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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

REPORT ON THE NON-DELIBERATED AGENDA ITEMS FOR THE FIFTIETH ANNUAL SESSION OF AALCO

Prepared by:

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

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THE STATUS AND TREATMENT OF REFUGEES
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1. THE STATUS AND TREATMENT OF REFUGEES

I. Introduction

1. The Asian-African Legal Consultative Organization (AALCO) has been concerned with the protection of refugees ever since this topic was introduced in its agenda in 1964 at the behest of Arab Republic of Egypt. Within AALCO, this has been a keenly debated subject during its Annual Sessions, which has contributed immensely to the exploring and framing of policies that take into account the rights of refugees in the Member States. While working in pursuance of its mandate, AALCO has collaborated with the Office of the United Nations High Commissioner for Refugees (UNHCR), both formally as well as informally. This cooperation and mutual assistance was formalized by the Signing of the Memorandum of Understanding (MOU) between the two Organizations on 23rd May 2002 . The MOU provides for the undertaking of joint study and envisages holding of seminars and workshops on topics of mutual interest and concern.

2. It is pertinent to remember here the distinguished record of contributions on the part of AALCO to the cause of the protection of refugees. This includes the adoption of the "Principles Concerning the Treatment of Refugees" in 1966 at its Eighth Annual Session, which are commonly known as *'Bangkok Principles'*. Further study improved upon these principles by adopting two addendum. The first which was adopted in 1970 at the Accra session, contained an elaboration of the *'right to return'* of any person who, because of foreign domination, external aggression or occupation, has left his habitual place of residence. Furthermore, in the year 1987, AALCO had adopted **'***Burden Sharing Principles'* as an addendum to the Bangkok Principles of 1966. These principles have highlighted the growing trend towards finding durable solutions to the refugee problems and for international assistance to relive the burden of those faced with large scale influx of refugees. Burden and responsibility sharing arrangements, including resettlement, represent a significant component of durable solutions for displacement situations. These principles provide a legal framework, which while "recommendatory in nature" nevertheless forms guiding principles for state practices in the Asian-African region. They remain a term of reference and an expression of the our region's concern for refugees.

3. Apart from the adoption of the 2001 Revised text of the Bangkok Principles, two other important initiatives of AALCO related to refugee protection needs to be mentioned here; the "Concept of Establishment of Safety Zones for Internally Displaced persons" and the preparation of the "Model Legislation of Refugees As regards the concept of safety zone (an area within a Country to which Internally Displaced Persons (IDPs) and prospective refugees can flee to secure assistance and protection)**,** AALCO had adopted *"A Framework for the Establishment of a Safety Zone for Displaced Persons in Their Country of Origin"* in 1995. It incorporates some twenty principles that provide for; the aim of the establishment of safety zone; the conditions for establishment; the supervision and management of the zone; the duties of the Government and of the conflicting parties involved; the rights and duties of the displaced persons.

4. Besides, the AALCO Secretariat was mandated by the Thirty-First Session that took place at Manila, Philippines in 1996, to prepare draft model legislation on refugees to assist Member States in enacting national laws on refugees. Accordingly, the Secretariat had submitted *"A Model Legislation on the Status and Treatment of Refugees"* to the Thirty-Fourth Annual Session held at Doha in 1995. The draft emphasized the need to provide for the rights and duties of refugees; rules for the determination of refugee status; mechanisms to address the refugee exodus etc.

5. It is also pertinent here to recall the special study that was undertaken by AALCO along with UNHCR on "*The Problem of Statelessness: An Overview from the African Asian and Middle Eastern Perspective*", which was released during the formers' Forty-Sixth Annual Session that took place at Cape Town, Republic of South Africa in 2007.

6. The AALCO Secretariat's Report for the current year focuses on the work of the UNHCR in the context of international protection of refugees over the last sixty years. It also goes on to highlight the utility of the United Nations Convention Relating to the Status of Refugees, which constitutes the most comprehensive codification of the rights of refugees at the international level. The logic underpinning choosing of this area is self-evident: this year 2011 marks the Sixtieth Anniversary of UNHCR and the Sixtieth Anniversary of the UN Refugee Convention. Since these are areas which cover a vast amount of work, the report seeks to present them in nutshell.

II. The Role of UNHCR in the Protection of Refugees

7. The Office of the United Nations High Commissioners for Refugees (UNHCR) was created on December 14, 1950 as a subsidiary organ of the UN General Assembly. Its original purpose was to address the post-World War II refugee situation in Europe. States still recovering from the devastation of World War II wanted to make sure that they had a strong and effective organization to look after the interests of – or "protect" – refugees in the countries where they had sought asylum. UNHCR was also charged with helping governments to find "permanent solutions" for refugees.

8. The UNHCR's statute was drafted virtually simultaneously with the 1951 UN Refugee Convention, and as a result the key international legal instrument, and the organization designed to monitor it, are particularly well synchronized. Article 35 of the 1951 Convention makes the relationship explicit, and requests states to cooperate with UNHCR in matters relating to the implementation of the Convention itself and to any laws, regulations or decrees that states might draw up that could affect refugees.

9. The UN Refugee Convention and its Protocol which was adopted in 1967 provide States Parties with a legal foundation for refugee protection. For its part, UNHCR has been given a mandate to provide international protection to refugees and seek permanent solutions that include the following:

10. **Voluntary repatriation:** This is the preferred long-term solution for the majority of refugees. Most refugees prefer to return home as soon as circumstances permit

(generally when a conflict has ended), and a degree of stability has been restored. UNHCR encourages voluntary repatriation as the best solution for displaced people, providing it is safe and their reintegration is viable. The UNHCR often provides transportation and a start-up package which may include cash grants, income-generation projects and practical assistance such as farm tools and seeds.

11. Sometimes, along with its many NGO partners, it extends this help to include the rebuilding of individual homes, as well as communal infrastructure such as schools and clinics, roads, bridges and wells. Such projects are often designed to help IDPs as well as returning refugees – while also benefiting other impoverished people in the area who may never have moved anywhere. Field staff monitor the well-being of returnees in delicate situations. Longer term development assistance is provided by other organizations.

12. **Local integration and ReSettlement:** Some refugees cannot go home or are unwilling to do so, usually because they could face continued persecution. In such circumstances, UNHCR helps to find them new homes, either in the asylum country where they are living (and in an increasingly crowded world, relatively few countries are prepared to offer this option), or in third countries where they can be permanently resettled.

13. Over the years, the core mandate of the UNHCR has undergone a number of changes and the scope of its work has been expanded over time under the authority of UN General Assembly. In the 1960s and 1970s UNHCR became increasingly involved in refugee situations in the Third world, on account of the waves of de-colonization sweeping across the developing world. This was also the period when it became the main UN agency responsible for monitoring the situation of **Stateless people**. The 1980s saw it take on a growing role in providing assistance in refugee camps and shifting away from its traditional focus on legal protection. The 1990s saw it assume a wider role in providing humanitarian relief and engaging in repatriation operations. The late 1990s and early twenty first century have seen UNHCR take an even greater responsibility for the protection of **Internally Displaced Persons** (IDPs) who unlike refugees, have not only, crossed any international border, but also do not have an exclusive international institution to look after their plight. The expansion of UNHCR's work to include these new areas has often been controversial, and there have been concerns that UNHCR has been used by States in ways that may contradict or undermine its refugee protection mandate.

14. As the problem of displacement has grown in complexity over the past half century, UNHCR has also grown to meet the challenge. In addition to offering legal protection, UNHCR now also provides material relief in major emergencies, either directly or through partner agencies. In its first fifty years, UNHCR has protected and assisted more than 50 million people and its work has earned two Nobel Peace Prizes.

15. UNHCR's mandate is now, therefore, significantly more extensive than the responsibilities assumed by States Parties to the Refugee Convention and Protocol. One of the challenges facing refugees and countries of asylum today consists of bridging the

"protection gap" which exists in situations where UNHCR seeks to protect persons with respect to whom concerned States do not recognise that they have a responsibility under any of the refugee instruments.

III. The Role of the United Nations Convention Relating to the Status of Refugees and its 1967 Protocol

16. The 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol are the cornerstones of modern Refugee protection, and the legal principles they enshrine have permeated into countless other international, regional and national laws and practices governing the way refugees are treated.

17. The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention, gave the 1951 Convention a truly universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions[1], as well as via the progressive development of international human rights law.

18. The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term "refugee" in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

19. The 1951 Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and *non-refoulement*. The Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination. The 1951 Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. Importantly, the 1951 Convention contains various safeguards against

[1] See, for example the Organization of African Unity (now African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, the European Union Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the qualification and status of Third Country Nationals or Stateless Persons as Refugees or as persons who otherwise need international protection and the content of the protection granted; the Cartagena Declaration on Refugees 1984, while non-binding also sets out regional standards for refugees in Central America, Mexico and Panama.

the expulsion of refugees. The principle of *non-refoulement* is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom (Article 33).

20. Finally, the 1951 Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form. Most States parties to the Convention issue this document, which has become as widely accepted as the former "Nansen passport", an identity document for refugees devised by the first Commissioner for Refugees, Fridtjof Nansen, in 1922.

21. Apart from expanding the definition of a refugee, the Protocol obliges States to comply with the substantive provisions of the 1951 Convention to all persons covered by the refugee definition in Article 1, without any limitation of date. Although related to the Convention in this way, the protocol is an independent instrument, accession to which is not limited to States parties to the Convention.

22. The fundamental importance and enduring relevance of the 1951 Convention and the Protocol was widely recognized in 2001 when States parties issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol. They also recognized in particular that the core principle of *non-refoulement* is embedded in customary international law[2].

23. Even though at the rhetorical level Countries have affirmed the continuing relevance of the UN Refugee Convention and its Protocol, the practice of some States does not lend credence to this enthusiasm. For example, the Western Industrialized Countries have been using restrictive and exclusionist measures designed to prevent asylum seekers arriving at their territory. This has been exacerbated by the end of the superpower conflict wherein the refugees no longer possess any ideological or geo political value.

24. Similarly, the issue of interpreting the provisions of the 1951 Convention has been acute. For example, the principle of non-refoulement, which is the most basic principle of refugee protection, has been given extremely narrow interpretation by some Western States creating significant protection gap in the refugee situation. Hence there is a need for a legal body that can interpret the 1951 Convention in an authoritative manner.

25. Also important in this context is the fact the war against terrorism has come to be used as a pretext in order to neglect the rights of asylum seekers and refugees. In this

[2] Declaration of State Parties to the 1951 Convention and/or its Protocol Relating to the Status of Refugees, Ministerial Meeting of State Parties, Geneva, Switzerland, 12-13 December 2001, UN Doc. HCR/MMSP/2001/09/, 16 January 2002. The Declaration was welcomed by the UN General Assembly A/RES/57/187, para 4 adopted on 18th December 2001.

context it is significant that the UN Security Council Resolution 1456 of Jan 20, 2003 emphasizes that:

> *States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.*

26. Finally, the new trends in forced displacement also pose considerable difficulties to the refugee protection system. They include; climate change, food insecurity, energy demand, population growth etc.

IV. Comments and Observations of AALCO Secretariat

27. The UNHCR, as the primary agency of the United Nations designed to deal with the situation of refugees, has made significant contributions to the protection of refugees and supporting the international system of protection. It has played a central role in responding to the needs of refugees and other displaced peoples all over the world. In the past two decades or so, the international environment in which the UNHCR operates has changed dramatically as has the work it carries out. The number of 'people of concern' to UNHCR has grown, so has the complexity of the problem of forced displacement.

28. The UNHCR has assisted not only traditional refugees but also a broad category of "persons of concern" which included Internally Displaced Persons, Returnees and other victims of conflict. As well as its mandate to protect and assist refugees, UNHCR also has another, lesser known mandate, to protect stateless persons and to prevent and reduce statelessness. It has also found itself operating in new circumstances, particularly in the midst of violent conflict. Consequently, it has operated alongside UN peace keepers and other military forces. These changes illustrate the enhanced roles that both refugee crises and the UNHCR play in contemporary world politics.

29. The UNHCR's statutory mandate has been supplemented through General Assembly resolutions and EXCOM conclusions in a manner that ensures that UNHCR continues to play a key role in the growth and refinement of international refugee law. In addition, UNHCR's contribution to a second source of international law, customary international law relating to refugees, has become increasingly important.

30. Protecting refugees and the search for solutions for their problems continue to be the *raison d'être* of the UNHCR. As in those earlier days, the principles enshrined in the 1951 Refugee Convention remain the foundation of the global protection regime. While some have recently questioned its continuing relevance, the Convention has proven its resilience by providing protection to millions of refugees over six decades. It is the hub upon which the entire global governance system for refugees turns, and we would tamper with it at our peril. As acknowledged in the Declaration of States Parties adopted at the Ministerial Meeting in Geneva in December 2001 and the Agenda for Protection, the

1951 Refugee Convention remains the cornerstone of the international refugee protection regime.

31. It is pertinent to remember here the promise of the adoption of the Agenda for Protection by the UNHCR in 2001. The agenda for protection, which was dubbed by the former High Commissioner of Refugees Ruud Lubbers as representing the "Convention Plus" approach, is all about building on the 1951 Convention. The "plus" concerns the development of special agreements or multilateral arrangements to ensure improved burden sharing, with countries in the North and South working together to find durable solutions for refugees. This includes comprehensive plans of action to deal with mass outflows, and agreements on "secondary movements", whereby the roles and responsibilities of countries of origin, transit, and potential destination are better defined. It also includes agreements aimed at better targeting development assistance. But, as a strategy designed to achive global burden-sharing, it failed to accomplish its goals on account of a number of reasons that included: the failure to address the question of why State Parties to the present refugee regime should commit themselves to burden-sharing.

32. Be that as it may, the international community's commitment to refugee protection is undeniably facing unprecedented pressures.

33. The task of UNHCR in persuading States to cooperate in the pursuit of refugee protection and durable solutions has been hampered by the fact that government's reaction to refugees have always been hostile. Refugees are also being perceived as a burden on local and national economies and have been blamed for increased pressures on social cohesion and national identity. This is something that needs to be challenged.

34. Another vital challenge facing the UNHCR pertains to the exclusionist measures that some Western States have put in place which result in severe undermining of the institution of asylum. Addressing this is of critical importance since the negative attitude adopted and negative measures taken by these States are directly related to the implementation of the 1951 Convention and Protocol.

35. The 1951 Convention has saved the life of millions of people over the years. We hope that the 60th anniversary of this worthy instrument will serve to shore up the international protection regime through the reaffirmation and practical evolution of its principles. However, the fact that the 1951 Convention is inadequate for refugee protection because it is not flexible in the face of what are perceived to be the new refugees; those fleeing for example, from ethnic violence in Bosnia or Kosovo, also needs to be realized. This is because, the definition of refugee as contained in the 1951 Convention remains relatively narrow, covering only people fleeing *individual* persecution by their governments.

36. Apart from that, there are new trends in forced displacement which are challenging for us all. It may be remembered here that the 1951 Convention responded to displacement due to persecution and war. Today, there are many other drivers of displacement that include: population growth, urbanization, climate change, food

insecurity, energy demand and others. As the 1951 Convention has aged, the landscape of international displacement and migration has become increasingly complex, begging questions as to the sufficiency of the definitions and protections provided in the Convention.

37. Even as we celebrate the sixtieth anniversary of the establishment of the UNHCR along with the sixtieth anniversary of the 1951 UN Refugee Convention this year, the above mentioned challenges are only few, albeit many of the critical issues that are crying for creative solutions.

V. Annex

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 3
1 JULY 2011

THE STATUS AND TREATMENT OF REFUGEES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat Document No. AALCO/50/COLOMBO/ 2011/S 3;

Reaffirming the importance of the 1951 Convention relating to the Status of Refugees (the 1951 Convention) together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention of 1969, as the cornerstone of the international system for the protection of refugees;

Welcoming the Sixtieth anniversary of the 1951 Convention and stressing the need to implement its provisions along with the 1967 Protocol, particularly in a manner fully compatible with the object and purpose of these instruments;

Commends the Office of the United Nations High Commissioner for Refugees (UNHCR) for the important contribution which it has made towards the protection of refugees, on the eve of the Sixtieth anniversary of the establishment of the UNHCR;

1. **Deplores** the widespread violations of the principle of non-refoulement and of the rights of refugees in many parts of the world.

2. **Acknowledges** the **desirability** of comprehensive approaches by the international community to the problems of refugees and displaced persons, including addressing root causes, strengthening emergency preparedness and response, providing effective protection and achieving durable solutions.

3. **Calls upon** all States that have not yet done so to ratify/accede to and to implement fully the 1951 Convention relating to the Status of refugees and the 1967 Protocol thereto and other relevant regional instrument as the case may be.

4. **Decides** to place this item on the provisional agenda at its Fifty-First Session.

2. EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES
(*Non-Deliberated)*

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2. EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

I. Introduction

A. Background

1. The agenda item entitled, "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed first on the provisional agenda of the Thirty-Sixth Session at Tehran, 1997, following a reference made by the Government of Islamic Republic of Iran.

2. Thereafter the item had been considered at the successive sessions of the Organization.[1] The Forty-Ninth Annual Session of the Organization (Dar es Salaam, United Republic of Tanzania, 2010) vide resolution AALCO/RES/49/S 6[2] directed the Secretariat "to continue to study legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States". The Resolution also urged upon the Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject.

3. The Secretariat in preparation of the study on this agenda item relies largely upon the materials and other relevant information furnished by the AALCO Member States. Such information provides useful inputs and facilitates the Secretariat in examining and drawing appropriate conclusions on the impact and legality of such extraterritorial application of national legislation, with special reference to sanctions imposed against third parties. The Secretariat acknowledges with gratitude the comments and observations in this regard received from the State of Kuwait, Republic of Korea, Republic of Mauritius and Japan.[3] In this regard, the Secretariat reiterates its request to the Member States to provide it with relevant legislation and other related information on this topic.

[1] It was last considered as a deliberated item at the Forty-Seventh Annual Session (HQ, New Delhi, 2008).
[2] For the full text of Resolution see AALCO, Provisional Summary Record of the Forty-Ninth Annual Session (5-8 August 2010**),** Dar es Salaam, United Republic of Tanzania or visit the AALCO's website www.aalco.int
[3] The text of the views and comments received from these Member States have been reproduced in the Secretariat doc. AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 6 and Yearbook of AALCO, Vol. III (2005), pp. 802-807.

II. Current Developments: Imposition of Sanctions against AALCO Member States

4. This section of the report covers some of the recent sanctions imposed against the AALCO Member States.

A. Extension of Sanctions against Myanmar by the United States of America

5. It may be recalled that the United States of America (USA) had first imposed sanctions against Myanmar in September 1996 by issuing an Executive Order 13047 on 20 May 1997, certifying under the authority of the Foreign Operations, Export Financing, and Related Programs Act, 1997 and the International Emergency Economic Powers Act. This Executive Order prohibits "U.S. persons" from making new investments in Myanmar and facilitation of new investment in Myanmar by foreign persons. On 14 May 2009, the Government of the United States had extended the sanctions on Myanmar for one year which would include the prohibition of new investments.[4]

B. Extension of Sanctions against Syrian Arab Republic by the United States of America

6. In May 2004, the President of the United States of America signed Executive Order 13338 implementing the Syria Accountability and Lebanese Sovereignty Restoration Act which imposes a series of sanctions against Syrian Arab Republic for its alleged support for terrorism, involvement in Lebanon, weapons of mass destruction programs, and the destabilizing role it is playing in Iraq. In continuation to it, on 4 May 2010, the Government of U.S. extended its sanctions against Syrian Arab Republic for its alleged role in supporting terrorist organizations and pursuance of weapons of mass destruction and missile programmes.[5] In retaliation, the Syrian Government had strongly rejected all the allegations and criticized the sanctions imposed and stated that the U.S. action lost its credibility.[6]

C. Extension of Sanctions against the Islamic Republic of Iran by the United States of America

7. It may be recalled that on 29 October 1987, the President of the U.S.A had issued an Executive Order 12613 imposing a new import embargo on Iranian-origin goods and services, on the alleged ground of Islamic Republic of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, pursuant to Section 505 of the International Security and Development Cooperation Act of 1985 ("ISDCA") which gave rise to the Iranian Transactions Regulations, Title 31, Part 560 of the U.S. Code of Federal Regulations (the "ITR").[7]

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[4] http://www.whitehouse.gov/the_press_office/Message-from-the-President-and-Notice-regarding-Burma/
[5] www.guardian.co.uk/world/2010/may/04/barack-obama-extends-sanctions-syria/
[6] http://www.jpost.com/LandedPages/PrintArticle.aspex?id=174756
[7] Details are drawn from: http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml

8. In 1995, the U.S. President issued an Executive Order 12957 prohibiting U.S. involvement with petroleum development in Iran. Further, he signed an Executive Order 12959, pursuant to the International Emergency Economic Powers Act ("IEEPA") as well as the ISDCA, substantially tightening sanctions against Iran. Later in 1997, the President signed Executive Order 13059 by confirming all trade and investment activities with Iran by U.S. persons, wherever located, are prohibited. Further in 2001, the President of the U.S. signed in to law H.R. 1954, the "ILSA Extension Act of 2001". The Act provides for a 5 year extension of the Iran and Libya Sanctions Act with amendments that affect certain of the investment provisions.

