserve the stability of inter-State relations on the one hand and the need to avoid a liberal expansion of such categories on the other, which could undermine concerns relating to impunity.

(ii) The Question of Possible Exceptions to Immunity

30. The question of whether State officials enjoy immunity in the case of commission of crimes under International Law though not dealt with in the Preliminary Report of the Special Rapporteur, generated substantial discussion at the current session.

31. Some members expressed the view that there was sufficient basis both in State practice and in the previous work of the Commission, notably the 1996 Draft Code of Crime Against the Peace and Security of Mankind, to affirm that there exists an exception to immunity, when a State official is accused of such crimes. It was further contended that the fact that immunity was excluded in the statutes and case law of

international tribunals could not be ignored when dealing with immunity from foreign criminal jurisdiction.

32. Other members, however, urged caution in liberally expanding the scope of such exceptions, which could undermine and lead to the total disappearance of the whole concept of jurisdictional immunities. They urged for the maintenance of the current status in international law as expressed for example in the *Arrest Warrant Case*. According to this view, the principle of Sovereign equality and stability in international relations reflected substantive legal values such as the protection of weak States against discrimination by strong States.

33. This approach of the Commission would be towards striking a delicate balance between the possible recognition of carefully defined exceptions, in the fight against impunity on the one hand and preserving the essence of jurisdictional immunities essential for the conduct of international relations and the maintenance of international stability on the other.

34. Certainly the views of Member States on these complex and certainly sensitive topics would be of considerable value to the International Law Commission. Before I conclude, Madam Chair, I would like to say a word or two just to flag some of the other issues.

C. Effect of Armed Conflicts on Treaties

35. The first reading of Draft Articles on the topic of “Effect of armed conflict on treaties” was completed. Two important developments were that Draft Article 4 on “Indicia of susceptibility of termination, withdrawal or suspension of treaties” in Working Group was finalized. Draft Article 4 provides that in order to ascertain whether treaty was susceptible to termination, withdrawal or suspension in the event of an armed conflict, resort shall be had to (a) Articles 31 and 32 of the Vienna Convention on the Law of Treaties, namely general rules of interpretation and supplementary means of interpretation and (b) nature and extent of the effect of armed conflict on the treaty, the subject matter of the treaty and parties to treaty. Accordingly, this issue that was subject of discussion least year, a considerable progress was made in identifying the criteria. It is worthy of note that some of these aspects had been the subject of exclusive comments by Member States of AALCO during the Forty-Sixth Session of AALCO, held in Cape Town. The next development was Draft Article 5 on “The operation of treaties on the basis of implication from the subject matter”. This provides that in the case of treaty subject matter of which involves the implication of their continuing operation during armed conflict. The incidence of an armed conflict will not as such effect the operation. The development here was that during this Session an Annex to the Draft Articles was adopted setting out an indicative list of categories of treaties, the subject matter of which involves the implication that their continuing operation in whole or in part during an armed conflict. The indicative list reflects the outcome of an extensive discussion on the categories of such treaties which are backed by substantial State and judicial practice, such as treaties creating permanent boundary regimes, human rights and treaties relating

to International Humanitarian Law and several others. I commend this for the earnest consideration of Member States, so that the ILC could benefit from the views of the Member Governments.

D. Responsibility of International Organization

36. Finally, a word on the “Responsibility of International Organization”, I will flag the issue of “Counter-measures” which has been subject of considerable discussion both last year and this year at the Commission. As this meeting is aware, that the whole subject of counter measures had been debated in the Commission in the context of Draft Articles on “State Responsibility”. While noting the lack of state practice in this regard, the Working Group and the Commission nonetheless recognized the usefulness of having some safeguard provisions on counter-measures. The challenge for the Commission is the extending by analogy certain rules on counter measures, particularly to inter-state relations between States and International Organizations or between International Organizations which led to considerable discussion in the Commission and the particular problem that the Commission is confronted with in this area is the sparse state practice and this indeed is a matter the Commission could considerably benefit by the views of the Member States. I shall stop at this point. I thank you for the hearing. Madam Chairperson. I thank you very much.

