

**Address by H. E. Prof. Dr. Rahmat Mohamad, Secretary-General, AALCO:
“Making AALCO’s Participation in the Work of International Law Commission
More Effective and Meaningful” - An Overview of the deliberations at AALCO’s
Forty-Ninth Annual Session, held in Dar es Salaam, United Republic of Tanzania
from 5 to 8 August 2010**

Monday, 1 November 2010 (4:30 PM to 6:30 PM)

H. E. Amb. Ombeni Sefue, the Permanent Representative of the United Republic of Tanzania at the United Nations in New York;

Judge Hisashi Owada, President of the International Court of Justice;

Ambassador Isabelle Picco, Chair, Sixth Committee;

H. E. Ambassador Mr. N. Wisnumurti, Chair, International Law Commission;

Ms. Patricia O’ Brien, the Legal Counsel of the United Nations;

Ambassador Hasan Kleib, Vice-Chair, Association of Southeast Asian Nations (ASEAN);

Mr. Dire Tiadi, Legal Counsellor, Permanent Mission of South Africa;

Dr. Roy S. Lee, Permanent Observer of AALCO at the United Nations Headquarters in New York;

Distinguished delegates, Ladies and Gentlemen;

A very good evening to you all.

It is my privilege to address this august gathering and to give a brief overview of the Thematic Debate on the Topic “*Making AALCO’s Participation in the Work of International Law Commission (ILC) More Effective and Meaningful*” which was held on 6 August 2010 during the Forty-Ninth Annual Session of AALCO held in Dar es Salaam, Tanzania. The thematic debate was convened, taking into account that AALCO as an inter-governmental body with 47 Member States from the two continents of Asia and Africa was uniquely placed to serve the States of these regions in examining and formulating their responses to newly emerging challenges of international law. We had a

very brilliant Panel for that purpose. It was a unique combination of academic wisdom with practical international legal experience.

H.E. Mr. Priyasath Gerald DEP, Hon'ble Solicitor-General of Sri Lanka and Vice-President of the Forty-Ninth Annual Session of AALCO chaired the Session. In his opening remarks, he rightly pointed out that, the founding Member States of AALCO with the objective to promote the perspectives of newly independent States of Asia and Africa laid down the statutory obligation that ordained that one of the functions and purposes of the Asian-African Legal Consultative Organization was "to examine subjects that were under the consideration by the International Law Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary, to the Member States." He observed that the Organization had in its fifty-four years of work examined the questions under consideration of the ILC.

Following my Introductory Remarks on the topic for debate, the three Panelists, namely Prof. Shinya Murase, Member, International Law Commission from Japan; Dr. Roy S. Lee, AALCO's Permanent Observer at the United Nations Headquarters in New York who has had a very distinguished career in the United Nations and had been the Member Secretary of the ILC; and Professor V. S. Mani, distinguished international law academic from India made their presentations. I would like to highlight certain key aspects of their presentations which are of high relevance for both the institutions:

1. Effective cooperation of AALCO with other legal bodies, particularly with the ILC, was essential for AALCO to succeed in the discharge of its mandate in relation to the codification and progressive development of international law.
2. There were three ways to influence the ILC or provide input to the ILC in its work which were (i) during the General Assembly and in the Sixth Committee when work of ILC were discussed. Member States could comment upon the work of the ILC; (ii) the ILC also invites UN Member States to transmit their comments on the work of ILC in the written form which must be submitted within a deadline and Governments are asked to comment on them. (iii) Out of 34 members of ILC,

there are 12 members belong to AALCO Member States; they may consider working together and strongly influence the ILC.

3. One of the Panelists highlighted the practical difficulties and problems for AALCO in relation to the work of ILC. He observed that the main problem of channelling the AALCO's views was that countries have different concerns; there were difficulties in relation to process of consolidation and process for collecting those ideas. The ideas and comments from Member States must be collected somewhere between May and July of every year. Therefore, it would be desirable to have the Annual Session of AALCO earlier than later. Member States could also send in their views at the earliest for ensuring the inclusion of their concerns. He stated that it was necessary to channelize the hard work from the AALCO Secretariat.
4. As far as the objective of the progressive development and codification of international law was concerned, one of the panelists observed that there were several international organizations that were contributing to that endeavour. Therefore, AALCO should not jump into that vast ocean but ought to prioritize on the basis of the interest of its Member States, the issues on which it should work upon. The Panelist stated that the ILC was faced from the very beginning with the question of policy loaded issues. The codification exercise performed by the Commission was an arduous process. Therefore, such exercise happened in several other fora within the UN system. In that context, the panelist drew attention to the negotiation of the UN Convention on the Law of the Sea by the First Committee of the UN General Assembly and the treaties concerning the Outer Space by the Disarmament Committee. The Panelist underlined the contribution of AALCO, to the elaboration of the UNCLOS which was highly significant and suggested that AALCO could therefore adopt a policy of pick and choose.
5. Referring to the remarks made by a fellow panelist that the response by the Afro-Asian Members to the ILC's call for response was not encouraging, one of the panelist was of the view that the resources of the AALCO Secretariat could be utilized to assist the Member States in that task. One of the panelists welcomed

the proposal made by the Attorney-General of Malaysia for setting up an AALCO Working Group for ILC matters. The Working Group could be assisted by the AALCO Secretariat in its work.