9. In September 2010, the Government of the United States of America through an Executive Order 13533 blocked property of certain persons on the allegations of serious human rights abuses by the Government of Iran.[8] Further, in January 2011, the US Treasury Department imposed new sanctions against 22 Iranian companies affiliated with the Islamic Republic of Iran Shipping Lines (IRISL) and two other companies related to Iran's Aerospace Industries Organization (AIO) over its nuclear energy program.[9]

10. Replying to the recent sanctions imposed, Iranian President stated that the sanctions imposed on Iran over its peaceful nuclear energy program are illegal and ineffective. Further, Iran fully cooperated with IAEA and its nuclear program is completely peaceful. He pointed out that dialogue is the only way through which the West can resolve its dispute with Iran.[10] Supporting Iran, Russian Government announced that it could longer support future sanctions against Iran. The Russian Foreign Minister Sergei Lavrov stated that the sanctions imposed on the Islamic Republic of Iran over its nuclear program will undermine cooperation within the Iran Six and UN Security Council aimed at settling the issue.[11] India and the People's Republic of China consistently voiced against such sanctions against Iran in the past. Indian Prime Minister stated that "we don't think sanctions really achieve their objective. Very often, the poor in the affected country suffer more…."[12] Further, the Government of the People's Republic of China has all along held that the Iranian nuclear issue needs to be resolved peacefully through dialogue and negotiations by diplomatic means. This was in the interest of all parties concerned. China was of the view that there is still space for diplomatic efforts and dialogue and consultation are the best option which should not be too readily abandoned. On the Iranian nuclear issue, China had played a responsible role. They stay in communication with relevant parties and would continue to do so.[13]

[8] Federal Register/Vol.75, No. 190/Friday, October 1, 2010/Presidential Documents.
[9] See the US Department of Treasury Website: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20110113.aspx
[10] http://www.presstv.ir/detail/148966.html
[11] http://en.rian.ru/russia/20110215/162615597.html
[12] India Sanctions Against Iran, *Times of India*, 15 April 2010.
[13] Foreign Ministry Spokesperson Qin Gang's Regular Press Conference on March 9, 2010, available at http://www.fmprc.gov.cn/eng/xwfw/s2510/t663005.htm#

III. Consideration of the Ministerial Declaration adopted by the Thirty-Fourth Annual Meeting of the Ministers of Foreign Affairs of Group of 77 (New York, 28 September 2010)

11. The Ministers of Foreign Affairs of the Member States of the Group of 77 and China met at the United Nations Headquarters in New York on 28 September 2010 on the occasion of their Thirty-fourth Annual Meeting to address the development challenges facing developing countries. It had adopted a Declaration which *inter alia* stated on the agenda that:

> "The Ministers firmly rejected the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries, and reiterated the urgent need to eliminate them immediately. They emphasized that such actions not only undermine the principles enshrined in the Charter of the United Nations and international law, but also severely threaten the freedom of trade and investment. They, therefore, called on the international community neither to recognize these measures nor apply them".[14]

IV. Consideration of Aspects Related to the Agenda Item at the XV Summit of the Heads and Government of Non-Aligned Movement (NAM) (Sharm El Sheikh, Arab Republic of Egypt, 11-16 July 2009)

12. The XV Summit of the Heads of State and Government of Non-Aligned Movement (NAM), was held in Sharm El Sheikh, Arab Republic of Egypt, from 11 to 16 July 2009. The Summit was held to address the existing, new and emerging global issues of collective concern and interest to the Movement, with a view to generating the necessary responses and initiatives thereof. In this regard, they reaffirmed and underscored the Movement's abiding faith in and strong commitment to its founding principles, ideals and purposes, particularly in establishing a peaceful and prosperous world and a just and equitable world order as well as to the purposes and principles enshrined in the United Nations Charter.

13. The Heads of State and Government of NAM reaffirmed and underscored the continued relevance and validity of the Movement's principled positions concerning international law,[15] as follows:

> The Heads of State and Government *remained* concern at the unilateral exercise of extra-territorial criminal and civil jurisdiction of national courts not emanating from international treaties and other obligations arising from international law, including international humanitarian law. In this regard, they *condemned* the enactment of politically motivated laws at the national level directed against other States, and *stressed* the negative impact of such measures on the rule of international law as well as on international relations, and *called for* the cessation of all such measures;

[14] Para 69 of the Ministerial Declaration, visit http://www.g77.org/doc/Declaration2010.htm

[15] See, Final Document of the XV Summit of Heads and Government of Non-Aligned Meeting, Arab Republic of Egypt, dated 16 July 2009, NAM 2009/FD/DOC.1

> The Heads of State and Government *reiterated* the need to eliminate unilateral application of economic and trade measures by one State against another that affect the free flow of international trade. They *urged* States that have and continue to apply such laws and measures to refrain from promulgating and applying them in conformity with their obligations under the Charter of the United Nations and international law, which, inter alia, *reaffirm* the freedom of trade and navigation.[16]

14. Recognising the serious danger and threats posed by the actions and measures which seek to undermine international law and international legal instruments, as well as consistent with and guided by the Movement's principled positions thereof, the Heads of State and Government agreed to undertake the following measures, among others:

> Firmly *oppose* the unilateral evaluation and certification of the conduct of States as a means of exerting pressure on Non-Aligned Countries and other developing countries;
>
> Refrain from recognising, adopting or implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on Non-Aligned Countries – threatening their sovereignty and independence, and their freedom of trade and investment – and prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the UN Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States;[17] and in this regard, *oppose and condemn* these measures or laws and their continued application, persevere with efforts to effectively reverse them and *urge* other States to do likewise, as called for by the General Assembly and other UN organs; *request* States applying these measures or laws to revoke them fully and immediately;
>
> Oppose all attempts to introduce new concepts of international law aimed at internationalising certain elements contained in the so-called extra-territorial laws of certain States through multilateral agreements;[18]
>
> Consistent with and guided by the afore-mentioned principled positions and *affirming* the need to promote, defend and preserve these positions, the Heads of State and Government *agreed* to undertake the following measures, among others:
>
> *Oppose* unilateralism and unilaterally imposed measures by certain States – which can lead to the erosion and violation of the UN Charter and international law, the use and threat of use of force, and pressure and coercive measures – as a means to achieving their national policy objectives;

15. The Heads of State and Government reiterated their strong concern at the growing resort to unilateralism and unilaterally imposed measures that undermine the UN Charter and international law, and further reiterated its commitment to promoting, preserving and

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[16] Ibid, Para 17.1 and 17.2

17 These include the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations" adopted by the General Assembly on 24 October 1970.

[18] Ibid 18, Para 18.1, 18.2, and 18.3

strengthening multilateralism and the multilateral decision making process through the UN, by strictly adhering to its Charter and international law, with the aim of creating a just and equitable world order and global democratic governance, and not one based on monopoly by the powerful few.

16. Consistent with and guided by the afore-mentioned principled positions and affirming the need to defend, preserve and promote these positions, the Heads of State and Government agreed to undertake the following measures:

- Continue promoting the rejection of and the adoption of concrete actions against the enforcement of unilateral coercive economic measures at the several multilateral fora where NAM and G-77 are involved.

- Oppose unilateralism and unilaterally imposed measures by certain States – which can lead to the erosion and violation of the UN Charter and international law, the use and threat of use of force, and pressure and coercive measures – as a means to achieving their national policy objectives.

17. The Heads of State and Government reaffirmed that democracy and good governance at the national and international levels, development and respect for all human rights and fundamental freedoms, in particular the right to development, are interdependent and mutually reinforcing. Adoption, for any cause or consideration, of coercive unilateral measures, rules and policies against the developing countries constitute flagrant violations of the basic rights of their populations. It is essential for States to promote efforts to combat extreme poverty and hunger (Millennium Development Goals 1) as well as foster participation by the poorest members of society in decision-making processes.

18. Finally, the Heads of State and Government reaffirmed the objective of making the right to development a reality for everyone as set out in the UN Millennium Declaration, and give due consideration to the negative impact of unilateral economic and financial coercive measures on the realization of the right to development.

V. Consideration of the Resolution on the "Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba", at the Sixty-Fifth Session of the United Nations General Assembly

19. On 26 October 2010, the United Nations General Assembly voted in favour of ending the United States economic, commercial and financial embargo against the island nation, which they said had crippled its development and whose justification was morally indefensible. The General Assembly - by a recorded vote of 187 in favour to 2 against (United States, Israel), with 3 abstentions (Marshall Islands, Federated States of Micronesia, Palau) - adopted a resolution[19] for the nineteenth consecutive year, calling for an end to the embargo and reaffirming the sovereign equality of States, non-

[19] A/RES/65/6 dated 23 November 2010.

intervention in their internal affairs and freedom of trade and navigation as paramount to the conduct of international affairs.[20]

20. The General Assembly expressed concern at the continued application of the 1996 "Helms-Burton Act" - which extended the embargo's reach to countries trading with Cuba - and whose extraterritorial effects impacted both State sovereignty and the legitimate interests of entities or persons under their jurisdiction. It reiterated the call on States to refrain from applying such measures, in line with their obligations under the United Nations Charter, urging those that had applied such laws to repeal or invalidate them as soon as possible.

21. Further, the resolution urged the Member States to put an end to the trade embargo on Cuba, which, among other things, called on all States to refrain from promulgating laws in breach of freedom of trade and navigation, and urged Governments that had such laws and measures to repeal, or invalidate them. It also requested the Secretary-General to report in the light of the purposes and principles of the Charter and international law and to submit it to the General Assembly at its sixty-sixth session.

A. Statements of AALCO Member States

22. The Representative of **Republic of Yemen**, on behalf of the "Group of 77" developing countries and China, said his delegation had always been firmly against the embargo and would like to reiterate once again its long-standing position on that important matter. The Group called upon the Government of the United States to end the economic, commercial and financial embargo against Cuba which, in addition to being unilateral and contrary to the United Nations Charter and international law, as well as the principle of neighbourliness, caused huge material losses and economic damage to the people of Cuba. At the Group's most recent annual meeting, its Ministers for Foreign Affairs firmly rejected the imposition of laws and regulations with extraterritorial impacts and all other forms of coercive economic measures, including unilateral sanctions against developing countries, and reiterated the urgent need to eliminate them immediately.

23. Such actions also severely threatened the freedom of trade and investment, and the international community should neither recognize those measures nor apply them. Sadly, communications between Governments and the United Nations on the matter unequivocally showed that the embargo remained largely unchanged and continued to impose severe economic and financial restrictions on Cuba, he said. The deepening impact of the global economic crisis on Cuba and the continued United States embargo would contribute to further aggravate the hardships for the people of Cuba. He called on the United States to heed the increasing calls by the international community to bring an end to the five-decade-old embargo and fully adhere to principles of mutual respect and non-interference in internal affairs of a sisterly country.

[20] UN Press Release, "As Speakers Denounce Use of 'Cold-War Era Tools of Coercion' General Assembly Again Calls for End to United States Economic, Trade Embargo against Cuba", GA/11015 dated 26 October 2010.

24. The embargo frustrated efforts towards achievement of the Millennium Development Goals and negatively affected regional cooperation in that area, he said. The peaceful co-existence among nations required an adherence by all to the cardinal principles of the Charter and the peaceful conduct or relations among nations. The Group of 77 and China would again fully support the draft resolution against the embargo and urged all Member States to do so as well, he said.

25. The Representative of **Arab Republic of Egypt** speaking on behalf of the Non-Aligned Movement, reaffirmed his unwavering commitment to defend, uphold and promote the United Nations Charter and the international laws that constituted the very essence of the multilateralism designed work to maintain peace and security, achieve economic sustainability and assure human rights. To that end, he renewed his commitment to Cuba, noting that it was disturbing that unilateral measures or laws continued to prevent countries from exercising their right to decide their own political system. "We can only firmly reject such violations of multilateralism", he said, and appealed to all States to recognize those efforts.

26. This year's central theme of the Assembly's work - reaffirm the central role of the United Nations - could only happen if all countries respected the rules of multilateralism in addition to sovereignty, good neighbourliness and mutual respect, he said. The United States embargo against Cuba undoubtedly ran counter to those principles and raised many questions, particularly, how could a country raise barriers to one of its neighbours when it promoted free trade and export; and how could it impose limits on the rights of people to travel when it advocated freedom of movement. Such contradictions were bewildering and must be promptly rectified, especially after some 187 Member States expressed there support last year by voting in favour of the resolution.

27. At a 2009 summit in Sharm el-Sheikh, Egypt, Ministers had adopted a declaration reflecting the Non-Aligned Movement's position. The evidence on the ground in Cuba was a stark reminder of what the embargo has done to the country. The repercussions not only affected the banking, trade, tourism, and other industries, but had negatively impacted health, nutrition, water quality, education and culture. In closing, he said the Non-aligned Movement reaffirmed its concerns and backed the argument in favour of prompt elimination of those unjustified sanctions. Year after year, Assembly took actions to swiftly lift embargo against Cuba, however, "maintaining the embargo seems to be part of an era long gone", he said. The United States should match its statements about openness with actions welcomed by international community. The Non-aligned Movement would continue to send that message to the United Nations. In Spanish, he said: "End the blockade now", and then, reverting to English, "This time our call will not go unheard".

28. The Representative of **People's Republic of China** welcoming the report of the Secretary-General that was before the Assembly, said that for 18 consecutive years, the world body had adopted resolutions by an overwhelming majority, urging all countries to repeal or invalidate all laws and measures with extraterritorial effect that compromised the sovereignty of other States, undermined the legitimate rights and interests of entities

and individuals under jurisdiction of those States, and affected freedom of trade and navigation.

29. Further, they regretted for those resolutions had not been effectively implemented and the embargo against Cuba had not been lifted. That fact constituted a serious violation of the purposes and principles of the Charter, he continued. China pursued an independent foreign policy of peace and was committed to developing friendly relations with all countries on the basis of the five principles of peaceful coexistence. Moreover, experience showed that sanctions usually failed to achieve their expected results, and instead, ended up victimizing civilians, in particular, the most vulnerable groups, such as women and children.

30. Stating that multilateralism and democratization of international relations had "taken root in people's hearts", while openness, cooperation, mutual benefit and "win-win progress" had become the consensus of the international community, the Chinese Government urged the country concerned to terminate, as soon as possible, its economic, commercial and financial embargo against Cuba. It maintained that all countries should develop their relations in compliance with the purposes and principles of the Charter.

31. The Representative of **Islamic Republic of Iran** said the economic blockade and sanctions against Cuba were illegitimate because they deprived the people of their economic and social nature. Historically, sanctions were a tool used, not to spur international peace and security, but to impose hegemonic intentions of big Powers against other nations and populations. Sanctions were "deplorable", he said, and had a dramatic impact on the rights recognized in the International Covenant on Economic, Social and Cultural Rights, causing significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardized the quality of food and water, interfered with basic health and education systems and undermined the right to work in a country. Notwithstanding the harm that sanctions bore, they had proved to be futile, and do not subscribe to the provisions of the Charter, he said.

32. The imposition of unilateral blockades and extraterritorial application of domestic laws by a State, which "happens to be the United States of America", against others affected, not only the population under sanction, but the interest of third parties. During the last 19 years, the Assembly had witnessed the passage of 18 resolutions to end the sanctions against Cuba. The economic, financial and commercial embargo against Cuba served no purpose other than inflicting hardships and suffering, and ran counter to international law and the Charter. Therefore, Iran strongly rejected and remained opposed to the unilateral economic and trade measures against one country. It would do everything to effectively thwart the sanctions and urged other States to do likewise. In closing, he emphasized the urgent need to end such measures against Cuba and other developing countries, noting that regardless of whom they were imposed by, or under what pretext, "sanctions remain illegitimate, futile and misguidedly punitive."

33. The Representative of **South Africa** said the blockade against Cuba violated international law and its imposition showed disregard for the noble principles enshrined

in the United Nations Charter. Indeed, the international community had regularly opposed the embargo, notably with its vote in the Assembly last year of 187 to 3, which was an outright rejection of that unilateral act. South Africa supported today's resolution, as such the embargo had caused untold suffering to Cubans. Aligning with the Non-Aligned Movement and Group of 77 developing countries, he said South Africa, together with its region, had been humbled by Cuba's historic role played in its liberation. True to their commitment to solidarity, Cubans had not stood by to watch while others were being oppressed, and for that reason, "we owe it to Cuba and its people to join the progressive forces of the world and unequivocally condemn the continued illegal embargo".

34. In repeatedly expressing its opposition to the embargo, South Africa had been guided by the basic norms of international law, he explained, and the need to eliminate punitive economic measures as a means of political and economic coercion. The embargo violated the sovereign equality of States. Despite the embargo, Cubans had "extended a hand of friendship" to others around the world, especially in the areas of health, education and biotechnology, and notably in Africa. South Africa and Cuba had maintained longstanding cordial relations and the South Africa-Cuba Joint Consultative Mechanism was a strategic platform for expressing such strong bilateral ties. The extremely harsh global financial crisis had only worsened Cubans' fate and stifled their outstanding contribution to the economic and social development of the poor. He urged taking meaningful steps to free them from the devastating impacts of the embargo and for the United States to end its unilateral isolation of that country.

35. The Representative of **Indonesia** said although it was unilaterally imposed, the United States embargo on Cuba had also impacted the economic and commercial relations of third countries. Much had changed since the initial imposition of the embargo; the world of 2010 was very different from that of 1961, as witnessed when nations had opted to work together to overcome the impact of recent crises on the global economy. "This testifies to the fact that globalization has created the conditions for true global solidarity and partnership among the community of nations. The embargo against Cuba runs contrary to that spirit of unity and solidarity that is taking root in the world today," he said. From perspectives of the United Nations Charter and international law, the embargo lacked fairness and respect for the equality that should exist between sovereign States, he said.

36. "Instead of dialogue to resolve differences, what we have is an unwanted standoff that does not allow for an exchange of views to normalize relations," he said. Not only do political complications result from the embargo, but economic commercial and financial hardships it caused could hardly be justified on humanitarian grounds, he said. Some small meaningful changes had occurred in recent times, such as the easing of travel restrictions and removal of obstacles to transfer remittances, but the time was right for relations between the two main parties to be transformed through constructive engagement. "Lifting the embargo would be in keeping with the spirit of the times," he said. It would demonstrate unambiguous respect for the principle of non-intervention and

Cuba would then be able to exercise its right to develop unhindered, while tensions between the two nations would dissolve, he said.

37. The Representative of **India** recalled it was the nineteenth year that the Assembly was deliberating the economic, commercial and financial embargo against Cuba. Time and again, it had rejected the imposition of laws and regulations with "extraterritorial effects" on the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation. The Assembly's resolutions remained unimplemented, which undermined the credibility of "this august house" and weakened multilateralism. The embargo's extraterritorial effects had denied Cubans access to the United States market, investment, technology and financial services, among other things.

38. Indeed, Cuba had had to pay enormous extra costs in the last five decades for sourcing products, technology and services from third countries thousands of kilometres away, he said. Cuba's efforts to provide health assistance to developing countries had borne the brunt of the embargo, making it yet another negative extraterritorial impact of the embargo. The financial, food and energy crises had only made the embargo's impacts more acute. The United States continued to be a major source of food imports for Cuba, insofar as permitted by the United States Trade Sanctions Reform and Export Enhancement Act, and the lifting of travel restrictions would bring immense benefits to Cuban tourism. Congressional efforts to relax or lift the embargo, and the substantial interest in the business sector for unhindered access to the Cuban market, lent further credence to the Assembly's annual resolutions.

39. The Representative of **Ghana** said that he took the floor of the Assembly to express his strong solidarity, which had been demonstrated by the international community year after year, to call for the end of restrictions against a Member State by a Member State. Ghana remained committed to the principles enshrined in the Charter and international law, and therefore, steadfastly refrained from promulgating and enforcing laws whose extraterritorial effects adversely affected the sovereignty of other states, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation, he said.

40. He went on to underscore the excellent bilateral relations shared by Ghana and Cuba, which was based on their mutual goals and responsibilities towards a just and equitable world in the spirit of cooperation and multilateralism. Ghana's longstanding cooperation with Cuba, most notably in the areas of health, education, and sports, continued to expand, he said. For example, an estimated 200 Cuban medical professionals currently worked in hospitals across his country, many of whom offered teaching facilities in some Ghanaian universities. Furthermore, Cuba continued to host educational scholarships to Ghanaian students, in order to study sectors that were deemed critical for the development agenda pursued by the Ghana Government. In closing, he stressed the debilitating toll that the 50-year-old embargo had taken on the well-being of the ordinary people of Cuba, including its women and children. To that end, in the spirit

of “fellow feeling for our brothers in Cuba”, he called for the United States to end its embargo.

B. Explanation after Vote on the Resolution

41. The Representative of **Myanmar** said the hardship and suffering caused by the embargo on Cuba were overwhelmingly called to end. His delegation believed it was the abject right of all States to pick their own social systems and their methods of development. The United States’ unilateral embargo against Cuba was against United Nations charter and contrary to international law, and for that reason, as in previous years, Myanmar voted in favour of the resolution.

42. The Representative of the **United Republic of Tanzania**, in a statement made after voting in favour of the resolution, said that the General Assembly had adopted successive texts calling on States to abide by the United Nations Charter and norms of international law. Such resolutions had also urged them to refrain from enacting laws and taking measures that were damaging to the legitimate rights and interests of third States. United Republic of Tanzania regretted that the “just appeal” of the international community had not always been heeded and that related General Assembly resolutions had yet to be implemented.

43. The economic, commercial and financial embargo imposed by the United States on Cuba had created huge difficulties for the Cuban people, said the representative, including by inflicting “enormous suffering” on Cuban women and children. The measures had also impeded trade exchanges between Cuba and several other counties, as well as frustrating efforts toward the attainment of the Millennium Development Goals in several areas. While United Republic of Tanzania enjoyed healthy and sound relations with the people and Government of Cuba, said the representative, it believed that cooperation between the two countries would flourish further if the blockade would be lifted. Similarly, United Republic of Tanzania enjoyed “excellent relations and a robust development partnership” with the United States, but nonetheless urged that country to listen to “repeated and increasing” calls by the international community to bring an end to the Embargo.

44. The Representative of **Libyan Arab Jamhiriya** said that the imposition of sanctions and embargoes had never been appropriate measures in disputes between States — they sent a message of force and reflected authoritarianism and arrogance that threatened peace. His own country had been subjected to a blockade this past decade and knew well “the nefarious effects” such measures had on the people. Unilateral measures ran counter to principles of international law and only aggravated human suffering, worsened disputes and fostered strife. He called on the United States to lift the blockade, saying his country had voted in support of the resolution because imposition of sanctions was not the best means to resolve disputes.

45. The Representative from **Syrian Arab Republic** said that the unilateral embargo imposed by the United States against Cuba ran counter to the sacrosanct nature of the

principles enshrined by the United Nations Charter and international law. Rather, the 50-year-old embargo had a set a precedent for dealing with countries outside the framework of international laws and had exposed the Cuban people to economic and social hardship. After 19 consecutive years of unilateral support of the Assembly, the economic, financial and commercial embargo was still in effect. The support of the resolution this year by 187 Member States was quite significant, he said, and emphasized that the majority of the international community supported ending the embargo and rejected the "Helms Burton Act", which contravenes international law. However, he said Israel's vote against the resolution had demonstrated that it had no regard for international law and was viewed as a desperate attempt to justify its embargo against Gaza, which was also internationally rejected. His delegation voted in favour of the draft resolution.