37. **Chairperson:** Thank you very much for providing us with a very useful overview on the two new topics before the International Law Commission, as well as for recent developments in relation to the topics of “Effect of armed conflict on treaties” and “Responsibility of International Organization”. I would also take the opportunity to request Member States to heed to Mr. Perera’s request that the Asian-African Member States should send their comments to the International Law Commission on various topics because these comments often are very useful in formulating the final form which a particular subject may take. So it would be really useful, if Member States of Asian-African Legal Consultative Organization could also contribute to the development and codification of international law. I will now give the floor to Amb. Yamada who will brief us on the topic of “Shared Natural Resources”. You have the floor. Sir.

38. **Statement by Amb. Chusei Yamada (Japan), Member, International Law Commission and Special Rapporteur of the ILC on the topic of “Shared Natural Resources”:** Madame Chair, Distinguished Vice-Chairman of the Sixth Committee, Distinguished Secretary-General of AALCO, Distinguished Delegates from ALLCO Member States, in my capacity as the Special Rapporteur on the topic of “Shared Natural Resources” of the International Law Commission (ILC), I would like to make a brief presentation on the work of the ILC for the codification of the law of transboundary aquifers. The ILC embarked on the codification of the law of transboundary aquifers in 2002 in order to provide legal regime for the proper management of aquifers in view of the critical importance of freshwater resources. Freshwater is our life support resources for which no alternate resource exists. 97% of the available freshwater is located underground. Freshwater resource is now being overexploited and widely polluted due to the rapid growth of world population and economic development. I would like to give

you an example of the impact on freshwater resources by human consumption. During the World Water Week in August this year, 2008 Stockholm Water Prize Award was presented to Professor John Anthony Allan from King's College London and the School of Oriental and African Studies. Professor Allan is the innovator of the Virtual Water concept, which measures how water is embedded in the production and trade of food and consumer products. In just one cup of coffee which you drink in London, for example, there are 140 liters of water used to grow, produce, package and ship the coffee beans.

39. Most of the Member States of AALCO possess transboundary aquifers with their neighbours. In order to equitably and reasonably manage those aquifers, it is essential to have proper arrangements with the neighbours. In a rather short period of 6 years, the ILC was able to adopt this year the final text of a preamble and an entire set of 19 draft articles and has sent them to the current session of the General Assembly. The text of the draft articles with the commentaries thereto are reproduced in Paragraph 54 of the Report of the ILC. During the work of the ILC, many Governments, including those of AALCO members, have offered their valuable contributions. As the codification of the law of transboundary aquifers could not be handled only by experts on international public law, the ILC solicited the support from UNESCO-International Hydrological Programme which played a central role in mobilizing hydrogeologists, groundwater administrators and water lawyers from various regions and in related organizations. I am firmly convinced that the draft articles are, therefore, based on solid political and scientific bases.

40. In Paragraph 49 of its report, the ILC recommends to the General Assembly (a) to take note of the draft articles on the law of transboundary aquifers in a resolution and to annex these articles to the resolution, (b) to recommend to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in these articles and (c) to also consider, at a later stage, and in view of the importance of the topic, the elaboration of a convention on the basis of the draft articles. I sincerely hope that the members of AALCO will render their valuable support to the adoption of the General Assembly resolution along the lines of the recommendation of the ILC.

41. Madame Chair, unfortunately, we do not have the other Special Rapporteurs today. But Mr. Perera has given you excellent resume on several important topics. I wish to inform you that four Special Rapporteurs will come here next week. They are the Special Rapporteurs on the topics of "Responsibility of International Organizations", "Protection of Persons in the event of Disasters", "Immunity of State Officials from Foreign Criminal Jurisdiction" and "The Obligation to Extradite or Prosecute". I am certain that you will have an opportunity to interact with them. I thank you Madam Chair.