Ambassador Chusei Yamada, Special Assistant to the Minister of Foreign Affairs, Japan and one of the ILC Members from Asia who served the Commission for a very long term in his message encouraged more active involvement by the Member States of AALCO in the work of ILC. He believed that the Secretariat of AALCO could play a role in assisting some of the Asian and African States which faced capacity problems in digesting the report of ILC. He pointed out that, in Europe, there existed the Committee of Legal Advisors on Public International Law (CAHDI). CAHDI obtained the annual report of ILC as soon as it was adopted and transmits it to its members. It organized a meeting of legal advisers and coordinated their positions before the debate in the Sixth Committee began. The Secretariat of AALCO could give similar or more contributions. With the assistance from Asian and African members of ILC, it could post executive summaries of ILC Report on its website for the Member States. It could also provide Member States with studies and recommendations on each topic. It was also entitled as an international organization recognized by the UN General Assembly to directly communicate to ILC its views and recommendations on behalf of its Member States. Ambassador Yamada expressed his hope that these measures would strengthen the position of the Member States of AALCO in the field of international law.

The Delegations of India, Malaysia, Japan, Ghana, People's Republic of China, Islamic Republic of Iran, Republic of Kenya, Kingdom of Saudi Arabia, the Gambia and Thailand took part in the deliberations that followed. I would also like to highlight some of the important points that the delegations have made:

Firstly, in order to make AALCO's participation in the work of ILC more effective and meaningful, the delegation proposed that a systematic and coherent method of obtaining AALCO Member States' feedback be developed. Perhaps AALCO could devise a dedicated inter-sessional meeting on ILC. This inter-sessional meeting would not only be

useful to discuss the topics under the consideration of the ILC but it could also be used to discuss appropriate topics, that were of mutual benefit and relevance to the Asian and African continents, to be elaborated at the ILC. Due to the work schedule of the ILC, the delegation proposed that this inter-sessional meeting may be held early in the year before the starting of each session of the ILC. The outcome of the inter-sessional meetings should be presented to the AALCO Annual Session for deliberation and consideration.

Secondly, AALCO must empower the ILC members of Asian-African region. Towards that objective, few suggestions were made: i) to popularize the draft articles of ILC among the Member States of AALCO; ii) to create a platform for academic exercise in discussing the issues relating to ILC; iii) compilation of state practice on international law matters, and which were relevant to the subject matters on the agenda of the ILC; iv) legal officers of AALCO could be exposed to ILC related matters, to have a legal expertise in order to write and comment on the reports of the ILC, on rotational basis, AALCO should send the legal officers to ILC; v) AALCO Session should be held in the first quarter of every year; and vi) AALCO could consider holding seminars to discuss certain specific topics dealt with by ILC as well as on some new topics identified by it. The outcome documents of these seminars could possibly be transmitted to the ILC for its reference.

Thirdly, the AALCO Secretariat could make Questionnaires on points which could be of significance in international law, and sent them to Member States, and compile responses there from and submit them to the UN legal department. If such action could be taken with cooperation of Member States, it could become valuable contribution to the work of ILC. If regional institutions such as the ASEAN, Arab League, and African Union could submit one uniform view on one subject item or a legal issue, state practices prevailing in the respective region could be communicated to the ILC. In such cases, AALCO Secretariat might need to coordinate activities with the ILC and/or the African Union.

Fourthly, one delegation while commenting on the topic “Reservation to Treaties”, stated that as it was a pivotal topic of the ILC having severe impact on the international

community, proposed that this topic should form an integral part of AALCO's Fiftieth Annual Session agenda and the Secretariat should formulate effective mechanism and platform to allow better understanding of that complex subject-matter amongst AALCO Member States.

Lastly, AALCO's participation in the work of the Commission to make more effective and meaningful, new topics that reflected the needs and requirements of the Asian and African countries may be introduced in order to reflect upon recent developments in international law and the pressing concerns of the international community as a whole.

Due to time constraints, I could touch upon only a few important points made by the panelists and delegations at the Forty-Ninth Annual Session of AALCO. Now our main task is to have a road map on how to materialize these suggestions.

I thank you all for giving a patient hearing.