46. The Representative of **Sudan** said her delegation voted in favour of the resolution and congratulated Cuba's foreign minister on the overwhelming support it achieved. Sovereignty, non-interference and freedom of trade were enshrined in a number of international agreements, and the embargo had negative results that extended beyond borders. The government of Sudan followed a policy of respect for international law and non-interference on others, thus condemned political and economic sanctions on developing countries, which ran against the United Nations Charter and prevented sustainable development. Sanctions also negatively affected the living standard of the Sudanese people and prevented the Government's efforts towards elimination of poverty, attainment in human development and health. They had affected all parts of Sudan, including the humanitarian situation in Darfur which had been exacerbated, she said.

47. The Representative of **Nigeria** thanked the Secretary-General for his report regarding the economic, commercial and financial embargo imposed by the United States on Cuba. Nigeria, like the "overwhelming majority" of the international community," opposed the embargo and considered that unilateral measures applied extraterritorially in a third State were contrary to the letter and spirit of the United Nations Charter.

48. However, it welcomed the decision taken in 2009 by the United States to remove a number of restrictions to travel to Cuba as well as the transfer of money and postal orders to Cuba from the United States. He said that Nigeria maintained friendly relations with all states and did not favour unilateral punitive measures to settle political disputes. Consequently, it reiterated its position in favour of lifting the "longest-lasting trade embargo in human history."

49. Welcoming the adoption of the draft resolution, the Representative of the **Democratic People's Republic of Korea** expressed his delegation's full support for solidarity with the Government and people of Cuba "struggling for justice and social progress." Democratic People's Republic of Korea had adhered to its "constant position" in opposing all forms of interference, threat of use of force and sanctions against sovereign States. Since the adoption of General Assembly resolution 64/6 in 2009, and despite the strong demand and expectations of the majority of United Nations Member

States, no sign of change in the policy of the United States Embargo against Cuba had been seen.

50. The United States embargo against Cuba showed that the "routinely uttered" commitment by the United States to the implementation of the outcomes of major United Nations summits and conferences was "merely lip-service" and that, in reality, its actions impeded the efforts of other countries for socio-economic development. The international community demanded the termination of the embargo, which, he said constituted "a grave violation of the principles of sovereignty, territorial integrity and non-interference as enshrined in the [Charter] and relevant international laws." The Democratic People's Republic of Korea in particular was of the view that the embargo was "illegitimate and inhumane;" constituted "flagrant, massive and systematic violations of the rights of an entire people;" and was "undemocratic" as it was purported to "overthrow a sovereign State."

51. Thus strongly denouncing the persistent United States Embargo against Cuba, the Democratic People's Republic of Korea would also strongly urged the United States to heed to the demand of the international community, observe all the relevant General Assembly resolutions and take measures to lift the economic, commercial and financial Embargo against Cuba immediately and without any condition.

VI. Comments and Observations of the AALCO Secretariat

52. It may be recalled that in the XV Summit of the Heads and Government of Non-Aligned Movement, 2009 held in Sharm el Sheikh, Arab Republic of Egypt, the Summit called upon the NAM Members to refrain from recognizing, adopting or implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on the countries – threatening their sovereignty and independence, and their freedom of trade and investment – and prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the UN Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States

53. Therefore, any legislation of a State to impose unilateral extraterritorial sanctions blatantly negates the principles enshrined in the Charter of the United Nations and the rules of international law. In addition to contravening the relevant provisions of the Charter of the United Nations, that attitude challenges freedom of trade, navigation and movement of capital, which has a considerable impact on the economic and human development of targeted States. It is also to be noted that the imposition of extraterritorial measures is gross violation of the principles of sovereign equality of States and non-intervention in the internal affairs of another State and the right to development.

54. Every State has an inalienable right to define its own model of the development of society. Any unilateral attempts by States to change the internal political system of other States using military, political, economic or other measures of pressure are unacceptable.

55. The unilateral sanctions have a particularly adverse effect on the sovereignty of other nations owing to its extraterritorial nature. Unfortunately, the target of sanctions imposed by the United States of America happens to be developing countries, particularly from Asia and Africa. Many of AALCO Member States have been and are prime targets of such unilateral imposition of sanctions having extraterritorial effects in the past and present times. These practices tend to have a very demoralizing effect on the innocent people of those countries who feel alienated and discriminated against in the fields of trade and economic relations particularly.

56. The States should reject application of such unilateral measures as tools for political or economic pressure against any country, because of the negative effects on the realization of all human rights of vast sector of their populations, *inter alia*, children, women, the elderly, and disabled and ill people; reaffirmed, in the context, the right of peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

57. The discussions at the UN General Assembly pertaining to the economic, commercial and financial embargo imposed by the Government of United States against Cuba provides an opportunity to elicit views of AALCO Member States on the subject item. The deliberation of the above said agenda shows clearly that the AALCO Member States are constantly opposing the unilateral imposition of sanctions.

58. AALCO has been consistently considering the implications of the "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties", since 1997. The Secretariat studies on the agenda item and the deliberations at successive sessions of the Organization affirm that such legislations apart from being at variance with the various rules and principles of international law and disrupts economic cooperation and commercial relations of the target States with other States. Therefore, it is the duty of free and independent States to continue to oppose the illegal extraterritorial application of national legislations of other States.

VII. Annex

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 6
1 JULY 2011

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat Document No. AALCO/49/COLOMBO/2011/S 6;

Recalling its Resolutions RES/36/6 of 7 May 1997, RES/37/5 of 18 April 1998, RES/38/6 of 23 April 1999, RES/39/5 of 23 February 2000, RES/40/5 of 24 June 2001, RES/41/6 of 19 July 2002, RES/42/6 of 20 June 2003, RES/43/6 of 25 June 2004, RES/44/6 of 1 July 2005, RES/45/S 6 of 8 April 2006, RES/46/S 7 of 6 July 2007, RES/47/S 6 of 4 July 2008, RES/48/S 6 of 20 August 2009 and RES/49/S 6 of 8 August 2010 on the subject;

Recognizing the significance and implications of the above subject;

Expressing its concern that the imposition of unilateral sanctions on third parties is not in conformity with the Charter of the United Nations and the general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development;

Declaring condemnation as regards the imposition against the AALCO Member States with additional and new series of sanctions against Union of Myanmar, Syrian Arab Republic and Islamic Republic of Iran by the Government of the United States of America;

Being aware that extraterritorial application of national legislation in an increasingly interdependent world retards the progress of the Sanctioned State and impedes the establishment of an equitable, multilateral, non-discriminatory rule-based trading regime;

Reaffirming the importance of adherence to the rules of international law in international relations:

1. **Directs** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States.

2. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject.

3. **Decides** to place this item on the provisional agenda of the Fifty-First Annual Session.

3. INTERNATIONAL TERRORISM

INTERNATIONAL TERRORISM
(Non-Deliberated)

CONTENTS

3. INTERNATIONAL TERRORISM

I. Introduction

A. Background

1. The Charter of the United Nations sets out the purposes of the Organization, which include the maintenance of international peace and security, to take collective measures to prevent threats to peace and suppress aggression and to promote human rights and economic development. As an assault on the principles of law and order, human rights and the peaceful settlement of disputes, terrorism runs counter to the principles and purposes that define the United Nations. The United Nations has been taking concrete steps to address the threat of terrorism, helping Member States to counter this scourge.

2. Several international legal instruments were adopted addressing certain specific acts of terrorism, which are also known as Sectoral Conventions.[1] However, the adoption of the historic Declaration on "Measures to Eliminate International Terrorism" by the General Assembly at its 49th Session on 9th December 1994[2] gave impetus to the active consideration of the issues involved. At its 51st Session, the General Assembly adopted a Supplement to its 1994 Declaration and established an Ad Hoc Committee[3] with the mandate to elaborate an International Convention for the Suppression of Terrorist Bombings and another one on Suppression of Acts of Nuclear Terrorism. Following that mandate, the Ad Hoc Committee met twice during the year 1997 and completed its work

[1] These conventions are: 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft; signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969). 2. Convention for the Suppression of Unlawful Seizure of Aircraft; signed at The Hague on 16 December 1970 (entered into force on 14 October 1971). 3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 23 September 1971 (entered into force on 26 January 1973). 4. Convention on the Prevention and punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977). 5. International Convention against the Taking of Hostages; adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983). 6. Convention on the physical Protection of Nuclear Material; signed at Vienna on 3 march 1980 (entered into force on 8 February 1987). 7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). 8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 10. Convention on the Marking of Plastic Explosives for the Purpose of Detection; signed at Montreal on 1 March 1991 (entered into force on 21 June 1998). 11. International Convention for the Suppression of Terrorist Bombings; adopted by the General Assembly of the United Nations on 15 December 1997 (entered into force on 23 May 2001). 12. International Convention for the Suppression of the Financing of Terrorism; adopted by the General Assembly of the United Nations on 9 December 1999 (entered into force on 10 April 2002). 13. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005.

[2] A/RES/49/60.

[3] A/RES/51/210.

on the International Convention for the Suppression of Terrorist Bombings, which later was adopted by the General Assembly at its 52nd Session on 15 December 1997.[4] In the meantime, at its 53rd Session, the General Assembly initiated consideration of a draft Convention for the Suppression of Financing of Terrorism taking as a basis for discussion the draft text submitted by the delegation of France to the Sixth Committee. The Convention was adopted by the General Assembly on 9th December 1999[5]. The matters concerning elaboration of an International Convention for the Suppression of Acts of Nuclear Terrorism have been discussed extensively in the subsequent meetings of the Ad Hoc Committee and its Working Group. The UN General Assembly adopted the Convention on 13 April 2005.

3. At itys 53rd Session, the General Assembly decided that the negotiations on the draft Comprehensive Convention on International Terrorism based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In addition, it would also take up the question of convening a high level conference under the auspices of the United Nations to address these issues. Pursuant to that mandate, a Working Group of the Sixth Committee in its meeting held from 25th September to 6th October 2000 considered the draft Comprehensive Convention on International Terrorism as proposed by India. Since then the matter has been under active consideration of the Ad Hoc Committee and the Sixth Committee of the UN General Assembly.

4. The item entitled "International Terrorism" was placed on the agenda of the AALCO's Fortieth Session held in New Delhi from 20-24 June 2001, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the comprehensive convention on international terrorism. The successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee of negotiations related to the drafting of a comprehensive international convention to combat terrorism; and requested the Secretariat to carry out, an in-depth study on this topic. The Centre for Research and Training (CRT) has brought *A Preliminary Study on the Concept of International Terrorism* in the Year 2006.

II. Ad Hoc Committee on International Terrorism

A. Background

5. In 1996, the General Assembly, in resolution 51/210 of 17 December, decided to establish an Ad Hoc Committee to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism. This mandate continues

[4] A/RES/52/164.
[5] A/RES/54/109.

to be renewed and revised on an annual basis by the General Assembly in its resolutions on the topic of measures to eliminate international terrorism.

6. The Ad Hoc Committee's mandate is further framed by the following two declarations adopted by the General Assembly:

- the Declaration on *Measures to Eliminate International Terrorism, Res. 49/60 of 9 December 1994*; and
- the Declaration to Supplement the 1994 Declaration on *Measures to Eliminate International Terrorism, Res. 51/210 of 17 December 1996*.

B. Ad Hoc Committee's work

7. Since its establishment, the Ad Hoc Committee has negotiated several texts resulting in the adoption of three treaties:

- the *International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly in resolution 52/164 of 15 December 1997*;
- the *International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly in resolution 54/109 of 9 December 1999*; and
- the *International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly in resolution 59/290 of 13 April 2005*.

By the end of 2000, work had begun on a draft comprehensive convention on international terrorism.

C. Current Mandate of the Ad Hoc Committee

8. Under the terms of General Assembly resolution 65/34 adopted on 6 December 2010 (operative paragraph 23), the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and shall continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

D. The Fifteenth Session of the Ad Hoc Committee held at the United Nations Headquarters from 11 to 15 April 2011

9. The Fourteenth Session of the Ad Hoc Committee[6] held three plenary meetings: the 44th and 45th on 12 April and the 46th on 16 April 2010. At the 44th meeting, the Ad Hoc Committee adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the 44th and 45th meetings, the Committee held a general exchange of views on the draft comprehensive convention and on the question of convening a high-level conference. The informal consultations regarding the draft comprehensive convention on international terrorism were held on 12 and 13 April and informal discussions were held on 12, 13 and 14 April.

[6] A/65/37.

10. On 12 and 16 April, the Coordinator of the draft convention, Maria Telalian, made statements briefing delegations on the informal contacts held intersessionally on 9 April 2010 and during the current session, respectively. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 13 April discussions. At the 46th meeting, on 16 April, the Ad Hoc Committee adopted the report on its fourteenth session.

11. At its 46th meeting, on 16 April, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the sixty-fifth session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high level conference under the auspices of the United Nations.

12. The Fifteenth Session of the Ad Hoc Committee was held at the United Nations Headquarters from 11 to 15 April 2011.

III. Developments in Counter Terrorism Committee (CTC)

A. Background

13. The Counter-Terrorism Committee (CTC) derives its mandate from Security Council resolution 1373 (2001), which was adopted unanimously on 28 September 2001. The Committee is monitoring the implementation of its anti-terrorism mandates and it is made up of all 15 members of the Security Council. The Committee monitors the implementation of resolution 1373 (2001) by all States and tries to increase the capability of States to fight terrorism. The CTC is charged with ensuring every State's compliance with Council requirements to halt terrorist activity, and with identifying weakness in state's capabilities to do so. For States with deficiencies in legislation, funds, or personnel, the CTC is supposed to help them remedy their deficiencies and upgrade their capacity. However, where the Committee concludes that the deficiencies are in political will, it will leave it to the Security Council to decide what measures to take to bring such determinedly non-compliant States into compliance with the 1373 mandates.

14. Seeking to revitalize the Committee's work, in 2004 the Security Council adopted resolution 1535, creating the Counter-Terrorism Committee Executive Directorate (CTED) to provide the CTC with expert advice on all areas covered by resolution 1373. CTED was established also with the aim of facilitating technical assistance to countries, as well as promoting closer cooperation and coordination both within the UN system of organizations and among regional and intergovernmental bodies. During the September 2005 World Summit at the United Nations, the Security Council – meeting at the level of Heads of States or Government for just the third time in its history – adopted resolution 1624 concerning incitement to commit acts of terrorism. The resolution also stressed the obligations of countries to comply with international human rights laws.

B. CTC adopts Plan of Action for the Implementation of Resolution 1624

15. The Counter-Terrorism Committee (CTC) adopted on 31 March 2011, a Plan of Action to assist Member States in the implementation of Security Council resolution 1624 (2005) on terrorist incitement and violent extremism. Resolution 1624 (2005) pertains to incitement to commit acts of terrorism, calling on UN Member States to prohibit it by law, prevent such conduct and deny safe haven to anyone "with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct."

16. The Plan of Action presented to the CTC by its Executive Directorate (CTED) calls for the development of comprehensive national counter-terrorism strategies to counter and prevent incitement to commit terrorist acts. Considering that the Internet and other technologies have been used to incite and recruit people, the Plan of Action emphasizes the importance of identifying effective measures to prevent terrorists from spreading their violent messages. CTED will also continue to collect data on good practices, codes and standards with a view to sharing them with Member States.

17. At the request of the Security Council, CTED will publish in December 2011 a global survey outlining strengths and weaknesses Member States have in implementing resolution 1624. The survey will present general trends and assess progress, which can then translate into technical assistance for States in need of support. At least two regional workshops will be organized this year to raise awareness of the provisions of the resolution and gather information for the global survey.

18. An open dialogue with Member States and engagement with partner organizations are also key elements of the Plan of Action. Communities need to be involved in the process to counter intolerance and extremism, as well. Civil society, academic institutions and the media can contribute to the fight against terrorism.

IV. Deliberations on the Comprehensive Convention on International Terrorism at the Sixth Committee of UN General Assembly at its Sixty-Fifth Session (2010)

A. Report of the Working Group

19. Pursuant to General Assembly resolution 64/118 of 16 December 2009 and upon the recommendation of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, the Sixth Committee decided, at its 1st meeting, on 4 October 2010, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to continue to discuss the item included in its agenda by the Assembly in its resolution 54/110 of 9 December 1999, in which the Assembly addressed the question of convening a high-level conference under the auspices of the United Nations. At the same meeting, the Sixth Committee elected Mr. Rohan Perera (Sri Lanka) as Chair of the Working Group. It also decided to open the Working Group to all States Members of the United Nations or

members of the specialized agencies or of the International Atomic Energy Agency. In keeping with its established practice, the Working Group decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair during the meetings of the Working Group.

20. The Working Group held two meetings, on 18 October and on 2 November 2010. It also held informal consultations on 20 and 21 October. At its 1st meeting, on 18 October, the Working Group adopted its work programme and decided to proceed with discussions on the outstanding issues relating to the draft comprehensive convention on international terrorism and, thereafter, consider the question of convening a high-level conference under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Chair, together with the Coordinator of the draft comprehensive convention, Ms. Maria Telalian, also held several rounds of bilateral contacts with interested delegations on the outstanding issues relating to the draft comprehensive convention. Annex I of the report contains the texts of the preamble and articles 1, 2 and 4 to 27 of the draft comprehensive convention, prepared by the Friends of the Chair, incorporating the various texts contained in annexes I, II and III to the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 at its sixth session (A/57/37), for discussion, taking into account developments in recent years. Annex II of the report contains texts of written proposals in relation to the outstanding issues surrounding the draft comprehensive convention. At its 2nd meeting, on 2 November, the Working Group received a report on the results of the bilateral contacts held during the current session. Annex III of the report contains an informal summary of the exchange of views during the meetings of the Working Group and its informal consultations. The informal summary is for reference purposes only and not an official record of the proceedings. At its 2nd meeting, on 2 November 2010, the Working Group decided to refer the consideration of the present report to the Sixth Committee.

B. Consideration at the Sixty-Fifth Session of the UN General Assembly

21. In their general comments, delegations stressed that terrorism was one of the most serious threats to worldwide peace and security, with some highlighting that it undermined democracy, peace, freedom and human rights. In that regard, delegations reiterated their firm condemnation of terrorism in all its forms and manifestations and their commitment to contribute to the international fight against terrorism. It was underlined that no cause could justify terrorism, and some delegations stressed that it should not be associated with any religion, culture, ethnicity, race, nationality or civilization. Views were also expressed that counter-terrorism policies must strike a balance between security considerations and respect for human rights values. Thus, delegations underscored the need for the respect for the rule of law in the context of the fight against terrorism, in strict observance of the Charter of the United Nations and international law, including human rights, humanitarian and refugee law.

22. Recognizing the central coordinating role of the United Nations in combating terrorism, States were called upon to fully implement all Security Council and General

Assembly resolutions on terrorism, singling out in particular Security Council resolutions 1267 (1999), 1373 (2001) and 1540 (2004), as well as the work of the sanctions committees established by these resolutions. Reference was also made by several delegations to the Statement by the President of the Security Council on 27 September 2010. Moreover, several delegations commended the appointment of the Ombudsperson pursuant to Security Council resolution 1904 (2009) and stressed the importance of further improvements to the listing and delisting procedures. The need to consider the impact of the reporting procedures on States was also mentioned by some delegations.

23. Delegations expressed their continued support for and commitment to the United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288) and its four pillars, and welcomed the recent second biennial review of its implementation. In this respect, it was emphasized that it was important to implement the Strategy as it constitutes a core document and strategic framework of the international community in fighting terrorism. It was also pointed out that the four pillars of the Strategy needed to be implemented without selectivity. Some delegations noted that the Strategy was a living document which needed to be updated regularly. The institutionalization of the Counter-Terrorism Implementation Task Force was also welcomed, and, while underscoring the primary responsibility of States to implement the Strategy, support was expressed for the role of the Task Force in enhancing coordination and coherence of counter-terrorism efforts of the United Nations system and its intention to conduct regular briefings. Several delegations stressed the importance of adequate funding for the Task Force. Furthermore, several delegations stressed that the fight against terrorism included the need to give proper support and protection for the victims of terrorist attacks.

24. Delegations emphasized that cooperation at the international, regional and sub-regional levels was essential in combating terrorism. Highlighting the crucial role played and the useful work done by the United Nations Office on Drugs and Crime (UNODC) and the Counter-Terrorism Committee Executive Directorate (CTED), some delegations stressed the importance of capacity-building measures and technical assistance. Several delegations also mentioned the importance of developing partnerships, including exchanging information, among States, civil society and the private sector in the field of counter-terrorism.

25. Furthermore, a number of delegations noted that the complex challenge posed by terrorism necessitated a comprehensive response. In this regard, they alluded to the need to address the root causes of terrorism and to eliminate the conditions conducive to its spread, as well as to address the dangers and destabilizing effects of State terrorism. Several delegations also underscored the importance of dialogue and interaction among various religions, cultures and civilizations. Such approaches would broaden mutual understanding and foster a culture of tolerance.

26. Some delegations pointed to the need for a clear definition of terrorism and echoed the need to distinguish it from the exercise of the right to self-determination of peoples under foreign occupation, colonial or alien domination. The importance of becoming party to the universal and regional counter-terrorism instruments and implementing them fully was emphasized. Several delegations stressed that perpetrators

of acts of terrorism should be prosecuted, and underlined the importance of implementing the *aut dedere aut judicare* obligation in combating terrorism. Several delegations also commended the recent adoption of the *Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* and the *Beijing Protocol Supplementary to the Convention for the Unlawful Seizure of Aircraft*, as important advancements for counter-terrorism by addressing new and emerging threats to civil aviation.

27. Some delegations pointed to the potential dangers posed particularly by the possible acquisition by terrorists of weapons of mass destruction and use of information and communication technologies, while also sharing their concern about the close links between terrorism and transnational organized crime, including money laundering, arms smuggling and trafficking in illicit drugs, as well as piracy. In particular, some delegations expressed their deep concerns regarding developments concerning the financing of terrorism, especially the increase in incidents of kidnapping and hostage-taking with the aim of raising funds for terrorist purposes and urged United Nations action to stem the tide of these developments. Attention was also drawn to the tendency to exploit local conditions to build terrorist networks in efforts to further the criminal enterprise and extremist ideology. The need to address incitement of terrorism was also underlined by some delegations, as well as the question of deliberate targeting of certain religions to provoke religious intolerance.