42. **Chairperson:** Thank you very much for your briefing. I now give the floor to Secretary-General of AALCO.

43. **Secretary-General:** Thank you Madam Chairperson. I would like to thank all the delegates and representatives of Member countries of AALCO in participating and

providing a positive input for the betterment of AALCO, On behalf of the Secretariat, we will take note of the comments made by Member countries and more importantly to carry out the mandate received from Member Countries. I look forward to work with all the Member countries of AALCO, with a view to achieve its objectives, particularly in contributing to the development of international law. Thank you Madam Chair.

44. **Chairperson:** Thank you. At this stage, I once again ask if any Member States wishes to take the floor. Indonesia you have the floor Sir.

45. **The Legal Adviser of the Republic of Indonesia:** Madam Chairperson, distinguished delegates, on behalf of the Indonesian delegation, allow me to take this opportunity to extend my delegations appreciation to the Asian-African Legal Consultative Organization for its excellent work in preparing for this meeting on the sidelines of the Sixty-third Session of the UN General Assembly. My delegation would also like to extend its sincere appreciation to the Secretary-General of AALCO for his excellent remarks on the steps taken by the Consultative Organization to ensure cooperation between the AALCO and the United Nations keeps running productively. My delegation would also reiterate its recalling on the Consultative Organization as an outcome of the Bandung Conference held in 1955, that had in over five decades come to be well-recognized as an outstanding symbol of Asian-African solidarity promoting the Asian-African perspectives of 47 of its Member States on important issues of international law. We believe that the meeting would provide a close interaction with the members of ILC from this meeting. Member States would have benefit to get a clear perspective from the Commission on issues of shared concern as such it would assist us to develop our arguments on the Report of International Law Commission in the United Nations. Thus, reflecting active contribution of our Member countries in the law-making process at the global level. We support the AALCO to enhance cooperation with the ILC in the sense of strengthening the work of ILC, by working more closely, by holding a joint meeting, seminar in order to provide a forum of world bodies to identify and solve the most pressing global legal problems encountered by them in the contemporary world.

46. Furthermore, we would like to recall another initiative taken by the AALCO in order to fulfill its mandate arising from the substantive resolutions adopted at the Forty-Seventh Annual Session held from 30th June to 4th July 2008 in New Delhi, particularly in exploring the possibility of holding a seminar/workshop/inter-sessional meeting on the topic of International Terrorism in cooperation with the United Nations Office on Drugs and Crimes to deal with the legal aspects of countering terrorism, as well as on recent developments in the International Criminal Court. My delegation is pleased that the AALCO has contributed to flourish as forum of cooperation on international legal issues between countries of both regions and other international organizations. We also have strong commitment to the enhancement of cooperation in the context of AALCO because we believe that it can contribute to further the progressive development and codification of international law in both the developing regions. Finally, my delegation believes that as an Inter-governmental Organization that enjoys Permanent Observer status at the UN, we do hope that the AALCO would continue to be active within the Organization. Thank you Madam Chairperson.

47. **Chairperson:** Thank you very much. Is there any other delegation wishing to take floor? I don't see anyone. Then I will take this opportunity to thank the Secretary-General of AALCO, the Vice-Chairman of the Sixth Committee, President Higgins, the Legal Counsel, Amb. Yamada, Amb. Rohan Perera for their contribution and sparing their time to address this meeting today. I also thank all the Member States for taking time out to be here and all the Observer State. It would be remiss of me not thank Amb. Bhagwat Singh and his staff Ms. Diane Jumet and the interns Autumn Houston and Daniela Barreto for their help in organizing this meeting. I would also like to thank the Conference Officers and the Interpreters. I would also like to express thanks to all the delegations who have expressed appreciation for my Government and with these words, I adjourn the meeting. Thank you very much.

The meeting was thereafter adjourned.