28. A number of delegations described the initiatives taken or planned at the national, regional and global level to counter terrorism and implement international obligations. This included the adoption of laws, as well as actions taken in relation to criminalization and addressing issues concerning financing of terrorism, money laundering, improvements to border security and denial of safe havens.

29. Concerning the work of the Ad Hoc Committee established by General Assembly resolution 51/210, delegations reiterated their call for the early conclusion of the draft comprehensive convention on international terrorism, which would supplement and strengthen the existing legal framework and enhance cooperation between States in their counter-terrorism efforts. In this context, reference was made to the 2005 World Summit Outcome (General Assembly resolution 60/1) and the United Nations Global Counter-Terrorism Strategy, stressing that concluding the draft convention should be a priority. States were urged to show flexibility and political will in order to resolve the outstanding issues, at the current session, preferably by consensus. The view was also expressed that it might be time to reconsider the usefulness of continuing the current negotiation process in the event no progress could be attained during the current session.

30. Some delegations reiterated their support for the proposal made by the Coordinator at the 2007 session of the Ad Hoc Committee (A/62/37, annex, para. 14) and considered that it constituted a balanced and legally sound compromise solution, which properly respected the integrity of international humanitarian law. It was also reiterated that the draft convention should be viewed as a criminal law instrument, dealing with individual criminal responsibility, on the basis of the principle of extradite or prosecute.

It did not lend itself to addressing State terrorism. Some delegations expressed their readiness to resolve some of the political difficulties in an accompanying resolution.

31. While some delegations stated their willingness to continue to consider the Coordinator's 2007 proposal as a compromise text, they reiterated their preference for the earlier proposals relating to draft article 18. On the one hand, it was pointed out that any compromise text had to be predicated on the principle that no cause can justify any act of terrorism and that the text should draw upon existing language that had already been agreed upon elsewhere. On the other hand, the need for a clear legal definition of terrorism, which distinguished terrorism from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination was reaffirmed. Some delegations also expressed the view that the draft convention should address all forms of terrorism, including State terrorism, and that it should cover acts by armed forces not covered by international humanitarian law. In this context, a previously made proposal to add language to draft article 2 was reiterated.

32. Some delegations reiterated their support for the proposal to convene a high-level conference under the auspices of the United Nations. While some delegations expressed a preference for convening the conference once agreement has been reached on the draft comprehensive convention on international terrorism, some other delegations pointed out that the convening of a conference should not be linked to the conclusion of the draft convention.

33. Some delegations expressed support for the initiative of Saudi Arabia to establish an international centre, under the aegis of the United Nations, to combat international terrorism, and for the proposal by Tunisia to convene a high-level conference to establish an international code of conduct in the fight against terrorism. Some delegations made reference to the establishment of regional research centres aimed at understanding international terrorism and the need to accord them support.

V. Comments and Observations of the AALCO Secretariat

34. International terrorism poses a threat to international peace and security, as well as to human life and dignity. Terrorist activities by any individual, groups, non-State entities or States have to be checked by all possible means. Furthermore, any attempt to link terrorism with any religion, race, culture or ethnic origin should be rejected.

35. The fight against international terrorism should be conducted in conformity with international law, including the Charter of the United Nations, as well as relevant instruments concerning international human rights law, international humanitarian law and international refugee law. It is a positive step that a draft Comprehensive Convention on International Terrorism is being discussed by Member States of the United Nations which may reflect the views of the international community. However, it should be pointed out that counter-terrorism initiatives should not be used as a pretext for interfering in the domestic affairs of other countries. Each country's sovereignty and territorial integrity should be respected and should not be violated under any circumstances. The United Nations has an indispensable role to play in any action against

terrorism. Cooperation of the international community is vital to win the fight against terrorism.

36. Defining terrorism itself is a major task. Although it has diverse versions, there is a growing demand that it needs a universally acceptable definition to solve the problem. The definition may be drafted in such a manner that the root causes and underlying factors of terrorism should be taken into account, as well as protection of human rights and fundamental freedoms. The definition of terrorism may be possible on the basis of experts' views and with the support of various countries. In addition, AALCO Member States can contribute more usefully by working together in the on-going negotiations on the "Draft Comprehensive Convention on International Terrorism", particularly as regards finding an acceptable definition of "terrorism".

37. International terrorism is a vital issue in the global scenario. Greater cooperation and coordination amongst all the UN Member States is highly essential to combat the threat posed by international terrorism. In this direction, Member States of AALCO may consider ratifying/acceding to the existing international counter terrorism conventions, including the 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism; and 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. National implementation and enforcement mechanisms, including legislations are crucial in the fight against terrorism. Further, mutual legal assistance in counter-terrorism and criminal matters are of much significance.

VI. ANNEX

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 7
1 JULY 2011

INTERNATIONAL TERRORISM
(Non-deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat Document No. AALCO/50/COLOMBO/ 2011/S 7;

Recalling the relevant international instruments, where applicable, and resolutions of the United Nations General Assembly and the Security Council relating to measures to eliminate international terrorism and the efforts to prevent, combat and eliminate terrorism;

Taking note of the ongoing negotiations in the Ad Hoc Committee established by the General Assembly of the United Nations by its resolution 51/210 of 17 December 1996 to elaborate a Comprehensive Convention on International Terrorism based on the proposal made by the Republic of India;

Expressing grave concern about the worldwide increase in acts of terrorism, which threaten the life and security of innocent people and impede the economic development of the concerned States;

Recognizing the need for the international community to collectively combat terrorism in all its forms and manifestations;

Reaffirming that international effort to eliminate terrorism must be strengthened in accordance with the Charter of the United Nations and taking into account international human rights law, international humanitarian law, and refugee law;

Calling for an early conclusion and the adoption of a comprehensive convention on international terrorism by expediting the elaboration of a universally acceptable definition of terrorism:

1. **Encourages** Member States to consider ratifying/acceding to the relevant conventions on terrorism;

2. **Also encourages** Member States to participate in the work of the above mentioned Ad Hoc Committee on International Terrorism;

3. **Directs** the Secretariat to follow and report on the progress of work in the Ad Hoc Committee on International Terrorism;

4. **Also directs** the Secretariat to collect national legislation on combating terrorism to facilitate exchange of information among Member States;

5. **Requests** the Secretary-General to hold seminars and joint activities in cooperation with other international organizations, especially UNODC, on dealing with the legal aspects of combating terrorism; and

6. **Decides** to place the item on the provisional agenda of its Fifty-First Annual Session.

4. THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS

AALCO/50/COLOMBO/2011/S 9
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THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS
(*Non-Deliberated)*

CONTENTS

4. THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS

I. Introduction

A. Background

1. The International Criminal Court (ICC), governed by the "Rome Statute",[1] is the first permanent, treaty based court established to help end impunity for the perpetrators of the most serious crimes of international concern namely, the Crimes of Genocide, Crimes against Humanity, War Crimes and the Crime of Aggression[2]. The Court may exercise jurisdiction over such international crimes only if they were committed on the territory of a State Party or by one of its nationals. These conditions however do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, or if a State makes a declaration accepting the jurisdiction of the Court.

2. The Rome Statute was adopted on 17 July 1998 and entered into force on 1 July 2002[3]. As of 12 October 2010, 114 countries are States Parties to the Rome Statute[4]. Out of 114 countries[5] 31 are African States,[6] and 15 are Asian States.[7] The ICC is an independent, permanent judicial institution and not part of the United Nations.[8] Although, the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organizations, individuals,

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[1]Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by proces-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002.

[2] The first Review Conference of the Rome Statute of the ICC held in Kampala, Uganda from 31 May 11 June 2010 amended the Rome Statute so as to include the definition of the Crime of Aggression and the conditions under which the Court could exercise jurisdiction with respect to the crime.

[3]Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998, vol. I; Final documents (United Nations publication, Sales No. E. 02.I.5), sect. A.

[4] http://www.icc-cpi.int/asp/statesparties.html

[5] This information based on ICC website as of 15th June 2010.

[6] Burkina Faso, 30 November 1998; **Senegal,** 2 February 1999; **Ghana,** 20 December 1999; Mali, 16 August 2000; Lesotho, 6 September 2000; **Botswana,** 8 September 2000; **Sierra Leone,** 15 September 2000; Gabon, 20 September 2000; **South Africa,** 27 November 2000; **Nigeria,** 27 September 2001; Central African Republic, 3 October 2001; Benin, 22 January 2002; **Mauritius,** 5 March 2002; Democratic Republic of the Congo, 11 April 2002; Niger, 11 April 2002; **Uganda,** 14 June 2002; Namibia, 20 June 2002; **Gambia,** 28 June 2002; **United Republic of Tanzania,** 20 August 2002; Malawi, 9 September 2002; Djibouti, 5 November 2002; Zambia, 13 November 2002; Guinea, 14 July 2003; Congo, 3 May 2004; Burundi, 21 September 2004; Liberia, 22 September 2004; **Kenya,** 15 March 2005; Comoros, 18 August 2006; Chad, 1 January 2007 and Madagascar, 14 March 2008. More information see http://www.icc-cpi.int/region&id=3.html

[7] Fiji, 29 November 1999; Marshall Islands, 7 December 2000; Nauru, 12 November 2001; **Cyprus,** March 2002; Cambodia, 11 April 2002; **Mongolia,** 11 April 2002; **Jordan,** 11 April 2002; Tajikistan, 5 May 2002; Timor-Leste, 6 September 2002; Samoa, 16 September 2002; **Republic of Korea,** 13 November 2002; Afghanistan, 10 February 2003; **Japan,** 17 July 2007 Cook Island, 18 July 2008 and **Bangladesh**, **23 March 2010.** For more information see http://www.icc-cpi.int/region&id=4.html

[8] http://www.icc-cpi.int/library/about/ataglance/ICC-Ataglance_en.pdf

corporations and other entities.[9] Sixty-four States, including one State not Party to the Rome Statute, have ratified or acceded to the Agreement on the Privileges and Immunities of the International Criminal Court.[10]

3. The Statute recognizes that States have the primary responsibility for investigating and punishing these crimes and also the Court is complementary to the efforts of States to investigating and prosecuting international crimes. The Court is the focal point of an emerging system of international criminal justice which includes national courts, international courts and tribunals with both national and international components. There are currently five situations (Uganda, the Democratic Republic of Congo, the Central African Republic and Darfur, Sudan), which are under investigation by the Office of the Prosecutor of the ICC. In addition, Pre-Trial Chamber II granted the Prosecutor, on 31 March 2010, authorization to open an investigation in the situation in Kenya. Three States Parties have referred situations on their territories to the Prosecutor, and also the Security Council has referred one situation to the Prosecutor for investigation.

4. Preliminary investigations by the Prosecutor are currently underway in a number of situations. On 16 October 2009 a Palestinian National Authority delegation submitted a preliminary report presenting its legal arguments in support of the declaration lodged on 22 January 2009, accepting the jurisdiction of the Court over the crimes committed by Israel in Palestine. The Prosecutor of the ICC is presently analyzing the situation. On 26 February, the United Nations Security Council decided unanimously to refer the situation in Libyan Arab Jamahiriya since 15 February 2011 to the ICC Prosecutor. On 3 March 2011 the ICC Prosecutor announced his decision to open an investigation in the situation in Libya, which is assigned by the Presidency to Pre-Trial Chamber I.

5. This Secretariat Report prepared for the **Fiftieth Annual Session of AALCO** seeks to highlight the developments that have taken place after the Forty-Ninth Annual Session of the Organization. This Report briefly highlights AALCO's Work Programme on the International Criminal Court in the previous years; Report on the Ninth Session of the Assembly of States Parties, Consideration of the item during the Sixty-Fifth Session of the United Nations General Assembly (2010), some recent developments and Comments and Observations of the AALCO Secretariat.

B. Deliberations during the Forty-Ninth Annual Session of AALCO (5th to 8th August, 2010, Dar es Salaam, United Republic of Tanzania)

6. It may be recalled that during the Forty-Ninth Annual Session ***a Special Meeting on "International Criminal Court: Recent Developments",*** was jointly convened by the Government of United Republic of Tanzania, International Committee of the Red Cross (ICRC); and the AALCO Secretariat primarily to discuss the outcome of the of the Review Conference: Principle of Complementarity and Crime of Aggression"

[9] http://www.icc-cpi.int/library/about/ataglance/ICC-Ataglance_en.pdf
[10] http://www.treaties.un.org

Working Session I: The Principle of Complementarity

7. **Prof. Dr. Rahmat Mohamad**, **Secretary-General** in his introductory statement stated that developments relating to the ICC had been successively considered at AALCO's Annual Sessions and various inter-sessional meetings. Bearing in mind the importance of the Review Conference held in Kampala, recently, AALCO in collaboration with the Governments of Malaysia and Japan had convened a two day Round Table Meeting of Legal Experts in Putrajaya, Malaysia from 30 to 31 March 2010. He noted with satisfaction that the views expressed by the Member States of AALCO at that meeting were largely the outcome of the Review Conference as well. He informed that in view of the importance of the topic for AALCO Member States, a three member delegation led by him had attended the Review Conference in Kampala, from 31st May to 2nd June 2010. Thereafter, he briefly outlined the outcome of the Review Conference, particularly the adoption of the definition of the crime of aggression, the stocktaking exercise which reemphasized the importance of the principle of complementarity and the retention of Article 124 in the Rome Statute.

8. **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan** stated that the First Review Conference of the Rome Statute of the ICC held at Kampala was truly historical in many aspects: not only that the Review Conference was convened for the first time after the commencement of full activities and operation of the ICC, but also a rare opportunity was provided and fully utilized for taking stock of the progress of the developments in the international criminal justice system and most importantly, various amendments to the Rome Statute were adopted by consensus.

9. He mentioned that the principle of complementarity was one of the most fundamental principles on which the Rome Statute system was based. The preamble of the Statute as well as Article 17 provided that the Court was complementary to national criminal jurisdictions. At Kampala, it was therefore quite natural that much discussion took place, focusing on this principle, and a resolution was adopted by consensus.

10. In his view, in order to implement actually the principle of complementarity, Member States should take necessary measures to enact national legislation whereby all the crimes stipulated in the Rome Statute were made punishable. In Japan's case, when considering the ratification of the Rome Statute, they examined thoroughly whether all the crimes in the Rome Statute were punishable under domestic laws and enacted the necessary legislation.

11. While, focusing on the principle of complementarity, utmost efforts were called for not only the Court and States Parties but also and all other stakeholders, including international organizations such as AALCO to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern.

12. **Mr. Roy S. Lee, Permanent Observer of AALCO at the UN Headquarters in New York** presented his views on the principle of complementarity from the stand point

of non-States Parties to the Rome Statute and underlined that they too could derive benefit from the Rome Statute of the ICC. This was particularly so, because it was clear that many States would not become parties to the Rome Statute. He said that the principle of complementarity applied to non-States Parties as well. Though States Parties had priority in exercising national jurisdiction, the same principle applied to non-States Parties as well. As the purpose of the Rome Statute was to end impunity and ICC respected the sovereignty of States and that was why it was complementary to national judicial systems as it supplemented them.

13. Dr. Lee also said that non-State Parties needed to criminalize the crimes enshrined in the ICC into their national jurisdiction as that in the long-run it would be beneficial to the States. He also said that the non-State Parties could take advantage of the provision in the ICC related to making an "opt in declaration", as that could if the need arose help to deal with one specific situation. He elaborated that such a declaration could be a useful tool for a country dealing with a crisis situation. Uganda, Congo and the Central African Republic, all States Parties to the Rome Statute of the ICC had voluntarily referred their domestic situations to the ICC. This approach would help them in carrying out investigations, thus help them to save their funds and human resources.

14. Dr. Lee added that the Rome Statute was a valuable source of information. It elaborately defined 93 crimes and the elements of those crimes in detail. He said that the definitions of some of the crimes like torture and the elements of crime involved therein could be extracted from the ICC for inclusion in some of the national legislations, where they were not included. He informed that the League of Arab States had framed a Model Legislation for its Member States. He further stated that some of the Member States had difficulty in ratifying the 1977 Additional Protocol of the Geneva Conventions of 1949, if those States read the definitions of the crimes under international humanitarian law, the ICC Statute had all those definitions, so reading the Rome Statute could help them in becoming parties to the 1977 Additional Protocol.

15. **Mr. Pahkiso Mochochoko, Senior Legal Adviser, International Criminal Court** in his presentation on "**Overview of the Complementarity Principle and Related States' Obligations under the Rome Statute",** explained that the principle of Complementarity had been described as a central feature of the Rome Statute system. It denoted that cases would only be admissible before the ICC if and when States were genuinely unwilling or unable to carry out investigations and prosecutions. According to the Complementarity principle, the primary duty and responsibility for the enforcement of prohibitions of international crimes rests with national criminal jurisdictions. The principle foresees a division of labour between national courts and the ICC. Enforcement of international crimes was thus dependent on the capability of national courts as fora of first instance. As a permanent international judicial institution, the ICC was a complement rather than a replacement to national criminal jurisdictions.

16. The formula of the Rome Statute that a country with jurisdictional competence had the first right to institute proceedings had two practical dimensions to it. The first one was that States that wished to preserve their national sovereignty by prosecuting

those responsible for crimes under the Statute had to incorporate the Rome Statute Standards into their national laws and ensure that their legal systems conform to international standards. The second dimension was that in order for States to cooperate with the Court, they had to introduce comprehensive legislation enabling them to extend full cooperation to the Court.

17. The Panelist also highlighted the benefits of enacting of national implementing legislation. He said that it was a clear expression of a political commitment to cooperate with the Court; it enabled national courts to assume jurisdiction over crimes under the Statute; it would enhance victims remedies and protection under domestic laws; it served to import into national law, example of "best practices" that could have a positive impact on domestic practices and it paved the way for effective cooperation with the Court.

18. He stated that many countries were currently struggling with the issues of compatibility with the ICC Statute with certain constitutional provisions while others had reached the conclusion that their constitutional provisions and the Statute were consistent and therefore amendments were unnecessary. He suggested that there was a need to customize measures required to harmonize States' approach on those matters. Interaction between the Court with States and civil society, where appropriate and before implementing legislations were crystallized would ensure that the objectives and purposes of the Statute were met. The elaboration of standards for effective incorporation which were based on the objects and purposes of the Statute while at the same time sensitive to the differences in domestic legal orders should be the goal.

19. The Panelist observed that many developing and least developing countries lacked time, resources and capability to undertake necessary legal reforms for complementarity. Raising awareness and providing technical assistance to help ratifying countries with implementing legislation would augur well for complementarity and the future of international justice. In this regard, he said that AALCO could play an important role in ensuring that States implement the provisions of the Statute.

20. Several non-governmental Organizations mostly operating under the auspices of the NGO Coalition for the International Criminal Court (CICC) were actively involved in reviewing and commenting upon implementing legislation according to pre-defined criteria. But many of them continued to face difficulties of access to draft legislation of States, he mentioned. The need for Government's to make their implementing legislation accessible to the NGOs for comments to ensure uniform approach and consistency could not be overemphasized.

21. The Panelist observed that the importance of the ICC lay in its potential to limit impunity and deter atrocities. Incorporating the ICC principles in national laws would limit the legal, political or procedural difficulties that were likely to arise if the States approached at the national and international level. Although the Complementarity regime under the Statute was not immune from criticism, nevertheless it was a successful attempt to strike a balance between the considerations and respect for the national jurisdictions, the ability of the Prosecutor to effectively exercise his powers and the Courts discretion

to hear the cases admissible, whatever the Court at its best authority to intervene the national proceedings such intervention which were based on the criteria which were clearly written. Ultimately, it would be for the Court to determine its ability to address some of the difficult questions regarding Complementarity as it developed its jurisprudence and regulations to meet the objectives of fairness and justice, where it would also operate efficiently and safeguarding the interests of the judges.

22. He also highlighted the need for the fair commitment of the States which was very essential for the effectiveness of the Court. States would adopt legislations to implement the provisions of the Rome Statute and provide the Court with effective cooperation.

23. **Dr. Srinivas Burra, Legal Adviser, International Committee of the Red Cross (ICRC), New Delhi, in his presentation on "Complementarity and the International Criminal Court",** stated that eestablishment of the International Criminal Court (ICC) was considered as one of the significant achievements of the international community in terms of regulating the behaviour of individuals. The long period of time taken since the initial idea emerged, for its realisation was a clear testimony to the significance of the ICC and the complex issues involved in its realisation. The ICC was established with a desire among some States and some quarters of civil society that international crimes must not go unpunished. Establishment of the ICC necessarily assumed that the individuals involved in certain grievous international crimes were left unpunished in certain situations. To prevent such situations the ICC was established.

24. The Statute of the ICC, like any other or many other international law instruments had to confront and concede to the traditional valid issue of sovereignty of States. To address the issue of State sovereignty and to effectively prosecute international crimes, the drafters of the Rome Statute had introduced the concept of complementarity in the form of Article 17 of the Statute. Though the word complementarity did not appear anywhere in the Statute, paragraph 10 of the Preamble and Article 1 of the ICC Statute refer to complementary nature of the jurisdiction of the ICC.

25. For a case to be taken up by the ICC it would be tested on three grounds. (1) Jurisdictional ground; (2) Admissibility ground; and (3) Interest of justice ground.

26. For complementarity, he mentioned that the principle addressed the issues relating to State sovereignty, encouraging national jurisdiction, and ensuring effective ICC non-interference.

27. On positive complementarity, he noted that when the Court starts taking up cases, it was expected to confront several challenges encompassing practical aspects and the interpretation of the Statute. To address those challenges and concerns, it was suggested that the Office of the Prosecutor may be able to resolve some of the issues by interacting more closely and actively with national courts, adopting a policy which has come to be called positive complementarity. The principle of complementarity looked for at more cooperative relationship between national jurisdictions and the Court. This seems to be some what similar to the 'guiding principles' of the complementarity as highlighted by

the 'Informal Expert Paper: The Principle of Complementarity in Practice' of the Office of the Prosecutor. The two guiding principles were partnership and vigilance.

28. It was important that for those who had become parties to the ICC may need to take certain measures. First step in this direction may be to bring in effective national legislation. It was necessary that in order to be able to prosecute violators of the crimes listed in the Statute, and thereby avoid a case being brought before the Court due to the inability to prosecute such a crime, to make those crimes punishable at the national level. Therefore, it was essential for effective operation of the complementarity principle to adopt necessary legislation.

29. To conclude, it could be arguably said that further clarifications on the principle of complementarity by the Court in its judgments in the future would help build confidence of the international community, mainly of States, and encourage active response in the form of adopting adequate national measures and more States becoming parties to the Statute.

30. The Delegations of the following countries presented their views on the topic namely: **Malaysia, the Sultanate of Oman, Republic of Korea, Thailand, the Kingdom of Saudi Arabia, United Republic of Tanzania, Brunei Darussalam, Islamic Republic of Iran, People's Republic of China, Arab Republic of Egypt,** and **South Africa**. The delegations presented their candid views on the principle of complementarity and agreed that the principle of complementarity was the core principle of ICC which needed to be further strengthened. The delegates cautioned against taking the principle of complementarity too far and using the concept of positive complementarity which might cause confusion with the concept of complementarity as enshrined in the Rome Statute.

31. The **Delegation of Malaysia** wanted to know how countries that did not have specific national legislations, incorporating the crimes enlisted in the Rome Statute, criminalize those crimes, and how those crimes could be internalized into their national legislations, without amending their Constitution, which was a very difficult task. She also said that for some grievous crimes death penalty was accorded in her country, whereas the Rome statute did not have any such provision, therefore, would it mean looking at two sets of crimes, one under the ICC and the other under the domestic law? The delegate was also concerned about the gravity of offences to be tried by the ICC and the interpretation of the same by the Prosecutor.

32. The Leader of Delegation of Malaysia while referring to Articles 6 and 7 of the Rome Statute of the ICC stated that in practice it would be very difficult to comply with all the elements of crimes enlisted in those articles.

33. The **Delegation of the Sultanate of Oman** clearly mentioned that the jurisdiction of the ICC was supplementary to national jurisdictions and did not want it to interfere in any way with its sovereignty. The Leader of delegation of the Sultanate of Oman was

however skeptical about the impartiality of the ICC. The delegates also wanted to know the basis on which the independence of the ICC could be judged.

34. The **Delegation of the Republic of Korea** maintained the view that the Asia-Pacific region was under-represented in the ICC and it was important that the goal of universalization of the Rome Statute be achieved, as that would lead to a global justice mechanism.

35. The **Delegation from the Kingdom of Saudi Arabia** asked how countries could relate between national crimes and the crimes within the jurisdiction of the ICC as this movement from one set of court to another itself would amount to interfering with the sovereignty of States.

36. The **Delegation of the United Republic of Tanzania** desired that seminars on the ICC should be held in individual Member States so that the ICC Statute could not be distorted. He felt that AALCO could assist in the holding of such seminars.

37. The **Delegation of the Islamic Republic of Iran** referred to the difficulty in applying Article 17 of the Rome Statute. He wanted to know what would be the position of ICC if a State decided to give amnesty in certain cases. Some other States emphasized on the necessity of national capacity building and establishing a working group of experts within AALCO to study the principle of complementarity in greater detail.

38. The **Delegation of the People's Republic of China** emphasized that two issues must be taken into consideration when the Court conducts cooperation with relevant States according to the principle of complementarity. Firstly, when judging the jurisdictional capacity and will of the States, the relevant provisions of the Statute should be interpreted strictly according to its literal text. Secondly, when assistance is provided to States to promote their capacity building, the need and characteristics of their legal systems should be respected and interference of their domestic affairs should be avoided.

39. The **Delegation from the Arab Republic of Egypt** strongly opposed the interference by the Security Council or the International Criminal Court into the internal affairs of a country. He insisted that unless a state was State Party to the ICC, the ICC should not take up any matter pertaining to the internal affairs of a country.

40. In response to the concerns raised by the Member States in relation to the Principle of Complementarity and its application, **Mr. Pahkiso Mochochoko,** Senior Legal Adviser, International Criminal Court briefly addressed those concerns. Firstly, he highlighted that there was need to have another seminar on this topic in order to be able to address all the pertinent concerns raised by the Member States; secondly, responding to the Delegation of Malaysia he said it would be beneficial for the Member States if they could internalize the crimes enlisted in the Rome Statute into their national legislations. Doing this would also be helpful in cases where national legislations had not mentioned a punishment for a particular crime; thirdly, with regard to the principle of positive complementarity he said that this did not/would not amount to interference with the state

sovereignty rather it would benefit states on a bilateral basis, as they would learn from the example of each other; fourthly, as regards the gravity of offences and how the Prosecutor of ICC would interpret it, the panelist while referring to the situation of Iraq mentioned that in that situation it was not the gravity of the offences committed rather ICC could not look into that case as Iraq was not a State Party to the ICC; fifthly, regarding the issue of serious crimes, the panelist stated that the crimes enlisted in the Rome Statute were the most serious crimes and thus the elements to be proved were commensurate with the seriousness of the crime itself, thus the definition of the crime itself met with the highest threshold once it was in the Rome Statute; and finally, Mr. Mochochoko maintained that the ICC was an independent and impartial court which was only guided by law, evidence and facts.

41. In response to the concern raised about the role and functioning of the Security Council and the ICC, the Senior Legal Adviser from the ICC maintained that both were independent bodies, one was a political body and the other a purely legal one. Their roles were clearly defined, and their roles should not be confused. He opined that it was the Member States that had vested the Security Council with a role in the International Criminal Court, now if they were not satisfied with that, it was up to the Member States to amend the Rome Statute accordingly. However, he said that, once a situation was referred to the ICC by the Security Council, in the present instance the situation in Darfur, Sudan, the ICC would look at it from a purely legal perspective. He also made a distinction between a referral from the Security Council and the Security Council not agreeing to defer proceedings in an ongoing case. While referring to the situation of Darfur, he said that it was a situation before the ICC, where the Judges were carefully weighing the evidence before them. Mr. Pahkiso Mochochoko said that under the Rome Statute all the States were under an obligation to cooperate with the ICC, and in that connection said that it remained to be seen what happened with the resolution adopted by the African Union.

42. Lastly, replying to the query about amnesty being granted, Mr. Mochochoko, said that there could be no amnesty for international crimes. This was a position taken by both, the ICC as well as the United Nations. The reason was that the crimes listed under the Rome Statute were so serious in nature that amnesty could not be granted for them under the provision of any international law.

Working Session II: Crime of Aggression

43. **Prof. V. S. Mani, Director, Jaipur National University, India,** in his presentation narrated the historical evolution of the concept of aggression. He stated that the concept of aggression came to be considered as a war crime under international law through Nuremberg Tribunal; United Nations General Assembly Declaration, 1974; and Declaration on Friendly Relations, 1970. He recalled the definitional problems of aggression ever since the period of colonialism. The problems were reflected in the Rome Statute of ICC in 1998 and International Law Commission failed to come up with a definition on aggression and they left it to the Member States to evolve a definition. In that regard, he said that the Kampala Review Conference on the Rome Statute was

extremely important on three aspects. They were: i). Defining aggression; ii) identifying various acts of aggression and the conditions under which ICC would exercise jurisdiction; and iii) amending process.

44. With regard to conditions of jurisdiction of the Court, he stated that it had three triggers and they were: i) State Parties; ii) Prosecutor of the ICC; and iii) the Security Council. He mentioned about the role of the Security Council in relation to ICC wherein he referred Article 39 of UN Charter and the ICJ judgment on Nicaragua case. As to the decision of 7 years time for the definition of aggression to come into force, he could not see any valid reason for it. The political compulsion he could understand but once the decision was taken to incorporate the definition in the Rome Statute, the ICC should have been allowed as stated under Article 5(2) of the Statute.

45. **Amb. Yasuji Ishigaki, Special Assistant to the Foreign Minister of Japan**, concerning the definition of crime of aggression, noted that there was a long history of discussions and debate in various international forums. Not to mention much earlier discussions in the UN General Assembly, and the recent Rome Conference, while deciding that the crime of aggression should be included as one of the serious crimes within the jurisdiction of the ICC, which failed to reach agreement on a provision defining the crime and setting out the conditions under which the Court shall exercise jurisdiction over that crime.

46. He mentioned that at the Eighth Session of the Assembly of States Parties, which was the last one prior to the Kampala Conference, States Parties had come out with a text for consideration at the Review Conference as the provisions for crime of aggression that could be included in the Rome Statute. However, due to the still wide divergence of views, overwhelming views at that time were that nobody was certain that a final agreed text would be worked out at Kampala.

47. At Kampala, intensive discussions took place on the formulation of the provisions on the crime of aggression. The biggest issue was on the conditions for the jurisdiction of the Court. In particular, most of the time and effort were directed to discussions on the question of how to define the jurisdiction of the Court in relation to the Security Council's power to determine the existence of act of aggression. Thereafter, he outlined the provisions contained in the Article and stated that according to the amendments adopted on the crime of aggression, if certain conditions were met, the ICC could exercise jurisdiction on the said crime even in the event when the UN Security Council does not determine the existence of act of aggression. Since the permanent members of the UN Security Council have hitherto insisted on the prerogative rights of the Security Council concerning the determination of act of aggression, their departure from such position was most significant.

48. On the other hand, while reflecting on very divergent views and positions of States Parties, he said the amendments adopted at Kampala were very complex and of unprecedented nature. Therefore, they include some controversial points which need to be clarified.

49. For that reason, Japan considered that it was important to build up a common understanding on the legal interpretation of the relevant provisions before the ICC would be able to exercise its jurisdiction on the crime of aggression.

50. Finally, he said that the Review Conference was not a goal point but instead a new starting point. It was of critical importance to endeavour to make the ICC an institution truly *effective, efficient, universal and systemically sustainable.*

51. **Dr. Roy Lee**, in his presentation referred to Article 39 of the UN Charter and said that it talked about State aggression to be determined by the Security Council, before 1998 it was not possible to separate state aggression from individual criminal responsibility with regard to that crime. He said that the adoption of the definition of the crime of aggression in the Kampala Review Conference was a great achievement and the time given to States till 1st January 2017 to study the provisions of that crime was a welcome decision.

52. The Delegations of the following Member States made their comments and presentations namely: **India, Thailand, Republic of South Africa, the Gambia** and **Malaysia**. A delegate said that having heard the panelists it was clear that the adoption of the definition of the crime of aggression at the Review Conference was a non-starter with loopholes and transitory in nature. In fact it was not the only definition for that crime. Besides it could not be integrated into national legislation in dualist countries where the principles of international law were not applicable at national level. He mentioned that ICC would have problems in dealing with crimes where Government decided to give amnesty as the right to give amnesty was a constitutional guarantee by governments.

53. The **Delegation of Malaysia** highlighted the issues relating to principle of complementarity and implementation. The delegate also stated that out of 81 member countries of the UN which had not ratified the ICC Rome Statute, 30 were AALCO Member States which roughly forms about 40% of the total number. This large group could meet to discuss common issues of concerns. To that end, the delegate proposed that AALCO could jointly with the ICC convene a workshop in Kuala Lumpur, especially, for non-States Parties from the AALCO Member States, to look at the concerns of the non-States parties, to what extent their present laws were different from the provisions of the Rome Statute and how they could incorporate the provisions of the Rome Statute of the ICC into their national legislations, before ratifying the Rome Statute.

II. AALCO's Work Programme on the International Criminal Court

54. The AALCO has been following the developments relating to the establishment of the ICC since its Thirty-Fifth Session (Manila, 1996). The initial discussions in the AALCO relating to the establishment of the International Criminal Court (ICC) were first held at two Special Meetings convened within the framework of the Thirty–Fifth (Manila, 1996) and Thirty-Sixth (Tehran, 1997) Sessions of the AALCO. Thereafter, the agenda item has been successively deliberated in almost all the Annual Sessions. This was done with a view to present before the Member States the developments within the ICC.

During 2009 a Seminar on the "International Criminal Court: Emerging Issues and Challenges was successfully convened in cooperation with the Government of Japan and AALCO Secretariat, in New Delhi. In 2010 in order to consolidate the position of the member States for the Kampala Review Conference, a Round Table Meeting of Legal Experts, was organized jointly by the Governments of Malaysia and Japan and AALCO Secretariat, in Putrajaya, Malaysia. The Reports of these two meetings were therafter, published and circulated to the Member States.

55. As reviewing and analyzing the developments pertaining to the ICC constitutes an important element of the work programme of AALCO, a three-member delegation, led by Prof. Dr. Rahmat Mohamad, Secretary-General, Dr. Yuichi Inouye, Deputy Secretary-General and Mr. Shikhar Ranjan, Senior Legal Officer participated at the Review Conference.

56. The Secretary-General addressed the General Debate on 1 June 2010. He utilized the opportunity to present the outcome of our Putrajaya Round Table Meeting. In that address, the Secretary-General emphasized that the three major challenges facing the ICC were: universality, sustainability and complementarity. He flagged the following issues of concern that emerged out at the Putrajaya Round Table Meeting for the consideration of the Review Conference:

57. *Firstly*, concerning the crime of aggression, he emphasized that the Member States of AALCO realized the imperative of having a clear and broadly acceptable definition on the Crime of Aggression and considered it to be indispensable to developing the rule of law in the world. In this regard, the AALCO was hopeful that the major definitional and jurisdictional issues would be successfully resolved at Kampala.

58. *Secondly*, as to the stock-taking of international criminal justice, the concept of complementarity, issues on cooperation with the ICC, and the relationship between peace and justice were of immense significance. Concerning the principle of complementarity, AALCO Member States considered it as constituting the core principle of Rome Statute. It needed to be further strengthened and there was a need for maintaining a balanced approach in its application.

59. *Thirdly*, as regards the proposals for amending the Rome Statute: *One*, on the proposal to delete Article 124 the opinion was that this would deprive new States Parties to the Rome Statute the right to defer the acceptance of the jurisdiction of the Court, therefore, it would be useful to retain it. This would encourage universalization of Rome Statute; and *Two*, as to the proposals for criminalizing the act of employing certain weapons in internal armed conflict and strengthening the enforcement of sentences, there was not much discussion, as most of the States had not made their positions clear.

60. On 2 June 2010, the Secretary-General hosted an Informal Networking Meeting of the AALCO that was followed by a Reception. During the course of this meeting H.E. Mr. Ichiro Komatsu, Ambassador of Japan to Switzerland launched the "Report of the Round Table Meeting of Legal Experts on the Review Conference of the Rome Statute of

the ICC", held on 30-31 March 2010 at Putrajaya, Malaysia. The meeting was very well-attended and several high-level representatives of Member States, non-Member States and representatives of civil society organizations attended it. It served as a useful mechanism for enhancing the profile and stature of AALCO. AALCO's publications were also distributed during the course of this networking meeting.

III. Report of the Assembly of States Parties of the ICC

61. The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court and Part 11 of the Rome Statute provides for the Assembly of States Parties (ASP). It is composed of representatives of the States that have ratified and acceded to the Rome Statute. Each State Party is represented by a representative who is proposed to the Credential Committee by the Head of the State of the Government or the Minister of Foreign Affairs.[11] Moreover, each State Party has one vote and every effort has to be made to reach decisions by consensus. If consensus cannot be reached then decisions are taken by vote.[12] Other States, which have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference, may sit in the Assembly as Observers. On the basis of the principles of equitable geographic distribution and the adequate representation of the principal legal systems of the world, the Bureau of Assembly of States Parties consisting of a President, two Vice Presidents and 18 members are being elected by the Assembly for a three-year term. The Assembly is responsible for the adoption of the normative texts and of the budget, the election of the Judges and of the Prosecutor and the Deputy Prosecutor. It meets at least once in a year. The reports of the previous Sessions of the Assembly of States Parties (ASP-I to ASP VII) were reported in the earlier reports of AALCO.[13] It may be mentioned that the resumed sessions of all these sessions took place in the following year.

A. Ninth Session of the Assembly of States Parties (ASP IX)

62. The Assembly of States Parties to the Rome Statute of the International Criminal Court ("the Assembly") opened its ninth session at United Nations Headquarters, in New York, which lasted from 6 to 10 December 2010.

63. Opening remarks were delivered by the President of the Assembly, Ambassador Christian Wenaweser, the United Nations Secretary-General, Mr. Ban Ki-moon and the President of Colombia, Mr. Juan Manuel Santos, followed by senior Court officials.

64. The United Nations Secretary-General, Mr. Ban Ki-moon, recalled the historic Review Conference in Kampala and its momentous achievements with regard to the definition of the crime of aggression and the provisions under which the Court will

[11] According to the Chapter IV of the Rules of Procedure of the Assembly of States Parties.
[12] Rome Statute article 112 (7).
[13] Refer AALCO Report on "International Criminal Court: Recent Developments" 2003/SD/S 10; 2004/SD/S 10; 2005/SD/S 10; 2006/SD/S 10; 2007/SD/S 9, AALCO/47th HEADQUARTERS (NEW DELHI) SESSION/2008/S 9 and AALCO/48/PUTRAJAYA/2009/S 9. For more information regarding the ASP-I to ASP VII refer www.icc.cpi-int.

exercise its jurisdiction with respect to the crime and urged all States to ratify the amendments. Furthermore, Mr. Ban Ki-moon recalled that the Court is the centerpiece of the system of international criminal justice. He also emphasized the crucial importance of States complying with their responsibilities to enforce all outstanding arrest warrants.

65. The President of the Assembly recalled the accomplishments of the Review Conference, and the fact that all decisions in Kampala had been adopted by consensus. He also joined the Secretary-General of the United Nations in his call to ratify the amendments to the Rome Statute adopted at the Review Conference. He also highlighted the challenges arising for the Assembly from situations where full cooperation by States was not forthcoming and furthermore emphasized the need to establish a dialogue between States Parties and the Court, which would address the needs of both sides as partners in the common effort to fight impunity.

66. The President of Colombia, Juan Manuel Santos asserted the strong commitment of Colombia to fight against impunity at the national level. He recalled that under the Rome Statute, the leading role in combating these crimes lies with States and that the Court should step in only when States are unwilling or unable to do so. President Santos not only underscored the commitment of his administration to provide reconciliation and reparation to victims of violence at the domestic level but also pledged to make a donation to the Trust Fund for Victims. President Santos also expressed the commitment of Colombia to assist and work with the Court for peace and justice as a UN Security Council member starting January 2011.

67. The President of the ICC, Judge Sang-Hyun Song, noted the recent achievements of the Court, which included increased judicial activity. Furthermore, he appealed to States to continue with their financial contributions to the Court so that it can fulfill its mandate. Lastly, he stressed the importance of following up on the momentum from the Review Conference, ensuring that States continue fulfilling their pledges, increase cooperation with the ICC and uphold the complementarity principle.

68. The Prosecutor, Mr. Luis Moreno-Ocampo, briefed the Assembly on existing investigations and nine preliminary examinations that are underway, including allegations of war crimes committed in the territory of the Republic of Korea. Mr. Ocampo welcomed the implementation of the independent oversight mechanism that would oversee the internal conduct of the Court's officials but reiterated that further discussions were necessary in order to prevent any negative impact on the integrity of the Rome Statute.

69. Ms. Elisabeth Rehn, Chair of the Board of Directors of the Trust Fund for Victims, referred to the increasing engagement of the Court with victims exemplified by education, counseling, rehabilitation and reparation initiatives of the Trust Fund, which has over 70,000 direct beneficiaries.

70. During the first two days of the general debate, 47 States Parties and one Observer State spoke reiterating their commitment to the Rome Statute and international

criminal justice. Some States Parties pledged to contribute a total of €400,000 to the Trust Fund for Victims, €200,000 to the Special Trust Fund for Relocation and €85,000 to a new Trust Fund which would fund the family visits of indigent detainees.

71. The Assembly also elected by consensus six members of the Committee on budget and Finance.

72. At the ninth session, the Assembly, inter alia, followed up on the stocktaking exercise of the Review Conference, considered proposals for the amendments of the Rome Statute that were not conveyed for consideration by the Review Conference, as well as considered the 2011 budget of the Court.

73. On 10 December 2010, the Assembly of States Parties to the Rome Statute of the International Criminal Court ("the Assembly") concluded its ninth session and adopted resolutions, *inter alia*, on the programme budget for 2011, permanent premises, governance, the Independent Oversight Mechanism and on Strengthening the International Criminal Court and the Assembly of States Parties.

74. As a part of the Review Conference follow-up, the Assembly considered three stocktaking topics, namely complementarity, cooperation, impact of the Rome Statute on victims and affected communities, and decided to keep under constant review the question of enhancing efficiency and effectiveness of the Court. The focal points on pledges invited States to submit new pledges to the Assembly as well as follow up on the pledges already made. The States Parties also adopted a resolution on the establishment of the study group on governance as a collective exercise by States and the Court.

75. The Assembly of States Parties will hold its tenth session from 12 to 21 December 2011 at United Nations Headquarters the Assembly would, *inter alia*, elect six new judges and the Prosecutor.

IV. Consideration of the Item during the Year 2010 at the United Nations General Assembly

A. ICC President's Report to the 65th Session of the United Nations General Assembly: 19 August 2010

76. The sixth annual report of the ICC, covering the period 1 August 2009 to 31 July 2010, was submitted to the United Nations in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court [14]. It covers the main developments in the activities of the Court and other developments of relevance to the relationship between the Court and the United Nations since the fifth report of the Court to the United Nations[15] .

[14] United Nations, *Treaty Series*, vol. 2283, No. 1272.
[15] (A/64/356).

77. In carrying out its functions, the Court relies on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation from States include analysis, investigations, the arrest and surrender of accused persons, asset tracking and freezing, victim and witness protection, provisional release, the enforcement of sentences and the execution of the Court's decisions and orders.

78. The Court is independent from, but has close historical, legal and operational ties to, the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute and by the Relationship Agreement and other subsidiary agreements.

B. Review Conference of the Rome Statute

79. The Review Conference of the Rome Statute was held from 31 May to 11 June 2010 in Kampala. Pursuant to article 123, paragraph 1, of the Rome Statute, the Secretary-General of the United Nations, Ban Ki-moon, in his capacity as depositary of the Rome Statute, convened and opened the Conference.

80. The Review Conference adopted the **Kampala Declaration** (declaration RC/Decl.1) in which States parties reaffirmed their commitment to the Rome Statute and its full implementation, as well as its universality and integrity. States parties decided to celebrate 17 July, the day of the adoption of the Rome Statute in 1998, as the Day of International Criminal Justice.

81. The Conference held a **pledging ceremony** in which 112 pledges from 37 States, including States not parties to the Rome Statute, and regional organizations, were made. These pledges covered, inter alia, financial contributions, support for arrests, agreements to enforce sentences, agreements on privileges and immunities, relocation of witnesses, cooperation with the Court and between States in various forms, complementarity, outreach and the designation of focal points.

82. The Conference undertook a **stocktaking of international criminal justice**, and separate panels of experts and practitioners considered the following topics: the impact of the Rome Statute system on victims and affected communities; peace and justice; complementarity and cooperation. The Conference adopted two resolutions [16], a declaration on cooperation (declaration RC/Decl.2) and a summary of the discussions on peace and justice (document RC/ST/PJ/1/Rev.1), and took note of the summaries of other topics[17].

83. The Conference amended the Rome Statute to include a **definition of the crime of aggression** and the conditions under which the Court could exercise jurisdiction with

[16] Resolution RC/Res.1, on complementarity, and resolution RC/Res.2, on the impact of the Rome Statute system on victims and affected communities.
[17] The summaries may be accessed at www.icc-cpi.int.

respect to that crime[18]. The exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States parties as required for the adoption of an amendment to the Statute.

84. By resolution RC/Res.5, adopted on 10 June 2010, the Conference amended article 8, paragraph 2 (e), of the Statute to include within the jurisdiction of the Court the following **war crimes** when committed in armed conflicts not of an international character: employing certain poisonous and expanding bullets; employing asphyxiating or poisonous gases, and all analogous liquids, materials and devices; and employing bullets that flatten easily in the human body. These crimes are reflected in new subparagraphs (xiii), (xiv) and (xv), respectively. By the same resolution, the Conference adopted the corresponding elements of crimes.

85. By resolution RC/Res.4 of 10 June 2010, the Conference decided to **retain article 124** of the Statute in its current form and agreed to further review its provisions during the fourteenth session of the Assembly of States Parties, to be held in 2015. This article grants to new States parties the possibility to opt out of the jurisdiction of the Court in respect of war crimes allegedly committed by its nationals or on its territory for a period of seven years after entry into force of the Statute for the State concerned.

86. In its resolution on strengthening the enforcement of sentences (resolution RC/Res.3), the Conference called upon States to indicate to the Court their willingness to accept sentenced persons in their prison facilities and confirmed that a sentence of imprisonment could be served in prison facilities made available though an international or regional organization, mechanism or agency.

C. Judicial Proceedings

87. The Court is seized of five situations. The situations in Uganda, the Democratic Republic of the Congo and the Central African Republic were each previously referred to the Court by those States, themselves Parties to the Rome Statute. The situation in Darfur, the Sudan was referred by the United Nations Security Council. In each case, the Prosecutor decided that there was a reasonable basis to open investigations. During the reporting period, Pre-Trial Chamber II authorized the Prosecutor to initiate an investigation into the situation in Kenya in relation to crimes against humanity committed between 1 June 2005 and 26 November 2009. Further, the Office of the Prosecutor is conducting preliminary examinations in various situations, including in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea and Palestine.

88. In respect of the situation in Uganda, there is one ongoing case, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, which is at the pretrial stage. The four warrants of arrest have been outstanding since July 2005. On 16 September 2009, the Appeals Chamber upheld the decision rendered by Pre-Trial Chamber II on 10 March 2009, which had ruled that the case against the four accused was admissible before the Court.

[18] see resolution RC/Res.6

89. In respect of the situation in the Democratic Republic of the Congo, there are three ongoing cases, one at the pretrial stage and two at the trial stage. In *TheProsecutor v. Bosco Ntaganda*, the arrest warrant issued by Pre-Trial Chamber I under seal on 22 August 2006 and unsealed on 28 April 2008 remains outstanding.

90. In *The Prosecutor v. Thomas Lubanga Dyilo* the Court has heard the prosecution case and the defence started the presentation of its evidence on 7 January 2010. On 8 July 2010, however, Trial Chamber I ordered a stay in the proceedings. The prosecution appealed the decision, which is now pending before the Appeals Chamber.

91. The trial in the case of *The Prosecutor v. Germain Katanga and MathieuNgudjolo Chui* started on 24 November 2009 before Trial Chamber II with the presentation of prosecution evidence which continued until 16 July 2010. The trial is scheduled to resume on 23 August 2010.

92. In the situation in the Central African Republic, there is one ongoing case, *The Prosecutor v. Jean-Pierre Bemba Gombo*, now also at the trial stage since 18 September 2009, when the Presidency referred the case to Trial Chamber III. The start of the trial was scheduled for 27 April 2010. On 25 February 2010, however, the defence submitted a challenge to the admissibility of the case, which led to subsequent postponements of the date of commencement of the trial. On 24 June 2010, Trial Chamber III confirmed that the case was admissible. The decision was appealed by the defence. The new date of commencement of the trial is to be set on 30 August.

93. In respect of the situation in Darfur, there are four ongoing cases, all at the pretrial stage.

V. Comments and Observations of the AALCO Secretariat

94. The drafters of the Rome Statute planned the first Review Conference as the first opportunity to consider amendments. They were of the view that seven years of the functional Court operations should enable States to make informed decisions on whether changes to the Rome Statute were needed.

95. In June 2010 and at the very beginning of the Review Conference, the international community had already answered that question: the Rome Statute was a very substantial treaty, which equipped the Court with all the tools necessary to carry out its mandate, and there was no need for significant changes to the treaty.

96. The discussions on amendments during the Conference focused on issues mandated by the Rome Conference itself. No proposals for institutional changes were tabled and the fundamentals principles, on which the Rome Statute was based, were firmly supported.

97. During the Conference many speakers expressed the view that impunity implied achieving universality of the Rome Statute, however, there was still a long way to go

before the Rome Statute becomes a truly universal instrument as it was not an easy process.

98. At the same time, it should be remembered that ratifying the Statute was far from being enough. A genuine commitment to the Court required the adoption of necessary implementing legislation. The outcome of the Review Conference has clearly demonstrated that the principle of complementarity would remain as one of the pillars for the effective functioning of the Court, and to be used as the Court of last resort. This principle needs to be further strengthened.

99. In this regard, it is pertinent to mention that despite, the repeated calls from the Secretary-General of the United Nations for universalization of the Rome Statute, it has evoked lesser participation particularly from the Asian States.

100**.** Another important feature for the proper functioning of the Court would be the cooperation it receives from the United Nations, States, International Organizations and other actors.

101. AALCO has taken keen interest in following the developments pertaining to the ICC. Pursuant to the mandate received from the Forty-Ninth Session of AALCO, held in Dar es Salam, United Republic of Tanzania, from 5th to 8th August 2010, and based upon the positive response received from the Governments of Malaysia, the International Criminal Court, the Government of Malaysia and the AALCO Secretariat are jointly organizing a *"Meeting of Legal Experts on the Rome Statute of the International Criminal Court: Operationalising the Rome Statute through Domestic Legislation" - to be held on 19th and 20th July 2011, at the Attorney General's Chambers in Putrajaya, Malaysia.*

102. It is expected that this two-day Meeting in Putrajaya, would serve as a forum for dialogue amongst the AALCO Member States to address issues and challenges relating to the Rome Statute.

103. In view of this, the Meeting would provide a forum wherein the States Parties to the ICC, the prospective State Parties and non-State Parties to the Rome Statute can engage in a dialogue to exchange their views and concerns relating to the Rome Statute. Some of the themes, on which the dialogue is expected to be structured around, include: (i) Update of Post Kampala Review Conference; (ii) Effect of Ratification of the Rome Statute on the National Legal System; (iii) Principle of Complementarity: Evolving Criteria for Avoidance of Subjective Interpretations; (iv) Exercise of Jurisdiction over non-State Parties to the Rome Statute; (v) Bilateral Immunity Agreements and (vi) Conflict between Peace and Justice.

VI. Annex

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 9
1 JULY 2011

INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Considering the Secretariat Document No. AALCO/50/COLOMBO/2011/S 9;

Taking note of the deliberations and decisions of the Review Conference of the Rome Statute of the International Criminal Court, and noting the progress in cases before the International Criminal Court (ICC);

Also taking note of the deliberations and decisions of the Ninth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC);

Being aware of the importance of the universal acceptance of the Rome Statute of the International Criminal Court and in particular, the principle of complementarity;

Taking note of the outcome of the Review Conference of the Rome Statute of the International Criminal Court held at Kampala, Uganda:

1. **Encourages** Member States which are not yet party to consider ratifying/acceding to the Rome Statute and on ratification/accession consider adopting necessary implementing legislation.

2. **Further encourages** Member States that have ratified the Rome Statute to consider becoming party to the Agreement on the Privileges and Immunities of the International Criminal Court.

3. **Directs** the Secretariat to follow up the deliberations in the forthcoming Tenth Session of the Assembly of States Parties and its meetings, and follow the developments regarding cases taken up by the International Criminal Court, and present a report at the Fifty-First Annual Session.

4. **Requests** the Member States to participate in the forthcoming "Meeting of Legal Experts on the Rome Statute of the International Criminal Court", scheduled to be held in Putrajaya, Malaysia on the 19th and 20th of July 2011.

5. **Decides** to place this item on the provisional agenda of the Fifty-First Annual Session.

5. CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

AALCO/50/COLOMBO/2011/S 11
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CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

(Non-Deliberated)

CONTENTS

5. CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

I. Introduction

A. Background

1. The agenda item "An Effective International Legal Instrument Against Corruption" was introduced into the agenda of the Asian-African Legal Consultative Organization [AALCO] by the then Secretary-General of AALCO at its Forty-First Session held at Abuja, Nigeria in 2002. This introduction had coincided with the efforts of the United Nations General Assembly (UNGA) to adopt an international convention on corruption. In its Resolution 55/61 adopted in 2001, the General Assembly established an Ad Hoc Committee for the Negotiation of a Convention against Corruption. That resolution also outlined a preparatory process designed to ensure the widest possible involvement of Governments through intergovernmental bodies. It is important to note that the Ad Hoc Committee was an open-ended body and was consistently attended by a very high number of delegations from different countries.

2. It was at this stage that AALCO had joined itself with the workings of the Ad Hoc Committee with the aim of influencing the negotiation process by giving the common concerns of the Asian-African States to it. AALCO's concerns were well in tune with the reality that corruption, though found in all countries, big and small, rich and poor, is a massive problem in developing societies. The Ad Hoc Committee held seven Sessions to successfully complete the negotiations and the United Nations Convention against Corruption [UNCAC or the Convention, hereinafter] was adopted through consensus by the General Assembly in October 2003.

3. The UNCAC, which came into force in 2005 and has got 151 State Parties[1] to it, is a powerful weapon in the armoury of the international community in its fight against corruption. The AALCO, convinced as it is, that corruption is no longer a local matter but a trans-national phenomenon that affects all societies and economies, and that a comprehensive and multi-disciplinary approach is required to prevent and combat corruption effectively, has been regularly deliberating on various aspects of the UNCAC during its Annual Sessions, with the objective of promoting the domestic implementation aspects of the UNCAC in its Member States. It has also been very vocal in promoting the cause of the UNCAC by adopting resolutions at its Annual Sessions encouraging its Member States to ratify the Convention. In pursuance of its work on corruption, AALCO has also produced two Special Studies on the subject. They are: *Combating Corruption: A Legal Analysis (2005)*; and *The Rights and Obligations Under the United Nations Convention Against Corruption (2006)*.

[1] Of these 151 States, 35 are from the Member States of AALCO who have either ratified or acceded the UNCAC and 6 who have only signed it. See, Annex I, for the complete list of the names of the Countries of AALCO who have done so.

4. Be that as it may, it needs to be mentioned here that the UNCAC contains a mechanism for implementation, in the form of a *Conference of the State Parties* (CoSP) with a Secretariat that is charged to assist it in the performance of its functions. The First Session of the CoSP to the UN Convention against Corruption was held from December 11 to 14, 2006 at Amman, Jordan and the Second Session of the CoSP to the UNCAC was held in Nusa Dua, Bali, Indonesia, from 28 January to 1 February 2008. The Third Session of the CoSP to the UNCAC took place at Doha from 9 to 13 November 2009, with the specific agenda of creating a mechanism to review the implementation of the UN Convention against Corruption.

5. This Secretariat Report, after providing a brief overview of the important features of the UN Convention against Corruption focuses on the salient features of the Review Mechanism adopted at the Third Session of the Conference of State Parties to the UNCAC at Doha in November 2009. It also seeks to identify the progress made thus far, by taking a look at the work of the Implementation Review Group that held its first Session in Vienna from 28 June to 2 July 2010. It is to be mentioned here that the Fourth Session of the Conference of State Parties to the United Nations Convention against Corruption is scheduled to be held in Marrakech, Morocco from 24 to 28 October 2011. Pursuant to the decision taken by the Conference at its Third Session in 2009, this Conference is expected to concentrate on key issues regarding review of the implementation of the UNCAC, asset recovery, prevention and technical assistance.

6. The AALCO, in collaboration with the O.P. Jindal Global University, has organized a Seminar on *"Corruption, Ethics and Good Governance"*, that took place at the AALCO Secretariat on 6th May, 2011. This seminar dealt with a lot of crucial issues emanating from the fight against corruption that included; the linkage between governance and integrity and governance and development; the impact of corruption on the realization of human rights; the effect of corruption on democratic governance and others.

B. Deliberations at the Forty-Ninth Annual Session of AALCO

7. The issue of corruption was discussed as a deliberated item at the last year's Annual Session of AALCO held at Dar-Es-Salaam, Tanzania from 5 to 8 August 2010.

8. Dr. Xu Jie, Deputy Secretary-General of AALCO had introduced the agenda item and highlighted the previous works of AALCO on this agenda item which included the preparation of two Special Studies. Explaining their rationale, he stated that they were prepared with a view to providing an in-depth analysis of the international anti-corruption instruments, especially the UN Convention Against Corruption and giving a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the UNCAC into their national jurisdictions.

9. On the utility of the UNCAC in the fight against corruption, he stressed that it represented the most comprehensive anti-corruption instrument available on the global scene. As regards the Review Mechanism, he remarked that with its adoption, the

international community had found an answer to one of the principle challenges facing the fight against corruption, namely, the failure to establish an appropriate review mechanism so as to enforce the provisions of the UNCAC effectively. He expressed hope that the review mechanism would go a long way in not only enforcing compliance with the provisions of UNCAC but also would enable the international community to monitor the anti-corruption efforts undertaken by its State Parties in a more effective and transparent manner.

10. During the deliberations that followed, almost all the Delegates expressed the view that UNCAC remains an important tool in the fight against corruption and that it should be implemented in both letter and spirit by adopting necessary legislation and creating the necessary institutional frameworks and infrastructure within their domestic societies. Many delegates welcomed the adoption the review mechanism to implement the provisions of UNCAC at Doha in 2009 and expressed hope that compliance with the mechanism would be indispensable in the fight against corruption. They also expressed their willingness to work with each other in close cooperation in their fight against corruption.

11. Furthermore, the Member States also explained in detail the domestic efforts that they have taken, including the anti-corruption legislations and institutional mechanisms, in their fight against corruption. A lot of delegates also stressed the need for international cooperation in anti-corruption efforts. In this regard, it was also felt that if countries worked towards the compliance of their national legislation in accordance with the requirements of the UNCAC, barriers in international cooperation could be significantly reduced.

II. The Road to the Implementing Mechanism

12. The adoption of the UN Convention against Corruption in 2003 created a global framework for combating corruption -- a development of enormous potential. The Convention's eight chapters establish government obligations and standards for preventing and punishing corruption, international cooperation, technical assistance and asset recovery[2]. The fact that it has been ratified by 151 States within a short time, has raised high expectations that UNCAC will begin to function as the leading global instrument for tackling corruption at the national and international level.

13. However for a long time, the UNCAC was not transformed from words to deeds. An effective implementation review mechanism was needed to be adopted by the State Parties to ensure implementation by governments. For it was rightly felt that without monitoring, there is no guarantee that countries will comply with the Convention's commitments in a timely or effective manner.

[2] See, for a comprehensive overview of the provisions of the UNCAC and what they mean for the State Parties : *Combating Corruption: A Legal Analysis* [2005] and *Rights and Obligations Under the United Nations Convention Against Corruption* [2006] , both prepared by the Secretariat of AALCO.

14. The First Conference of States Parties (CoSP) held in Jordan in December 2006 agreed that "effective and efficient review of the implementation of the Convention…is of paramount importance and urgent." No progress was made at the Second CoSP in January 2008. During the past two years an Inter-Governmental Working Group has sought to develop a consensus on the review mechanism and its terms of reference. However, a small number of governments has been blocking agreement on several critical issues. The Conference at its third session, held in November 2009, adopted landmark Resolution 3/1 on the review of the implementation of the Convention. In that Resolution, the Conference established a review mechanism aimed at assisting countries to meet the objectives of the Convention through a peer review process.

15. In the remaining part of the Secretariat's report an attempt is made to look at the implementation mechanism (or the Doha mechanism) as it has come to be called) with the objective of finding out the positive as well as the negative aspects of it. With this Mechanism, States Parties have undertaken to review their implementation of UNCAC provisions through a peer review process. Reviews will be conducted on the basis of each State's self-assessment, submitted through the comprehensive self-assessment checklist endorsed by the Conference at its third session.

A. Structure and Terms of Reference: A Brief Overview

16. The Terms of Reference (TOR) of the Review Mechanism specify that:

- The UNCAC will be reviewed by way of a peer review process – each State Party shall be reviewed by two other States Parties, with the State Party under review being actively involved.

- The selection of the State Party under review and of the reviewing States will be carried out by drawing of lots. Each State will be reviewed by a State from its own regional group and one from another.

- Each review phase shall be composed of two review cycles of five years each and all States Parties must undergo the review within the cycle.

- The first review cycle will cover UNCAC Chapters III (criminalization and law enforcement) and Chapter IV (international co-operation).

- The second review cycle will cover Chapter II (preventive measures) and Chapter V (asset recovery).

- An initial desk review will be based on the responses to the comprehensive self-assessment checklist. States under review shall endeavour to conduct broad consultations including all relevant stakeholders when preparing their responses.

- Active dialogue between the country under review and the reviewers is a key component of the process.

- Country visits will be conducted when agreed by the State under review, and States shall facilitate engagement with all relevant stakeholders.

- A country review report will be prepared under the ownership of the country under review. The executive summary of this report will be an official United Nations document.

- The Mechanism has an Implementation Review Group (IRG) which shall have an overview of the review process and provide recommendations and conclusions to the Conference.

17. The review of implementation of the Convention and the Mechanism are under the authority of the Conference, in accordance with article 63 of the Convention. Consistent with the Convention, in particular article 63, the purpose of the review process shall be to assist States Parties in their implementation of the Convention. In this regard, the review process, *inter alia*, shall:

- Promote the purposes of the Convention as set out in its first article;

- Provide the Conference with information on the measures taken by States Parties in implementing the Convention and the difficulties encountered by them in doing so;

- Help States Parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;

- Promote and facilitate international co-operation in the prevention of and the fight against corruption, including in the area of asset recovery;

- Provide the Conference with information on successes, good practices and challenges of States parties in implementing and using the Convention;

- Promote and facilitate the exchange of information, practices and experiences gained in the implementation of the Convention.

B. Guiding Principles and Characteristics of the Review Mechanism

18. The Mechanism is an intergovernmental process which shall:

- Be transparent, efficient, non-intrusive, inclusive and impartial;

- Not produce any form of ranking;

- Provide opportunities to share good practices and challenges;

- Assist States parties in the effective implementation of the Convention;

- Take into account a balanced geographical approach;

- Be non-adversarial and non-punitive and shall promote universal adherence to the Convention;

- Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such an outcome;

- Identify, at the earliest stage possible, difficulties encountered by States Parties in the fulfillment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;

- Be of a technical nature and promote constructive collaboration, inter alia, in preventive measures, asset recovery and international co-operation;

- Complement existing international and regional review mechanisms in order that the Conference may, as appropriate, co-operate with those mechanisms and avoid duplication of effort.

19. It needs to be recalled here that the process of the adoption of the implementation mechanism saw apprehensions being expressed by a number of countries on the ground that the proposed mechanism could be used in order to interfere into the domestic affairs of sovereign states. In conformity with Article 4 of the UNCAC, the Mechanism shall not serve as an instrument for interfering in the domestic affairs of States Parties but shall respect the principles of equality and sovereignty of States parties. Furthermore, the review process shall be conducted in a non-political and nonselective manner. The Mechanism shall also promote the implementation of the Convention by States Parties, as well as cooperation among States Parties. It shall further provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening co-operation among States parties in preventing and fighting corruption.

20. The Mechanism shall take into account the levels of development of States Parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions. The review of implementation of the Convention is perceived as an ongoing and gradual process. Consequently, the Mechanism shall endeavour to adopt a progressive and comprehensive approach.

C. Implementation Review Group

21. It could be recalled here that pursuant to paragraph 42 of the terms of reference of the Review Mechanism, an open-ended intergovernmental group of States parties by name, the Implementation Review Group, had been established which shall operate under

the authority of and report to the Conference of State Parties. Pursuant to paragraph 44 of the terms of reference, the functions of the Group shall be to have an overview of the review process in order to identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention. Pursuant to paragraph 43 of the terms of reference, the Group shall hold meetings at least once a year in Vienna.

22. It also could be recalled here that the resolution creating the Review mechanism also did contain the Draft Guidelines for Governmental Experts and the Secretariat in the conduct of country reviews, as well as a draft blueprint for country review reports which had been adopted by the Conference of State Parties. The Guidelines and the blueprint were expected to be finalized by the Implementation Review Group at its First Session.

23. The First Session of the Implementation Review Group took place in Vienna from 28th June to 2nd July 2010. At this session, the Guidelines for Governmental Experts and the Secretariat in the conduct of country reviews, as well as a Blueprint for the country review report, which had been adopted earlier, were finalized by the Implementation Review Group[3]. The meeting also witnessed the drawing of lots conducted by the Implementation review Group to identify the reviewers and the reviewees for the first four years of the first review cycle.

24. Lots were drawn to select the reviewing States parties for the first year of the first review cycle. For each State party selected to be reviewed[4], one of the two reviewing States was selected from the same regional group and the second reviewing State was selected from a pool of all States parties. According to the terms of mechanism of the review mechanism, the reviewing States parties shall appoint up to 15 governmental experts for the purpose of the review process. At the time of the drawing of lots, 94 States parties had submitted lists of experts. It was agreed that the secretariat would set an appropriate deadline for the remaining States parties to comply with their obligation.

25. The States parties selected for reviews that were in attendance were asked to indicate whether they wished to exercise that right. Selected States parties not in attendance were to be notified by the secretariat of their selection and allowed a reasonable time frame for exercising their right to defer. When a selected State party exercised its right to defer, the States parties from the same regional group selected to be reviewed the following year were invited to indicate whether they wished to take the place of the deferring State party. The Group was of the understanding that if no State party volunteered to advance its review, the review of the deferring State party would be added to the reviews already scheduled for the following year.

[3] See, for the "Guidelines for the Governmental Experts and the Secretariat in the conduct of Country Reviews", CAC/COSP/IRG/2010/7, Annex I, and Appendix.

[4] See, for the list of State Parties selected for review and reviewers for the first review cycle, CAC/COSP/ IRG/2010/ 7, Annex II.

III. Comments and Observations of the AALCO Secretariat

26. The prolonged deadlock over the creation of an implementation review mechanism had impaired the ability of UNCAC to become the key global framework for combating corruption. The fact that this has been resolved and a new implementing review mechanism has been put into practice does augur well for the fight against corruption. The Conference of State parties, in November 2009, adopted the Review Mechanism according to which, over two successive five years review cycles, each State Party will review and be reviewed by its peers. The mechanism is certainly not perfect and leaves room for improvement. For instance, a review process in which the final product of a review is kept confidential is not a process that will be effective or transparent or inspire promise. But it needs to be kept in mind that the decision was reached through a political consensus and the commitment expressed by two third of the world to have a common legally binding platform is definitely an accomplishment, in particular for the sake of international cooperation.

27. Having established the review mechanism, it is for the States parties to the UNCAC to show the political will to translate the obligations of the Convention into concrete reality. In order for that to happen, the State Parties should extend their full cooperation with the process enabling them to review the efficacy of their laws and regulations in an all-encompassing manner. The coming years will throw light on their will to tackle this serious menace called corruption.

28. Be that as it may, AALCO believes that technical assistance is a crosscutting issue running throughout the Convention, and its provision is an essential part of its effective and efficient implementation. Hence, AALCO emphasizes that in order to promote the implementation of the UNCAC, States Parties should afford one another the widest measure of technical assistance, especially for the benefit of developing countries and their efforts to apply the Convention.

IV. Annex-I

Participation of the AALCO Member States in the UN Convention against Corruption

Status: Signatories 140, Parties 151 [as of 31st March 2011[5]]

Ratification Status of African Countries:

Country	Signature	Ratification (R)/Accession (A)
Botswana	---	---
Cameroon		R
Egypt		R
Gambia	---	---
Ghana		R
Kenya		R
Libya		R
Mauritius		R
Nigeria		R
Senegal		R
Sierra Leone		R
Somalia	---	---
South Africa		R
Sudan	S	
Tanzania		R
Uganda		R

Ratification Status of Asian Countries:

Country	Signature	Ratification (R)/Accession (A)
Bahrain		R
Bangladesh		A
Brunei		R
China P.R.		R
Cyprus		R
India	S	
Indonesia		R
Iran		R
Iraq		A
Japan	S	
Jordon		R

[5] The information contained in this chart has been accessed from the web site of the United Nations Office on Drugs and Crime: www. Unodc.org/unodc/en/treaties/CAC/signatories.htm

Korea D.P.R	**---**	**---**
Korea Rep.of		**R**
Kuwait		**R**
Lebanon		**A**
Malaysia		**R**
Mongolia		**R**
Myanmar	**S**	
Nepal		**R**
Oman	**---**	**---**
Pakistan		**R**
Palestine	**---**	**---**
Qatar		**R**
Saudi Arabia	**S**	
Singapore		**R**
Sri Lanka		**R**
Syria	**S**	
Thailand		**R**
Turkey		**R**
U.A.E		**R**
Yemen		**R**

Annex-II

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 11
1 JULY 2011

CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat document contained in No. AALCO/50/ COLOMBO/2011/S 11;

Deeply concerned about the impact of corruption on the political, social and economic stability and development of societies;

Bearing in mind that the prevention and combating of corruption is a common and shared responsibility of the international community, necessitating cooperation at the bilateral and multilateral levels;

1. **Welcomes** the adoption of the new review mechanism to implement the provisions of the United Nations Convention against Corruption, which reflects the high-level commitment on the part of the international community to effectively tackle the problem of corruption;

2. **Encourages** Member States of AALCO who have not done so to consider ratifying/acceding to the United Nations Convention against Corruption so as to strengthen the fight against corruption;

3. **Decides** to place this item on the provisional agenda at its Fifty-First Annual Session.

6. WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR WORLD TRADE

AALCO/50/COLOMBO/2011/S 13
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WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR THE WORLD TRADE

(*Non-Deliberated)*

CONTENTS

6. WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR THE WORLD TRADE

I. Introduction

A. Background

1. At the Thirty-Fourth Session of the AALCO (1995) held at Doha, Qatar, the item "WTO as a Framework Agreement and Code of Conduct for the World Trade" was for the first time introduced in the Agenda of AALCO. Thereafter, this item continued to remain on the agenda of the Organization and was deliberated upon during the subsequent sessions. At these sessions, the Secretariat was directed to monitor the development related to the WTO, particularly the relevant legal aspects of dispute settlement mechanism.[1]

2. In fulfillment of this mandate, the Secretariat had been preparing reports and presenting it to the Member States for their consideration and deliberation. In furtherance of its work programme, the AALCO in cooperation with the Government of India also convened a two-day seminar on 'Certain Aspects of the functioning of the WTO Dispute Settlement Mechanism and other Allied Matters' at New Delhi (1998). Further, at the Forty-Second Session held in Seoul (2003), the Secretariat presented a Special Study on 'Special and Differential Treatment under WTO Agreements'.

3. At the Forty- Ninth Annual Session held in Dar es Salaam, United Republic of Tanzania from 5 to 8 August 2010, the Secretariat provided an update on the Doha Development Round of Negotiations with focus on the negotiation on Agriculture, Non-Agriculture Market Access (NAMA) and the Review of the Dispute Settlement Understanding. In that Session, the Organization directed the Secretariat to continue to monitor and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding.[2]

4. This study provides a brief report on the Doha Development Round of Negotiations with focus on the negotiation on Agriculture, Non-Agriculture Market Access (NAMA) and the Review of the Dispute Settlement Understanding. The summary of the deliberations on this item at the Forty-Ninth Annual Session of AALCO and the "Training Workshop on the World Trade Organization" organized by the Centre for Research and Training of AALCO in cooperation with the Institute for Training and Technical Cooperation (ITTC) of the World Trade Organization from 28th March to 1st April 2011 are also included.

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[1] **Thirty-eight AALCO Member** States are Members of WTO. They are: Arab Republic of Egypt, Bahrain, Bangladesh, Brunei Darussalam, Botswana, Cameroon, Cyprus, Gambia, Ghana, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, People's Republic of China, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Tanzania, Thailand, Turkey, Uganda, and United Arab Emirates.

[2] AALCO/RES/49/S 13, OP.2.

B. Deliberations at the Forty-Ninth Annual Session of AALCO, Dar es Salaam, United Republic of Tanzania (2010)

5. Dr. Xu Jie, Deputy Secretary-General, AALCO introduced the topic and observed that the World Trade Organization had completed fifteen years since its establishment on 1 January 1995. The WTO was born out of negotiations, and everything the WTO did was based on negotiations. The bulk of the WTO's current work came from the 1986–1994 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO was currently host to new negotiations, under the "Doha Development Agenda" launched in 2001. After highlighting the importance of the negotiations, the DSG raised the query that how far the negotiators from the Asian-African region, particularly, the developing and Least Developed countries were equipped to handle the highly technical negotiations undergoing in the WTO, especially, the Doha Round of Negotiations. He stated that the trade negotiators needed training and research guidance to effectively participate in the negotiations. In that regard, he emphasized that the AALCO Secretariat, through its Research and Training Division, Centre for Research and Training (CRT) was willing to undertake research studies, and training workshops for trade negotiators from the Asian-African region, in collaboration with the AALCO Member States and international organizations, particularly, the WTO Secretariat. Financial resources and subject experts were required to undertake these projects.

6. In that context, he recalled that the Centre for Research and Training (CRT) of AALCO had successfully organized a "Basic Course on the World Trade Organization" from 1 to 5 February 2010 at the AALCO Headquarters in New Delhi. Sixty seven participants, including Diplomats, Officials, Law Teachers, and Research Scholars representing twenty four countries, participated in the Training Programme. Experts in the field of WTO delivered lectures. He expressed his gratitude to the WTO Secretariat for deputing a resource person from the Trade Negotiations Committee (TNC) Division for delivering lectures. The AALCO Secretariat believed that such initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. He informed that "The Basic Course on the World Trade Organization" was a first step in this direction and many such initiatives would follow in the near future.

7. The Deputy Secretary-General emphasized that the Doha Round of Negotiations had reached a critical stage and the Secretariat hoped that AALCO Member States would actively participate in the Doha Round of Negotiations and make meaningful contributions for its successful conclusion. Negotiations on Agriculture and Non-Agriculture Market Access (NAMA) remained central to the success of the negotiations and were crucial for many of the Member States. He said that the real challenge was how to protect the interest of the Developing and Least Developed countries in the ongoing negotiations.

8. The Delegation of **Sultanate of Oman, People's Republic of China, Japan, Republic of Indonesia, Republic of Kenya, India, United Republic of Tanzania,**

Thailand and **Kingdom of Saudi Arabia** made statements on the topic. One delegation supported the objectives of the negotiations and desired its early conclusion. However, it was noted that the rules and procedures should be equitable and the benefits of the system should be shared with small developing countries. Another delegation was of the view that trade disputes should be primarily addressed through amicable dialogue on equal footing, in accordance with WTO rules and principles. The delegation firmly opposed to trade protectionism and any discriminatory measures that ran counter to the basic WTO spirit. For those trade disputes which could not be settled by dialogue, the WTO dispute settlement mechanism provided a platform for both parties to dispute to pursue a peaceful, rule-oriented manner to settle the issue. The delegation stated that the WTO dispute settlement mechanism had complicated procedure and need adept debate skill which was difficult to most developing countries. In that regard, capacity building and technical cooperation were increasingly important to them.

9. Another delegation said that when issues relating to the WTO were discussed at AALCO, legal aspects of the problems should be focused, leaving substantive questions relating to actual negotiations for consideration by those engaged in such negotiations in Geneva. One delegation expressed its hope that through AALCO, they also could contribute with a clearer sense of how to move forward in light of the current global situation and where negotiations stood and to ensure that the aspiration of developing and least developed countries be accommodated in the conclusion of negotiation. Another delegation believed that much still had to be done to ensure that developing nations gain greater market access to developed member nation's markets. One delegation viewed that compliance was a crucial achievement of the stronger Dispute Settlement Mechanism that emerged out of the new DSU, and this advantage had to be preserved. The delegation opined that all the developing countries including India need to develop institutional mechanisms or support systems to assess and manage the pre-litigation and post-litigation. The delegation also emphasized on development of legal capacity in developing countries which lack adequate financial, institutional and human resources indeed remains a challenge.

10. Another delegation observed that Least Developed Countries, particularly, African countries have traditionally not been considered as important players who should be consulted in the negotiations. The relatively lower level of development and integration in international trade of the LDCs have impeded or limited their participation into the system. The delegation pointed out the limited participation as panellists, limited or non-representation in the Appellate Body from LDCs and limited or non representation of LDC nationals in the WTO Secretariat. The delegation highlighted that LDCs and developing countries should undertake accession from a position of strength that would enable them to face emerging challenges adequately and exploit the opportunities, meanwhile should strive to retain what they have already secured under the WTO.

11. One delegation maintained its firm belief in the importance of the multilateral negotiation through the WTO, especially for the specific issues of subsidies, rules on Free Trade Agreements and the monitoring of protectionism that required multilateral discussion. The delegation was convinced that in order to find a global solution to the

current global economic crisis through the strengthening of multiculturalism, we must bring the Doha Development Agenda (DDA) forward. Another delegation highlighted the issues involved in the negotiation process and wanted to know the problems faced by the AALCO Secretariat in training people in these areas.

C. Training Workshop on the World Trade Organization, (28 March – 1 April 2011, AALCO Headquarters, New Delhi)

12. A five-day training workshop on the World Trade Organization was organized by the Centre for Research and Training (CRT) of AALCO in cooperation with the Institute for Training and Technical Cooperation (ITTC), World Trade Organization from 28th March to 1st April 2011 at the AALCO Headquarters, New Delhi. The training programme was attended by 40 participants from 11 countries, namely, India, People's Republic of China, Islamic Republic of Iran, Sri Lanka, Nigeria, Uganda, Sultanate of Oman, Papua New Guinea, Rwanda, Kingdom of Morocco and Suriname.

13. The Inaugural Session was held on 28th March 2011. H.E. Prof. Dr. Rahmat Mohamad, Secretary-General, in his welcome address highlighted the role of AALCO and its training and research wing-Centre for Research and Training. He also gave a brief outline on the AALCO's work on the WTO related matters. Mr. Masahiro Mikami, Director, International Legal Affairs Division, Ministry of Foreign Affairs, Government of Japan in his opening remarks highlighted the relation the government of Japan have with AALCO as a Member State and the importance of capacity building programmes for the Member States of AALCO. Ms. Vonai Muyambo, Training Officer, Institute for Training and Technical Cooperation, World Trade Organization in her introductory remarks emphasized the importance attached by the WTO to joint capacity building programmes with AALCO and also explained the methodology of the workshop. Prof. Abhijit Das, Head & Professor, Centre for WTO Studies, Indian Institute of Foreign Trade, New Delhi delivered the inaugural lecture on the topic: "Doha Negotiations: What is at Stake for Developing Countries". He made a detailed presentation on the negotiations on agriculture, non-agricultural market access (NAMA), cotton and fisheries. He also highlighted the role and concerns of the developing countries at the Doha round of negotiations. Dr. Xu Jie, Deputy Secretary-General, AALCO and Head of the Centre for Research and Training proposed a vote of thanks. On behalf of AALCO and CRT, he thanked the participants for showing keen interest in the training workshop and also thanked the distinguished speakers and the Secretary-General for their support and cooperation. He also sought support and cooperation in the future endeavors.

14. Five-day training workshop consisted of both lecture and case study. Ms. Vonai Muyambo was the lead resource person for the training workshop. The topics included, Introduction to the World Trade Organization, WTO Basic Principles and Exceptions, Exercises on Basic Principles, General Agreement on Services (GATS), and Trade Related Aspects of Intellectual Property Rights (TRIPS). The case studies on GATS and TRIPS, namely, Liberalization of Retail Services in India, and Seizure of Generic Drugs was dealt by Professor Madhukar Sinha, Centre for WTO Studies, Indian Institute of

Foreign Trade, New Delhi. Training programme was successfully concluded on 1st April 2011 and the Certificate of Completion was awarded to the participants.

II. Developments in the Doha Round of Negotiations

15. On 21 April 2011 the negotiating chairs circulated documents representing the product of the work in their negotiating groups. Trade Negotiations Committee Chair Mr. Pascal Lamy stated in a cover note that for the first time since 2001 Members had the opportunity to consider the entire Doha package, including all market access areas as well as the entirety of the regulatory agenda. He observed that the current WTO rules were last updated in 1995. Since then the world of trade had moved on. As integral pillars of the multilateral trading architecture, our surveillance and dispute settlement system keep serving the membership, but given their distinct mandate, they could not replace the legislature, ie the membership. He highlighted that for the WTO to remain efficient, our disciplines need updating for trade today as well as for the next generation.

A. Agriculture Negotiations

16. In his report by the Chairman, H.E. Mr. David Walker, to the Trade Negotiations Committee he gave a detailed view on the status of the negotiations.

1. Draft Modalities Text

17. He undertook consultations on ten categories of issues that are bracketed or otherwise annotated in the documentation (the Draft Modalities text TN/AG/W/4/Rev.4 together with TN/AG/W/5, TN/AG/W/6 and TN/AG/W/7). The objective of this work was to help Members to build consensus towards concluding Modalities in Agriculture. It was recognised at the outset that the issues identified potentially differed in nature and in the state of their preparation in the documentation before the Negotiating Group. It was nevertheless considered useful to, where necessary and as far as possible, advance technical understanding and framing of issues in preparation for when decisions could be taken. In his assessment this judgement has been borne out in practice albeit, to this point, Members have not been in a position to substantively resolve matters nor is there any discernable progress on these issues that can be captured in text.

a) *Blue Box – Product-specific limits (paragraph 42, TN/AG/W/4/Rev.4)*

18. Consultations indicate that no further technical preparation is required for the eventual decision to be taken with respect to the bracketed numbers in this paragraph.

b) *Cotton (paragraphs 54/55 and Chair's introduction, TN/AG/W/4/Rev.4)*

19. The Chairman held a number of consultations on cotton throughout the period covered by this report. There have also been a number of political-level contacts between particular Members. Consultations have confirmed that not all Members are in a position to agree to the text as drafted but no new contributions, technical or substantive, have

been forthcoming to date. All Members involved in the consultations have emphasised that they remain committed to finding a solution that addresses the issue of cotton "ambitiously, expeditiously and specifically" consistent with the commitments made at the Hong Kong Ministerial Conference in December 2005. However, in the absence of a dynamic capable of leading to the resolution of outstanding issues in the Agriculture negotiation more broadly, and indeed the Round as a whole, what that solution might be remains unclear.

c) *Sensitive Products – Designation (paragraph 71, TN/AG/W/4/Rev.4 and TN/AG/W/5)*

20. The annotation to paragraph 71 reads "*Japan and Canada have declared themselves not to be in a position to agree to this* [the right of developed country Members to designate up to 4 per cent of tariff lines as "Sensitive Products"] *limitation*". Consultations confirm that Japan and Canada are still seeking flexibility to designate additional tariff lines under the "Sensitive Products" category. It remains to be seen whether Members are prepared to agree any further flexibility in designation of "Sensitive Products" beyond that already provided in paragraph 71 and, if so, what payment would be required for such designation. The Chairman expect consultations would continue amongst interested Members on a "without prejudice" basis, including on how any differential tariff quota expansion requirements might be allocated across different tariff lines.

d) *Tariff Cap (paragraph 76, TN/AG/W/4/Rev.4 and TN/AG/W/5)*

21. Views remain sharply divided on whether there should be an exception allowing the maintenance of tariffs in excess of 100 per cent *ad valorem* on products outside a Member's overall "Sensitive Product" entitlement. Differing views have also been expressed on the appropriateness of the payment options in the bracketed text in paragraph 76, were any such exception to be granted.

e) *Tariff Quota Creation (paragraph 83, TN/AG/W/4/Rev.4 and TN/AG/W/6)*

22. While views remain divided on whether such flexibility should be afforded, consultations indicate a general willingness to continue technical discussion, on a "without prejudice" basis, based on TN/AG/W/6. There is a sense that the operability of criteria contained in TN/AG/W/6 is difficult to conceive in the abstract and that discussion may benefit from further factual clarification – for example in respect of which products amongst those for which consumption data has been submitted pursuant to Annex C of TN/AG/W/4/Rev.4 are not currently subject to tariff quotas. Transparency more generally remains a key element in Members' consideration of this issue.

f) *Tariff Simplification (paragraph 104, TN/AG/W/4/Rev.4)*

23. In TN/AG/25, the Chairman reported that consultations had involved an initial technical discussion on how the "or" option in paragraph 104 of TN/AG/W/4/Rev.4 would be operationalised through the other provisions of paragraphs 103 – 108 of

TN/AG/W/4/Rev.4 together with the associated Annex N. Questions were raised, in this context, concerning some apparent differences in terminology between the text of paragraphs 104 – 108 and Annex N and about the interrelationship of envisaged procedures between the text and the Annex. Members were also interested in how proposed simplification would work in practice. The European Union provided an overview presentation, in an open-ended setting, on its proposed simplifications to the Meursing table. Since April 2010 Members have continued discussions amongst themselves to better understand how proposed simplifications would work in concrete terms. The Negotiating Group has also been advised that a number of Members have been working on developing a possible alternative to the options contained in TN/AG/W/4/Rev.4. Members have been making good progress in their work but have not yet reached the stage of having a defined product which can be shared with the Negotiating Group for the purpose of attempting to reach a multilateral solution to this issue.

g) *Special Products (paragraph 129, TN/AG/W/4/Rev.4)*

24. The annotation to paragraph 129 reads "A number of developing country Members have expressed reservations concerning the numbers specified in this paragraph, noting also that this may be affected by what is decided in other areas of the text". Consultations indicate that this annotation remains factually correct. Some Members expressed concerns about the potential export impacts of the treatment provided in paragraph 129. Other Members considered that the paragraph should be regarded as "stabilised".

h) *Special Safeguard Mechanism – SSM (paragraphs 144/145, TN/AG/W/4/Rev.4 and TN/AG/W/7)*

25. In TN/AG/25, the chairman reported that consultations had benefitted from analytical contributions on various elements of a possible SSM architecture from a range of Members, including a number of contributions that had been circulated to all Members as JOB documents. Those contributions covered issues such as price and volume cross-check, seasonality, price-based SSM, flexibilities for Small, Vulnerable Economies (SVEs), and pro-rating. Initial technical exchanges were undertaken on the issues of seasonality, price and volume cross-check, and price-based SSM. A number of questions were raised on the circulated analytical papers with indications of further analytical contributions to come from others on these issues. Other papers on flexibilities for SVEs and pro-rating, which had only been recently circulated at that point, had been introduced with Members indicating they would need some time to study the papers before being in a position to enter into technical discussion on those issues. At the time of TN/AG/25 the importance of further focussed analysis and discussion was highlighted to contribute to the development of shared understanding to underpin the compromises necessary for the establishment of a "fit for purpose" mechanism. Since April 2010, further discussion was undertaken based on the analytical contributions submitted to that point and additional contributions submitted by Members in July and September 2010. The Chairman advised the Negotiating Group in October that the stage of useful analytical discussion appeared

to have been exhausted. What was needed beyond that was "problem solving" engagement among Members to design a mechanism capable of being used to address cases of disruptive import surges while not disrupting demand-induced trade. That remains the case, at least to the extent that no such compromise options have yet been presented for consideration by the Negotiating Group. Several further proposals have been presented concerning Member-specific flexibilities in this area. These issues will also need to be considered in any process of reaching agreement on an SSM.

B. Non-Agricultural Market Access (NAMA) Negotiations

26. Report by the Director-General on his consultations on NAMA sectoral negotiations of 21 April 2011 provided a factual overview of the consultations which he held individually with seven members, namely Australia, Brazil, China, the European Union, India, Japan and the US.

1. Factual overview

27. According to the Hong Kong Declaration, NAMA sectoral negotiations are being pursued to achieve the overall objective of reducing or eliminating tariffs, as appropriate, with participation being non-mandatory. These essentially concerns around thirty WTO Members applying the formula. The Director-General carried out these consultations by posing each participant a series of questions relating to their sectoral priorities, specific views on the product basket approach and or other possible approaches, details on the products requested and offered, the respective contribution of formula cuts and sectorals to the overall NAMA level of ambition, as well as possible trade-offs within NAMA and across other areas of the negotiation. None of the seven Members totally exclude the possibility of sectoral participation. All of them indicated to him that they were ready to participate in one or more sectorals, depending on the specifics of the treatment and how sensitivities on specific tariff lines would be accommodated. Those Members seeking additional market access through sectorals indicated that the following sectors were of priority to them: chemicals, industrial machinery, electronics & electrical products, enhanced health care, forest products, raw materials and gems and jewellery. The emphasis placed on each of these sectors varied across these Members, with some also indicating sensitivities over some of these sectors too.

28. China, India and Brazil indicated they were not seeking further market access through sectorals. Each of them indicated specific sensitivities over these sectors, with chemicals being of particular difficulty and electric and electronics to a lesser extent. These Members also indicated a number of sectors where they could envisage participation, depending on the specifics of the treatment. Members have discussed the "product basket approach" as a possible architecture for sectoral tariff cuts. These discussions have been general in nature and show different views on the number of baskets to be used, on how products should be assigned to each basket as well as on the treatment to be accorded to products within each basket. It would be fair to say that each one of these Members has its own vision on a product basket approach.

29. The level of detail of the sectoral product coverage also varied among participants. Some of the participants extended requests to the other side, indicating products on which they would expect additional tariff cuts. In the case of chemicals, this was done by means of an illustrative list of product chapters. However, he was not informed of any discussion which entered specific products/tariff lines or specific trade-offs. No real back and forth negotiation took place.

30. Regarding treatment, views also varied. On one side of the spectrum, He heard the need for the bulk of the products within the chosen sectors –in particular on chemicals – to move to zero. Other Members were of the view that the purpose of the exercise was to achieve cuts beyond the formula in a balanced and realistic manner, without excluding less than to zero cuts. Different technical means were explained as to how this could be achieved. On the other end of the spectrum, there were members for whom reducing the bulk of the tariffs to zero is not feasible. According to calculations provided during the consultations, eliminating tariffs on chemicals, industrial machinery and electric and electronic products would be somewhere close to applying a Swiss formula 4 coefficient by the developed countries in the consultations (instead of the 8 coefficient in the NAMA modalities currently on the table) and around Swiss formula 8 coefficient by the developing ones (instead of the 20-22 coefficient).

31. But where the gap was largest was on the role of sectoral negotiations in achieving the overall level of ambition in the NAMA negotiations. On one end of the spectrum, he heard the need for sectorals to complement the outcome of the formula tariff reductions by delivering significant additional market access. The objective of sectorals would be to rebalance the disparity in the contribution between developed and emerging countries and to achieve, if not equalisation, a harmonization of their tariffs. In other words, the goal of sectoral negotiations would be for emerging countries to "catch up" with developed members regarding the level of market opening. Other Members indicated that the Swiss formula should be the main determinant of the overall level of ambition of the NAMA negotiations. Sectorals should be seen as a supplement to the tariff cuts achieved through the formula. In this respect, some of them reiterated the non-mandatory nature of the sectoral participation as well as the links between the level of ambition in NAMA and in Agriculture.

2. Assessment

32. In the report, it was identified that there is a fundamental gap in expectations in sectorals. This gap is not a technical one that one could bridge through adjustments in the architecture of sectorals. One side considers tariff cuts achieved through the formula as being insufficient to meets its expectations for the level of ambition of the Doha Round on industrial tariffs. They argue that the formula only provides for limited cuts in applied tariffs in emerging countries. They also argue that given the already low level of developed country industrial tariffs, and the application of the formula reductions with no exceptions, they would lose all leverage to obtain future industrial tariff reductions from emerging economies. Therefore, they saw the Doha Round as the last opportunity towards a harmonisation of tariffs with emerging economies. For that, the essence of tariffs on chemicals, industrial machinery and electric and electronic products should be

eliminated. The other side considers that the formula delivers a significant level of ambition. These Members point at the unilateral tariff reductions that many developing countries have undertaken since the Uruguay Round and point at the value in binding them in the Doha Round. They also indicate that, for the first time in the history of the multilateral trading system, developing countries are systematically cutting their tariffs, including some of their applied tariffs. As to sectorals, these Members see them as a means to improve the level of ambition, but according to them, such negotiations must be faithful to the mandate of the Doha Round, be balanced and proportionate. On this last point, some Members point at the disproportionate efforts that emerging countries would be undertaking when eliminating tariffs on chemicals, industrial machinery and electric and electronic products, considering the current very low level of tariffs applied by developed countries.

33. In sum, there are fundamentally different views on the ambition provided by the Swiss formula as it currently stands, on whether the contributions between the different members are proportionate and balanced as well as on what is the contribution of sectorals. The DG believed that they are confronted with a clear political gap which, as things stand, under the NAMA framework currently on the table, and from what he had heard in his consultations, is not bridgeable today.

34. Textual report by the chairman, Ambassador Luzius Wasescha, on the state of play of the NAMA negotiations was also circulated. Textual report has been divided into three parts. The first part contains comments on the current status of the non-NTB area of the December 2008 NAMA draft modalities contained in TN/MA/W/103/REV.3 (hereafter referred to as the "December 2008 NAMA text"). In the second part, he has reflected the work-in-progress concerning NTBs, and finally in the third part, he has provided some comments on the way forward.

III. Review of the Dispute Settlement Understanding (DSU)

35. In his report by the Chairman of the Special Session of the Dispute Settlement Body, Ambassador Ronald Saborío Soto, to the Trade Negotiations Committee, he recalled his last written report on 22 March 2010, in which he informed that TNC that they had completed a first round discussion of all issues contained in the consolidated draft legal text contained in the document that he had issued under his own responsibility in July 2008, which was endorsed by participants as basis for their further work in November 2008.[3] He informed that since May 2010, they initiated a more intensive process, building on earlier work. So far, they met seven times in this context, based on a combination of meetings in variable geometry depending on the issue being discussed. On each occasion, the Chair conducted informal consultations with interested delegations over the course of a week, with an open-ended informal meeting of the Special Session at the end of the week to report on the work to the entire Membership. In addition, delegations had continued to work individually and among themselves to advance discussions further. The July 2008 text had brought focus to the discussion and provided a unified basis for their continued work. Report points out that the participants had

engaged in their recent work in a constructive spirit, and they have made measurable progress in a number of areas. Specifically, they are close to an understanding on draft legal text on sequencing, they have identified key points of convergence on post-retaliation, and they had conducted constructive work on third-party rights, timesavings and various aspects of effective compliance. They have also discussed certain aspects of flexibility and Member-control, and in that context, made substantial progress towards draft legal text on the suspension of panel proceedings.

36. The report suggests that much work remains to be done in order to reach agreement. As described in the July 2008 report, and as confirmed recently, the work had been conducted on the assumption and understanding that all issues must progress in parallel, and they have not yet completed, in this phase of the negotiaitons, discussion on all of the issues contained in this text. Further work was therefore required in order to complete this phase of the negotiation. In addition to completing the work on the issues referred to above, there is a need to discuss also panel composition, remand, mutually agreed solutions, strictly confidential information, transparency and *amicus curiae* briefs and developing country interests, including special and differential treatment. A successful conclusion to the negotiations will also require additional flexibility in Members' positions. Based on the recent consultations, the Chairman's understanding was that participants were fully committed to continuing to work constructively for the successful completion of this work, toward a rapid conclusion of the negotiations.

IV. Comments and Observations of the AALCO Secretariat

37. The AALCO Secretariat urges AALCO Member States to actively participate in the Doha Round of Negotiations and make meaningful contributions for its successful conclusion. The Secretariat believes that consensus could be realized in all negotiating issues and the Members would be able to adopt the Doha Round results at the earliest if momentum is kept. However, it may be noted that the interests of the Developing and Least Developed Countries (LDCs) shall be protected in the Doha Round of Negotiations. The Negotiations on Agriculture and NAMA remains central to the success of the negotiations.

38. In order to enable the Developing and LDCs to get a rightful place in the world trading system and taking into consideration the importance of the topic and the impact of the WTO Regime and the ongoing trade negotiations, for the Member States of AALCO, the AALCO Secretariat would be very much willing to undertake research studies, workshops/seminars and capacity building exercises for the officials and trade negotiators of the Member States, subject to the financial and material support from the Member States and international and regional organizations. The Secretariat believes that these initiatives would help the officials and trade negotiators of the Member States to gain more legal expertise to understand the various aspects of the WTO Regime. The Basic Course on the World Trade Organization and Training Workshop on the World Trade Organization organized in cooperation with the WTO Secretariat were an important step in this direction and many such initiatives would follow in the near future.

V. Annex -I

SECRETARIAT'S DRAFT
AALCO/RES/50/S 13
1 JULY 2011

WTO AS A FRAMEWORK AGREEMENT AND CODE OF CONDUCT FOR WORLD TRADE (*Non-Deliberated)*

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat Document No. AALCO/50/COLOMBO/ 2011/S 13;

Recognizing the importance and complexities of issues involved in the WTO Doha Development Agenda;

Hoping that the Doha Round of Negotiations would conclude successfully in the near future;

1. **Encourages** Member States to successfully complete negotiations mandated under the Doha Development Agenda, taking fully into consideration the special concerns of developing and least-developed country Members of WTO;

2. **Appreciates** the effort of the Centre for Research and Training (CRT) of AALCO in successfully organizing a Training Workshop on the World Trade Organization in cooperation with the Institute for Training and Technical Cooperation (ITTC) of the World Trade Organization from 28th March to 1st April 2011, at AALCO Headquarters, New Delhi;

3. **Directs** the Secretariat to continue to monitor and report on the Doha Round of Negotiations, particularly the outcome of the review process concerning the WTO Dispute Settlement Understanding;

4. **Requests** the Secretary-General in consultation with Member States, subject to the availability of necessary resources, to organize seminars or workshops to facilitate the exchange of views by Member States on issues currently under negotiation within the WTO and capacity building programs; and

5. **Decides** to place this item on the provisional agenda of its Fifty-First Annual Session.

7. MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE

AALCO/50/COLOMBO/2011/S 16
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MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE
(Non-Deliberated)

CONTENTS

7. MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE

I. Introduction

1. Presently, the world is more interconnected than ever before thus events happening in one country tend to affect other countries as well. The financial crisis originated in a few developed countries and soon became a global crisis affecting many of the Developing and Least Developed Countries. Many analysts believe that the world is going through the worst crisis since the Great Depression. This financial crisis has emerged due to varied reasons. *The Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* headed by Mr. Joseph Stiglitz, in its report has identified the failure of the prevailing regulatory philosophy based on free market as one of the reasons for the financial crisis. The collapse in confidence in the financial system is widely recognized as central issue in the economic crisis. The Commission noted that the current crisis reflects problems that go beyond the conduct of monetary policy and regulation of the financial sector. It also involves deeper inadequacies in areas such as corporate governance and competition policies. The ongoing global financial crisis has given an opportunity to the international community to conduct an analysis of the financial system at the international and national level.

2. However, an effective global response will require the participation of the entire international community. Convening of the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* by the United Nations from 24th to 26th June 2009 in New York to assess the global financial crisis and to address the major issues, including the role of Member States in the ongoing international discussions on reforming and strengthening the international financial and economic system and architecture would definitely give wider participation of the international community in the ongoing efforts to regulate the financial sector. This would further strengthen the Monterrey Consensus adopted at the International Conference on Financing for Development (18-22 March 2002) and the Doha Declaration on Financing for Development, Follow-up of the International Conference on Financing for Development held in Doha, Qatar from 29 November to 02 December 2008.

3. The G-20 Toronto Summit[1] held from 26-27 June 2010 had recognized that the financial crisis had imposed them huge costs. The recent financial volatility had strengthened their resolve to work together to complete financial repair and reform. They highlighted the need to build a more resilient financial system that serves the needs of their economies, reduces moral hazard, limits the build-up of systemic risk and supports strong and stable economic growth. G-20 Summit have recognized that collectively they have made considerable progress toward strengthening the global financial system by fortifying prudential oversight, improving risk management, promoting transparency and continuously reinforcing international cooperation.

[1] G-20 Toronto Summit (26-27 June 2010) Declaration, Annex-II

II. Explanatory Note by the Secretary-General of AALCO for Inclusion as a New Item on the Provisional Agenda of the Forty-Eighth Annual Session, Putrajaya, Malaysia (2009)

4. The following are the excerpts of the explanatory note by the Secretary-General of AALCO:

A. Legal Dimensions of the Financial Crisis

5. One of the reasons for the current fragile state of the world economy are the shortcomings in the system of global economic governance, in particular a lack of coherence between the international trading system, which is governed by a set of internationally agreed rules and regulations, and the international monetary and financial system, which is not. There is a need for substantial improvement in the coordination of global economic policy. Global economic integration has outpaced the development of the appropriate political and legal institutions and arrangements for governance of the global economic system.

6. While many concede that financial liberalization and deregulation have created many opportunities for economic growth, at the same time, both liberalization and non- regulatory measures have also burdened the global economy with a great many financial crises over the past three decades. International response to the growing number of financial crises is normally in the form of a number of international public and private sector bodies setting standards and rules to govern financial markets.

7. The current crisis has made it apparent that there are large gaps and deficiencies in the regulatory structures of many countries. It is also necessary that while effective regulatory system must be national, there must be some global regulatory framework to establish minimum national standards and to govern the global operations of relevant global financial institutions. It is also imperative that the regulatory reforms be real and substantive, and go beyond the financial sector to address underlying problems in corporate governance and competition policy.

8. In this regard, *Declaration on Strengthening the Financial System* adopted by the Leaders of the G 20 on 2nd April 2009 in London had emphasized on action to strengthen regulation and supervision to reform the regulation of the financial sector. The core principles identified are strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation.

9. In addition, to the efforts at the international level, governments and central banks at the national level, have a major role to play in diffusing the crisis. They have come up with new monetary policies and regulatory schemes, which include rescue packages to bail out their financial systems. Major central banks have shown considerable coherence and coordination in their response to the sub-prime crises by providing liquidity to affected banks and financial institutions. However, to ensure that domestic regulatory systems are strong, greater consistency and systematic cooperation between countries is required.

B. Relevance of AALCO

10. AALCO is an intergovernmental organization with 47 Member States from Asia and Africa, which are at different stages of their economic development. The impact of the financial crisis and the responses are varied in each State. Legal aspects of the international and national monetary and financial system, was never within the purview of AALCO. Since AALCO comprises of Member States from diverse economic background, it could be a suitable forum to discuss the legal aspects of the international and national monetary and financial system, in the light of the financial crisis. Moreover, the financial crisis has had serious implications on the population of many of the AALCO Member States. If mandated, AALCO could play an important role in the ongoing international efforts to regulate financial and banking sector. These efforts would be complementary and supportive to the ongoing international efforts and would lead to progressive development of financial and banking regulations.

C. Proposal of the Secretary-General

11. Keeping in view, the impact that the global financial crisis has had on the Member States of AALCO, the Secretary-General would like to propose to the AALCO Member States to include "Managing Global Financial Crisis: Sharing of Experience" as an item on the agenda for the forthcoming Forty-Eighth Annual Session of AALCO. This proposal is in line with Article 1 (b) of the AALCO's Statutes which provides for exchange of views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary. Accordingly, at the Forty-Eighth Session, AALCO Member States can share their experience on how they have dealt with the financial crisis. These would include policy and regulatory (Legal) framework initiated in the respective countries so as to find the common basis for handling such a crisis. In this regard, the AALCO Secretariat proposes to convene a panel of experts from Asia and Africa who could share their country experiences with regard to the financial and banking regulations. The Secretariat would do the necessary follow up based on the outcome/mandate of the Session.

III. Deliberation at the Forty-Eighth Session of AALCO, Putrajaya, Malaysia (2009)

12. The **President of the Forty-Eighth Session of AALCO, Tan Sri Abdul Gani Patail,** in his introductory remark on the topic "Managing Global Financial Crisis: Sharing of Experiences" stated that the Asian financial crisis of 1998 was one of the most dramatic events of recent times which raised many questions regarding the appropriate policy response to the financial crisis. The current financial crisis which had affected the ASEAN region the most, emanated from three factors like inadequate risk management practices at banks, increased complexity of financial instruments and speculation of financial markets.

13. The **Secretary-General of AALCO** introduced the agenda item and highlighted that financial liberalization and deregulation had created many opportunities for economic development. But at the same time, both measures had also burdened the global economy with many financial crises over the last three

decades. He briefly explained about outcome of *The Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* and the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* convened by the United Nations from 24th to 30th June 2009 in New York. He emphasized that AALCO as an intergovernmental Organization was a suitable forum to discuss the legal dimensions of the financial crisis. The impact of the financial crisis and the responses were varied in each State. If mandated by the Member States, AALCO could play an important role in the ongoing international efforts to regulate the financial and banking sector. Those efforts would be complementary and supportive to the ongoing international efforts and would lead to progressive development of financial and banking regulations.

14. H.E Tan Sri Zeti Akhtar Aziz, Governor, Central Bank of Malaysia in her presentation on the topic elaborated that even after witnessing 100 financial crises, "we must share the lessons learnt from such instances since our regions were still vulnerable and fundamental to financial crisis". The dynamics of these issues affecting Asia was that the crisis starts in the financial markets and then extends to the foreign exchange. She explained that many of the Asian countries survived the financial crisis due to resilience. She informed that States needed to anticipate these crises and must take all preventive measures to overcome them. The government through the Central Bank must restore the stability of financial markets, ensure credit flows to private sector and should ensure resumption of growth. Henceforth, the Government should be able to ensure restoring the confidence which could happen through surveillance, ensuring access to financing, and block erosion of capital. She reiterated the significance of regulation and control by the central banks so that other financial institutions should not suffer due to the financial crisis, that would ensure that even when the economy is adversely affected due to financial crisis it could recover from its reminiscences at the earliest.

15. Mr. Kenji Aramaki, Graduate School of Arts and Science, University of Tokyo in his presentation "Global Financial Crisis-Japan's Experiences in the 1990s and Challenges for the Global Regulatory Reform" explained Japan's experiences in the 1990s, which included formation of an Asset Bubble and its collapse, the evolution of a financial crisis and policy responses to it. He also explained the current crisis and challenges for strengthening global financial system. He stated that de-leveraging by financial institutions has been under way and would continue for the years to come. He suggested that the most important was to make this process proceed as orderly as possible. At the same time, an overhaul of the regulatory and supervisory framework of the financial sector is being worked out so as to prevent another formation of financial excesses and accumulation of risk in the financial system. He concluded that stable and well-functioning financial system was a common concern for all countries and coordinated efforts for this were strongly needed.

16. The following Member States of AALCO made comments and observations on this topic, namely, the **Republic of South Africa, State of Kuwait, People's Republic of China, Saudi Arabia, Indonesia, Thailand** and **Arab Republic of Egypt.** There was a general consensus and opinion that Member States of the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental

authorities so that the States could take preventive measures to overcome financial crisis. The role of the government financial institutions in taking control of collapsing financial institutions and thereby restoring the confidence of the creditors through proper surveillance and intervention was also emphasized.

V. Proposal for Compilation of National Regulatory Mechanism of AALCO Member States

18. In view of the observation by the Member States that the Asian-African regions must cooperate in terms of sharing their information and experiences in order to form an interconnected regulatory structure among governmental authorities so that the States could take preventive measures to overcome financial crisis and recognising the fact that some of the AALCO Member States are yet overcome the financial crisis, the AALCO Secretariat proposes to bring out a compilation of the national regulatory mechanism (Legal framework) of its Member States. This would give an opportunity to the Member States to share their regulatory framework and could be used in addressing the present and future financial crisis. Hence, the Member States of AALCO are requested to forward their national regulatory framework developed by the concerned Ministries and the Central Bank to the AALCO Secretariat**.**

V. Annex -I

SECRETARIAT'S DRAFT
AALCO/RES/DFT/50/S 16
1 JULY 2011

MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCES
(Non-Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Having considered the Secretariat Document No: AALCO/50/COLOMBO/ 2011/S16;

Recognizing the significance of the topic, especially the legal aspects, for the Asian-African countries in the context of the ongoing global financial crisis and its impact on development;

Being aware of the adverse consequences of the global financial crisis on the economic growth and development of Member States of AALCO, and their efforts to resolve it;

Noting the efforts of the international community to address the global financial crisis, particularly, convening of the *UN Conference on the World Financial and Economic Crisis and its Impact on Development* by the United Nations from 24th to 30th June 2009 in New York to assess the global financial crisis;

Taking note of the Resolution (A/RES/63/303) adopted by the United Nations General Assembly on 9th July 2009 on the *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*:

1. **Emphasizes** the need for strengthening the foundation for a fair, inclusive and sustainable global financial system;

2. **Recognizes** that disruption in the financial market, loss of confidence, inadequate surveillance of the financial sector and lack of early warning led to the global financial crisis;

3. **Affirms** the need by Member States to review their respective legal framework to address the financial crisis including regulatory and supervisory mechanisms;

4. **Also recognizes** the need to reform and strengthen the international financial and economic system, as appropriate, to adapt to the current global financial realities;

5. **Calls upon** Member States to forward to the Secretariat their views and suggestions on this item, so as to guide the Secretariat on the future course of action;

6. **Request**s Member States of AALCO to forward their national regulatory framework/legal framework developed by the concerned Ministries and the Central Bank to the AALCO Secretariat so as to enable the Secretariat to bring out a compilation of the national regulatory framework of its Member States**;** and

7. **Decides** to place this item on the provisional agenda of its annual sessions, as and when required.